SYNOPSIS OF MORAL AND PASTORAL THEOLOGY

by Adolphe Tanquerey, S.S.

The ninth edition, carefully revised
according to the Code of Canon Law

VOLUME I

On Penance, Matrimony, and Holy Orders

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Title Pages and Approval

Synopsis of Moral and Pastoral Theology

According to the mind of St. Thomas and St. Alphonsus, adapted to the morals of the present day.

Vol. 1. - On Penance, Matrimony, and Order.

The author reserves the right of ownership.

To Incarnate Wisdom,

which reaches from end to end mightily,

and disposes all things sweetly,

and to the Immaculate Virgin,

the Seat of Wisdom,

I have dedicated this work.

"God of my fathers, and Lord of mercy, who hast made all things by thy word, and by thy wisdom hast appointed man, that he should have dominion over the creature which was made by thee; that he should order the world in equity and justice, and judge judgment in uprightness of heart: give me wisdom, the attendant of thy throne, and reject me not from among thy servants, for I am thy servant and the son of thy handmaid; a weak man, and of short time, and too small for the understanding of judgment and laws." (*Wis.* IX, 1-6.)

"Seat of Wisdom, pray for us."

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On Penance, On Matrimony and Order

By Ad. Tanquerey

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- Benjamin Octavius,
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Tournai, July 14, 1922.
V. Cantineau, Vicar General.

Approval of His Eminence Francis Cardinal Richard, Archbishop of Paris

How much it profits toward the right formation of clerics in the theological sciences that doctrine be drawn from the purest sources, set forth in a clear and scientific method, and at the same time adapted to the needs and morals of our time, can be hidden from no one. Now with these qualities there is endowed, as has been reported to Us and thoroughly ascertained, the work whose title is *Synopsis of Dogmatic and Moral Theology*, distributed in five volumes, to which a sixth and last will soon be added, which D. Tanquerey, from the priests of the Society of St. Sulpice and professor of theology in Our Seminary, has written. For in this work the passages of Sacred Scripture have been examined rather diligently, according to the desire of Leo XIII, who greatly wishes that "the use of divine Scripture should flow into the whole discipline of theology and be, as it were, its soul";[1] nor have the testimonies of the Fathers or Councils been neglected, since they themselves also contain revealed truths. And because, according to the precept of the Apostle, the minister of Christ must be able *to exhort in sound doctrine and to refute those who contradict*, the author introduces opponents - opponents, I say, especially of our own time, whom it is chiefly important today to refute - and he makes clear how worn out their arguments are, although perhaps wrapped in new concepts and words, and demonstrates how weak they are, arguments for the most part drawn from their own books.

[1] Encyclical *Providentissimus, On Sacred Scripture*, November 19, 1893, § *Illud autem maximi*.

As to the moral matter, however, the author takes special pains that, according to the Lord's own words, he may bring forth from his treasure new things and old: old things, namely the very principles which are from eternity and which, while other shifting things are moved, remain unmoved; new things, namely new explanations and new conclusions, by which he explains and judges the new forms of acts, contracts, rights, or duties, which are multiplying day by day in modern times, and solves the questions arising thence. Thus, concerning the right of property, against its modern haters, concerning the condition of workers and the ways of bringing it to a better state, concerning the newest contracts regarding the labor of workers, the author treats many things clearly and opportunely.

Therefore it is not only pleasing to Us that this work, already disseminated in many parts of the Catholic Church, is also held in the hands of students in Our Seminary for the use of the schools, but We also earnestly commend it to the whole clergy of our diocese.

Given at Paris, February 18, 1905.

- Francis Card. Richard,
  Archbishop of Paris.

In this new edition, with the cooperation of C. Belmon and A. Cance, most learned professors of moral theology in the Seminary of Rodez, we have especially changed those things which had to be corrected from the Code of Canon Law and from the more recent decrees of the Congregations. If, in the course of the work, kind readers notice certain things still to be reformed, let them not hesitate to make them known to us, so that we may be able diligently to correct them.

Issy, near Paris, on the feast of the Visitation of the Blessed Virgin Mary, 1922.

Ad. Tanquerey.

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On Penance (Volume I)

On the Virtue of Penance (Preliminaries)

On Penance — Object and Division of the Treatise

1. Object. The spiritual life which is conferred in Baptism, strengthened through Confirmation, and nourished in sacred Communion, can be lost through mortal sin and sometimes is lost; but it is repaired through the Sacrament of Penance, which for that reason is deservedly called the Sacrament of Reconciliation, the second plank offered to the sinner after shipwreck, and a laborious baptism, which cleanses us from sin only by arduous labors.

Penance is at once an act, a virtue, and a sacrament. Right reason shows that some act of penance is necessary after sin has been committed. For the injury inflicted upon God must be repaired; moreover, after the grave sinful act has passed, man remains turned away from the last end until he is freed from sin by penance. Therefore, even before the Sacrament of Penance had been instituted, some act of penance was required for recovering justification lost through mortal sin.[1]

[1] To the point, the Council of Trent says (sess. XIV, chap. 1): "Penance was indeed necessary, at every time, for all men who had defiled themselves with any mortal sin, in order to obtain grace and justice, even for those who had asked to be washed by the Sacrament of Baptism; so that, after perversity had been cast off and amended, they might detest so great an offense against God with hatred of sin and pious sorrow of soul."

For exercising acts of penance, according to the common opinion, there is infused into the justified the virtue of penance, which inclines us to detestation and expiation of sin.

Besides this, Christ instituted a Sacrament by which, once certain acts of penance have been placed, and by means of priestly absolution, sins committed after Baptism are remitted.

2. Division. We shall treat of this Sacrament in this Treatise, with a few preliminary matters, however, concerning the virtue of penance.

There will be two parts: in the former, which is chiefly dogmatic, we shall set forth the divine institution and nature of the Sacrament of Penance; in the latter, which is moral, we shall explain the duties of the penitent and of the confessor; in an Appendix, we shall hand down a few things concerning Indulgences, by which the temporal punishment owed to sin is diminished or taken away.

Dogmatic part:

- Concerning the power of the keys granted to the Church.
- Concerning the acts of the penitent required for the exercise of this power.
- Concerning the Sacrament itself: concerning matter and form; concerning effects.

Moral part:

- Duties of the penitent: contrition; confession; satisfaction.
- Concerning the confessor: concerning his power; concerning his duties.

Appendix: concerning Indulgences.

Preliminary Matters Concerning the Virtue of Penance

Before we treat of the Sacrament of Penance, a few things must be noted beforehand concerning the virtue of penance: 1. concerning its notion; 2. concerning its necessity. For, even after the Sacrament has been instituted, it is necessary to exercise acts of penance both within and outside the sacred tribunal.

I. The Genuine Notion of Penance

3. 1. Etymological notion. Penance, according to most ancient authors, is derived from the words *poenam tenere*, "to hold punishment," and therefore designates the act by which we undergo punishment in order to make satisfaction for sins.

[1] St. Thomas, 3 p., q. 85; Suarez, *de Paenitent.*, disp. I and VII; Morinus, *Commentar. in admin. Paenitentiae*, bk. I, chs. 1-2; Billuart, diss. II; Billot, *De Paenit.*, thesis 6; L. de San, *de Paenit.*, P. 1, chs. 1-6; Pesch, n. 87 ff.

More truly, however, more recent authors say that penance takes its origin from *poena*, or *penitus*, and etymologically designates something inward, which affects the heart itself.[1]

[1] Cf. M. Breal and A. Bailly, *Dictionnaire etymol. latin*, Paris, 1898, p. 240.

Among profane authors, this word especially signifies three things: (a) an interior sense of weariness or displeasure; thus in Cicero, in the book *On Old Age*, it is said: "If, therefore, he had lived a hundredth year, would he be weary of his old age?" (b) sorrow because of a deed previously admitted, whether good or evil: "We are accustomed to say *paenitere* then, when the things which we ourselves have done, or which have been done by our will and our counsel, afterwards begin to displease us, and we change our judgment concerning them";[2] (c) sorrow conceived concerning some crime or delict: "We see King Alexander," says Cicero,[3] "who, when he had slain Clytus, his familiar friend, scarcely kept his hands from himself: so great was the force of repenting!"

[2] Aulus Gellius, *Noct. Attic.*, bk. XVII, ch. 1.

[3] Cicero, in IV *Tuscul. quaest.*

In this last sense the sacred authors very often use the word *penance*, inasmuch as it signifies sorrow of the soul concerning a sin committed.

4. 2. Theological notion. Penance, whose scope is to repair the injury inflicted upon God through sin, is defined: a supernatural and moral virtue inclining the sinner to detestation of his own sin, insofar as it is an offense against God, and to a firm purpose of amendment and satisfaction.

In this definition four things are chiefly included: the nature, object, acts, and subject of this virtue.

(A) The nature of penance, which is: (a) a supernatural virtue. Speculatively and in itself there could be a natural habit of penance, acquired by repeated acts; but in fact penance in Christians must be supernatural. For they have been raised to a supernatural state, and therefore they can repent as they ought only under the influence of actual grace and from a supernatural motive known by revelation. Indeed, according to the more common opinion, this virtue is supernaturally infused, together with the other virtues, at the very instant at which the soul is justified.

(b) And moral, not theological: for it is not immediately concerned with God, nor is it founded upon one of the divine attributes; but it is concerned with sin insofar as it is amendable, and its motive is the honesty of expiation or satisfaction to be shown to God who has been offended.

(B) The object is twofold: (a) the material object, or that concerning which penance is concerned, is any personal sin whatever, insofar as it violates divine right and therefore must be destroyed and repaired by suitable satisfaction. Hence there is no penance properly so called concerning original sin, nor concerning the sins of others; for that alone can properly be retracted which was committed by one's own will. But penance taken broadly, insofar as it is hatred and detestation of sin, can be concerned with the sins of others, since we are bound to pursue them with hatred. In this sense Christ was penitent, insofar as He hated our sins and made satisfaction for them.

(b) The formal object or motive of this virtue is the honesty which is found in repairing an offense inflicted upon God. This is the special or proper motive, so to speak, of penance. Nevertheless, an act of detestation of sin can arise from other motives: of charity, gratitude, hope, fear of God, etc., because sin is opposed to these various virtues.

(C) The proper acts of penance are detestation and sorrow for sin committed, the purpose of not sinning thereafter, and satisfaction, or at least the will of making satisfaction.[1] In a broader sense, all those acts by which sin is repaired can be called acts of penance, for example prayer, fasting, self-denial, and other acts of the virtues, insofar as they are orderable to making satisfaction for sin.

[1] The genesis of these acts can be understood thus: when first the sinner apprehends the sin committed as evil, the will abominates and detests it, because it is evil; then he notices that this evil is present to himself, in itself or in its effects, and he grieves over it; but he cannot sincerely grieve over sin unless he firmly wills to avoid it in the future; and furthermore, since the past evil must be repaired, there now arises spontaneously the will of making satisfaction, as is explained below.

(D) The remote subject of penance is any man guilty of sin or capable of sin; for the act of penance properly so called indeed presupposes an act of sin, but the habit by which a man is rendered prompt for grieving over his own sin can be found in all who are capable of sin, since they ought to be prompt for grieving over sin, if perhaps it has been committed.

The proximate subject is the will, because hatred of sin is an act by which the will is turned away from sin; but this act of the will presupposes previous cognition by the intellect, by which sin is apprehended as evil; furthermore it often flows into the sensitive appetite, causing there sensible sorrow or sadness; but the will remains the proper seat of penance.

5. 3. Controversy concerning the nature of this virtue. (A) All theologians concede that penance is a virtue, but some have denied that it is a special virtue. A few, such as William of Auxerre and F. Mayronius, taught that sins are detested not through a special virtue, but through the virtue to which they are opposed; for example, intemperance is detested through the virtue of temperance. Others, such as Durandus, said that penance is nothing other than charity, insofar as it grieves over sin as an offense against God. Some, after Cajetan, maintained that penance is a complex of three virtues: charity, which hates sin; religion, which by confessing sins acknowledges the dominion of God; and vindicative justice, which furnishes satisfaction.

(B) Nevertheless, theologians commonly teach, after St. Thomas, that penance is a special virtue. For there is a special virtue where there occurs a praiseworthy act elicited because of a special motive or formal object; but the act of repenting is certainly a praiseworthy act, since it tends toward the destruction of past sin, and it is elicited because of a special motive, namely because sin is an offense against God. For this motive extends itself to all sins and differs from the motive of other virtues, and therefore it is a special motive. Therefore penance is a special virtue.

This virtue, moreover, is referred to commutative justice, not indeed as a subjective part, but as a potential part;[1] for through it the sinner in some way repairs the injustice committed against God, not indeed according to perfect equality, but in the best way possible. St. Thomas explains this thus (3, q. 85, a. 3): "Justice simply so called is between equals, because justice is a certain equality... But justice in a certain respect is said to be that which exists between those of whom one is under the power of the other, as a servant under a master, a son under a father, a wife under a husband. And such justice is considered in penance. Hence the penitent has recourse to God with the purpose of amendment, as a servant to a master, according to that:[1] 'As the eyes of servants are on the hands of their masters, so are our eyes unto the Lord our God, until he have mercy on us'; and as a son to a father, according to that:[2] 'Father, I have sinned against heaven and before thee'; as a wife to a husband, according to that:[3] 'Thou hast committed fornication with many lovers; nevertheless return to me, saith the Lord.'"

[1] The subjective parts of some virtue are, as it were, the species into which it is divided, or the parts which fully participate in the nature of that virtue; potential or annexed parts are those which are ordered to certain secondary acts and do not have the whole nature of this virtue, but only something of its perfection. But although penance is a certain species of justice, it participates in something of the other virtues, as is excellently declared by St. Thomas (q. 85, a. 3, ad 4): "Penance is with faith in the Passion of Christ, through which we are justified from sins, and with hope of pardon, and with hatred of vices, which pertains to charity. But insofar as it is a moral virtue, it participates in something of prudence, which is directive of all virtues; but from the very notion of justice, it has not only that which belongs to justice, but also those things which belong to temperance and fortitude, insofar as, namely, it abstains from those things which cause delight, which pertains to temperance, and bears hard things, which pertains to fortitude."

[1] Psalm 122:2.

[2] Luke 15:21.

[3] Jeremiah 3:1.

6. 4. False notion of the Protestants. (A) It is set forth. This flows from the way in which they conceive sin and justification. Since man, according to Luther, sins necessarily, penance properly does not consist in a change of will, which remains evil, but in a change of feeling (*sentiment*) in relation to God; namely, the feeling of terror, struck into him once sin has been recognized, is changed into faith or confidence by which one believes that sins are forgiven to him on account of Christ, and thus he is justified.

Calvin, however, corrected this notion, asserting that penance is the beginning of a new life arising from confidence, or "a true conversion of our life to God, proceeding from a sincere and serious fear of God, which consists in the mortification of our flesh and of the old man and in the vivification of the spirit."[4]

[4] Calvin, *Institutes*, bk. III, ch. 3, n. 4.

Both contend that no satisfaction must be paid to God, since Christ has abundantly made satisfaction for us.

Modern Protestants, however, coming nearer to the Catholic truth, admit that the beginning of a new life is a prior condition for justification, and that true penance embraces humble confession of the delict before God, horror of the sin committed, and amendment of life.[1]

[1] Cf. Bovon, *Morale chretienne*, Lausanne, 1897, vol. I, pp. 224-237.

7. (B) The Lutherans are refuted. Genuine and salutary penance is not only the purpose of a new life, but also the detestation of sins committed. This is certain.

(a) For whatever may be said concerning the etymological meaning of the words *paenitentia* or *metanoia*,[2] it is certain from biblical usage that words of this kind signify not only a simple change of counsel, but also detestation of the past life. Thus, for example, pious Job said: "I have spoken unwisely... therefore I reprehend myself, and do penance in dust and ashes";[3] again the Psalmist says: "A sacrifice to God is an afflicted spirit; a contrite and humbled heart, O God, thou wilt not despise";[4] nor do the Prophets speak otherwise: "Be converted, and do penance for all your iniquities... and make for yourselves a new heart and a new spirit."[5] Now in these and similar texts, besides a change of life, there is found detestation of sin; for what is it to reprehend oneself, to have a contrite heart, to do penance for sins, etc., if not to detest the past life? Moreover, St. Paul, addressing the penitent Corinthians, explicitly commemorates sadness as an element of true penance:[6] "Now I rejoice, not because you were made sorrowful, but because you were made sorrowful unto penance... For the sorrow that is according to God works penance unto steadfast salvation."

[2] The word *metanoia* (*meta*, beyond or after; *nous*, mind) etymologically has the same sound as "trans-mentation," or change of mind; but from usage among both sacred and profane authors, it also signifies sadness and sorrow concerning the past, as is clear from lexicons even edited by Protestants, Schleusner, Robinson, Thayer, etc. Cf. Morinus, op. cit., bk. I, ch. 2. The same can be said of the word *paenitentia*; for from what was said above, this word sometimes signifies displeasure; this is confirmed from these verses of Ovid (bk. I *de Ponto*, Elegy I): "I repent: oh! if any trust is given to the wretched; I repent, and I myself am tormented by my deed."

[3] Job 42:3-6.

[4] Ps. 50:19.

[5] Ezek. 18:30 ff.

[6] 2 Cor. 7:9-10.

(b) Reason itself agrees: for he who comes to his senses, and changes his life for the better recalls his counsel for this reason: because he understands that the former life is evil; for why would he lead a new life unless he saw that the former one was contrary to equity? But just as we are bound to love the good, so also to hate evil, especially if it has been committed by us. Therefore penance imports detestation of sin. Moreover, reconciliation with an offended person requires more than cessation of the injury; for one who asks pardon from men must first manifest detestation and sorrow for the injury previously inflicted, so that, moved by this sorrow, the offended person may be willing to pardon the injury. In the same way, therefore, the sinner must conduct himself with God.

II. Concerning the Necessity of Penance

8. 1. State of the question. The question concerns fallen man, or the sinner, and concerns both the necessity of means and the necessity of precept. That is necessary by necessity of means which is a means, and indeed a necessary means, of justification and therefore of salvation, without which, consequently, even if it is inculpably omitted, salvation cannot be obtained. That is necessary by necessity of precept which is so prescribed that its omission, if culpable, is a sin, but if inculpable, does not harm salvation. (a) Now all Catholics teach that penance in general, that is, some detestation and retraction of sin, is necessary by necessity of means, once mortal sin has been posited; the controversy is only whether a formal act of penance is required, or whether a virtual act suffices, such as is contained in an act of perfect charity. The Scotists maintain that a virtual act of penance suffices; many Thomists think that a formal act is required. Suarez, however, distinguishes, saying that a formal act is required *per se* when someone thinks of his sins, but that remission of sin can *per accidens* be obtained by a virtual act of penance when, through forgetfulness or lack of consideration, someone does not think of his sins. We embrace this opinion as the more probable.

[1] St. Thomas, 3 p., q. 86, a. 2; Suarez, disp. IX and XV; Salmanticenses, disp. IV, dub. 2; disp. V, dub. 6; Drouin, q. I, ch. 3; Palmieri, thesis 7; de Augustinis, thesis 11; Sasse, thesis 6.

(b) Victoria[2] denies that there is a special precept of repenting, and therefore denies that impenitence is a special sin. For the texts of Scripture, he says, must be understood of the necessity of means, which is not always joined with a precept: thus, for example, sanctifying grace, although necessary for salvation, does not fall under a precept. But this opinion is commonly rejected by theologians.

[2] Tr. *de Septem Sacram.*, q. 121.

9. 2. Thesis: Supposing mortal sin, it is certain that at least a virtual act of penance is necessary by necessity of means in the present order of things; it is commonly held that the same is necessary by necessity of precept. I said: once mortal sin has been posited, by which, namely, we are turned away from God, the last end; if the sin is only venial, penance, although desirable, is not necessary for salvation. I said also: in the present order, because some theologians think that God can, by His absolute power, pardon sin and infuse grace without any act of the sinner; but, considering His attributes, especially wisdom, justice, and holiness, He cannot.

(A) As to the necessity of means. (a) Scripture. For that is necessary by necessity of means which is so joined with the end that without it the end cannot be obtained; but, once grave sin has been posited, salvation is so joined with penance that without it salvation cannot be had, as is gathered from these and similar testimonies: "If that nation shall repent of its evil, against which I have spoken, I also will repent of the evil which I thought to do to it... if it shall do evil in my eyes, so that it does not hear my voice, I will repent of the good which I have spoken that I would do to it";[1] "But if the wicked man shall do penance for all his sins... he shall live by life and shall not die... but if the just man shall turn himself away from his justice and shall do iniquity according to all the abominations which the wicked man is accustomed to work, shall he live? All his justices which he had done shall not be remembered; in the prevarication by which he has prevaricated, and in his sin which he has sinned, in them he shall die."[2] Nor is it otherwise in the New Testament: "Unless you

shall do penance, you shall all likewise perish";[3] "Do penance, therefore, and be converted, that your sins may be blotted out,"[4] as if it were said: the necessary condition that your sins be blotted out is that you do penance. Therefore, in the present order, penance is joined with the remission of sin as a means with the end.

[1] Jer. 18:8-10.

[2] Ezek. 18:21-27.

[3] Luke 13:5.

[4] Acts 3:19.

(b) Tradition. From the Council of Trent cited above: "Penance was indeed necessary, at every time, for all men who had defiled themselves with any mortal sin, in order to obtain grace and justice." From this it follows that penance is necessary by necessity of means, since at every time, even before a positive law had been established, it was required for the remission of sin.

(c) Theological reason. The sinner cannot be saved unless he has first obtained from God the remission of his sin; but without penance God cannot remit sins. For wisdom forbids that He reconcile to Himself and receive into His friendship one whom He knows to be voluntarily turned away from Himself and obstinate in the love of sin: for this would be nothing other than to foster and reward sin itself. Moreover, justice forbids that an offense be remitted without some reparation; holiness forbids that He unite to Himself something impure still adhering to sin. Now one who has gravely sinned, even from frailty, remains turned away from God, at least habitually, until he repents, and does not repair, as far as he can, the offense inflicted upon God, but perseveres in it and continues to adhere to sin. Therefore God cannot remit sin, considering His attributes, unless the sinner turns himself to God through an act of penance; therefore without penance the sinner cannot be saved.

10. (B) As to the necessity of precept. (a) Scripture. The texts adduced already demonstrate the matter; for God, by declaring the necessity of penance so emphatically and by threatening the gravest punishments to the impenitent, manifests clearly enough that He wills all to be bound to do penance. Furthermore, according to the testimony of Scripture, one who refuses to repent is convicted of disobedience, and indeed of grave disobedience, since he is punished with a grave penalty: "Because I called and you refused, I stretched out my hand, and there was none who regarded... I also will laugh in your destruction."[1] Moreover, Christ preached penance under the form of a precept: "From that time Jesus began to preach and to say: Do penance, for the kingdom of heaven is at hand."[2] In vain, however, is it objected that grace, although necessary for salvation, does not fall under a special precept; for grace is not a virtue, but a means to virtue, and therefore it is not directly prescribed; but penance is a special virtue, from what has been said, and therefore falls under a precept.

[1] Prov. 1:24-33.

[2] Matt. 4:17.

(b) Reason. Each person is bound, by force of justice, to repair an injury inflicted upon another; but man, through mortal sin, has inflicted a grave injury upon God; therefore, from the precept of justice, he is bound to compensate this injury by doing penance. Another reason is added: everyone is

commanded to have care for his spiritual salvation; but the sinner cannot save his soul unless he repents of grave sins; therefore by force of charity toward himself he is bound to do penance.[3]

[3] From this St. Thomas infers (3 p., q. 84, a. 7, c. and ad 1) that penance is prescribed by natural law: "For by natural reason man is moved to repent of the evils which he has done, but that he do penance in this or that way is from divine institution."

3. When Does the Precept of Penance Oblige?

11. First, the precept of repenting can be considered as negative and affirmative: insofar as it is negative, it forbids one to take complacency in his sins; in this sense it obliges always and for always. Insofar as it is affirmative, it commands that one grieve over sins committed; and then it obliges at the opportune time, both *per se*, that is, by force of the virtue itself of penance, and *per accidens*, or by force of another precept which one is bound to fulfill.

(A) *Per se*, (a) it does not oblige immediately after sin has been committed. For a precept of this kind is affirmative, from what has been said; but it belongs to the nature of an affirmative precept that it does not oblige immediately and for always, but at a determined time, namely when the opportunity presents itself. Moreover, if it obliged immediately, one who did not immediately do penance would thereby sin, and would commit a new sin as often as, conscious of this obligation, he did not repent; but this is opposed to the common sense of the faithful, who by no means accuse themselves of these sins, and of confessors, who do not ask about them.

12. (b) It certainly obliges, however, in the article of death, or even in a very probable danger of death or of perpetual madness; for then each person is bound, by reason of justice toward God and charity toward himself, to be reconciled with God and to provide for his salvation, since otherwise either certainly or very probably no other opportune time remains.

(c) More probably, it also obliges sometimes during life. Thus more commonly against Durandus, Cajetan, Vasquez, and a few others, who contend that no time can be assigned within which this precept obliges outside the article of death. For excessive delay of conversion is gravely reprehended by the sacred authors: "Delay not to be converted to the Lord, and defer not from day to day: for his wrath shall come suddenly, and in the time of vengeance he will destroy thee";[1] "But according to thy hardness and impenitent heart, thou treasurest up to thyself wrath in the day of wrath."[2] Moreover, delay of conversion is dangerous to salvation, because it easily induces into new sins,[3] renders merit *de condigno* impossible, and exposes one to the danger of damnation if death should suddenly occur; it is also injurious to God, since for a long time the sinner remains His enemy and defers until death the compensation for the injury inflicted upon God, thus despising the grace of God which moves him to conversion. And so voluntary delay of penance for a notable time is a new sin, namely the sin of impenitence.

[1] Eccli. 5:8-9.

[2] Rom. 2:4-5.

[3] For St. Gregory the Great rightly says (*Moral.*, bk. XXV, ch. 9, in Migne, P. L., LXXVI, 334): "For sin which penance does not wash away, by its very weight soon draws one to another." The reason for this is that one who remains long in the state of mortal sin is deprived of those efficacious graces which are necessary for overcoming grave temptations. Cf. St. Thomas, $1.^2$, q. 109, a. 8.

13. What time, however, is notable and sufficient to constitute a new sin cannot be accurately defined. Delay for many years is commonly considered a notable time, especially because by the ecclesiastical precept, which seems to be determinative of divine law, the sinner is bound to confess his sins at least once a year, and therefore to do penance.

According to Laymann[4] and many others, one who satisfies the precept of annual confession does not defer penance beyond the due time, because the Church, by determining the time of confession, seems also to have determined the time of penance. And this opinion is very probable, especially because generally the faithful do not think themselves guilty of a new sin unless they have deferred penance beyond a year.

[4] *De Sacr. Paenitent.*, ch. 2, n. 6.

Nevertheless, St. Alphonsus[5] does not wholly acquiesce in this opinion, but he thinks that one month is a notable time in the delay of penance, both because of the obligation of eliciting an act of charity once a month, which the sinner cannot fulfill unless he grieves for his sins, and because one who remains in mortal sin through an entire year cannot avoid the danger of easily falling back into other sins. Yet he adds, and this is to be noted for practice, that sinners, especially the uneducated, can for the most part, indeed almost always, be excused from this sin of delayed penance on account of inadvertence.

[5] St. Alphonsus, bk. VI, n. 437, and *Homo Apostol.*, tr. XIV, n. 10.

14. (B) *Per accidens* it obliges whenever the sinner, from some other precept, is bound to recover the state of grace: (a) for administering the sacraments, if he is a priest, or for receiving the sacraments of the living; (b) for overcoming grave temptations, if the sinner is conscious that he cannot resist them unless he elicits an act of contrition; (c) for eliciting an act of charity toward God, if the obligation of fulfilling this precept is urgent. - But the precept of sanctifying feasts and the Lord's day does not import an obligation of eliciting an act of penance, since the state of grace is not required for keeping the Lord's day.

Therefore sinners are to be earnestly exhorted to do penance quickly, not indeed by asserting that the delay of penance is a new mortal sin, but by showing that impenitence is dangerous for the sinner and injurious to God,[1] as above.

[1] Among the passages of Scripture and of the Fathers which can be alleged, these especially are to be attended to: Prov. 1:22-23; Isa. 1:2-31; Jerem. 2, 3, 4; 18:5-17; Ezek. 18:21-32; Matt. 3:8-12; Luke 13:2-5; Acts 3:19-26, etc.; - St. Ambrose, *De Paenitentia*, bk. II, in Migne, P. L., XVI, 495 ff.; St. Augustine, sermon 20, in Migne, XXXVIII, 140-141, etc. - Cf. Bourdaloue, *Careme*, sermon for the Monday of the 2nd week, on final impenitence; Massillon, *Careme*, on final impenitence; Wiseman, *Sermons on Moral Subjects*, *On delay of repentance*; Newman, *Sermons to Mixed Congreg.*, *Neglect of divine calls and warnings*.

Preliminary Matters

15. 1. Notion of the Sacrament of Penance. Before the coming of Christ, Penance was not a sacrament; but in order that the faithful might more securely obtain the remission of sins committed after baptism, the Lord raised penance to the dignity of a sacrament, by handing over to the Church the ministerial power of remitting sins, and by determining the acts to be furnished by sinners for obtaining pardon.

Penance, insofar as it is a sacrament, is commonly defined by theologians: A Sacrament of the New Law instituted by Christ, by which, through the juridical absolution of a priest, sins committed after baptism are remitted to a man who is contrite, has confessed, and promises satisfaction.

It is said (a) by which, through the juridical absolution of a priest, so that there may thus be declared the form of this sacrament, namely, the absolution of the priest; the minister, or priest; and the mode in which it is administered, namely, the judicial form; (b) to a man who is contrite, etc., by which words are designated both the subject and the dispositions of the subject: contrition, confession, and the intention of making satisfaction, which, according to many, are also the proximate matter of the sacrament; (c) sins are remitted, etc., and thus are expressed not only the principal effect, but also the remote matter of the sacrament, namely, all sins, whether mortal or venial, committed after baptism. From what is to be said, it will be clear that this definition is legitimate.

16. 2. Division of this part. In the dogmatic part of this Treatise, we intend to demonstrate the existence, or divine institution, of the sacrament of Penance, and also to declare its nature.

For accomplishing this, we shall examine three things:

I. The power of the keys granted to the Church;

II. The acts of the penitent required for the exercise of this power;

III. The nature of the sacrament, insofar as it can be inferred from these two.

The reason for the division is this: according to the Council of Trent, the Lord especially instituted the sacrament of Penance when He conferred on the apostles the power of remitting sins, which is called the power of the keys; therefore it is necessary to explain this before all else. But since this power is not exercised unless certain acts of the penitent have been posited, namely confession, contrition, and satisfaction, these must be treated afterward. And since the sacrament itself is constituted from the power of the keys and from the acts of the penitent, it is fitting to discuss the sacrament itself by way of corollary, describing its matter and form as well as its effects.[1]

[1] In this new edition, we have revised the dogmatic part with the kind cooperation of P. Callou, professor of dogmatic theology in the Seminary of St. Sulpice at Paris.

Dogmatic Part — Chapter I: On the Power of the Keys Conferred upon the Church

On the Power of the Keys Conferred upon the Church

We shall examine two things: 1. whether this power was truly conferred by Christ; 2. who are the ministers able to exercise it.

Art. I. On the Power of the Keys Itself, Insofar as It Was Truly Conferred upon the Church

17. State of the question. 1. The nature of this power is declared. (A) The power of the keys, as it is taken here, is the power of judging concerning the internal state of conscience, or the power of remitting and retaining sins, not only in the external forum before the Church, but also in the internal forum before God; and therefore it is the power of ruling the conscience of the faithful and of changing its interior relations with respect to God.

It is twofold: (a) the power of establishing new obligations which the penitent must fulfill in order to be freed from his sins, or the power of imposing penalties; (b) the power of dissolving spiritual debts before God, or of remitting sins.

(B) This power indeed is: (a) supernatural, delegated by God Himself, conferred in order to a supernatural end; (b) ministerial under Christ, and, as it were, a certain participation in the divine power; (c) truly efficacious, that is, binding or freeing the conscience itself. (d) Nevertheless it is not absolute, since its exercise and efficacy depend on certain conditions established by God Himself, which both the minister and the penitent must observe; (e) nor infallible, since the minister of God, although judging authoritatively concerning the internal state of the penitent, can err because of human infirmity. God certainly ratifies in heaven the sentence of the minister, but only when what must be posited has been posited, or when the conditions required on the part of the minister and on the part of the penitent have been fulfilled.

18. 2. Errors. Besides the Montanists and Novatians, concerning whom we shall soon treat in their own place, Protestants have attacked the power of the keys in different ways. Their general principle is that justification, and therefore the remission of sins, takes place through faith or confidence (above, n. 6).

(a) Luther indeed remained uncertain for a long time, now acknowledging, then rejecting, a sacrament of this kind; and his disciples imitated this hesitation.[1] Yet absolution, according to them, has only the force of declaring, not of effecting, the remission of sins. (b) Calvin openly denied the existence of the sacrament, teaching that Penance is not truly distinguished from Baptism, or from the remembrance of Baptism; for according to him, sin is not destroyed through Baptism, but only testimony is given that sins have been remitted by faith, or rather are not imputed. But afterward it happens that the baptized person is terrified by subsequent sins, and then it is useful to recall to his memory the Baptism previously conferred, as a pledge of justification received for the whole course of life; this remembrance of Baptism is nothing other than Penance, by which displeasure for sin and

the purpose of a new life are renewed.[2] (c) Anglicans acknowledge that both the dying and those about to communicate publicly can be absolved by presbyters; indeed they admit the utility of confession, but not its necessity.[3] (d) The Ritualists, furthermore, teach that absolution is a sacrament, namely one of the lesser sacraments; for among the greater sacraments they count only Baptism and the Supper.

[1] Hence in the *Confession of Augsburg* (art. 12) one reads: "Concerning Penance they teach that remission of sins can come to those who have fallen after Baptism, at whatever time they are converted; and that the Church ought to impart absolution to such persons returning to penance." (In Schaff, *Creeds*, vol. III, p. 14). - "Absolution can properly be called the sacrament of Penance, as also the more learned scholastic theologians say" (Melanchthon, *Apology*, art. 5). Cf. Pfisterer, *Luthers Lehre von der Beichte*, Stuttgart, 1857.

[2] "Thus one must think that, at whatever time we are baptized, we are washed and cleansed once for all life: and therefore as often as we have fallen, the memory of Baptism must be recalled, and the soul must be armed with this, so that it may always be certain and secure concerning the remission of sins; for although, once administered, it may seem to have passed, nevertheless it has not been abolished by later sins." (Calvin, *Instit.*, bk. IV, ch. 15).

[3] Before communion, these words are spoken by Anglican ministers: "If any among you is found whose conscience is troubled and in distress, and who needs consolation or counsel, let him have recourse to me or to another prudent priest, learned and skilled in the law of God; let him confess and disclose secretly his sins and his anxieties, so that he may be able to receive salutary admonitions, counsels, and consolations, and through us, ministers of God and of the Church, obtain confidence and absolution." Cf. Blunt, *The Sacraments*, London, 1868, p. 190; Morgan Dix, *The Sacramental System*, New York, 1893, p. 92-104. - See the doctrine of the Protestants expounded in Vacant, *Dict. de Theol.*, t. I, col. 218-229.

19. (e) In our days, the American Protestant H. C. Lea,[1] renewing the arguments of Dallaeus, attacks the divine institution of confession and absolution in this way: 1) Christ in the Gospel, who often inculcates that God is to be worshiped in spirit and in truth, instituted no external rite for the remission of sins, but requires only love and penance of heart. 2) The power of remitting sins by some sacramental rite was by no means acknowledged in the first centuries of the Church. There did indeed flourish a certain penitential discipline, but it had force only in the external forum, for reconciling sinners with the Church, not with God. 3) The Fathers teach that there are many means for obtaining the remission of sins, but among them they do not mention priestly absolution. 4) Besides, the words of absolution recited over penitents are nothing other than prayers by which priests earnestly begged from God the pardon of sins, and by no means sacramental forms conferring grace.[2]

[1] Lea, *A History of Auricular Confession and Indulgences*, Philadelphia and London, 1896. - The Liberals teach nearly the same thing.

[2] Op. cit., t. I, ch. I-VII, p. 5-167.

Against these errors we shall set forth and vindicate Catholic doctrine, by critically examining the texts of Scripture and of the earlier Fathers.

20. Thesis: Christ conferred on the Church the power of remitting and retaining all sins committed after baptism, and that by a truly judicial act.

It is *de fide* from the following canons of the Council of Trent:[3] 1. "If anyone shall say that, in the Catholic Church, Penance is not truly and properly a sacrament, instituted by Christ our Lord for

reconciling to God Himself the faithful as often as they fall into sins after Baptism: let him be anathema."

[3] Trent, sess. XIV, can. 1, 3, 9.

3. "If anyone shall say that those words of the Lord the Savior, 'Receive the Holy Spirit: whose sins you shall forgive, they are forgiven them; and whose sins you shall retain, they are retained,' are not to be understood of the power of remitting and retaining sins in the sacrament of Penance, as the Catholic Church has always understood them from the beginning, but shall twist them, contrary to the institution of this sacrament, to the authority of preaching the Gospel: let him be anathema."

9. "If anyone shall say 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, provided only that he believes himself absolved; or that the priest absolves not seriously, but in jest; or shall say that the confession of the penitent is not required so that the priest may be able to absolve him: let him be anathema."

The Council therefore teaches that the power of remitting and retaining sins was truly conferred upon the Apostles and their successors; - and that it can be exercised in the Catholic Church not once or again, but as often as the faithful fall into sins after Baptism, and therefore that no sin is irremissible; - but that this power is not a bare ministry of declaring that sins have been remitted, but a truly judicial act by which priests reconcile to God Himself sinners who are otherwise well disposed.

§ I. The Thesis Is Proved from Scripture.

In order that the demonstration may be clearer, we premise two things: (a) that Christ, while He lived on earth, exercised the power of the keys, or the power of remitting sins, by a free act of His will, for example, in the case of the paralytic and of the sinful woman; (b) that He likewise, in a general way, conferred on the Apostles all power committed to Himself by the Father for promoting the salvation of souls, as is clear from the four Gospels. Now it is altogether improbable that the power of the keys was excepted from this general mission or delegation.

[1] Cf. Corluy, *Spicilegium Dogmatico-biblicum*, Ghent, 1884, t. I, p. 33-51; t. II, p. 438-452; Vacant, *Dict. de Theol.*, t. I, p. 138-143.

In reality, Scripture being carefully inspected, two things are established: 1. that the power of the keys was promised to the Apostles and their successors, and within the amplitude of this power is contained the power of remitting sins; 2. that this power was in fact conferred on them on the very day of the resurrection.

21. 1. That this power was promised is clear from the words of Christ to Peter: "And I say to thee that thou art Peter, and upon this rock I will build my church; and I will give to thee the keys of the kingdom of heaven; and whatsoever thou shalt bind upon earth shall be bound also in heaven, and whatsoever thou shalt loose upon earth shall be loosed also in heaven."[2] Likewise from the words of Christ directed afterward to all the Apostles:[3] "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." For greater clarity of the proof, the sense of these texts must first be explained.

[2] Matt. 16:18-19.

[3] Matt. 18:18.

(a) To Peter are promised the keys of the kingdom of heaven, that is, the power of jurisdiction over the whole Church, which Christ designates by the name kingdom of heaven, as is clear from the words previously uttered: "upon this rock I will build my Church." For to hand over the keys of someone's house or city is the same as to confer authority to close and open it, or supreme authority, as is clear from the usage of speech among sacred and profane authors; thus, when Eliacim is substituted for Sobna, the prefect of the temple or of the royal house, it is said:[1] "And I will give the key of the house of David upon his shoulder"; likewise, when the glorious Christ wishes to signify that all power has been handed over to Him, He says: "And I have the keys of death and of hell."[2] Therefore true authority over the Church is promised to Peter.

[1] Isa. 22:22.

[2] Apoc. 1:18; cf. 3:7.

22. (b) But what the nature of this power is, the following words declare: "whatsoever thou shalt bind... whatsoever thou shalt loose..." These must be declared accurately. We indeed admit that these words historically present a twofold sense: sometimes they signify nothing other than to declare that a thing is lawful or not (for example, in the Talmud one reads: Rabbi M looses, Rabbi N binds, that is, the former asserts that a thing is lawful, but the latter that it is not lawful); at other times, however, they designate legislative and judicial power. Now that this is the sense in the present place is clear from the context: 1) for Christ promises His own authority to the Apostles; but this authority is not only declarative, but at the same time legislative and judicial; therefore Christ promises the Apostles the power of making laws, imposing obligations, and also rendering judgment and loosening bonds which can prevent the faithful from entering heaven, especially sins, which are one of the chief bonds; 2) this agrees with the former part of the text, where there is handed over the power of the keys, or of closing and opening heaven, and therefore of taking away sin, which obstructs entrance into heaven; 3) and it is confirmed from the parallel passage, where the same power is conferred on the Apostles with respect to sins.[1]

[1] Matt. 18:15-18. For there it is a question of sins to be remitted or retained: "If thy brother shall sin [against thee is lacking in the best codices]... tell the Church; but if he will not hear the Church, let him be to thee as the heathen and publican. Amen I say to you, whatsoever you shall bind, etc."

That this power touches not only the external forum, but conscience itself, is clear from the fact that God ratifies in heaven whatsoever the Church shall have bound or loosed on earth.

23. (c) What Christ had first promised to Peter alone, a little later He likewise promised to all the apostles together; He does not indeed hand over to them the power of the keys, or the supreme power, but the power of binding and loosing, which they will exercise dependently on Peter.

(d) In both cases, there is question here of a power to be exercised over the Church itself, not over those who are outside: "I will build the Church, and I will give to thee the keys..." Likewise, when there is question of the power conferred on the Apostles, the Church is first mentioned: "Tell the Church; but if he will not hear the Church..." A power of this kind is therefore distinguished from the power of baptizing, which is exercised over those who are outside, so that they may be introduced into the Church.

The aforesaid argument, although general, is altogether valid. Its force is confirmed from the words of St. John and from the authority of the Fathers; for already St. Pontiff Callixtus used this text to prove that there was in him the faculty of remitting sins; but Tertullian, although a Montanist, did not deny this sense, but only said that this power conferred on Peter had been transmitted only to spiritual men.[2]

[2] Tertullian, *De pudicitia*, ch. 21, P. L., t. II, col. 1025.

24. 2. The power which Christ had promised He conferred on the Apostles; for, having returned from the dead, He stood in the midst of the disciples and said to them:[3] "Peace be to you... As the Father hath sent me, I also send you. When he had said this, he breathed on them and said to them: Receive ye the Holy Spirit: whose sins you shall forgive, they are forgiven them; and whose sins you shall retain, they are retained."

[3] John 20:21-23.

These words indeed are, as it were, an authentic declaration by which one of the many powers already promised to Peter and the Apostles in the aforesaid texts is specifically defined. For the power of which there is question here is not, as Protestants wish, a mere faculty of preaching the remission of sins, or of declaring that sins have been remitted to penitents, but the power truly to remit sins; - not only as to punishment, but also as to guilt; - extending to all sins; - to be exercised in a judicial mode; - and therefore not restricted to the power of remitting sins through baptism. This we shall declare successively.

25. (A) The power here conceded is the power truly to remit sins. This is gathered: (a) from the context; for Christ begins thus: as the Father hath sent me, I also send you; by which words it is declared that the mission to be given to the Apostles is similar to the mission which Christ received from the Father. Now Christ had not only preached the remission of sins, but had truly forgiven them; indeed He had come into the world for this, that He might truly destroy them.[1] Therefore the Apostles received the power truly to remit sins. - Afterward Christ, by the sensible sign of breathing, imparts the Holy Spirit to the Apostles, so that it may thus be manifest to all that the power to be conferred on them is a new and singular privilege, which they can exercise only with the help of the Holy Spirit. But to announce the remission of sins is not so new and singular a privilege, since the Prophets performed this, and any member of the faithful can perform it; the Apostles themselves had already done it by preaching. Therefore there is question not of preaching, but of the remission of sins.

[1] Matt. 9:2-8; Luke 5:20; 7:47; Apoc. 1, etc.

26. (b) From the text itself: 1) for the verb you shall forgive (Gr. *aphete*) is active, and signifies such remission as is done through a positive and efficacious action, not through a mere declaration of remission already made; this is confirmed from the other word you shall retain (*kratete*), which likewise denotes a positive action; for Christ did not say "you shall not forgive," which would be merely negative, but you shall retain, as if a positive action of the priest were required. 2) Moreover, in the second clause there is added "they are forgiven them, they are retained"; and this indeed, according to the Protestants themselves, sounds the same as they are truly remitted or truly retained; therefore, by force of the parallelism, the prior words, you shall forgive, you shall retain, ought to be understood in the same sense. For by what right is to forgive, in the prior clause, said to signify to declare remission, and in the latter, truly to forgive? 3) Finally, by force of this text, such is the relation between the remission of sins made by the Apostles and that made by God, that whenever the Apostles remit, God remits; but such a connection is indeed well explained if the Apostles enjoy a true faculty of remitting; but if they have only the power of preaching remission, there is no certain connection between the declaration of the Apostles and the remission of sins. For how, apart from a special revelation, can the ministers of the Church know and declare with certainty that sins have been remitted by God?

27. (B) The power conferred on the Church touches not only the debt of punishment, but also the debt of guilt, and therefore remits guilt itself before God. For Christ here uses the words *aphete tas hamartias*, which He had previously used to signify the true remission of sins as to guilt.[1]

[1] Matt. 9:5, 6; Mark 2:10; Luke 5:20; 7:47-49.

This is confirmed from the context. For (a) there is question of that remission of sins by which the mission of Christ is brought to perfection and completion; but the proper end of this mission was the interior remission of sins: for Christ had come into the world to seek sinners and make them saved, to justify, sanctify, and lead to heaven those who by sin had been made alien from God.[2] (b) The Apostles, in remitting sins, act in the power of the Holy Spirit conferred on them: "Receive ye the Holy Spirit..." Now it is proper to the Holy Spirit to remit sins as to guilt: for in Him we have been washed and sanctified and justified.[3]

[2] Mark 2:17; Matt. 18:11; Luke 19:10; Rom. 5:10, 18, 19.

[3] 1 Cor. 6:11.

28. (C) This power extends to all sins. For (a) no limitation is added: "whose sins you shall forgive, they are forgiven them," and the Greek text *an tinon aphete* clearly designates that all sinners can obtain pardon; (b) moreover, these words are determinative of the general power of loosening bonds, which suffers no exception: "whatsoever you shall loose upon earth shall be loosed also in heaven"; therefore all sins can be remitted.

29. (D) The same power must be exercised by a judicial act, that is, by instructing the cause and rendering sentence. (a) First, indeed, the apostles and their successors must instruct and know the cause. For a twofold power is conferred, both of remitting and of retaining sins (which word, as we noted above, says more than not remitting); now a faculty of this kind cannot be exercised at will, but prudently. But how can someone know whether sins can be remitted or

not, ought to be retained or not, unless he has first instituted a juridical investigation of the matter? For this there is required knowledge both of the offenses committed by the sinner and of the dispositions of the subject, so that the Apostles and their successors may be able to judge whether, as ministers of Christ who are bound to render an account of their administration, they can absolve those who are rightly disposed, or bind the indisposed. Therefore the power of remitting sins also supposes the right and the office of instructing the cause.

(b) But once the cause has been instructed, they must also render sentence: for it pertains to them to retain or remit sins according to the dispositions of the penitent, and therefore to prescribe the conditions to be fulfilled for the remission of sins, to impose burdens and satisfactions for the sins committed. For in them there is the power of binding as well as of loosing, and whatsoever things are retained or remitted on earth are retained or remitted in heaven. Therefore they enjoy judicial power, to which sinners are compelled to subject themselves if they wish to be absolved.

30. (E) This power is not restricted to the power of remitting sins through baptism, but also includes the faculty of forgiving sins committed after baptism. We do not indeed deny that the words of John can be understood, and in fact were understood by most of the Fathers, of the power of remitting sins through baptism; for the words of Christ are general, and of themselves can be heard of sins committed before or after baptism. Certainly, however, they are not limited to baptism alone: (a) this is clear from the context, both because they are universal, and because they suppose this power to be exercised indefinitely and in a judicial mode; and this indeed is understood of penance rather than of baptism, since the latter is conferred only once, and not properly after the manner of a judgment.

(b) This interpretation is confirmed by the authority of the Fathers: for Origen openly says that the power of forgiving sins was conferred on the apostles and their successors by force of the aforesaid words.[1] St. Pacian more directly refutes the Novatians, who said that the words of John were parallel to the words of Matthew, "Going therefore, teach all nations, baptizing them..."; and he shows that the text of John is to be expounded according to the words of Matthew, "Whatsoever you shall bind," and therefore regards sins committed after baptism.[2] St. Ambrose made this interpretation his own.[3] But among the Fathers who take the aforesaid words of John concerning the remission of sins through baptism, some, such as St. Cyril of Alexandria, openly teach that the same words can also be understood of sins committed after baptism.[4]

[1] Origen, *De orat.*, n. 28, P. G., t. XI, 529.

[2] St. Pacian, ep. 3a, n. 11, P. L., t. XIII, 1070.

[3] St. Ambrose, *De paenit.*, I, 68, P. L., XVI, 467-468.

[4] "Moreover, men inspired by the Spirit remit sins, or retain them, in two ways, as I think: for either they call to baptism those worthy, men already proved, of course, by the gravity and constancy of life and faith, or they forbid and keep away from divine grace those who are not yet worthy; or in some other way they remit and retain sins, namely when they correct sons of the Church who sin, or pardon those doing penance." (St. Cyril, *In Joan.*, bk. XII, ch. XX, 22-23, P. G., t. LXXIV, p. 722.)

From these words of St. John, therefore, and from the manner in which they were commonly understood already from the third century, it is rightly inferred that to the Apostles and their

successors there was truly granted the power of remitting, by a judicial rite, all sins committed after baptism.[5]

[5] Rightly, therefore, the following proposition 47 of the Modernists was condemned by the Holy Office (*Lamentabili* decree): "The words of the Lord: Receive ye the Holy Spirit; whose sins you shall forgive, etc., by no means refer to the sacrament of Penance, whatever it pleased the Tridentine Fathers to assert."

31. Scholion. (A) On the exercise of the power of the keys by the Apostles. (a) The power of binding, or of imposing penalties for the correction and amendment of sinners, at least where there was question of public offenses, was certainly exercised by the Apostles. An example is had in the case of the incestuous Corinthian concerning whom St. Paul writes: "I indeed, absent in body but present in spirit, have already judged, as present, him who has done this, in the name of our Lord Jesus Christ... to deliver such a one to Satan for the destruction of the flesh, that the spirit may be saved in the day of our Lord Jesus Christ."[1] For there the Apostle, by an act of judgment, condemns the incestuous man to undergo some penalty. (b) The power of loosing is also indirectly inferred from these words;[2] for the sinner is handed over to certain temporal penalties, to the end that afterward he may be justified and saved on the day of judgment; and thus already there appears the connection between the canonical penalty imposed by the Church and the remission of sin, which afterward is manifestly exhibited in penitential discipline.

[1] 1 Cor. 5:3-5. Cf. 2 Thess. 3:14-15; Tit. 3:10.

[2] Certain Fathers and Theologians thought that Paul directly exercised this power when he afterward absolved the incestuous Corinthian (2 Cor. 2:5-11); but it is much more probable that he of whom there is question in the second passage is not the incestuous man of whom there is question in the first.

The same can be inferred from the manner of acting with Hymenaeus and Alexander, whom he indeed hands over to Satan, but for amendment, namely, "that they may learn not to blaspheme."[3]

[3] 1 Tim. 1:20.

32. (B) On the remissibility of all sins. The Apostles were persuaded that all sins, even the gravest, before judgment, were remissible by condign penance. Thus St. Paul supposes that the gravest sins, such as fornication, are remitted through penance;[4] likewise St. John presents God as threatening dire punishments to those who are guilty of apostasy and idolatry, "unless they shall do penance from their works";[5] therefore he supposes that the aforesaid sins can be destroyed by penance.

[4] 2 Cor. 12:20-21.

[5] Apoc. 2:19-23.

Yet a few texts are opposed, from which it seems to be clear that certain sins are irremissible. It is useful to explain these texts briefly.

(a) Namely, Christ said to the Pharisees: "Every sin and blasphemy shall be forgiven men: but the blasphemy of the Spirit shall not be forgiven."[6] - Resp. Once the context has been inspected, the sin of which there is question is that by which works manifestly divine, such as miracles done to prove the divinity of Christ's mission, are ascribed to the devil, and thus the eyes are deliberately and

pertinaciously closed to the light of faith; for there is question of the Pharisees who were saying that Christ cast out demons in Beelzebub. Now that sin is said not to be remitted, not because it is never forgiven, but because of itself it has no excuse and deserves no pardon; or, according to others, because it is forgiven with greater difficulty, not indeed from a defect of power or will in God and His ministers, but because it is difficult for a sinner who has pertinaciously abused the means of grace to repent sincerely. St. Thomas declares this most excellently (2a 2ae, q. 14, a. 3): "For one who sins from ignorance or weakness deserves a lesser punishment; but one who sins from certain malice does not have any excuse by which his punishment may be lessened. Likewise also one who blasphemed against the Son of man, His divinity not yet having been revealed, could have some excuse because of the infirmity of the flesh which he beheld in Him, and thus deserved a lesser punishment. But one who blasphemed against the divinity itself, attributing the works of the Holy Spirit to the devil, had no excuse by which his punishment might be diminished." The Holy Doctor continues by explaining that sin against the Holy Spirit is also said to be irremissible according to its own nature, insofar as it excludes faith, and therefore those things through which the remission of sins is effected; just as a disease is called incurable according to the nature of the disease, by which that through which the disease can be cured is taken away. "By this, however," he says, "the way of remitting and healing is not closed to the omnipotence and mercy of God, by which such persons are sometimes healed spiritually, as if miraculously."

[6] Matt. 12:31. Cf. Maldonatus, on this place.

Others, however, with St. Augustine (serm. 71), hold that a sin of this kind is final impenitence, which is remitted in no way, because mortal sin in which a man perseveres until death cannot be remitted either in this life or in the future. Yet this explanation seems foreign to the context.

33. (b) The words of the Epistle to the Hebrews are alleged: "For it is impossible for those who were once illuminated, have also tasted the heavenly gift, and have been made partakers of the Holy Spirit, have nevertheless tasted the good word of God and the powers of the world to come, and have fallen away, to be renewed again unto penance."[1] - Resp. Here there is question of apostates, who, after Baptism had been received (*illuminated*), after the Eucharist and Confirmation had been received (*the heavenly gift... partakers of the Holy Spirit*), were returning to Judaism or paganism; and according to certain Fathers and Theologians, it is declared that they cannot be renewed through Baptism, since a sacrament of this kind cannot be repeated. St. Athanasius hands down this interpretation:[2] "Nor," he says, "is it impossible to repent, but it is impossible that we be renewed under the pretext of penance. But there is an immense difference between these sayings. For he whom it repents indeed ceases to sin, yet he retains the scars of wounds. But he who is baptized, puts off the old man, and is renewed, born from above by the grace of the Spirit." St. Chrysostom says the same (hom. IX on this place, n. 3). - But very many others, and indeed more probably, understand the word impossible of great difficulty, of moral, not physical, impossibility, so that the sense is that it is exceedingly difficult for apostates to return to the true faith. In almost the same way the following words can be understood: "For if we sin voluntarily after receiving the knowledge of the truth, there is now left no sacrifice for sins, but a certain terrible expectation of judgment";[1] since here also there is question of apostates, who, insofar as they remain in apostasy, lack the sacrifice for sins, just as those who voluntarily remain outside the Church are outside the way of salvation;

yet from this the possibility of returning to the Christian faith, in which the sacrifice for sins is offered, is not precluded.[2]

[1] Hebr. 6:4 ff.

[2] Ep. 4 ad Serap., n. 13.

[1] Hebr. 10:26.

[2] Cf. A. Lemonnyer, O. P., *Epitres de S. Paul*, Paris, Bloud, 1905, t. II, p. 221-223.

(c) The words of John are also opposed:[3] "He who knows his brother to sin a sin not unto death, let him ask, and life shall be given to him who sins not unto death. There is a sin unto death; I do not say that anyone should ask for that." - Resp. What that sin unto death is, theologians and commentators dispute. More probably, we think there is question here of the sin of infidelity, by which the divinity of Christ is denied, since throughout this whole chapter St. John is speaking of faith in Christ; but the Apostle does not declare such a sin to be irremissible, but only that the precept of praying for one's neighbor does not extend to those who have stained themselves with such a sin; because, on account of the enormity of their sin, they deserve to be abandoned by the faithful like heathens and publicans. In other words, these sinners are deprived of the public suffrages of the Church, as excommunicated persons are today. But if sin unto death is understood of final impenitence, the explanation already proposed above is valid.

[3] 1 John 5:16.

34. Conclusion. The power of the keys, conferred by Christ on the Apostles, was exercised in apostolic times, but not in the same mode in which it is now exercised: (a) namely, not frequently, because lesser or venial sins, as not being necessary matter, were not then accustomed to be subjected to the power of the keys, and moreover greater sins, on account of the fervent life of the first Christians, were rarely committed; (b) with a certain severity, insofar as arduous penance was imposed on sinners, especially exclusion from the Church before absolution was granted, chiefly for this end, that the faithful might be more efficaciously deterred from sin. But it is not wonderful that the matter stood this way: for since Christ had not determined the mode in which the power of the keys was to be exercised, it belonged to the Church, according to the diversity of times and circumstances, to define this for the greater utility of the faithful.

§ II. The Thesis Is Proved by Tradition. — Preliminary Matters

35. 1. State of the question. Since today liberal Protestants contend that the Church reconciled sinners only in the external forum, namely insofar as it received again into its bosom those whom it had excommunicated on account of sins, our purpose is to show that they also obtained the remission of sins in the internal forum and before God.

[1] Petavius, *De paenitentiae vetere in Ecclesia ratione*, P. G., XLII, 1027 ff.; Morinus, *Comment. historicus de disciplina in admin. Sacr. Paenitentiae*, Antwerp, 1682, bk. I, ch. 3-7; ch. 16-19; bk. III-VII; Palmieri, *Tr. de Paenitentia*, 2nd ed., Prato, 1896, thesis IX-XI; L. de San, op. cit., n. 180-245; F. Pignataro, *De disciplina paenitentiali priorum Ecclesiae saecul.*, Rome, 1904; Funk, *Zur altchristlichen Bussdisciplin*, Paderborn, 1897; Boudinhon, *Sur l'histoire de la penitence*, in *Revue d'hist. et de Litter. relig.*, t. II, 1897, pp. 306, 496; Vacandard, in *Rev. du Clerge francais*, t. XIV, p. 192; t. XV, p. 195, etc.; id. in Vacant, *Dict. de Theologie*, t. I, p. 145-168; Batiffol, *Etudes d'hist. et de theologie positive*, 3rd ed., Paris, 1904; Swete, *Penitential discipline in the*

first three centuries, in *Journal of Theological Studies*, April 1903, p. 321-337; Casey, *Notes on a History of Auricular Confession*, Philadelphia, 1889; P. A. Kirsch, *Zur Geschichte der Katholischen Beichte*, Wurzburg, 1902; Gartmeier, *Die Beichtpflicht*, 1905; G. Rauschen, *Eucharistie und Bussakrament in den ersten Jahrhunderten der Kirche*, 1908, in French, *L'Eucharistie et la Penitence dans les six premiers siecles*, trans. M. Decker and E. Ricard, 1910.

36. 2. General argument. But before we declare the individual texts, it is expedient to present a general argument, by proving that reconciliation with the Church also involves reconciliation with God, the testimonies of Scripture and of the Fathers being considered. It is proved by a twofold argument: (A) From the fact that to be united to the Church is the same as to be united to God Himself. (a) This is already clear from what was said in the Treatise on the Church, where we proved that the Church was instituted by Christ for sanctifying men (n. 607 ff.), and that outside the Church salvation is not given (n. 824 ff.): for from this it logically follows that to be truly and properly united to the Church is the same as to be joined to God Himself, who alone is the author of sanctification. (b) This indeed is confirmed from the fact that the Church, according to the doctrine of St. Paul, is the body of Christ, so that to be a member of the Church is the same as to be a member of Christ. (c) The most ancient Fathers teach the same, who, with St. Ignatius, assert that those who are intimately united to God and Christ are with the bishop, and that those who, led by penance, have returned to the unity of the Church, by that very fact are of God and live according to Christ.[1] The Fathers of the third and fourth centuries declare the matter more clearly, as we shall say below.

[1] *Philad.*, III.

(B) From the comparison instituted by the ancient Fathers, Hermas and others, between baptism and penance as to the effects which they produce: for just as baptism internally and before God washes away sins, so likewise does penance, although in a different mode.

These things having been premised, we shall prove the thesis by a threefold class of testimonies: 1. by the implicit testimonies of the second century; 2. by explicit testimonies in the controversy with the Montanists; and 3. in the controversy with the Novatians. By way of appendix, we shall speak, 4. of penitential discipline through the first four centuries.

Yet we observe that certain documents of the earlier centuries, and indeed of the greatest importance, have perished, as can be inferred from the fact that the decree of Callixtus, concerning which below, is known to us only imperfectly, namely from the writings of Tertullian, who attacks it. Hence if the historical argument for the earlier centuries appears incomplete, that must be attributed, in part, to the paucity of documents; and therefore the things which are obscure must be elucidated both from the practice of the Church and from the documents of the subsequent age.

I. The Testimonies of the Second Century Are Examined

37. In the primitive age of the Church, the Doctors were wholly occupied in defending the fundamental dogmas of the faith, namely the unity of God, the divinity of the Christian religion, the divinity of Christ, the obedience to be furnished to bishops, etc. - Furthermore, under the influence of enthusiasm and fervor prevailing in the first Christian communities, not

a few of the faithful thought that grave sins could scarcely be committed by the faithful, and therefore they thought little about penance. - Yet experience made it known that even the baptized were not impeccable, indeed that some also sometimes fell into very grave sins. From this arose the question whether and how these sins could be destroyed. Certain rigorists thought that sins committed after baptism were irremissible. Against them, the Fathers of the second century taught that sins committed after baptism can be destroyed through penance: not expressly, however, but incidentally and obscurely, if the matter is judged only from the documents which survive.

38. 1. St. Ignatius the martyr intimates this, while writing about the year 107: "For as many as are of God and of Jesus Christ, these are with the bishop; and as many as, led by penance, shall have returned to the unity of the Church, these also shall be of God, so that they may live according to Jesus Christ."[1] Likewise in the *Teaching of the Twelve Apostles* (*Didache*) one reads:[2] "But on the Lord's day, coming together, break bread and give thanks, after you have confessed your transgressions, that your sacrifice may be clean"; for there confession of sins, or exomologesis, is exhibited as the means by which sins are taken away: "that your sacrifice may be clean." This is confirmed from the testimony of St. Irenaeus:[3] for he narrates that certain women had been seduced and corrupted by Marcus, the magician and heretic. Now some among them, converted to the Church of God, confessed their sins and performed public penance or exomologesis; but others, terrified by public exomologesis, despairing of the life of God, departed. From this it is rightly inferred that penance was then held as a means for recovering the divine life.

[1] *Ad Philadelph.*, n. 3; p. 267 ed. Funk (*Patres Apostolici*), 1901.

[2] *Didache*, A.D. 98-120?, n. 14, p. 33 ed. Funk.

[3] *Contra haereses*, bk. I, ch. 13, n. 5-7, P. G., t. VII, 587-591.

39. 2. But the principal work in which the penitential doctrine of this age is expounded is the *Pastor* of Hermas, a work written very probably in the years 140-154 by the brother of Pius, the Roman Pontiff.[4]

[4] Cf. A. d'Ales, *La discipline penitentielle d'apres le Pasteur d'Hermas*, in *Recherches de Sc. relig.*, 1911, pp. 105-139, 240-261.

(a) First, the author inquires whether, after baptism, a place for penance is given. For Hermas had heard from certain doctors that there is no other penance except that which takes place in baptism. "You have heard rightly," says the Pastor;[1] "for so the matter stands. For he who received the remission of sins ought not to sin anymore, but to remain in chastity."[2] Nevertheless God, since He is very merciful, the Pastor continues, concedes penance for all sins committed up to this point, and indeed after the manner of an extraordinary privilege. Only one penance is given: for it is not permitted to repent and to sin again, lest the faithful thus be led into sin.[3] But remission extends to all offenses, even apostasy and adultery.[4]

[1] This Pastor, according to some, is an angel of God; according to others, Christ Himself.

[2] *Pastor*, Mand. IV, 3, 2, p. 479 ed. Funk.

[3] Mandat. IV, 3, 4-7, p. 479-481 ed. Funk.

[4] Simil. VI, 2, 3-4, and VIII, 2, 8-9; VIII, 6, 6; pp. 547, 561, 569. - The mode of doing penance is afterward described: "The penitent ought to torture his soul and humble himself strongly in every act of his and be afflicted in all various tribulations; and when he shall have sustained the tribulations coming upon him, He who created all things and confirmed them will altogether have mercy on him, and will give him some remedy; and this certainly, if He shall have seen the heart of the penitent clean from every business." Thus there is required first a contrite and humbled heart, then a patient acceptance of tribulations, finally a change of life (Simil. VII, 4, p. 555 ed. Funk).

40. (b) But that this penance takes place under the leadership and auspices of the Church is clear especially from the analogy of the tower, which, as Hermas says, is the Church. For through baptism we enter the tower; through sin we are expelled from it; but through penance we enter again into the structure of the tower: "For for this reason an interruption of the building was made, that these (sinners), if they shall have done penance, may enter into the structure of the tower. But if they shall not have done penance, then others will enter and they will be cast away forever."[5] Therefore there is not question of merely private penance, but of that which takes place under ecclesiastical pastors, and is concluded by reconciliation with the Church, and therefore with God Himself.

[5] Simil. IX, 14, 2, p. 605 ed. Funk.

(c) The necessity and efficacy of penance in the internal forum for recovering spiritual life he declares thus:[6] "But as many as do not do penance have lost their life; as many of these as have done penance have become good and have received a dwelling in the first walls; some have even ascended into the tower. You see, therefore, he says, that the penance of sinners has life, but impenitence death."

[6] Simil. VII, 6, 6, p. 569.

41. Hermas therefore supposes that there is in the Church the power of imposing penance and of reconciling sinners before God; but he does not describe the mode of this reconciliation, because his purpose was to restore Christian morals, not to describe all the things which pertain to penitential discipline. But what he omitted here, the writers of the third century affirm so expressly that from this it is rightly inferred that the power of the keys was not unknown in the second century.

II. Testimonies of the Fathers of the Third Century Against the Montanists

Penance, which Hermas had handed down as an extraordinary remedy in the middle of the second century, is exhibited as an ordinary remedy at the beginning of the third century. - Furthermore, the Church's power of remitting sins is expressly affirmed.

42. 1. This is clear from the heresy of the Montanists, who, around the end of the second century, with Montanus as author, judging that the end of the world and the last judgment were imminent, preached rigorism in Phrygia, and especially contended that apostasy, homicide, and adultery were never to be remitted by the Church. To them Tertullian, around the year 202, gave the name and authority of his talent.

(A) While he was still Catholic, he had indeed written a book *On Penance*, in which he distinguishes two kinds of penance: the first is performed before baptism by catechumens; the second belongs to the faithful who, after baptism, have fallen into grave sins. He speaks of this latter with difficulty, lest the baptized, by hope of pardon, be led to sin more freely, and he observes that this penance is conceded only once: "He placed in the vestibule a second penance, which may open to those who knock, but now once, because now for the second time; but never more, because the next time would be in vain."[1]

[1] *De Paenit.*, ch. 7, P. L., t. I, p. 1241. - Cf. A. d'Ales, *La Theologie de Tertullien*, p. 339-355; 478-491.

43. (B) But in the Treatise *On Modesty*, which he wrote when already a Montanist (A.D. 217-222), Tertullian contends that certain sins are irremissible.

(a) The occasion of this treatise was the edict of Callixtus, in which the Roman Pontiff declared that he would thereafter remit the sins of fornication and adultery: "I hear," says Tertullian, "that an edict has been set forth, and indeed a peremptory one. The supreme Pontiff, that is, the bishop of bishops, issues this edict: I remit the offenses of adultery and fornication to those who have discharged penance."[1] For at that time there prevailed, at least in some churches, the custom of not absolving from the three gravest sins, namely idolatry or apostasy, fornication or adultery, and homicide; not because the Church lacked the faculty of remitting them, but so that the faithful might be more efficaciously removed from these sins. Public penance was indeed imposed on those guilty of these crimes, and hope was left to them that they might obtain pardon from God Himself; but absolution from these sins was not customarily given: and therefore they were sins, as it were, reserved to God. - But Callixtus, fearing lest adulterers should fall into despair, promulgated the aforesaid edict, passing over the two other sins in silence. There he speaks as one having authority; for, Tertullian bearing witness, the edict is peremptory; and he derives his authority from the words of Christ: Thou art Peter, etc.

[1] We know this decree from Tertullian himself, *De pudic.*, ch. 1, p. 220 ed. Vind.; P. L., t. II, p. 981.

44. (b) Tertullian the Montanist sharply rebukes him. He indeed admits that there is in bishops a power of forgiving certain sins, namely those which are not unto death;[2] but he asserts that certain sins are unto death or irremissible, among which he counts fornication and adultery. Moreover, he says,[3] Callixtus does not remit idolatry or homicide; why therefore does he forgive adultery? Yet Tertullian confesses that these three sins can be pardoned by God. Indeed he acknowledges that this power belongs to the Church, but he adds that its exercise is not expedient: "But the Church," you say, "has the power of granting offenses. This I both acknowledge the more and dispose, who have the Paraclete Himself in the new prophets saying: The Church can forgive an offense; but I will not do it, lest they also commit others."[1] Therefore this power of absolving from all sins committed after baptism was considered so unshaken that it was acknowledged by the Montanists themselves. Nor did they deny that the words: "Thou art Peter... whatsoever thou shalt bind, etc.," included the power of remitting sins, but they said that this same power had been transmitted not to bishops, but to the spiritual,[2] or to the disciples of Montanus who were led by the Spirit. Thus they erred rather concerning the sacred hierarchy and the opportuneness of forgiving sins than concerning the power of absolving considered in itself.

[2] Sins of this kind, which are called lighter or lesser or middle in relation to the three reserved crimes, are not those which today we call venial, but mortal sins which were expiated by public penance.

[3] *De pudic.*, ch. 5, p. 227 ed. Vind.; P. L., t. II, p. 988.

[1] *De pudic.*, ch. 21, p. 269 Vind.; P. L., II, 1024.

[2] *De pudic.*, ch. 21, p. 270-271; P. L., II, 1026.

Notwithstanding Tertullian's eloquence, the decree of Callixtus was soon received into the universal Church, and, by the middle of the third century, the practice of imparting absolution to adulterers prevailed.

45. 2. This indeed is confirmed by other testimonies:

(A) Origen distinctly acknowledges that there is in bishops and priests the power of forgiving sins, and indeed before God: "But he upon whom Jesus breathed, as upon the apostles... he forgives the things which God would forgive, and retains incurable sins." Even graver sins can be remitted once, but lighter ones always: "In the graver crimes a place for penance is conceded only once; but those common ones into which we frequently fall always receive penance and are redeemed without interruption."[3] Therefore, if elsewhere he seems to say that there are three irremissible sins, that is very probably understood in the sense that they cannot be pardoned without due penance.[4]

[3] *In Levit.*, XV, 2, P. G., XII, 561; *C. Celsum*, III, 51.

[4] *De oratione*, 28, P. G., XI, 527-530; for there he ridicules those "who in some way arrogate to themselves those things which surpass the priestly dignity... and boast as if they could also pardon idolatry and remit adulteries and fornications."

46. (B) Moreover, from the liturgical and canonical books of this time it is clear that the power of forgiving sins was conceded to bishops in ordination itself. (a) Thus, among the Canons of Hippolytus, at the beginning of the third century, one reads (can. 3): "Grant also to him, O Lord, the episcopate and a clement spirit for redeeming sins; and grant to him the faculty for dissolving all bonds of iniquity of demons." - Likewise, in the *Constitutions of the Egyptian Church*, at the end of the third century, similar words are found: "Let him offer the sacrifice of Thy holy Church, and in a holy mind ... let him forgive sins according to Thy command, let him make ordinations according to Thy dispositions, and, in the power of the authority conferred on Thy Apostles, let him loose all bonds of punishments."[1]

[1] You will find both these documents among the *Monumenta Ecclesiae liturgica* (edited by F. Cabrol and H. Leclercq), Paris, t. I, p. XXXI.

(b) This is also inferred from the work *Didascalia Apostolorum*, which before the end of the third century was received in the Syrian church. For there (ch. 5-10) it is handed down that the office falls upon the bishop of indeed gravely rebuking sinners and imposing penance on them, but afterward of reconciling them through the imposition of hands, because he has the power of binding and loosing. Nor is any sin excepted; but on the contrary texts of Scripture are brought forward, from which it is clear that God pardoned the sins of Manasseh, who had committed idolatry and homicide, and also of the adulterous woman.[2]

[2] Lagarde edited the Syriac text of this work, Leipzig, 1854; Nau made a French version public in *Canoniste contemporain*, t. XXIV, 1901, pp. 78, 137, 205, 273, 336, 401, 543, 643; t. XXV, 1902, pp. 14, 73, 138, 193. - You will find the same

doctrine in the *Apostolic Constitutions*; cf. Funk, *Die Apostolischen Konstitutionem, eine litterar-historische Untersuchung*, Rottenburg, 1891.

47. Conclusion. In the third century the Montanists themselves acknowledge that some power of remitting sins is in the Church, and the liturgical and canonical books openly teach this; and from this it is rightly inferred that the same doctrine had been received in the second century: for if Tertullian had known that this doctrine had recently been brought into the Church, he would surely have said this while he was so sharply attacking Callixtus. Moreover, the prayers of ordination and the canons cited above concerning the power of the keys would not have been universally received unless they had been consonant with the faith of the Church.

And thus the interpretation which we gave of the testimonies of the second century is confirmed.

III. Doctrine of the Fathers Against the Novatians

48. But a new question arose concerning the absolution of the lapsed, or of those who had fallen into apostasy at the time of the Decian persecution (A.D. 250). Many Christians had sacrificed to idols, and were called *sacrificati*; others had received from officials a certificate in which it was declared that they had sacrificed, although in reality they had abstained from the worship of idols; for this reason they were called *libellatici*. When the storm had calmed, many of the lapsed were seeking reconciliation and absolution, asking from confessors and martyrs certificates of peace, which they would present to priests so that they might immediately be received into the peace of the Church. From this arose the question whether absolution was to be conceded to the lapsed, just as Callixtus had conceded it to adulterers.

49. 1. Doctrine of the Church. (A) St. Cyprian, both in his letters and in the book *On the Lapsed*, responds thus. (a) Peace is not to be denied to those of the lapsed who by true penance and confession of Christ have expiated their sin: "Therefore, when they shall have washed away every offense and, with the Lord assisting them by a stronger power, shall have destroyed the former stain, those ought no longer to lie under the devil who, having been made exiles and having been despoiled of all their goods, have raised themselves up and have begun to stand with Christ."[1] Likewise, if they labor under dangerous illness, they can immediately be reconciled, "so that, exomologesis having been made and the hand having been imposed on them by you unto penance, with the peace promised to them by the martyrs they may be sent to the Lord."[2]

[1] Ep. XXV, p. 538 ed. Vind., P. L., t. IV, p. 274.

[2] Ep. XIX, 2, p. 525 ed. Vind.; P. L., t. IV, p. 260; cf. ep. XVIII, p. 524 ed. Vind., and P. L., 259.

(b) But, outside these cases, the lapsed ought to perform long penance before they are absolved, nor are those priests to be approved who, once letters of peace given by the martyrs had been shown, immediately received the lapsed to communion: "For, when in lesser sins sinners perform penance for a just time, and according to the order of discipline come to exomologesis, and through the imposition of the hand of the bishop and clergy receive the right of communication, now, at a raw time, while persecution still continues, the peace of the Church herself not yet having been restored, they are admitted to communication, and offering is made in their name, and not while penance has

not been completed, while exomologesis has not yet been made, while the hand has not yet been imposed on them by the bishop and clergy, the Eucharist is given to them."[1]

[1] Ep. XVI, 2, p. 518 ed. Vind.; P. L., t. IV, p. 251-252.

50. (B) Response of the Roman Church. But when some complained about this, St. Cyprian wrote to the presbyters and deacons of Rome, the pontifical see being vacant, setting forth the whole matter; and they approved his manner of acting and confirmed it by the ancient practice of the Roman Church. They acted cautiously and prudently toward the lapsed, "so that wicked men may not praise our prone facility, nor those truly doing penance accuse our cruelty as if harsh."[2]

[2] Ep. XXX (otherwise XXXI), p. 556 ed. Vind.; P. L., t. IV, p. 315. - Novatian, afterward a favorer of rigorism and schism, wrote this letter; and already some mark of severity appears in his letter.

(C) The Carthaginian Decree. Afterward this manner of acting was approved by the Council of Carthage (A.D. 251), at which many bishops were present. A distinction was instituted between the *libellatici* and the *sacrificati*: the former were reconciled after some penance, the latter only at the end of life: "And therefore it pleased us..., the cases of individuals having been examined, that the *libellatici* meanwhile be admitted, and that aid be given to the *sacrificati* at the end, because there is no exomologesis in the lower regions."[3] Thus apostasy was no longer a reserved sin. But those who were unwilling to perform penance through life, and only at the time of dangerous illness beg for exomologesis, will not receive communion and peace, because "he is not worthy to receive consolation in death who did not think that he was going to die."[4]

[3] Ep. LV, 17, p. 636 ed. Vind.

[4] Ibid. 23, p. 641-642 ed. Vind.

51. 2. Error of the Novatians. (A) It is expounded. Yet these decrees did not please Novatus and Felicissimus, who fled to Rome and adhered to Novatian: this presbyter, grieving that he had not been elected Supreme Pontiff, withdrew from the Church. (a) Novatian himself taught that the Church cannot remit the sin of apostasy: this error was condemned in a Council held at Rome in A.D. 251, but it survived for many years. (b) His disciples, the Novatians, afterward taught that all sins unto death cannot be forgiven by the Church.

52. (B) Novatianism is attacked by the Fathers. Against them there wrote, among others, St. Ambrose and St. Pacian.

St. Ambrose, in the book *On Penance*,[5] against the Novatians (about A.D. 384), proves that Christ conferred on the Church the power of forgiving all sins, and indeed before God: from the words of John:[1] "Whose sins you shall forgive..."; and from the words of Matthew:[2] "I will give to thee the keys of the kingdom of heaven..." Then he demonstrates that sins are remitted before God from the analogy with baptism: "In baptism certainly there is remission of all sins: what difference does it make whether through penance or through the laver priests claim for themselves this right given to them?[3] There is one mystery in both." And afterward he adds that in penance, as in baptism, grace is conferred. - Finally he shows that no sins are irremissible, by explaining the texts of Scripture brought forward by the adversaries,[4] concerning which we have already treated above, n. 32-33.

[5] Migne, P. L., t. XVI, p. 465-524.

[1] P. L., XVI, 467.

[2] P. L., XVI, 476.

[3] *De paenit.*, bk. I, ch. 8, P. L., XVI, 477.

[4] P. L., XVI, 480-482, 496, 499.

53. St. Pacian, bishop of Barcelona, in three letters written to Sempronian the Novatian (about A.D. 380), expressly defends Catholic doctrine against the Novatians. (a) He proves that the power of forgiving sins was conceded by God not only to the apostles, but to their successors: "God would never threaten the one who does not do penance, unless He pardoned the one doing penance. You will say: God alone will be able to do this. It is true: but what He does through His priests is His own power. For what is that which He says to the Apostles: Whatsoever you shall bind on earth, etc.? Why this, if it was not lawful for men to bind and loose? Or is this lawful only to the Apostles? Therefore also to baptize is lawful only to them."[5] (b) But because the Novatians said that baptism would become useless if remission of sins is given to penitents, St. Pacian shows that there is a distinction between the two sacraments: "For Baptism is the sacrament of the Lord's passion; the pardon of penitents is the merit of the one confessing. All can obtain the former, because it is the gift of God's grace, that is, a gratuitous donation; but that labor belongs to the few who rise after a fall, who recover after wounds, who are helped by tearful voices, who revive through the destruction of the flesh."[6]

[5] Ep. I ad Sympron., n. 6, P. L., t. XIII, 1057.

[6] Ep. III ad Sympron., n. 8, P. L., XII, 1068.

(c) Since the heretics contended that remission of sin is an incitement to sinning, Pacian responds: "What do you say? Therefore he who more often shows the remedy of the crime shows the crime? And does that physician, when he cures, teach men to be wounded constantly? God does not wish man to sin even once, and yet He frees from sin. Nor certainly when He frees does He teach sin; just as neither does one who frees from a fire show forth a fire."[1] (d) Finally he shows that all sins can be remitted: "Whatsoever you shall loose, He says; He excepts absolutely nothing. Whatsoever, He says: whether great or small."[2] - But because the condemnation of the incestuous man was opposed, he responds that this man was not handed over to Satan unto eternal death, but for doing penance: "Then you see that this very sinner guilty of incest is not handed over to death, but to Satan, for amendment, for being buffeted, for doing penance. Finally he says, For the destruction of the flesh, yet not of the soul, nor even of the spirit; but for the destruction of the flesh alone, namely temptations, distresses of the flesh, losses of members."[3]

[1] Op. cit., n. 9, p. 1069.

[2] Op. cit., n. 12, p. 1071.

[3] Op. cit., n. 18, p. 1075.

54. Many other Fathers of the fourth century hand down this power of absolving as an unshaken truth.[4] - Nor is it necessary to proceed further, since, the adversaries admitting it, the power of the keys was already exercised by the Church from the fifth century.

[4] Thus, among others, St. John Chrysostom, in the work *De Sacerdotio*, bk. III, ch. 5, P. G., t. LXVII, 643; St. Gregory Nazianzen, Orat. 39 *in SS. Lumina*, n. 18-19, P. G., t. XXXVI, 356-357; St. Aphraates, *Patrol. syriaca*, ed. Graffin, 1894, t. I, pp. 313-360; St. Ephrem, *Opera*, Rome, 1740, t. II, p. 440; St. Hilary, *Comment. in Matt.*, P. L., t. IX, 1921, etc.

From the controversy with the Novatians it is lawful to infer that here there is a new extension of the decree of Callixtus: not only fornication, but also apostasy, indeed even homicide, are remitted by the power of the keys, so that no sin is any longer reserved to God. For, taking occasion from the Novatian heresy, the Fathers of the fourth and fifth centuries expressly assert that no sins are irremissible.

55. General conclusion. From the facts and testimonies alleged above, it is historically clear that Protestants altogether err when they affirm that through the earlier centuries the Church reconciled sinners only in the ecclesiastical forum. (a) For explicitly the Fathers of the fourth, and indeed of the third, century affirm that there is in the Church the power truly to forgive at least certain sins, even grave ones, before God, or with the infusion of grace.

(b) The same is implicitly clear from the manner in which the contrary heresy progressively arose: first Tertullian with the Montanists does not deny the power itself, but only the opportuneness of exercising it; afterward the Novatians, even in the fourth century, do not altogether deny this power, but restrict it to sins which are not unto death; the Protestants of the sixteenth century are the first who wholly rejected the power of the keys.

Therefore Catholic doctrine is not new, since it casts deep roots in antiquity, but the assertion of Protestants is new, which was wholly unknown to the ancient Fathers.

56. The difficulty is solved. Yet the Liberals object that in the fourth century traces are found of the opinion by force of which sins are not truly remitted, but only declared remitted. For Jerome, explaining the words Thou art Peter..., institutes a comparison between the priests of the Old and of the New Law, and asserts that the mission of the former and the latter is similar; just as the ancient priest did not cure leprosy, but only judged authentically concerning the disease and its healing, so "the bishop and presbyter binds or looses, not those who are innocent or guilty, but, according to his office, when he has heard the varieties of sins, he knows who is to be bound or who is to be loosed."[1]

[1] *In Matth.*, XVI, 19, P. L., XXVI, 118.

Resp. (a) Even if St. Jerome had taught that the power of priests is merely declarative, his testimony, as being one single testimony, could not overturn the countless testimonies of the Fathers of an earlier or later age. (b) But very probably his words can be understood in a Catholic sense, namely in the sense that priests cannot forgive sins in an arbitrary mode, but after accurate investigation, so that they may know who is legitimately to be bound or loosed, as was said above concerning the nature of this power (n. 17); for afterward he confesses that whatsoever they bind upon earth is bound in heaven.[2]

[2] *In Matth.*, XIX, 18.

IV. Appendix on the Ancient Penitential Discipline.

The power of the keys, from what has been said, was always the same in the Church, but the mode of exercising it was different according to different times, as the utility of the faithful or of the Church required: it will be opportune to explain this briefly.

[3] Tertullian, *De paenitentia*, *De pudicitia*; *Philosophoumena*, IX, 12; E. Preuschen, *Tertullians Schriften De paenitentia und de pudicitia, mit Rucksicht auf Bussdisziplin untersucht*, Giessen, 1890; E. Rolffs, *Das Indulgenz-Edikt des romischen Bischofs Kallist kritisch untersucht und reconstruiert*, Leipzig, 1893; A. d'Ales, *La Theologie de Tertullien*, p. 339-355; G. Rauschen, op. cit., t. II, § II.

57. 1. The general character of the ancient penitential discipline is described. The Church imposed on sinner faithful a new kind of life, very similar to eremitic religious life. (A) First, penance was enjoined by the Bishop:[1] (a) sinners put on a special habit, so that in sackcloth and ashes they might lead an austere and laborious life: thus they were, as it were, authentically received among the penitents; (b) they were deprived of many privileges in the religious and civil order: standing at the doors of the church, or admitted within the church in a special place, they could not assist at the Eucharistic sacrifice; nor enter upon marriage or use a marriage already entered upon; nor even seek honors, exercise military service or business;[2] (c) but they afflicted their body with various mortifications, renounced baths and sumptuous banquets; content with brief sleep, they devoted themselves to lengthy prayer, redeeming sins by alms proportioned to their condition: thus they preluded the religious life which was afterward instituted.

[1] How laborious penance of this kind was, Tertullian describes thus, *De paenit.*, ch. IX, P. L., I, 1243-1244: "And so exomologesis is a discipline of prostrating and humbling man, enjoining a manner of life alluring mercy; concerning dress also and food it commands one to lie in sackcloth and ashes, to obscure the body with filth, to cast down the soul with sorrows, to change by sad treatment those things in which he sinned; moreover to know food and drink as plain, of course not for the belly's sake, but for the soul's; and for the most part to nourish prayers by fasts, to groan, to weep, and to roar day and night to the Lord thy God, to throw oneself before the presbyters, and to kneel before the dear ones of God, to enjoin on all the brethren the embassies of his supplication."

[2] Thus Pope Siricius, writing to Himerius, ep. I, 5, P. L., XIII, 1137, reproaches those "who, after penance has been done, like dogs and swine returning to their former vomit and wallowing-places, again sought the military belt and theatrical pleasures and new marriages and forbidden intercourse."

58. (B) The whole Church cooperated with this public penance, not only by pious exhortations, but also by asking pardon from God for the penitents: this was, as it were, the first origin of indulgences.

59. (C) When the penance was judged sufficient, absolution was conceded by the Bishop, which consisted in the imposition of hands with a prayer which signified the pardon of sins. But this was given to each penitent only once, lest by a more frequent concession the faithful should seem to be led to multiplying sins. But if they sinned again, they were committed to the divine mercy. Generally, once a year, absolution was solemnly conceded before the faithful gathered together, and indeed on the Lord's Supper, according to the Roman usage. But if the danger of death was urgent, the sick were absolved immediately, lest they depart from the world without communion.[3]

[3] This is clear from the letter of St. Innocent I, Pope, to Decentius, bishop of Gubbio (P. L., XX, 559): "Concerning penitents, however, who, whether from graver things committed or from lighter ones, have performed penance, if no sickness intervenes, they are to be remitted on the fifth feria before Easter, according to the custom of the Roman Church. But it will be for the priest to judge about weighing 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 his satisfaction to be congruous. But if someone falls into sickness and has come even to desperation, he is to be relaxed before the time of Easter, lest he depart from the world without communion."

60. 2. Differences between the ancient and today's discipline are reviewed. (A) The chief difference consists in this, that formerly public penance and absolution were given only once to the Christian sinner, whereas today absolution is conceded as often as the contrite sinner asks it.

(B) Formerly the Church imparted absolution only to those who proved an undoubted conversion by long and laborious penance, and at the same time performed satisfaction for sins, so that there might be greater certainty about the dispositions of the penitents and about the efficacy of the absolution; whereas today it is imparted to those who show probable signs of conversion and seriously promise that they will fulfill penance, so that sinners may more confidently and more frequently have recourse to the sacred tribunal.

Conclusion. In antiquity, as now, three acts of the penitent were required, but the primitive Church chiefly insisted on satisfaction, whereas today it insists more on sorrow and confession.

But this change of discipline does not touch the power itself of the keys.

61. 3. Disputed questions. Today, however, among Catholic authors, two principal questions are agitated: (a) whether, for some time, in the universal Church, absolution was denied to the gravest sins; (b) whether, in the first five centuries, besides public penance, private penance also flourished.

62. (A) As to the first, (a) authors of the greatest weight, such as Morinus, d'Aubespine, Juenin, Petavius, Sirmond, Funk, Vacandard, Batiffol, think that the Church, through the first three centuries, denied absolution to the guilty of apostasy, fornication, and homicide,[1] even in the article of death, remitting them to the judgment of God and at the same time pouring forth prayers that God would pardon them. - They prove this: from Tertullian; for he asserts that Callixtus was the first who gave pardon to adulterers, and thus does not stand by itself, because he continues to deny absolution to idolaters and murderers;[1] from Cyprian, who testifies that certain African bishops were unwilling to absolve adulterers;[2] from the Council of Elvira (A.D. 306), can. 1, where it is said: "It has pleased us that among those who, after the faith of saving baptism, at an adult age shall have approached the temple to worship an idol, and shall have done this, which is a capital crime, because it is of the highest wickedness, it has pleased us that he should not receive communion even at the end";[3] from the Council of Arles (A.D. 314), can. 22, where similar things are had; from Origen, who rebukes priests absolving, from ignorance of canonical discipline, the three aforesaid offenses.[4] Therefore, they say, in the Church both Latin and Greek, there prevailed until the fourth century the practice of denying pardon to those guilty of these crimes.

[1] Morinus, op. cit., bk. X, ch. 1-3; d'Aubespine, *De vet. Ecclesiae ritibus*, ch. 2; Juenin, *De paenit.*, q. VII, ch. 1, a. 2, § 1; Petavius, in notes to Epiphanius, haeres. 59, at the end of his works; Sirmond, *Hist. paenit. publicae*, ch. 1; Funk, *Theol. Quartalschrift*, 1906, p. 432 ff.; Vacandard, in *Rev. du clerge franc.*, t. XX, 1899, p. 575 ff.; Batiffol, op. cit., p. 215.

[1] Tertullian, *De pudicitia*, ch. 5-6; P. L., t. II, p. 987-991.

[2] St. Cyprian, ep. 52 to Antonianus, n. 21.

[3] In Bruns, op. cit., t. II, p. 2.

[4] Origen, *De oratione*, ch. 28, P. G., t. XI, p. 528-529.

63. (b) Moreover, many theologians, among whom Esser, Stufler, and A. d'Ales, teach that a universal practice of denying absolution at the end of life to graver crimes never prevailed in the Church.[5] They prove this by a twofold argument: indirectly, by the authority of the Council of Trent defining sacramental confession to be necessary by divine right; from which it is inferred that the Church could not deny to penitents, especially in the article of death, so necessary a sacrament; directly, by exhibiting the testimonies of the Fathers, especially Hermas, St. Cyprian, St. Pacian, St. Caelestine, St. Leo, etc., which we have reported above.

[5] Palmieri, th. 9, p. 92; De San, n. 211 ff.; Pignataro, op. cit., p. 106 ff.; Pelle, *Le Tribunal de la Penitence*, thesis, Paris, Oudin, 1903, p. 86-136; G. Esser, *Die Bussschriften Tertullians*, 1905; Stufler in *Zeitschrift f. Kath. Theol.*, 1908, p. 1-48; A. d'Ales, in *Rev. du Cl. fr.*, 1907, t. L, p. 337-365, and *L'Edit de Calliste*, p. 228 ff.

They respond to the alleged authorities: Tertullian calumniates the doctrine of Callixtus, perhaps in order to lessen his authority among the Africans; Cyprian affirms that certain bishops, but not all, denied absolution to adulterers; the councils alleged above speak of communion, not of absolution to be denied.

64. (c) Judgment concerning this controversy. Here there is question not of a dogmatic matter, but of a historical and disciplinary one, which must be settled from facts. But these are sufficiently obscure. It seems certain that, in the middle of the second century, absolution was not denied on account of the aforesaid sins, as is clear from the authority of Hermas. Likewise all concede that already from the fourth century the reservation of these sins had been abolished, at least in most churches. But the matter remains doubtful as to the end of the second century and the beginning of the third. Irenaeus and Clement of Alexandria indeed suppose that in their time adultery and homicide could be pardoned.[1] But in certain churches, especially in Africa, some bishops did not absolve from these sins, St. Cyprian bearing witness: "And indeed among our predecessors certain bishops here in our province did not think that peace was to be given to adulterers."[2] That the same practice was received in certain churches, even at Rome, is clear from the testimony of St. Hippolytus (*Philosophoumena*, IX, 12). But from this it is by no means proved that this practice was universal; for it did not prevail in the East, and in the West it was not received in all churches or by all. The testimonies of Tertullian, already a Montanist, and of Hippolytus, who then favored rigorism, do not seem wholly worthy of faith, and St. Cyprian rightly hands down that only certain bishops adhered to that practice; but all confess that the Council of Elvira promoted rigorism.

[1] St. Irenaeus, loc. cit.; Clement of Alexandria, *Liber quis dives salvetur*, ch. 47, P. G., t. IX, p. 647-651, where he narrates that St. John received into the Church a certain leader of robbers, previously baptized by him, and therefore supposes that homicide is not irremissible.

[2] St. Cyprian, Epist. LV, 21.

Wherefore the prior opinion unjustly asserts that the practice of denying absolution to the three graver offenses was universal. (A. d'Ales, *L'Edit de Calliste*; Tixeront, *Theol. anteniceenne*, 8th ed., pp. 361-377, 500-504).

65. (B) As to private penance, a twofold opinion likewise prevails.

(a) The theologians of whom above[3] hold that in the earlier centuries there was a twofold kind of penance: public penance for public graver offenses, but private penance for occult ones. They prove this: 1) *a priori*; for if there had prevailed an obligation of publicly confessing occult sins or of publicly doing penance for them, the sacramental seal would have been violated; moreover, public penance was conceded only once, and therefore, if private penance were taken away, there would be no hope of pardon for those falling again. 2) From certain facts: Cerdon, the heretic, is described by St. Irenaeus[4] as "coming into the Church and making exomologesis... now indeed secretly teaching [heresy], but now making exomologesis"; but public penance was given once; therefore here there is question of private exomologesis. Almost the same thing is narrated about Marcion, who, having been cast out of the Church once and again, finally underwent penance, afterward to receive peace.[5] - Furthermore, the Council of Nicaea, can. 13, establishes that sacred communion is not to be denied to all who are dying (and therefore to those who have relapsed); therefore penance was first ministered to them, and that private.

[3] The arguments of these were recently expounded by N. Nardi, in *Etudes des PP. Jesuites*, t. 80, 1899, p. 577, and t. 82, 1900, p. 577.

[4] St. Irenaeus, *C. Haeres.*, bk. III, ch. 4, P. G., t. VII, p. 857.

[5] Tertullian, *De praescript.*, ch. 30, P. L., t. II, p. 42.

66. (b) On the contrary, however, the critics of whom above deny that through four centuries there was a private penance distinct from public penance.[1] They indeed acknowledge that the confession of sins was sometimes occult and auricular; but satisfaction or penance was always public; the same must be said of absolution, if you except the case of the dying: for then the pardon of sins took place privately. For: 1) as often as the Fathers of the first four centuries treat of penance, namely Hermas, Tertullian, St. Cyprian, St. Pacian, Clement of Alexandria, Origen, St. Gregory Thaumaturgus, Dionysius of Alexandria, etc., they always describe it as public. 2) Private penance is not exhibited except at the end of the fourth century in the East, when Nectarius (381-398) abolished the penitentiaries, on the occasion of a certain scandal;[2] but in the West, in the following century. 3) The very few facts alleged to the contrary prove nothing: Cerdon and Marcion, heretics, underwent no other exomologesis except public, which alone belonged to so great a crime, but because of their inconstancy they broke it off several times; from the Nicene canon nothing else is inferred except that the pardon of sins is conceded privately to the dying, by way of privilege, but from this it is by no means proved that, in a general way, private penance prevailed for other Christians; indeed, if the dying survived, according to the First Council of Orange, can. 3, they ought to stand in the order of penitents, and therefore to perform public penance.

[1] The arguments of these were recently set forth by Vacandard, in *Rev. du Cl. francais*, t. XXIX, 1900, p. 258-264.

[2] This is narrated by Socrates, H. E., bk. V, ch. 19, P. G., t. LXVII, p. 613 ff., and Sozomen, H. E., bk. VII, ch. 16, P. G., t. LXVII, 1457 ff.

67. (c) Judgment concerning this controversy. In a matter so difficult and obscure, it may be allowed to observe these things: - 1) It is not sufficiently clear, from the documents and facts known up to this point, that private penance was in use through the first three centuries. Sometimes confession was secret, as will be declared more fully below, but nothing proves that the remission of sins was conceded without public satisfaction. 2) Not only the three greatest sins, namely apostasy, fornication, and homicide, were subjected to public penance, but also other lesser sins which were considered as mortal; St. Cyprian testifies to this: "When in lesser sins sinners perform penance for a just time and according to the order of discipline come to exomologesis, and through the imposition of the hand of the bishop and clergy receive the right of communion."[3] 3) Public penance was truly sacramental, since it wholly tended to the remission of sins not only as to punishment, but also as to guilt, through the ministry and absolution of the priest, the faithful interceding with him, as is clear from the things said above concerning exomologesis, and from what is to be said concerning absolution. 4) Sacramental absolution was conceded to the dying, even before they had completed canonical penance, so that, reconciled with God, they might depart from life; furthermore, sometimes, on account of the intercession of confessors and martyrs, the time of penance was shortened.

[3] St. Cyprian, ep. 9, n. 2, P. L., t. IV, p. 251.

Whether or not, outside these or similar cases, absolution was conceded before exomologesis had been completed is not sufficiently clear. But for common offenses penance was shorter and was conceded several times.[1]

[1] Thus most modern critics. The contrary, however, is held, among others, by Palmieri, *De Paenit.*, Appendix, p. 508; Frank, *Bussdisziplin*, p. 811 ff.; Schmitz, *Bussbucher*, II, 34 ff., 74 ff.; Pignataro, op. cit., p. 99; Pesch, n. 263-268.

Art. II. On the Minister of the Power of the Keys

68. From the things said above it can already be inferred that the power of the keys belongs not to all Christians, but only to certain ministers of the Church: for since this power touches the very conscience of all the faithful and remits sins even before God, it is evident that it cannot be exercised except by those who are deputed by God to rule the faithful and sanctify them. For exercising it, according to Trent, a twofold power is required, namely the power of order and of jurisdiction.

69. (a) And first, the power of order: - "Concerning the minister of this sacrament, the holy Synod declares that all doctrines are false and wholly foreign to the truth of the Gospel which perniciously extend the ministry of the keys to any other men whatsoever besides Bishops and Priests, thinking that those words of the Lord: '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,' were said to all the faithful of Christ indifferently and promiscuously, contrary to the institution of this sacrament, in such a way that anyone has the power of remitting sins, public sins indeed by correction, if the one corrected shall acquiesce, but secret

ones by spontaneous confession made to anyone whatsoever. It also teaches that even priests who are held by mortal sin exercise, through the power of the Holy Spirit conferred in ordination, the function of remitting sins as ministers of Christ; and that those think wickedly who contend that this power is not in bad priests."[2]

[2] Trent, sess. XIV, ch. 6.

In the same sense the Code speaks, can. 871: "The minister of this sacrament is only a priest."

70. (b) The power of jurisdiction is required besides for the valid use of this power, because it is exercised only in a judicial mode: -

"Since therefore the nature and reason of judgment demands that sentence be pronounced only upon subjects, it has always been persuaded 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 moment."[1]

[1] Trent, sess. XIV, ch. 7. Cf. Code, can. 872.

§ I. On the Power of Order for Remitting Sins

71. State of the question. (A) They have erred concerning this matter:

(a) the Montanists, who held that only pneumatics or spiritual men, that is, those who were inspired by the Holy Spirit, could pardon sins; (b) the Waldenses and Wycliffites, who conceded the power of absolving sins to good laymen, but denied it to wicked priests; (c) liberal Protestants, who hold that in the first centuries of the Church the power of the keys was exercised by charismatics, that is, by those members of the faithful who enjoyed a special gift or charism: for they contend that the hierarchy was not instituted by Christ, but that various charisms, among which was the charism of forgiving sins, were distributed among the faithful by the Holy Spirit.[2]

[2] Muller, in *Zeitschrift fur Kirchengeschichte*, 1895, p. 1 ff., 187 ff.; cf. Vacandard, in *Rev. du Cl. fr.*, t. XIX, 1899, p. 337.

72. (B) Furthermore, in the Middle Ages, certain Catholic authors held that deacons or clerics of inferior order were in some sense extraordinary ministers of penance, insofar as, priests being lacking, they could receive confessions, indeed, according to some, contribute something toward the absolution of sins.[3] - Moreover Morinus thinks, on account of some difficult passages of the Fathers, that in antiquity deacons were held as extraordinary ministers of penance. - Finally, a few said that, priests and clerics being lacking, confession should be made to laymen.[4]

[3] See their opinions expounded in Vacant, *Dict. de Theol.*, t. I, p. 183-189; Laurain, *De l'intervention des laiques, des diacres et des abbesses dans l'administration de la penitence*, Paris, 1897, p. 69.

[4] In Laurain, op. cit., p. 18 ff.

73. Thesis: Priests alone, that is, bishops and presbyters, are ministers of the power of the keys, or can validly absolve from sins.

It is *de fide* from Trent, can. 10: "If anyone shall say that priests who are in mortal sin do not have the power of binding and loosing; or that priests alone are not ministers of absolution, but that to all and each of Christ's faithful 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 force of which words anyone whatsoever can absolve sins, public sins indeed by correction only, if the one corrected shall acquiesce, but secret sins by spontaneous confession: let him be anathema."

74. 1. It is proved from Scripture, namely from the two texts alleged by Trent, which we declared above (n. 21-31). For from these, joined with the interpretation of the Fathers, it follows that the power conferred on the apostles and their successors must be exercised in a judicial mode. Now not all the faithful enjoy judicial authority, but only those who preside over the Church, whom "the Holy Spirit has placed as bishops to rule the Church of God,"[1] as is clear from the things proved in the treatise on the Church. - But who were invested with this power must be determined from the doctrine and practice of the Church.[2]

[1] Acts 20:28.

[2] These are priests, that is, bishops and presbyters, as is clear from the facts brought forward. Through the first four centuries, this power was exercised almost exclusively by bishops; but in the fourth century, to certain presbyters, namely penitentiaries, there was conceded the authority of hearing confessions and absolving sinners; from the fifth to the eighth century this power was extended to several other presbyters; and already from the eighth century to all priests. (Tixeront, III, 253.)

75. 2. By Tradition. (A) In the second century, we can gather only certain traces, for the reasons already brought forward where we treated of the power itself of the keys. St. Ignatius constantly commends and commands obedience to be furnished to the bishop, nor does he promise to sinners the remission of sins unless they return to the bishop; from which it is inferred that the power of absolving, which involves judicial power, was exercised only by bishops or dependently on them.

76. (B) But this is expressly affirmed in the third and fourth centuries, as soon as errors concerning this matter arise. Thus, Tertullian bearing witness, Callixtus claims for himself the power of remitting sins, and indeed by force of the text "Whatsoever thou shalt bind." - The Montanists indeed contend that this authority belongs to spiritual men,[3] but their error is rejected by the universal Church. Tertullian himself, while still Catholic, describing exomologesis, says that sinners groan, weep, and "throw themselves before the presbyters."[1] St. Cyprian, disciple of Tertullian, exhorts sinners to penance, "while satisfaction and remission made through priests is pleasing before the Lord."[2] Others with St. Ambrose explicitly say that the power of binding and loosing, and therefore of remitting sins, is in priests alone: "For this right has been permitted to priests alone. Therefore the Church rightly claims this, since she has true priests; heresy cannot claim it, since it does not have priests of God."[3] We have already said (n. 46) that the power of absolving is conferred on bishops in ordination itself.

[3] Tertullian declares this thus, *De pudicitia*, ch. 21: "And therefore the Church indeed will forgive offenses; but the Church of the Spirit through a spiritual man, not the Church the number of bishops."

[1] *De Paenitent.*, n. 9.

[2] *De Lapsis*, ch. 29.

[3] St. Ambrose, *De Paenit.*, bk. I, ch. 2, P. L., t. XVI, p. 468.

77. The Greek Fathers assert the same. Origen expressly asserts that the power of remitting sins was conferred on the apostles and their successors by force of the words "Whose sins you shall forgive"...; and from the context and parallel passages it is clear that these successors are priests: thus he speaks of the sinner who "is not ashamed to show his sin to the priest of the Lord, and to seek medicine."[4] - St. Athanasius, in the *Fragment from the Books against the Novatians*, writes: "Just as a man baptized by a priest is illuminated by the grace of the Holy Spirit, so one who confesses in penance receives remission through the priest by the grace of Christ."[5] - In the fourth century, at Constantinople, penitentiary presbyters were instituted, whose office was to impose penance and absolve those confessing.[6]

[4] Origen, *in Levit.*, hom. II, n. 4, P. G., t. XII, p. 418; cf. 560, 561; t. XI, p. 528, 529; t. XIII, 1846.

[5] P. G., t. XXVI, p. 1315.

[6] Socrates, H. E., bk. V, ch. 19, P. G., LXVII, 614-615. It is also probable that penitentiaries were likewise constituted at Rome at the beginning of the fourth century. Yet certain Catholics deny this, thinking that the imposition of penance and the absolution of sins, in the western Church, was reserved to the bishop. See Vacandard, in *Revue du Clerge francais*, t. XLII, 1905, p. 361; whose arguments, however, Batiffol refutes, ibid., p. 449.

78. Difficulties are solved. (A) It is permitted to observe only a few things concerning pneumatics. We do not indeed deny that certain persons, in the primitive Church, were endowed with special charisms, which are described by St. Paul;[7] but nowhere is it said that to them was conceded the power of remitting sins. - Tertullian, already made a Montanist, ascribes this power to spiritual men, but, notwithstanding his talent, this assertion was soon universally reproved, even by St. Cyprian, his disciple. Therefore nothing can be deduced from this against our thesis.

[7] 1 Cor. 12:3-11; 14:2-40; Ephes. 4:11.

79. (B) Some object that confessors and martyrs obtained the privilege of conceding certificates of peace, and therefore the remission of sins. - It is indeed true that certificates of peace were given by them, so that the lapsed might more easily obtain pardon; but from the letters of St. Cyprian it is evidently clear that this intercession of the martyrs was indeed one of the motives on account of which a milder or shorter penance was imposed, just as today, by force of the communion of saints, indulgences are conceded, but by no means was it true absolution from sins. He indeed confesses that the lapsed can be helped by the prayers of the martyrs; but the bishops must judge to whom and when reconciliation ought to be conceded.[1] Now this doctrine was approved not only by the African bishops, but also by the Roman Church, as we already noted above, n. 50. From this the thesis is confirmed not a little, since it is clear that the martyrs themselves contributed something to the pardon of sins only by a privilege of intercession.

[1] Letters, 9, 10, 11, 13, 17, 26, 30, etc., P. L., t. IV, pp. 252, 255, 257, 260, 270, 304-305.

80. (C) Yet another difficulty arises from the intervention of deacons in the administration of penance. St. Cyprian, writing concerning the lapsed who were in danger of death, says that they can make exomologesis before a presbyter, or, if a presbyter is lacking, before a deacon:[2] "If they have been occupied by some inconvenience and danger of illness, without awaiting our presence, before any presbyter whatsoever who is present, or, if a presbyter shall not be found and death begins to press, before a deacon also they can make exomologesis of their offense, so that, the hand having been imposed on them unto penance, they may come to the Lord with the peace which the martyrs desired to be given, in letters written to us."

[2] Epist. 12 to the clergy concerning the Lapsed, P. L., t. IV, p. 259.

The matter is explained in different ways. (a) Some, with Morinus, think that the holy Doctor truly held that deacons are extraordinary ministers of penance in more urgent cases. (b) Others say that here there is question of external reconciliation with the Church, which, as regards sinners, had to precede the administration of viaticum. For the question was concerning the lapsed who had received a certificate of peace from the martyrs and at the same time labored under grave illness and were in danger of death. The bishop permits presbyters, and, if they are lacking, deacons, to impose penance on the sick through the imposition of hands, so that, penance having been accepted and an act of contrition elicited, those about to die may be able to receive communion, and thus approach the Lord with peace; for often deacons, priests being lacking, ministered viaticum to the dying who had been justified by an act of perfect contrition. This is confirmed by canon 32 of the Council of Elvira (306): "If anyone before a presbyter has fallen by a grave lapse into the ruin of death, it has pleased us that he ought not to perform penance, but rather before the bishop; yet, sickness compelling, it is necessary that a presbyter furnish communion, and a deacon if a priest shall have ordered him." Thus it is explained how some deacons, since they ministered viaticum, heard confessions beforehand, namely so that they might arouse sinners to contrition; this can be inferred from Odo, bishop of Paris, statutes (1197), where one reads:[1] "Item, we strictly forbid that deacons in any way hear confessions, except in the most straitened necessity; for they do not have the keys, nor can they absolve."

[1] In Mansi, XXII, 653; cf. Laurain, p. 88 ff., where you will find many other documents.

81. (D) It is also sometimes objected that monks who had not been initiated into the priesthood heard confessions.

Resp. We readily admit that in the Middle Ages, especially in the East, the matter sometimes stood this way, because, namely, the Christian people, scandalized by the wicked morals of secular priests, often preferred to confess sins to religious, even to those who were not priests: but this was an abuse and ignorance born of good faith.

82. (E) They urge: In the Middle Ages the practice prevailed that, in danger of death, when a priest was lacking, confession was made to laymen; the most learned theologians commended this practice, indeed taught its necessity, for example Lanfranc,[2] Peter Lombard,[3] Robert Pullus,[4] Albert the Great,[5] St. Thomas,[6] and others; therefore laymen absolve.

[2] *De Celanda confessione*, in Migne, t. 150, p. 629 ff.

[3] *Sentent.*, bk. IV, dist. 17.

[4] *Sentent.*, bk. VI, ch. 51, 301-302, in Migne, t. 186, p. 897.

[5] *In IV Sentent.*, dist. 17, art. 58-59.

[6] *In IV Sentent.*, dist. 17, q. 3, a. 3, sol. 2.

Resp. The aforesaid Doctors by no means teach that laymen have the power of absolving, although they hold that, in a case of necessity, it is useful or necessary for sins to be confessed to a layman. They accepted this opinion from the author of the book *On True and False Penance*, which was wrongly ascribed to St. Augustine; here are the words of Pseudo-Augustine:[7] "He who wishes to confess sins so that he may find grace, let him seek a priest who knows how to bind and loose... Yet such is the force of confession that, if a priest is lacking, let him confess to his neighbor... Although he to whom confession is made does not have the power of loosing, nevertheless he who confesses his crime to his companion is made worthy of pardon from the desire of the priest." From this it follows that laymen lack the power of absolving. St. Thomas holds the same (loc. cit.) when he says: "But when necessity is imminent, the penitent ought to do what is on his part, namely to be contrite, and to confess to whom he can; and although he cannot perfect the sacrament, so that he may do what is on the part of the priest, nevertheless the supreme priest supplies the defect." Therefore laymen, when they heard confessions in a case of necessity, did not enjoy the power of absolving; but Christ Himself, on occasion of this humble confession, imparted the remission of sins to those well disposed. Nevertheless, because of this intervention, deacons were called by certain theologians of this age extraordinary ministers of the sacrament of Penance.[1]

[7] In Migne, P. L., t. 40, p. 1122.

[1] Vacant sets forth at length these opinions of the Scholastics, *Diction. de Theologie*, t. I, p. 182-189.

From this one can likewise infer how necessary confession was considered to be, since, when a priest was lacking, it was said that it should be made before a layman.

83. (F) We say nothing of abbesses, who sometimes usurped the power of hearing the confessions of nuns; for this was reproved as incongruous and absurd in both Churches, Greek and Latin, "because," as Innocent III said, "although the Most Blessed Virgin Mary was more worthy and more excellent than all the Apostles, nevertheless the Lord entrusted the keys of the kingdom of heaven not to her, but to them."[2]

[2] In Migne, P. L., t. 216, p. 356; for the eastern Church, see P. G., t. 119, p. 1066; cf. Laurain, op. cit., p. 1-67.

§ II. On the Power of Jurisdiction

84. State of the question. (A) Besides the power of order, in the minister of Penance there is desired the power of jurisdiction. (a) Ecclesiastical jurisdiction in general is defined as the power of ruling subjects in those things which regard the supernatural end. It differs from the power of order: for the latter is the power of ministering the sacraments, conferred by sacred ordination, and inhering indelibly in the subject; whereas jurisdiction is the power of ruling, conferred by an external act of a superior, which can be revoked. This indeed is threefold: legislative, for making laws; judicial, for authoritatively rendering sentences; and coercive, for inflicting penalties against delinquents.

(b) Now the jurisdiction which is required for the sacrament of Penance is judicial, since this sacrament is ministered under a judicial form. But judicial power can be twofold: of the external forum, when directly and primarily it regards the public utility of the Church; of the internal forum, when directly and primarily it regards the private utility of each member of the faithful. Since, therefore, the sacrament of Penance was instituted primarily for the sanctification of private persons, the jurisdiction necessary for its administration is a judicial power of the internal forum, and indeed of the penitential forum, so that it may thus be distinguished from jurisdiction of the internal extra-penitential forum, which can be exercised outside sacramental confession, for example, by dispensing in a vow; by removing a censure with effect in the internal forum only.

(c) Hence the jurisdiction of the confessor can be defined as a supernatural power, conferred by an external act of a superior, by which a priest can exercise judgment toward subjects in the internal and penitential forum. But it is conferred by designating the subjects over whom the power of absolving can be exercised, or the place where it is legitimately exercised.

(B) Now certain older theologians, such as Durandus, held that jurisdiction is given in ordination itself, although they acknowledged that its use is bound by the prohibition of the Church; theologians commonly reject this opinion as antiquated. The Synod of Pistoia was even further distant from the truth when it asserted that it is indeed fitting, but not necessary for the validity of absolution, that the confessor possess jurisdiction.[1]

[1] In Denzinger, n. 1400.

85. Thesis: Besides the power of order, for valid absolution there is required the power of jurisdiction, which is not received by force of ordination alone, but by concession of ecclesiastical superiors.

1. The former point, namely that jurisdiction is required for valid absolution, is explicitly declared by Trent, above, n. 68. The Decree for the Armenians had gone before:[2] "The minister of this sacrament is a priest having the authority of absolving, either ordinary, or by commission of a superior"; that is, ordinary or delegated jurisdiction.

[2] In Denzinger, n. 594.

(A) The reason for this assertion is taken, as Trent rightly hands down, from the very nature of absolution. For the power of remitting or retaining sins is exercised by way of judgment; but judicial power cannot validly be exercised except over a subject, that is, over one who has been subjected to the authority or jurisdiction of the judge by a legitimate superior; just as, in civil matters, not any judge whatsoever can know any cause whatsoever, but each knows those causes which are assigned explicitly or implicitly by a legitimate superior; for if judges were to treat any causes indiscriminately, there would be no subordination of inferiors and superiors, but the whole order of justice would be disturbed.

From this it is likewise given to understand why jurisdiction in the other sacraments is required for licit, but not for valid, administration, whereas it is necessary for valid absolution: for the other sacraments are not conferred by way of judgment, and therefore of themselves do not demand jurisdiction.

86. (B) The matter is also historically clear. For from what has been said, the power of remitting sins in the first centuries of the Church was exercised by the Bishop of each diocese, and indeed over his own subjects, as is clear from the letters of St. Cyprian; wherefore the holy Doctor rebukes priests who had reconciled the lapsed without consulting the Bishop.[1] - But afterward, from the fourth and fifth centuries, with the number of the faithful and of sins increased, the Bishops began to designate penitentiary presbyters attached to some special church, who there would receive the confessions of penitents.[2] - When parishes were instituted in villages and country places, the power of absolving, like the other ecclesiastical offices to be performed, was committed to parish priests. Hence, when the Fourth Lateran Council issued the decree concerning annual confession, it commanded that the faithful confess to their own priest, that is, to the parish priest having jurisdiction over subjects, or to a priest delegated by him or by a legitimate superior. - To religious indeed, not having a parish, the faculty of receiving confessions was given, but by force of delegation conceded by the Supreme Pontiff or Ordinaries.[3] Therefore some jurisdiction was always necessary for exercising the power of absolution.

[1] St. Cyprian, ep. 11, P. L., IV, p. 257. - This is likewise clear from can. 4 of the Second Council of Carthage: "If anyone has been placed in danger and shall have asked to be reconciled to the divine altars, if the bishop shall have been absent, the presbyter ought certainly to consult the bishop, and thus reconcile the endangered one by his precept." (In Bruns, t. I, p. 119.)

[2] Thomassin, *Anc. et nouv. discipline de l'Eglise*, Bar-le-Duc, 1864, t. I, P. I, bk. II, ch. 10 and 11, p. 381 ff., and ch. 23-26.

[3] Thomassin, op. cit., ch. 12, p. 401 ff.

87. 2. But the latter point, namely that this jurisdiction is not conferred by force of ordination alone, but by concession of superiors, follows from the things already proved. For Trent (loc. cit.), by declaring that the absolution of a priest lacking jurisdiction is of no moment or value, supposes that there can be a priest who lacks jurisdiction; but if jurisdiction were conceded by force of ordination alone, it could not be taken away, since the power of order, like the priestly character itself, is indelible; therefore jurisdiction does not flow from ordination itself.

This can also be declared thus. Every jurisdiction is either ordinary, that is, annexed to the office or munus which is conceded, or delegated, that is, obtained from a special commission of an ecclesiastical superior; but neither is conferred by force of ordination alone: not the former, because no one by force of ordination itself receives a determined diocese or parish; not the latter, because ecclesiastical superiors do not intend to concede this special commission by force of ordination, but afterward confer it by a special and distinct act of mission.

88. It is indeed objected that the complete power of absolving, and therefore jurisdiction, was conferred on the Apostles by Christ by these words: "Receive ye the Holy Spirit; whose sins you shall forgive, etc."; but the same words are said to newly ordained priests; therefore they too receive the same power by force of ordination. - Resp. The Apostles received from Christ both powers, of order and of jurisdiction, not precisely by force of the words "Receive ye, etc.," but by force of the intention of Christ, which is sufficiently manifested by the preceding words, "as the Father has sent me, I also send you." Hence, although the words "Receive ye" are said to

new priests, it does not follow from this that they receive the power of jurisdiction, because the Church does not intend to concede it by these words; therefore the parity must be denied.

89. Corollaries. 1. Jurisdiction can be limited in various modes by legitimate superiors, but especially by the Roman Pontiff, who has supreme jurisdiction in the universal Church. For ecclesiastical superiors who possess ordinary jurisdiction can concede it or not; therefore, *a fortiori*, they can confer it in a more or less limited mode, as in the Lord they shall have judged expedient. Hence jurisdiction can be limited as to persons, insofar as the faculty of absolving is restricted to certain persons or kinds of persons; as to place, for example, within the limits of one parish; as to time, so that after a certain time has elapsed it expires; as to sins, insofar as a superior can reserve to himself absolution from certain graver sins.

90. This is historically clear. When bishops permitted presbyters to absolve from sins, they reserved to themselves certain very grave ones. Thus, in the Synod of Paris (about A.D. 1200), it is established: "Let priests reserve greater things to greater ones, in confessions, such as homicides, sacrileges, sins against nature, incests, and defilements of virgins, laying of hands upon parents, broken vows, etc." Almost at the same time, the Council of London decreed "that those who knowingly have perjured themselves to the detriment of anyone whatsoever are not absolved... except by the diocesan bishop, or by his authority, except only in the article of death." Moreover, the bishops themselves were not accustomed to absolve certain more atrocious crimes, but remitted them to the Supreme Pontiff. An example is had in can. 13 of the Council of Avignon (1209): "Against public perjurers, convicted of perjury, and those who persevered pertinaciously in excommunication for six months... we promulgate a special and new canon, namely that it be lawful for none of the bishops to absolve anathema of this kind, but that, according to the Apostolic See, sacrilegious persons and incendiaries be sent to be absolved."[1] - Finally, the Roman Pontiffs themselves reserved certain graver crimes to themselves, so that the faithful might be more efficaciously deterred from perpetrating them. For Trent says, ch. 7: "It seemed to our most holy Fathers to pertain greatly to the discipline of the Christian people, that certain more atrocious and graver crimes be absolved not by any priests whatsoever, but only by the highest priests; whence the Supreme Pontiffs, by the supreme authority handed down to them in the universal Church, were rightly able, by their particular judgment, to reserve certain graver causes of crimes."

[1] You will find these canons and very many others in Thomassin, op. cit., P. I, bk. II, ch. 13-14, t. I, p. 406-417.

91. 2. It is commonly held that jurisdiction is required also for the absolution of venial sins. Many older theologians, even of the first name, such as St. Thomas and Scotus,[2] denied this, because venial sins can be remitted also by other sacraments, in which jurisdiction is not required. Others said that any priests whatsoever received from the Church jurisdiction for absolving from venials by force of custom, without special concession; this could once have been true, but today it has fallen into desuetude; for Innocent XI, by the decree *Cum ad aures*,[3] prohibited Bishops from permitting that the confession of venials be made to a simple priest not approved by the bishop or Ordinary. Hence today it is commonly taught[4] that jurisdiction is required even for absolution from venials; for

in the sacrament of Penance venial sins also are remitted by way of judgment; but a judge cannot render a valid sentence without jurisdiction; therefore.

[2] St. Thomas, in 4, dist. 18, q. 2, a. 3, sol. 1 ad 3; Scotus, in 4, d. 18, q. 4, a. 2, sol. 3.

[3] In Denzinger, n. 1086.

[4] I say commonly, because a few with Ballerini, *Opus Morale, De Paenit.*, n. 555, hold the contrary and understand the decree of Innocent XI concerning liceity, not concerning the validity of absolution.

Dogmatic Part — Chapter II: On the Acts of the Penitent

On the Acts of the Penitent

The power of the keys, from what has been said, must be exercised in a judicial mode, and therefore supposes certain acts on the part of the penitent. Now the exomologesis described above included three principal acts: confession of sins, not only before God, but also before His ministers; contrition, or hatred and detestation of sin; satisfaction, that is, the long and laborious expiation of the offense: concerning these things we must speak separately.

Art. I. On the Confession of Sins

92. State of the question. 1. Notion of confession. (A) In the Old Law, although the sacrament of penance had not yet been instituted and there was no sacramental confession, nevertheless a certain confession of sins was acknowledged, and indeed threefold: -

(a) Confession made to God, for obtaining the remission of sins more easily: "He who hides his crimes shall not be directed, but he who shall have confessed and forsaken them shall obtain mercy";[1] (b) a general confession by which the Supreme Pontiff publicly recited the iniquities of the people of Israel once a year: "Then let him offer the living goat; and with both hands placed upon its head, let him confess all the iniquities of the children of Israel";[2] (c) a more specific confession, which was made to priests when a sacrifice for sin was offered, because the victim was different according to the diversity of sins, or also when restitution had to be made.[3] (d) The Jews who were baptized by John confessed their sins,[4] so that they might thus more efficaciously manifest their purpose of doing penance; but this confession was not sacramental.[5]

[1] Prov. 28:13; cf. Eccli. 4:31.

[2] Levit. 16:20-21.

[3] Levit. 4:3-35; 5:1-13; 6:1-7; Num. 5:6-7.

[4] Matt. 3:6.

[5] Cf. Vacant, in *Dictionnaire de la Bible*, under the word confession.

(B) But after the sacrament of penance was instituted, the confession of sins was one of the acts required for the remission of sins, and was often called exomologesis. Now the Greek word *exomologesis*, which is frequently found among the Fathers, signifies two things: the whole action of penance, or the long and laborious series of acts by which the remission of sins was obtained; and the first part of this penance, namely the declaration of sins, whether it is public, or private or auricular.

Understood in this latter sense, sacramental confession is the accusation of one's own sins committed after baptism, made to a legitimate priest, for obtaining pardon through the power of the keys.

93. 2. Errors concerning the necessity of confession. Protestants and their precursors denied this necessity: - (a) Wycliffe, saying: "If a man has been duly contrite, every external confession is superfluous and useless to him"; this proposition was condemned by the

Council of Constance;[1] (b) Luther, who nevertheless was not consistent with himself, asserting at one time that confession is "a most bloody slaughterhouse, which tortures miserable consciences," and at another time "the best remedy for afflicted consciences";[2] (c) Calvin,[3] who contends that auricular confession, as it exists among the Romanists, was instituted not by Christ, but by Innocent III in the Lateran Council, and that it is a thing harmful to the Church; (d) modern Protestants, even Ritualists, who, although they acknowledge its utility, nevertheless reject its necessity.[4]

[1] Denzing., n. 483.

[2] In Moehler, *Symbolik* (*La Symbolique*, *Symbolism*), § 33.

[3] Cf. *Instit.*, bk. III, ch. 4.

[4] "Absolution in the Anglican church - for we do not have the sacrament of Penance in the sense of the Romans (Catholics) - must be considered only a privilege of the faithful. There is no obligation to open sins secretly to a presbyter, since there is no general law; and those who do so cannot boast of a higher perfection in the observance of religious duties; and those who abstain from confession cannot rightly be accused of having failed in duty." (Morgan Dix, op. cit., p. 90).

94. The arguments by which today's Protestants attack both the divine institution and the necessity of confession are taken from history and are reduced to these: (a) Certain testimonies concerning confession are indeed found among sacred authors and the Fathers; but there it is a question of confession before God, not of confession made before priests; (b) moreover, the confession which the ancient Fathers commemorate is not auricular, and therefore not sacramental, but public and for repairing the scandal given to the community; (c) from the seventh century, in the Penitentials, auricular confession is indeed described, but from the mode in which it is performed, from the many prayers recited, the fasts required for it, and other circumstances, it is clearly gathered that it was very extraordinary; (d) besides, even in the twelfth century, there is doubt concerning its necessity, and some assert that confession made to God suffices, without there being need to confess to priests. From these things it is clear that only in the thirteenth century was auricular confession held as necessary.[1]

[1] Lea sets forth these arguments at length, op. cit., t. I, p. 168-273.

95. 3. Catholic doctrine. Against these errors, Trent[2] expounds Catholic doctrine (a) concerning the divine institution and necessity of sacramental confession: -

[2] Trent, sess. XIV, ch. 5.

"From the institution of the sacrament of Penance already explained, the universal Church has always understood that the complete confession of sins was also instituted by the Lord, and exists as necessary by divine right for all who have fallen after Baptism: because our Lord Jesus Christ, about to ascend from the earth to heaven, left priests as vicars of Himself, as presidents and judges, to whom all mortal crimes into which Christ's faithful shall have fallen should be brought; so that, according to the power of the keys, they may pronounce the sentence of remission or retention of sins. For it is clear that priests could not have exercised this judgment when the cause was unknown, nor indeed could they have observed equity in imposing penalties, if they themselves 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 have consciousness after diligent examination of themselves, even if those sins are most occult."

Three things are asserted here: the divine institution of confession, its necessity, and also its object, namely all mortal sins committed after baptism, of which consciousness is had.

96. (b) But as to the mode of confessing, secret or public, the Holy Synod adds: -

"Moreover, as to the mode of confessing secretly before a priest alone, although Christ did not forbid that someone, in vengeance for his crimes and for his humiliation, both on account of the example of others and on account of the edification of the offended Church, can publicly confess his offenses, nevertheless this is not commanded by a divine precept, nor would it be sufficiently prudent for it to be prescribed by some human law that offenses, especially secret ones, should be opened by public confession.

"Hence, since by the most holy and most ancient Fathers, with great and unanimous consent, secret sacramental confession, which the holy Church has used from the beginning and also now uses, has always been commended, the vain calumny of those who do not fear to teach that it is alien from the divine command, and is a human invention, and had its beginning from the Fathers gathered in the Lateran Council, is manifestly refuted. For by the Lateran Council the Church did not establish that Christ's faithful should confess, which it understood to be necessary and instituted by divine right, but that the precept of confession should be fulfilled by all and each at least once a year, when they had reached the years of discretion."

From these things it is gathered that confession, whether secret or public, is truly sacramental; yet it is not expedient that public confession of offenses, especially occult ones, be prescribed. Moreover, it is asserted, although not defined, that secret confession was in use from the beginning of the Church.

To understand this better, it must be known that this question was diligently weighed by the theologians and bishops of the Council; some judged that secret or auricular confession was instituted by Christ; but others thought that Christ indeed instituted confession, but in no way determined whether it ought to be secret or public.[1] The Council did not wish to define the matter, but only declared that the mode of confessing secretly is not alien from the institution of Christ, that is, according to Suarez,[2] that it is not contrary or repugnant to the divine precept, indeed that it is consonant with it.

[1] Cf. Theiner, *Acta genuina C. Trid.*, t. I, pp. 531, 540, 549, 557, 562, 580, 592, etc.

[2] Suarez, *De Paenit.*, disp. XXI, sect. II, n. 12.

Therefore there will be a twofold thesis: the former concerning confession itself; the latter concerning the mode of confessing.

97. Thesis 1: Sacramental confession is necessary by divine right for all those who have committed grave sins after baptism, and upon them there rests the obligation of confessing all and individual mortal sins.

It is *de fide* from Trent:[3] "If anyone shall deny that sacramental confession was either instituted or is necessary for salvation by divine right, or shall say that the mode of confessing secretly to a priest

alone, which the Catholic Church has always observed from the beginning and observes, is alien from the institution and command of Christ, and is a human invention: let him be anathema. - If anyone shall say that in the sacrament of Penance, for the remission of sins, it is not necessary by divine right to confess all and individual mortal sins, of which memory is had with due and diligent premeditation, even occult ones... let him be anathema."

[3] Sess. XIV, can. 6-7.

We said: (a) "sacramental confession," abstracting from the question whether it is public, or private or auricular; it is certain that public confession is not required, indeed is often inopportune, as Trent says; but if in fact it is sometimes employed, in order to absolution, this too will be a truly sacramental confession; (b) "necessary by divine right," and indeed strictly, under penalty of damnation, because confession is not a merely ecclesiastical precept, but a divine one, insofar as it is implicitly contained in the power of remitting sins in a judicial mode; but this necessity arises from a positive precept, and therefore admits certain exceptions, concerning which we shall speak below; (c) "grave sins," or mortal sins, since venial sins can be remitted without confession; but here it is useful to note that many sins which today are held as mortal by theologians are called venial or minute by certain Fathers: thus Caesarius of Arles, among minute sins, mentions oaths, perjuries, detractions, idle words, hatred, anger, gluttony, envy, etc.;[1] now the faithful were bound to accuse only those sins of whose gravity they were conscious. But under the name of grave sins are comprehended internal and occult sins, as Trent expressly says. (d) But all mortal sins and individual ones must be accused distinctly, insofar as this can be done.

[1] For, enumerating minute sins, he says: "Let us think, from the time when we began to have sense, what for oaths, what for perjuries, what for curses, what for detractions, what for idle words, what for hatred, what for anger, what for envy, what for evil concupiscence, what for gluttony, what for sleepiness, what for sordid thoughts, what for concupiscence of the eyes, what for voluptuous delight of the ears..." (Sermon 257, P. L., XXXIX, p. 2220).

The foundation of this doctrine is had in Scripture; the full proof is taken from Tradition; but reason shows the fittingness of this dogma.

§ I. The Institution and Necessity of Confession Is Inferred from Scripture.

98. 1. From the words of St. Matthew concerning the power of the keys, and from those of St. John concerning the power of remitting and retaining sins, the divine institution of confession is legitimately inferred. For Christ instituted the sacrament of Penance by way of judgment, so that the priest cannot bind or loose, remit or retain, at will, but only according to the laws of equity and prudence. But such a judgment cannot be pronounced without a prior confession of all mortal sins; for an equitable and wise judgment cannot be rendered unless the cause is known, and indeed in particular; and moreover the cause regularly cannot be known without the confession of the penitent, who alone can reveal his secret sins, or even the true malice of external sins, which depends on the internal act of the will.

[2] Cambier, *De divina institutione confessionis* (thesis), Louvain, 1884; Palmieri, Th. 33, p. 401-419; L. de San, n. 756-780; Mangenot, *Dict. de Theol.*, t. III, word Confession.

Furthermore, the power conferred on the Apostles and their successors embraces the faculty both of remitting and of retaining sins; now such a power cannot be exercised indiscriminately. Before the spiritual judge renders sentence, he must know whether sins have been committed or not; indeed he is bound to know their number and gravity, and also the interior dispositions of the sinner, so that he may be able prudently to judge whether they should be remitted or retained, and what kind of satisfaction should be imposed. But for this there is generally required an integral and distinct confession of mortal sins: otherwise, for the most part, the judgment will be neither equitable nor prudent. Therefore Christ, by conceding to the Church the power of remitting sins by way of judgment, by that very fact instituted confession.

99. 2. From the same texts it is gathered that confession is necessary for all who have fallen into grave sin. (A) For from the words "whose sins you shall forgive..." the Lord established in His Church a tribunal for the remission or retention of sins; but when a prince establishes a tribunal in his kingdom for the knowledge of causes, he manifests clearly enough that this is the way necessary by common right for ending disputes: for, if judges could not compel the guilty to present themselves before the tribunal, their power would be vain, since it could be despised with impunity. Thus if Christ, by instituting the sacred tribunal, had not commanded sinners to have recourse to it, but had left another ordinary means by which they could be justified, the power of priests would be illusory: for who would subject himself to humble confession and laborious penance, if another less laborious means were at hand for obtaining pardon of sins? - This conclusion is surely confirmed from the parallel passage, where there is question of the power of the keys. For the power of remitting sins is nothing other than a certain special attribution or exercise of the power of the keys, as was already said, n. 24. Therefore the power of remitting sins has the same force as the power of the keys. But the power of the keys supposes the force of obliging all the faithful who have fallen into mortal sin after Baptism to have recourse to it for the loosening of such a bond: "I will give to thee the keys of the kingdom of heaven; whatsoever thou shalt bind upon earth shall be bound also in heaven..." For just as no one can enter a house which is closed unless the doorkeeper opens the door, so no one to whom the gate of heaven is closed by mortal sin can enter the kingdom of God unless the gate is opened by the doorkeeper to whom Christ handed over the keys; otherwise the power of the keys would be illusory: for what profit is there in having keys, if without them, against the will of the doorkeeper, access lies open? Therefore the power of remitting sins, like the power of the keys itself, has the force of obliging sinners to have recourse to the sacred tribunal.

(B) It is confirmed from the last part of John's text: "and whose sins you shall retain, they are retained"; whose sense is: if you retain, I also retain. Therefore sin is not remitted by God when the Apostles retain it; and therefore the sinner needs Apostolic power in order to obtain pardon; for otherwise, when the Apostles retained, God would not retain; the power of the Apostles would become vain, and Christ's words false. Therefore the power of retaining sins supposes that the apostles and their successors can oblige sinners to have recourse to the sacred tribunal, for obtaining the remission of mortal sin committed after Baptism.

100. Certain other texts are brought forward which seem to regard sacramental confession; concerning these it is permitted to note a few things.

(a) In the Acts of the Apostles (19:18) one reads: "And many of those who believed came confessing and declaring their deeds." Not a few theologians, with Bellarmine, think that here there is question of the faithful and of sacramental confession; for the Greek word *exomologoumenoi* used here is that by which the Greeks designate sacramental confession. But many others, such as Beelen and Patrizi, hold that here there is speech of Jews and Gentiles not yet baptized, but converted by the seen prodigy and beginning to believe; and therefore not of sacramental confession, but of that general accusation of sins which preceded baptism. We hold this latter opinion as the more probable.

(b) The words of James are also alleged:[1] "Confess, therefore, your sins to one another." Many Fathers[2] and theologians indeed understand these words of sacramental confession; for they are brought forward after the words concerning the remission of sins through sacred anointing: the sense therefore is that the sick must confess their sins, and the word to one another designates one of the priests designated in the preceding verse. - But not a few others, such as Beelen, think that here there is question of confession made to a prudent man, in order to ask counsel from him and to obtain the help of his prayer. This interpretation likewise is truly probable.

[1] James 5:16.

[2] Among whom Origen, homil. 2 on Levit., P. G., t. XII, p. 419.

§ II. Sacramental Confession Is Proved from Tradition.

101. State of the question. (a) Protestants contend that confession was not instituted by divine right, since, even in the twelfth century, the question was agitated among the Doctors whether sins were to be confessed to priests or to God alone; as is clear from the words of the Decree of Gratian (1150):[4]

[3] Morinus, op. cit., bk. II; Palmieri, th. 33-35, p. 401-449; Cambier, op. cit., p. 96-323; L. de San, n. 779-870; Pignataro, op. cit., p. 25-56; Pelle, op. cit., p. 279-449; Vacandard, *La Confession sacramentelle dans l'Eglise primitive*, Paris, Bloud, 1903; id., in Mangenot, *Dict. de Theol.*, word Confession.

[4] *De paenitent.*, dist. I, ch. 90, p. 1189 ed. Friedberg.

"Some say that sins ought to be confessed to God alone, as the Greeks. But some judge that they are to be confessed to priests, as almost the whole holy Church. Both of these things are done within the holy Church not without great fruit, yet in such a way only that we confess our sins to God, who is the remitter of sins, and this belongs to the perfect... but nevertheless the institution of the Apostle must be followed by us, that we confess our sins to one another, and pray for one another that we may be saved. Therefore confession which is made to God alone, which belongs to the just, purges sins. But that which is made to a priest teaches how the sins themselves are purged."

(b) But we respond that, in the time of Gratian, some doubts concerning this matter had arisen, because confession, although most ancient, was part of the penitential discipline which at that time was gradually falling into desuetude; hence it happened that some, few in number however, doubted concerning its necessity and divine institution. But doubts of this kind did not prevail in the primitive times of the Church, as we shall soon show.

Three stages especially can be outlined in the history of confession: 1. through the first four centuries public penance prevailed, of which the confession of sins, either public or occult, was a part; 2. from the fifth to the twelfth century, penance becomes less rigorous, and private confession becomes more frequent; 3. from the twelfth century, public penance ceasing, private confession and satisfaction alone remain. It suffices to outline the first two stages.

I. Sacramental Confession Flourished Through the First Four Centuries

We shall bring forward a twofold argument: the first from penitential discipline; the latter from the testimonies of the Fathers.

102. 1. It is proved by a general argument taken from penitential discipline itself. For discipline of this kind was such that it necessarily supposed some confession, whether public or occult.

(A) The facts are set forth. Penitential discipline consisted in a complex of penal works which the Church imposed on the Christian sinner, and from the character of this obligation the necessity of confession clearly appears. For: (a) this obligation was most strict, under penalty of eternal damnation: when the faithful complained about the severity of this penance, the Fathers did not hesitate to answer that no middle way was given between this penance and the punishments of hell; (b) it was imposed by the authority of God Himself: when martyrs offered to the lapsed certificates by which they might be freed from penance, St. Cyprian and other bishops reproved this, asserting that no one could dispense from a law divinely established; (c) the obligation of doing penance extended to all sins which the Church considered grave, and therefore not only to the gravest crimes, namely apostasy, fornication, and homicide, but to common offenses which kept one away from the reception of sacred communion, for example, thefts, impurities, frauds, rash judgments, violation of faith, etc., insofar as they are distinguished from lighter faults which are not subjected to the power of the keys;[1] - and not only to public and external sins, but also to occult and internal ones, as St. Pacian teaches: "I add also that not only hands are punished in homicide, but every counsel which has driven another's soul into death; and not only those who have burned incense on profane tables, but absolutely every lust wandering outside the marriage bed and lawful embraces."[2]

[1] Tertullian, *De pudicitia*, ch. 18, P. L., 1017; ch. 19, P. L., 1028; St. Cyprian, epist. IX, n. 2, P. L., IV, 251; St. Pacian, Ep. ad Sempronianum, ch. 24; P. L., XIII, 1079; *Paraenesis ad paenit.*, ch. 4, P. L., XIII, 1083.

[2] *Paraenesis ad paenit.*, ch. 5, 6, 7, P. L., XIII, 1084 ff.

(d) The mode of doing penance was not left to the choice of the sinner, but was determined by the Church itself: for obtaining the remission of sins, the sinner first had to be received among the penitents by the Bishop or by one taking his place, and had to subject himself to him as to the time and mode of doing penance.

103. (B) The conclusion is drawn. Now all these things necessarily suppose some confession of the sinner made to the bishop, whether by acknowledging the truth of sins which had been denounced to ecclesiastical authority, or by spontaneously confessing offenses committed by himself: for how could the minister of the Church have received among the penitents and afterward absolved those whose offenses had not been subjected to his judgment? Moreover, this confession was considered as necessary for salvation, and indeed by divine right; and, as

we said, it extended to all grave sins. Therefore from the institution itself of penitential discipline our thesis is clear, which moreover is confirmed by many testimonies of the Fathers.

104. 2. It is proved by the testimonies of the Fathers. Before we bring forward the individual ones, we premise that there was some progress in the exposition of this dogma and in the practice of confession. (a) The divine institution and necessity of confession are contained in the alleged texts of Scripture not explicitly, but only implicitly: the matter of confession is designated only in a general and confused mode. (b) Nothing is established concerning the time when the precept of confession urges. (c) Likewise Christ defines nothing concerning the mode of confessing, secret or public. (d) Finally, the precept binds only those who are conscious of mortal sin; but, as was said above, n. 97, in these times many sins which today, because of the education of the Christian conscience, are acknowledged as mortal, were held as minute.[1] Therefore many of the faithful, who were free from graver sins, did not approach the sacrament of Penance: for then the practice of confessing venials for the sake of devotion did not prevail. (e) From another aspect, not a few sinners were deterred from confession on account of the laborious and long-lasting penance which was then customarily imposed; and, since no special time was fixed beforehand for making confession, many deferred it more than was proper.

[1] Yet it is worthy of note that St. Paul holds as excluding from the kingdom of heaven certain of the sins which St. Caesarius judges to be "minute."

Confession, therefore, was less frequent than in our times, and therefore is not often commemorated by the Fathers.

105. (A) In the second century, St. Irenaeus speaks of confession as necessary for recovering grace. For he narrates that certain women had been corrupted by Marcus, a magician and heretic, and adds: "These women, very often converted to the Church of God, confessed that according to the body they had been ruined by him as if by desire, and, being greatly inflamed, had loved him."[2] But that this confession is necessary is inferred from the following: "Certain women indeed even make exomologesis in public; but certain others, fearing this very thing, in silence gradually withdraw themselves, despairing of the life of God";[3] for those who, on account of shame, were unwilling to confess their sins did not receive the grace of God and fell into despair.

[2] *C. haeres.*, bk. I, ch. 13, n. 7, P. G., t. VII, p. 587.

[3] Ibid., n. 7, p. 591.

106. (B) In the third century, we already have several testimonies, in both the Latin and Greek Church, not only concerning public confession, but also concerning private confession.

(a) St. Cyprian describes public confession: "Let each one confess, I beseech you, dearly beloved brethren, his own offense, while he who has sinned is still in the world, while his confession can be admitted, while satisfaction and remission made through priests is pleasing before the Lord."[1] In the same place[2] he praises those who, although they did not externally commit idolatry, "nevertheless,

since they thought about this, sorrowfully and simply confess this very thing before the priests of God." Here indeed there is question of sacramental confession, which the remission of sins follows, made to priests, and in which even internal sins or thoughts are manifested.

[1] *De Lapsis*, ch. 29, P. L., t. IV, 489.

[2] Ibid., ch. 28, P. L., IV, 488.

(b) Origen, speaking of the various means by which the remission of sins can be obtained, commemorates sacramental confession thus:[3] "There is also yet a seventh remission of sins, although hard and laborious, through penance, when the sinner washes his bed with his tears, and his tears become his breads day and night, and when he is not ashamed to show his sin to the priest of the Lord and to seek medicine"... He expressly asserts and illustrates the necessity of this confession by comparison:[4] "See therefore what divine Scripture teaches us, that one ought not to conceal sin inwardly. For perhaps just as those who have within themselves enclosed undigested food, or an abundance of humor or phlegm remaining heavily and unpleasantly in the stomach, if they have vomited, are relieved; so also those who have sinned, if indeed they hide and retain sin within themselves, are inwardly pressed, and are almost suffocated by the phlegm or humor of sin. But if one becomes his own accuser, while he accuses himself and confesses, at the same time he vomits out the offense and digests the whole cause of the disease."

[3] Homil. on Levit., II, 4, P. G., t. XII, p. 418.

[4] Homil. II on Ps. 37, n. 6, P. G., XII, 1386.

(c) To these words can be added what St. Peter of Alexandria writes concerning a hidden robber:[5] "Then, manifesting his sin to the priest through confession, striving toward the contrary, that is, doing alms, he will cure the infirmity."

[5] In Mai, *Spicilegium Romanum*, t. VII, p. 465.

107. (C) In the fourth century, the Fathers discuss both kinds of confession still more frequently.

(a) Thus, among the Latins, St. Ambrose exhorts sinners to penance and confession in this way: "And therefore let us not be ashamed to confess our sins to the Lord. It is shameful that each one should disclose his crimes; but that shame plows its own field, takes away perpetual thorns...[6] But if you wish to be justified, confess your offense. For a modest confession of sins loosens the bonds of crimes."[7] But that there is question here of confession

[6] *De paenitent.*, bk. II, ch. 1, P. L., t. XVI, p. 497.

[7] Ibid., ch. 6, p. 507.

made not to God alone, but also to His ministers, is clear from the following:[1] "Some ask for penance for this reason, that they wish communion to be restored to them immediately. These do not so much desire to loose themselves as to bind the priest: for they do not put off guilt from their own conscience, and they put it on the priest, to whom the precept has been given: Do not give what is holy to dogs"... For there it is supposed that priests are judges, and that they are bound by sin if they absolve too quickly.

[1] Ibid., ch. 9, p. 517-518.

St. Pacian, who had so explicitly asserted that the power of remitting sins is in priests, above n. 53, no less expressly urges the necessity of confession, even of occult sins: "What will you do, you who deceive the priest? Who either deceive him as ignorant, or confound him, not fully knowing, by the difficulty of proving? I therefore beg you, brethren, even for my danger, through that Lord whom hidden things do not deceive, cease to cover your wounded conscience. Prudent sick persons do not fear physicians, even those about to cut, even about to burn, not even in the hidden parts of bodies... Will the sinner fear? Will the sinner be ashamed to purchase eternal life by present shame?... But if you blush before the eyes of the brethren, do not fear those who are sharers in your falls."[2]

[2] *Paraenesis ad paenitentiam,* P. L., t. XIII, p. 1086.

108. (b) Among the Greeks, these things are worthy of special note.

Aphraates, called the Persian Sage, speaks thus concerning the necessity of penance and confession (about A.D. 340): "Thus, one who has been struck by Satan ought not to be ashamed to confess his offense, and to leave it, and to seek penance as a remedy. He who is ashamed to disclose his wound will be seized by gangrene, and it will infect the whole body with harm; but he who is not ashamed to manifest the wound will be healed and will descend again to the battle... Thus absolutely to him who has been overcome in our contest, this way remains for receiving health, that he should say: I have sinned... Therefore you, physicians, who are disciples of our illustrious Physician, ought not to deny medicine to those who need healing." Here indeed there is question of confession made to priests, who are designated by the name of spiritual physicians; and indeed of occult confession, for the priest ought not to manifest to others the sins accused; for he addresses priests thus: "And when he shall have revealed it (the spiritual infirmity) to you, do not publish it, lest on account of him the innocent be judged by enemies and by those who hate us to be in fault."[3] - More briefly, but no less directly, St. Gregory of Nyssa says:[4] "But he who usurps another's goods for himself by hidden taking, if afterward, by disclosure, he shall have opened his sin to the priest, with the pursuit of vice changed into the contrary, will cure the sickness."

[3] Demonstration VII, n. 3-4; *Patrol. syriaca,* edited by Graffin, t. I, p. 318-319.

[4] Ep. canonica, can. 6, P. G., t. XLV, p. 234.

109. Conclusion. From the aforesaid testimonies it is lawful to infer that the Church, by imposing public penance, by that very fact affirmed the necessity of confession, not indeed by words, but in a practical mode; and not primarily, but secondarily, namely by prescribing the series of acts necessary for the remission of sins, among which was found confession, which was reputed all the more necessary because it was, as it were, the gate by which Christian sinners were able to enter again upon the way of salvation.

II. Sacramental Confession from the Fifth to the Twelfth Century

Already from the fifth century, we find the first traces of a certain change in penitential discipline, both in general and as regards confession: namely, the obligation of completing a long and laborious penance before the reception of absolution is gradually abrogated, notwithstanding the hesitations of a few, and therefore confession becomes more frequent.

110. 1. Change of penitential discipline. Its principal cause is taken from the fact that the faithful, terrified by the severity of penance, deferred exomologesis more and more, often until death. From this a twofold difficulty was born.

111. (A) As regards the dying: if absolution is denied to sinners before they complete penance, they will pass from this life without communion; but if it is conceded, by that very fact penance is abolished, at least as regards them. The matter having been maturely weighed, after not a few discussions, Innocent I approved the milder manner of acting: "It has been asked what ought to be observed concerning those who, after baptism, having been devoted at every time to the pleasures of incontinence, at the very end of their life ask at once for penance and for the reconciliation of communion... Therefore, with penance, final communion will be granted, so that men of this kind, at least in their last moments, by the permission of our Savior, may be vindicated from perpetual destruction."[1]

[1] P. L., XX, 498; Denzing., n. 95. There another reason is also given, "and lest we seem to follow the harshness and hardness of the Novatian heretics who deny pardon."

112. (B) As regards the healthy, the difficulty likewise arose: for either absolution would be conceded only when death was imminent, or the ancient discipline had to be changed; here also the Church embraced the milder solution.

(a) For already in the fifth century, satisfaction or penance to be performed before the reception of absolution becomes milder. St. Augustine testifies that in his time there is a twofold penance, one milder for occult sins, even very grave ones such as adultery, the other stricter for public sins: but this latter also was mitigated.[1] Likewise St. Leo, distinguishing public penance from private, imposes the former for idolatry, homicide, and fornication, but declares that other grave sins, for example, to eat of foods sacrificed to idols, can be purged by fasts and imposition of the hand; elsewhere he exhorts sinners who are not numbered among public penitents to perform each year, especially before Easter, a milder penance, in which they will be helped by the supplications of priests.[2] St. Caesarius of Arles expounds this more clearly: "And indeed he who has received penance publicly could perform it more secretly; but, I believe, considering the multitude of his sins, he sees that he alone is not sufficient against such grave evils, and therefore he wishes to seek the help of the whole people."[3] - In the Greek Church a similar mitigation is found: not rarely the penitent is absolved before he has completed satisfaction, indeed immediately after confession has been made; the satisfactory works imposed on the penitent become lighter, and they can be performed in a secret mode, unless there is question of public and graver sins, for example, fornication.[4]

[1] Sermon LXXXII, 11, P. L., XXXVIII, 511; cf. *De fide et operibus*, 48; *Enchiridion*, 80; *Cont. lit. Petil.*, III, 44.

[2] Epist. CLXVII, question 19, P. L., LIV, 1209; Epist. CVIII, 2, P. L., LIV, 1011; Sermon XLIII, 2, 3; XLIV, 1; XLIX, 1, 2; L, 1, 2; P. L., LIV, 282, 285, 301, 305 ff.

[3] Sermon CCLXI, 1, P. L., XXXIX, 2227.

[4] Pseudo-Areopagite, epist. VIII, 1, P. G., III, 1088; *De ecclesiast. hierar.*, III, 2-3, 7, P. G. III, 436, 452; St. John Climacus, *Liber ad Pastorem*, P. G., LXXXVIII, 1196.

(b) At the same time, absolution is conceded to penitents not only once, but often. Thus St. Chrysostom received sinners kindly, so that in the Synod at the Oak he was accused by Bishop Isaac

"because he gives license to those sinning, teaching thus: if you have sinned again, repent again; and as often as you have sinned, come to me, I will heal you."[5] St. Basil and St. John Climacus also suppose that monks are absolved rather frequently.[6]

[5] Labbe, *Concilia*, t. II, p. 1328.

[6] St. Basil, *Regulae brevius tractatae*, interrog. 229, 288; P. G. XXXI, 1236, 1285. St. John Climacus, *Scala*, grad. IV, P. G. LXXXVIII, 705.

(c) Soon the privilege once conceded to the dying, namely of receiving absolution immediately after confession had been made, is extended to all the faithful, even those not sick, because, namely, on account of the disturbances of the times, they are in fact in some way in danger of death. Thus among the statutes of St. Boniface (+755) one reads (n. XXXI): "And because by various necessity we are hindered from fully observing the statutes of the canons concerning reconciling penitents, for that reason let them not be altogether dismissed. Let each presbyter take care, immediately after receiving the confession of penitents, that each one be reconciled, a prayer having been given. But to the dying let communion and reconciliation be furnished without delay."[1]

[1] P. L., LXXXIX, 823.

113. 2. Consequences as regards confession. From this change of penitential discipline, between the ninth and twelfth century, certain doubts arose in the mind of the faithful, at least in certain regions, concerning the necessity of confession made to priests: for since this was, as it were, a preparation for satisfactory works, it seemed to some that its obligation ceased once public penance had been abolished. And thus the text of Gratian alleged above is explained. Notwithstanding these doubts of a few, the necessity of confession made to priests did not cease to be preached in the Church.

114. (A) All the Doctors of that time clearly assert this necessity, as is especially clear from the works of Alcuin and the statutes of Theodulph. The former directly expounds the obligation of confessing sins to a priest, and not to God alone.[2] The latter asserts that public crimes are to be wept over according to the institution of the canons and the holy Fathers, but occult sins are to be expiated by private penance; this begins from confession, in which the penitent declares whatever he can remember from youth of all the ways in which he has acted; if he seems entangled by shame or forgetfulness, he must be questioned concerning the eight capital sins, namely gastrimargy (gluttony), fornication, acedia or sadness, avarice, vainglory, envy, anger, pride; afterward, if he promises that he will expiate and avoid the offenses, he is immediately absolved.

[2] Epist. CXII, P. L., C, 338; cf. *De confessione peccatorum ad pueros S. Martini*, P. L., CI, 649. Elsewhere, *De psalmorum usu*, I, 3, 9, P. L., CI, 470, 478, he lists sins about which confessors can question penitents.

It is indeed true that the arguments brought forward by the Doctors at that time to prove the necessity of confession, which they tried to prove directly from the words of Christ and the Apostles, were not apodictic; and therefore Abelard thought that this obligation was only ecclesiastical. But this difficulty vanished when St. Thomas brought forward a valid argument, not indeed directly from the words of the Lord, but indirectly, from the very nature of the power of the keys.

115. (B) The Church herself inculcated this necessity in various ways: (a) by establishing, already from the fifth century, that sacred communion was to be received at certain times, and moreover that the necessity rested on sinners of confessing sins before communion; and therefore by increasing the number of confessors, so that penitents might be able to have recourse to them more easily.

(b) By publishing penitential books, in which it was set forth what penalties corresponded to each sin, and formulas for questioning penitents were handed down.[1] Books of this kind, already received in Ireland and England in the sixth century, were introduced into Gaul and Italy by St. Columbanus at the beginning of the seventh century, and indeed for this end, that it might be shown that the ordinary way of obtaining pardon of sins was private confession, which absolution followed. For this reason confessions now became more frequent, first indeed in monasteries, and soon among the faithful themselves.

[1] You will find some of these books in Morinus, op. cit., Appendix; but especially in H. G. Schmitz, *Die Bussbucher und die Bussdisciplin der Kirche*, 1883; *Die Bussbucher und das Kanonische Bussverfahren*, 1898. Cf. B. Brat, *Les livres penitentiaux et la penitence tarifée*, Brignais, 1910; Tixeront, III, 387 ff. - It is permitted, by way of example, to excerpt a few things from the *Penitential of St. Columbanus* (about A.D. 600): "If therefore someone has sinned by thought, that is, has desired to kill a man, or to fornicate, or to steal, or to eat secretly and become drunk; or certainly to strike someone... let him do penance for greater things for half a year; for lesser things forty days, on bread and water... If someone has stolen, let him do penance for a year. If someone has struck his brother through a quarrel and has shed blood, let him do penance for three years, etc." (P. L., LXXX, 225).

116. (c) By issuing canonical penalties against those who died without confession of sins; thus, for example, the Council of Chalchuth (*Kent*) held in England, A.D. 787, explicitly speaks of confession made to a priest, and inculcates its necessity in these words: "But if anyone (which may it not happen) has departed from this light without penance or confession, prayer is by no means to be made for him."[2]

[2] Mansi, XII, p. 949.

(d) By defining times for confession to be made. According to the rule of Chrodegang, bishop of Metz, canons ought to confess twice in the year to the bishop, once at the beginning of Lent before Easter, and the other time from the middle of the month of August to the Kalends of November.[3] Other councils prescribe times for laymen themselves; thus the Council of Esztergom (Gran), A.D. 1114, establishes that laymen ought to confess sins and receive communion three times in the year, on the feasts of Easter, Pentecost, and the Nativity of the Lord.[4] Hence the Sixth Council of Paris commands priests to remain in their parishes, "lest men without confession and infants without the regeneration of baptism often die."[5] Thus gradually the way was being prepared for the statutes of the Fourth Lateran Council (1215), in which it was decreed that the faithful must confess their sins to their own priest at least once a year.

[3] Mansi, XIV, p. 320.

[4] Hefele, trans. Delarcq, t. VII, p. 128.

[5] Can. 29, in Mansi, XIV, p. 558.

117. Conclusion. (A) Therefore the Church, by her whole manner of acting, professes from the first centuries that sacramental confession is a means divinely instituted, and indeed necessary for

all those who have sinned gravely after baptism. This appears: (a) first indirectly from the fact that confession is held as a prior condition necessary for satisfaction and the absolution of sins; (b) afterward more directly when, penitential discipline having been mitigated, the Church holds confession as a necessary condition for private penance and absolution. If any doubts arose, these are explained both from the reluctance of certain faithful and from the insufficiency of the arguments by which the doctrine was defended; but the Church herself never doubted concerning this obligation.

(B) Nevertheless, a certain progress can and must be admitted in the frequency of confession and in the mode of confessing: for these things, as not having been distinctly declared by Christ, were left to the authority of the Church to be defined according to the diversity and opportuneness of times.

118. Thesis II: Secret or auricular confession, which alone prevails today, was also in use from the beginning. It is certain.

To prove the thesis, we shall use the ascending method, namely by establishing that the matter is already altogether certain from the fifth century, and by going back from this century to apostolic times.

119. 1. That in the fifth century private confession was in use is most certainly clear from the testimony of St. Leo the Great. For when the Pontiff heard that some priests had publicly read the sins of penitents written in little books, he condemns this practice as an illicit usurpation, contrary to the apostolic rule; "since it suffices that the guilt of consciences be indicated to priests alone by secret confession." For although it is lawful for penitents publicly to confess certain sins, for the sake of humility, nevertheless this is by no means prescribed, lest in this way some be kept away from confession: "For that confession suffices which is first offered to God; then also to the priest, who comes as intercessor for the offenses of penitents. For then more persons will be able to be provoked to penance, if the conscience of the one confessing is not published to the ears of the people."[1] From this it follows that already in the time of St. Leo there was a twofold sacramental confession, public, which was sometimes permitted to the faithful, and private or auricular, which was prescribed to sinners.

[1] Epist. 168 to the bishops of Campania, P. L., LIV, 1211.

120. 2. In the fourth century secret confession also prevailed, although sometimes occult sins were indirectly disclosed by the reception of public penance.

(A) That confession is secret is testified, among others, by St. Aphraates (above, n. 108), who, addressing priests, commands them not to manifest to others the sins revealed in confession: "And when he shall have revealed it (the spiritual infirmity) to you, do not publish it, lest on account of him the innocent be judged by enemies and by those who hate us to be in fault."[2] - St. Ambrose himself heard confessions secretly; for Paulinus, deacon, writes these things about him in the Life of this saint:[3] "He was also rejoicing with those who rejoice and weeping with those who weep; since as often as anyone, for receiving penance, had confessed his falls, he wept in such a way that he

compelled that man also to weep... But the causes of the crimes which they confessed to him he spoke to no one except to the Lord alone, before whom he interceded."

[2] Demonstration VII, n. 3-4 (*Patrol. syriaca*, edited by Graffin, t. I, p. 318-319).

[3] P. L., XIV, 40.

The same is confirmed by the institution of penitentiaries, or priests whose special office was to hear private confessions.

(B) Nevertheless, although confession in itself was occult, sometimes the sinner, by undertaking public penance, by that very fact indirectly confessed before the Christian community that he was guilty of grave offenses.[4] Likewise the imposition of canonical penalties, for example the deposition of a cleric, likewise indirectly manifested even occult offenses. For then the internal forum was not wholly distinguished from the external forum: Christians, considering themselves mutually as members of the same body, manifested their sins less unwillingly, so that, aided by the prayers and satisfactions of the brethren, they might more easily obtain the mercy of God.

[4] Sometimes also the sin of an accomplice was indirectly betrayed, as happened in the time of Nectarius (391) in the church of Constantinople, where, on the occasion of the confession of a certain woman, the grave offense of a certain deacon who had sinned with her became known. To forestall such abuses, Nectarius abolished the office of penitentiary, indeed, according to some, the obligation itself of confessing sins before communion. Whatever the case, this abolition was not long-lasting; for the successor of Nectarius, St. John Chrysostom, exhorted sinners to confess sins and to perform private penance for them. Cf. Batiffol, op. cit., p. 149 ff.; P. Galtier, *S. Jean Chrysostome et la confession*, in *Recherches de Sc. Relig.*, 1910, pp. 209, 313.

121. 3. In the third century, the same is clear from various testimonies. Thus Origen writes concerning private confession, which precedes public penance:[1] "Only look around more diligently to whom you ought to confess your sin. First prove the physician to whom you ought to expose the cause of your sickness... If he shall have understood and foreseen that your sickness is such that it ought to be exposed and cured in the assembly of the whole Church, from which perhaps others also will be able to be edified and you yourself easily healed, this must be provided with much deliberation and with the sufficiently skilled counsel of that physician"; from which it is clear that already in the time of Origen there was a distinction between public and private confession, and that both were in use.

[1] Homil. II on Ps. 37, n. 6, P. G., XII, 1386.

Likewise St. Cyprian supposes that confession is secret when he speaks of those who, "although bound by no crime of sacrifice or certificate, nevertheless, since they even thought about this, sorrowfully and simply confess this very thing before the priests of God, making exomologesis of conscience."[2]

[2] *De lapsis*, 28, P. L., IV, 488; Joumet, *Enchiridion*, n. 553.

As regards the second century, we indeed do not find an explicit testimony, since the text of St. Irenaeus alleged above, n. 105, can equally be understood of public or secret confession. But, since already in the third century private confession was in use among the Greeks and Latins, and no trace is found of any change concerning this matter, it is rightly inferred that it ascends to apostolic times, as St. Leo in fact teaches, n. 119.

122. Conclusion. (a) Therefore private confession was always in use, although it was not absolutely secret, since sins were in some way indirectly manifested by the imposition of public penance. By this manifestation Christian humility and solidarity were fostered, namely while all the faithful helped the penitents by prayers and works. Nevertheless there were not a few inconveniences: some were deterred from confession by shame, others stirred up scandals by indiscreet confession.

(b) To remove these abuses, the Church gradually abolished public confession and afterward public penance; thus the rights of each Christian were preserved more safely, and gradually the faithful approached the sacred tribunal more frequently.

123. The whole argument is contracted. First indeed Protestants asserted that Innocent III was the inventor of confession and had promulgated its necessity in the Lateran Council (1215). But it has been historically proved that entire treatises concerning sacramental confession were published long before Innocent, that not a few Councils established statutes concerning its utility or necessity, and that in penitential books, Greek and Latin, the whole order of confession had been described, with a catalogue of sins, even occult ones, and of the penalties inflicted on them. Defeated in this matter, some contended that auricular confession was brought into the Church by Leo the Great (+461); but no less clearly it has been shown, from the Fathers both Latin and Greek, and from the very institution of penitentiaries, that secret or auricular confession was in use in the earlier centuries, namely the fourth and third. But since in the second century there is already speech of confession, nothing prevents us from admitting that this was sometimes occult. Besides, public confession itself, then certainly prevailing, was truly sacramental, since it was ordered to obtaining pardon of sins, by means of penance imposed by priests. Thus, proceeding from clearer testimonies to more obscure ones, it is historically demonstrated that sacramental confession was employed in the Church from the beginning, and that it flows from Christ, since it is indivisibly connected with the power of the keys which the Lord handed over to the Apostles.

§ III. The Utility of Confession Is Shown by Reason.

124. Once the divine institution of confession has been posited, its fittingness can be shown:

[1] P. Felix, *De la confession: pourquoi on se confesse et pourquoi on ne se confesse pas?* Paris, 1892; Bougaud, *Le Christianisme et les temps presents*, 6th ed., 1902, t. V, ch. 6, p. 145-182.

1. On the part of God. For sin includes an act of pride and disobedience which must be repaired; but it cannot be repaired in a better mode than by sincere confession of sins. For he who had said at least equivalently: I will not serve, by confession subjects himself to God, saying: I have sinned; and, reconsidering his offenses in the bitterness of his soul, and opening them candidly and humbly to the minister of God, he tames pride and compensates, insofar as can be done, for the offense inflicted upon God: since "a contrite and humbled heart, O God, thou wilt not despise."
2. On the part of man. (a) Confession gives peace and security to souls; one of the chief goods which we can enjoy is certainly peace of soul; but the sinner can scarcely find peace and

security of soul except in sacramental confession. For although he tries to conceive sorrow for sins and to satisfy for them, nevertheless he does not know whether he is worthy of love or hatred, for no one is a judge in his own cause; on the other hand, if he opens all grave sins to God's minister by humble confession, the latter can judge concerning them, and also concerning the dispositions of the penitent and the equity of satisfaction already performed or to be performed, and thus the anguish of soul and remorse of conscience vanish.[2] (b) Likewise confession deters from sins: for if the land is desolated with desolation because there is no one who reflects in his heart, he who frequently examines his conscience in order to confess all sins committed by himself escapes a danger of this kind; since by scrutinizing conscience, he sees and flees the occasions of sinning, and learns the means for overcoming temptations; besides, the obligation of opening all things, even the most secret, makes him more watchful, so that there is no more efficacious restraint for coercing sinners than sacramental confession. (c) Confession also greatly promotes the practice of virtues: for since we are weak and inconstant, we need a friend and guide in the spiritual life: "We fluctuate among various counsels," says Seneca (Ep. 52); "we will nothing freely, nothing absolutely, nothing always. No one by himself is strong enough to emerge; someone must stretch out a hand, someone must lead him out... There is need not only of a guide, but of a helper and, so to speak, a co-actor." But in sacramental confession we find a most faithful friend, to whom, under the inviolable seal of secrecy, we can open the offenses, infirmities, and wounds of the heart; a spiritual guide who will teach us the ways of the Lord, by showing what we ought to avoid and what to do, not in a general mode, as happens in preaching, but in a special mode, accommodated to our infirmities, according to that saying: "Arise, and enter into the city, and there it shall be told thee what thou must do";[1] a helper, who, burning with zeal for God, will, as it were, compel us to expel vices and cultivate virtues.

[2] Not a few Protestants candidly acknowledge this, for example E. Naville (in de Baudry, *La Religion du Coeur*, p. 84 ff.): "For what sinner has not turned the eyes of cupidity toward the tribunal of penance? Who has not desired, in the bitterness of his soul and the uncertainty of divine remission, to hear from the mouth of him who is a participant in Christ's authority these words: Go in peace, thy sins are forgiven thee?"

[1] Acts 9:7.

Hence Leibniz says:[2] "But that this whole institution is worthy of divine wisdom cannot be denied, and, if anything else, certainly this is illustrious and praiseworthy in the Christian religion, which even the Chinese and Japanese have admired; for the necessity of confessing deters many from sins, especially those who have not yet been hardened, and gives great consolation to the fallen, so that I think a pious, grave, and prudent confessor is a great instrument of God for the salvation of souls; for his counsel is useful for ruling the affections, for noticing vices, for avoiding occasions of sins, for restoring what has been taken... for removing doubts, for lifting up the afflicted mind, and finally for taking away or mitigating all evils; and since scarcely anything more excellent than a faithful friend is found in human affairs, of how great value is it when, by the inviolable religion itself of the divine sacrament, one is bound to keeping faith and bringing help?"[3]

[2] *Systema theol.*, Paris, 1819, p. 270.

[3] And not otherwise do not a few modern Anglicans speak, among whom H. P. Liddon, as is clear from his letters:

"Christ Church, Oxford, March 1883. - Dearest X., From the year 1847 I have gone to a confessor as often as I have had need, and this has never displeased me. Nothing better which may restore the soul seems able to exist: and absolution, which follows confession, is a more direct and authentic form of the power of absolving than those more universal formulas which are used in the daily office and in the administration of the Eucharist. I have also experienced, as far as I am concerned, that the doctrine of Bishop Butler with respect to following the safer way concerning the manner of conducting oneself most openly confirms this practice... The earthly minister, who imparts absolution, is undoubtedly finite and imperfect, whereas Our heavenly High Priest is infinitely understanding and good. Nevertheless this minister, by force of the mission received from Christ, comes to our aid, so that, with every effort of heart and soul, we may repent of our sins, if we wish, which by our own powers we would fulfill with difficulty."

3. On the part of society. For society can scarcely stand secure without the observance of laws; but confession is of great service for the observance of laws. For a prudent confessor urges the observance of human laws together with divine ones, rightly orders domestic society, which is the foundation of civil society, settles lawsuits and dissensions, reconciles enemies, procures restitution of goods taken away, prevents or repairs scandals; indeed confession greatly promotes that equality of which our age boasts, since the law of confessing affects all, kings or presidents as much as subjects, nobles and the rich as much as the poor, and in the sacred tribunal no distinction is made between penitents of diverse condition.[1]

[1] Infidels and Protestants have acknowledged this social utility of confession; thus Voltaire, *Diction. philos.*, art. catech. du Cure; the Protestant author of the work *Letters of Atticus*, letter 5.

125. The adversaries indeed object that sacramental confession provides an occasion for many abuses and is often pernicious equally to penitents and ministers. - Resp. We concede that sometimes abuses creep into this practice *per accidens*, but rarely; for the Church, both by punishing with grave penalties those soliciting to shameful things, and by excommunicating those absolving an accomplice in a shameful sin, and by compelling those who have been solicited to evil to denounce the confessor, has wisely provided lest such abuses be multiplied. But the few inconveniences which sometimes arise from the frailty or perversity of men cannot be a sufficient reason why an institution should be destroyed which otherwise confers so many and so great benefits both on private persons and on society itself; for if things which men abuse had to be removed immediately, what at last would remain in civil or ecclesiastical society?

Art. II. On Contrition

126. Tridentine doctrine. For obtaining the remission of sins through the power of the keys, confession does not suffice, but contrition is required, as Trent rightly teaches:[1] -

[1] Trent, sess. XIV, ch. 4.

"Contrition, which holds the first place among the aforesaid acts of the penitent, is sorrow of soul and detestation concerning sin committed, with the purpose of not sinning henceforth. But at every time, for obtaining pardon of sins, this motion of contrition was necessary; and in a man fallen after Baptism, only then does it prepare for the remission of sins, if it is joined with confidence in divine mercy and the intention of furnishing the remaining things which are required for rightly receiving this sacrament...

"It teaches, furthermore, that although it sometimes happens that this contrition is perfected by charity, and reconciles man to God before this sacrament is actually received; nevertheless the reconciliation itself is not to be ascribed to that contrition without the intention of the sacrament which is included in it. But that imperfect contrition, which is called attrition, since it is commonly conceived either from consideration of the turpitude of sin, or from fear of hell and punishments, if it excludes the will of sinning, with hope of pardon, it declares not only does not make a man a hypocrite and a greater sinner, but is also a gift of God and an impulse of the Holy Spirit, not indeed as yet inhabiting, but only moving, by which the penitent, helped, prepares for himself the way to justice. And although without the sacrament of Penance it cannot by itself lead the sinner to justification, nevertheless it disposes him to obtaining the grace of God in the sacrament of Penance. For, usefully shaken by this fear, the Ninevites, at the preaching of Jonah full of terrors, did penance and obtained mercy from the Lord. Wherefore certain persons falsely calumniate Catholic Writers, as if they had handed down that the sacrament of Penance confers grace without a good motion in those receiving it, which the Church of God has never taught or thought; but they also falsely teach that contrition is extorted and coerced, not free and voluntary."

Two things especially are set forth in this Tridentine declaration: 1. the nature and necessity of contrition; 2. its efficacy for remitting sins with or without the real reception of the sacrament of Penance.

§ I. Nature and Necessity of Contrition.

127. Notion of contrition. (A) Contrition, from the word to crush, etymologically designates the action by which a solid body is reduced to the smallest parts; but metaphorically it designates that disposition by which the heart hardened by sin is broken and softened.

[1] St. Thomas, Suppl., q. 1, a. 1; Suarez, disp. IV; Salmanticenses, disp. VII; Bellarmine, bk. II, ch. 4; Drouin, q. IV, ch. 1; Billuart, diss. IV, a. 1; de Augustinis, p. I, a. 4; Palmieri, th. 30; Billot, th. 12; L. de San, n. 473 ff.

Hence the Roman Catechism (*De Paenit.*, n. 33): "Rightly, however, the name contrition was imposed on detestation of sin... to signify the force of sorrow, the likeness being drawn from corporeal things which are broken little by little by a stone or some harder material: so that by this word it might be declared that our hearts, which have been hardened by pride, are bruised and crushed by the force of penance." It is also called compunction of heart, because just as swollen ulcers are cut by iron, so hearts, as if a scalpel of contrition has been applied, are incised, so that they may be able to draw out the deadly poison of sin; wherefore it has also been called a rending of the heart by the prophet Joel: "Be converted to me with all your heart... and rend your hearts."[2]

[2] Joel 2:12.

(B) As to the thing, contrition is defined by Trent:[3] "sorrow of soul and detestation concerning sin committed, with the purpose of not sinning henceforth." It is said (a) sorrow of soul, or affliction, sadness, inwardly distressing and crucifying the soul; for since sin is the highest moral evil, the sinner sincerely returning to God cannot but be sad concerning the offenses committed by himself. This sadness indeed, although primarily internal, is commonly manifested outwardly; yet tears or other signs of grief of this kind are not required, since the will can sincerely grieve without such signs being exhibited.

[3] Sess. XIV, ch. 4.

(b) Detestation concerning sin committed, that is, hatred of sin, proceeding from knowledge of its malice and evil effects, joined with retraction of the depraved will, so that the sinner sincerely says: if I could act anew, I would wish not to have sinned. Sorrow and detestation are so connected that one who detests his sin grieves over it, and one who grieves over it necessarily detests it; namely, according to the common opinion, sorrow is the consequence of detestation, just as delight follows love; first indeed we detest sin, because we apprehend it as evil; then, conceiving that evil to be present, whether in itself or in its consequences, we grieve over it. Hence in the Blessed hatred of sin exists without sorrow; for they do not apprehend sin as truly present, since they are now immune from sin and its consequences.

(c) With the purpose of not sinning; for true penance regards not only past faults as to be abolished, but also future faults as to be forestalled; for no one truly detests sins unless by that very fact he wills to avoid them in the future: if he should be unwilling to avoid them, he deserves not pardon, but indignation.

128. Thesis: True contrition, such as was defined above, is necessary for obtaining pardon of sins, whether within or outside the sacrament.

1. Scripture. This is clear from all the texts brought forward above, where we treated of the necessity of penance, n. 9-10. For the penance which is there required as a necessary condition for justification is nothing other than conversion to God, aversion from the way of iniquity, change of heart and life, a contrite and humbled heart. All these things indeed suppose sorrow of soul and detestation of sin, with the purpose of amendment.

This disposition indeed, even after the sacraments have been instituted, remains necessary; for when Jews or Gentiles are converted to the Christian faith, the first disposition required from them after faith is penance or contrition: "Do penance, and let every one of you be baptized... Do penance therefore, and be converted, that your sins may be blotted out... Do penance therefore from this thy wickedness; and pray to God, if perhaps this thought of thy heart may be remitted to thee... Therefore God has also given to the Gentiles penance unto life."[1] - Wherefore the Apostle rejoices that the Corinthians were made sorrowful unto penance: "Now I rejoice, not because you were made sorrowful, but because you were made sorrowful unto penance... For the sorrow which is according to God works penance unto stable salvation."[2]

[1] Acts 2:38; 3:19; 8:22; 11:18.

[2] 2 Cor. 7:9-10.

129. 2. By Tradition. For the whole penitential discipline which we explained above (n. 57 ff.) had been instituted for this end, that by frequent reconsideration of sins and laborious expiation of them, and also by the prayers of the Church, sorrow of soul and detestation of sin and the desire of amending life might be vividly stirred up in penitents. This indeed is clear both from the testimonies already brought forward (n. 57 ff.) and from the following.

St. Justin indeed asserts that God concedes pardon to penitents from mercy; but at the same time he teaches that those are deceived who say that, even if they are sinners, God will nevertheless not impute sin to them, provided they know Him. He proves this by the example of David, who was justified only by contrition. "But if," he says, "remission was not granted before penance was done to such a man, but only then when that great king and anointed one and prophet so wept and so conducted himself, how can impure and utterly lamentable men, unless they lament and mourn, have hope that the Lord will not impute sin to them?"[1]

[1] *Dialogus cum Tryphone*, n. 141; P. G., t. VI, p. 798-799.

130. Thus also Tertullian, by the example of the prodigal, shows that God spares the sinner, "but if he repents from the soul, if he compares his hunger with the plenty of his father's hired servants, if he leaves the unclean herd of swine, if he seeks again the father, even offended."[2] Likewise St. Cyprian promises pardon to penitents, "penance having been done and detestation of their deeds having often been professed, if by tears, if by groans, if by weeping, they shall have shown signs of a sorrowing and truly penitent soul."[3] Nor otherwise does St. Ambrose: "And if you weep most bitterly, Christ will look upon you, guilt will depart. For the practice of sorrow abolishes the luxury of crime, the delights of error. Thus, while we grieve over the things admitted, we exclude things to be admitted, and there comes to be from the condemnation of fault a certain discipline of innocence."[4] Elsewhere he teaches the necessity of this penance thus: "For penitence is necessary for the fallen, just as medicines are necessary for the wounded. But how great, do you think, and what kind of penance is necessary? One that either equals the crimes, or certainly exceeds them... When with firm faith you have conceived in your soul that this is certain, as it is, that it is necessary for a prevaricating soul to be handed over to Tartarean punishments and to the fires of Gehenna, and that no other remedy has been established after one baptism than the solace of penance, be content to undergo however great affliction, however great labor, provided you are freed from eternal punishments."[5]

[2] Tertullian, *De Paenit.*, ch. 8, P. L., t. I, p. 1243.

[3] Ep. XXXI, P. L., t. IV, p. 313.

[4] *De Paenitent.*, bk. II, ch. 10; P. L., t. XVI, p. 519.

[5] *De lapsu virginis*, n. 33-34, P. L., t. XVI, p. 376-377.

St. Chrysostom published an entire treatise on Compunction, where, among other things, he has these words: "For what need is there, tell me, of bodily strength, when we must crush the heart, when we must pray watchfully, when we must reconsider sins, put down arrogance and swelling, depress the mind? These indeed are the things which placate God toward us, nor do they need much labor." Afterward he declares the necessity of this penance; for this becomes possible, indeed easy, if we think, he says, that impenitent sinners are damned to Gehenna; "if we always have Gehenna before our eyes, and also the angels then running everywhere through places, and gathering from the whole world those who are to be led away into Gehenna; if we also think how great an evil it is, Gehenna being set aside, to be excluded from the kingdom of heaven."[1]

[1] St. Chrysostom, *De Compunctione*, bk. I, n. 10; P. G., t. XLVII, p. 410.

Therefore the Fathers teach two things, namely that contrition is situated in the retraction of sin and amendment of life; and that this is necessary for salvation.

§ II. Efficacy of Contrition with or without Absolution for Remitting Sins

131. Historical exposition. From the things said up to this point it is certainly clear that a Christian guilty of mortal fault cannot be justified unless he fulfills two conditions: that he have contrition and that he subject himself to the power of the keys. But, already from the fifth century, the question was agitated: what are the parts of contrition, and what are the parts of absolution, in the remission of sins?

(A) St. Augustine asserts the efficacy of contrition and of absolution together, but declares the parts of each only by comparison: just as, he says, Lazarus, raised from the dead, remains entangled in bonds until Christ commands him to be loosed, so the sinner, cleansed from sins through contrition, remains bound in some way by bonds until the Church looses him by absolution.[2]

[2] Sermon 67, P. L., XXXVIII, 434.

(B) The Scholastics tried to refine this explanation, too obscure and vague, by distinguishing between perfect and imperfect contrition, absolution in reality and in desire, yet in different ways.[3]

[3] See their opinions set forth in *Dict. de Theol.* (*Absolution*), I, 171-182.

(a) Hugh of St. Victor declares that sins are not remitted by contrition unless the intention of receiving absolution is added; but by absolution remission of eternal punishment is conceded.[4] Yet this is false, since mortal sin cannot be remitted unless eternal punishment annexed to it is simultaneously remitted.

[4] "The impiety of sin is most rightly taken as hardness of heart, which first is loosed in compunction, so that afterward in confession the sin itself, that is, the debt of damnation, may be absolved." (*De Sacramentis*, bk. II, p. XIV, ch. 8, P. L., CLXXVI, 564-570).

(b) Peter Lombard taught that by perfect contrition sin is remitted as to guilt and punishment, but that by absolution the sins authentically remitted are shown.[1] This opinion indeed was preparing the way for the error of Protestants, by asserting that the force of absolution is declaratory only.

[1] "They [priests] forgive or retain sins, when they judge and show that they have been forgiven by God or retained." (Bk. IV Sent., dist. XVIII, P. L., CXCII, 885-889).

(c) William of Paris came nearer to the truth: he asserts that a certain attrition, or unformed contrition, that is, not informed by charity, does not suffice by itself for justification, but is a prior disposition which is easily converted into contrition informed by charity, and thus induces the remission of sins; but absolution breaks the bonds of sins in those who once enjoy gratuitous grace.[2]

[2] William, *De sacram. paenitentiae*, ch. 5-8, among *Opera*, Paris, 1676, t. I, p. 462-473.

(d) St. Thomas distinctly sets forth the difference between contrition perfected by charity and attrition, and also that the latter suffices for the remission of sins when absolution is added: "When someone approaches confession attrite, not fully contrite, if he does not place an obstacle, in this very confession and absolution grace and remission of sins are given to him."[3] He adds however (which is rejected today) that attrition does not suffice of itself, but by reason of good faith, so that if someone

is conscious of this defect, he ought to accuse it as pretense. Moreover, he teaches that grace is increased by absolution, if this is already had.

[3] St. Thomas, in IV Sent., dist. 22, q. 2, a. 1; cf. Supplementum, q. 10, a. 1; q. 18, a. 1.

(e) Scotus proceeded further, teaching that even a small attrition, namely that which is conceived from fear of hell, suffices for the remission of sin when absolution is added, provided that the penitent actually does not adhere to sin: "Small attrition, even one which does not have the character of merit for the remission of sin, willing nevertheless to receive the sacrament of penance, as it is dispensed in the Church, and without an obstacle in the will of mortal sin... receives the effect of the sacrament, namely penitential grace, not indeed from merit... but from the covenant of God assisting His sacrament."[4]

[4] Scotus, IV Sent., dist. 14, q. 4, n. 7.

Conclusion. Gradually scholastic doctrine was refined by the theologians of a subsequent age; today it is commonly admitted that by perfect contrition, with the intention of receiving the sacrament, the sinner is immediately justified, and nevertheless absolution is not useless, since this increases grace in those justified; moreover, attrition suffices with the real reception of absolution. Thus are reconciled the things which the primitive Church had already implicitly inculcated by her practice, namely the necessity and efficacy both of contrition and of absolution. Thus also it appears better how the Sacrament of Penance is at once a remedy for sinners, and for the fervent an efficacious means of spiritual progress.

132. Doctrine commonly received today. A twofold contrition is distinguished, perfect and imperfect: the former, which is perfected from the motive of charity, and suffices for justification even without the real reception of the sacrament; the latter, which is conceived from a motive different from charity, for example, from the turpitude of sin or fear of punishments, and does not suffice for justification unless at the same time the Sacrament of Penance is received. - A few things therefore must be recalled to memory concerning charity, or concerning the love of God: for perfect contrition corresponds to perfect charity, and imperfect contrition corresponds to imperfect charity or to fear.

(A) A twofold love of God can be distinguished: (a) imperfect love, or mercenary love, which theologians call the love of hope or of concupiscence, by which, namely, God is loved above all desirable things, not on account of Himself, but on account of the goods which He bestows, not because He is good in Himself, but because He is good to us, indeed the highest good, by the fruition of whom we shall someday be blessed; (b) perfect love, or gratuitous love, by which God is loved on account of Himself and above all things; this likewise is twofold: the love of benevolence, by which we love God as infinitely perfect, rejoice together in His perfections, and wish good to Him, namely by desiring Him to be known and loved by all; and the love of friendship, which, besides benevolence, imports mutual love, or a return of love, insofar, namely, as he who loves is loved by God. It must be noted, however, that the motive of the love of friendship is the infinite goodness of God in Himself, and not His goodness toward us; or in other words, by the love of friendship we love God on account of Himself, knowing nevertheless that God loves those who love Him; hence the mutual return of love is not the motive of friendship, but only one of its conditions.

(B) Now, since it belongs to the same virtue to pursue one of two opposites and to flee the other, so it belongs to charity to love God and to detest sin, insofar as it is opposed to God: therefore there are as many species of contrition as there are species of love. These things being posited, it is certain that the contrition which is conceived from perfect love, whether of benevolence,[1] provided it is supernatural and above all things, or of friendship, is perfect, and immediately remits sins; thus, for example, he who grieves over sin insofar as it is an offense of God, the Highest Good and loved above all things, has perfect contrition.[2] But it is controverted whether contrition conceived from the love of hope and of gratitude, or from the virtues of penance, obedience, or religion, suffices for contrition, as will be explained below.

[1] A few theologians have said that the love of benevolence does not suffice for perfect contrition, but they are deceived, thinking that love of this kind either is not supernatural, or, if it is supernatural, is not above all things.

[2] But theologians dispute whether it is necessary that that contrition proceed from the motive of infinite goodness, insofar as it is the aggregate of all perfections, or whether it suffices that it be elicited from the motive of any divine attribute offended, for instance mercy, wisdom. In our judgment, the question is more speculative than practical; for of themselves all the divine attributes are connected with His infinite goodness, and moreover he who detests sins as injuring one of the divine attributes does not exclude the other attributes, and consequently has truly perfect contrition.

Moreover, for justification there is not required an intense, or vehement, act of contrition, whatever certain ancient theologians said to the contrary; for provided that contrition is appreciatively highest, that is, provided that someone grieves over sin as the highest evil, it suffices for the remission of sins, although it is not very intense: "however small the sorrow may be," says St. Thomas,[3] "provided it suffices for the character of contrition, it blots out every fault."

[3] Suppl., q. 5, a. 3.

Division. These things having been noted beforehand, we shall prove three things: 1. that perfect contrition justifies the sinner without the real reception of the sacrament; 2. that attrition suffices with absolution for justification; 3. that attrition consequently is truly useful, and not a hypocrisy to be condemned.

133. Thesis I: Perfect contrition remits grave sins, without the real reception of the Sacrament of Penance, yet not without the intention of it. It is certain.

(A) For Trent expressly proposes this:[1] "It teaches, furthermore, that although it sometimes happens that this contrition is perfected by charity, and reconciles man to God... nevertheless the reconciliation itself is not to be ascribed to that contrition without the intention of the sacrament which is included in it."

[1] Sess. XIV, ch. 4.

(B) Scripture teaches in many ways that those who are converted to God with their whole heart, and truly love Him, are immediately justified, or obtain the remission of sins: (a) "I love those who love me";[2] "The impiety of the wicked will not harm him, on whatever day he shall have been converted from his impiety."[3] Hence thus: in the Old Testament adult sinners were able to obtain the remission of offenses without the Sacrament of Penance, which did not yet exist; otherwise they could not have been saved. But if they could obtain this, certainly it was through the noblest act, such as penance perfected by charity is; for the texts adduced demonstrate that God loves, and consequently adorns

with sanctifying grace, those who love Him, and remits the impiety of those who are converted to Him; therefore. (b) Nor does the matter stand otherwise in the New Law, after the Sacrament of Penance was instituted; for Christ, without any restriction, said to His disciples: "If anyone loves me, he will keep my word: and my Father will love him, and we will come to him and make our abode with him";[4] from which it is clearly gathered that he who loves Christ immediately enjoys the divine indwelling, which is not had without habitual grace. The words of John prove the same: "God is charity; and he who remains in charity remains in God, and God in him."[5] This is confirmed by the words of Christ to the sinful woman:[6] "Many sins are forgiven her, because she has loved much."

[2] Prov. 8:17.

[3] Ezek. 33:12.

[4] John 14:23; cf. John 14:21.

[5] 1 John 4:16.

[6] Luke 7:47.

In vain the adversaries object that the sins had not been remitted before Christ said: sins are forgiven her, and consequently that charity does not justify of itself, but only when the words of the Lord are added. For such words merely declared that the woman's sins had already been remitted, as is clearly gathered from the Greek word *apheontai*, which is of the past tense and signifies they have been remitted; therefore it remains that her offenses were pardoned from the fact that she had loved much.[1]

[1] The thesis could be confirmed from the Fathers, namely from texts where they affirm the efficacy of penance for obtaining the remission of sins. Cf. Tertullian, *De paenit.*, ch. 4, P. L., t. I, p. 1233; St. Cyprian, *De Lapsis*, ch. 36, P. L., t. IV, p. 493; St. Pacian, ep. 3 to Sympronian, n. 8, P. L., t. XIII, 108; St. Chrysostom, In II Timoth., homil. 7, n. 3, P. G., t. LXII, p. 640, etc.

(C) Reason itself shows the fittingness of this matter. For although perfect contrition of itself cannot adequately compensate for the offense inflicted on God by mortal sin, nor merit the remission of mortal sin, nevertheless it befits God to grant indulgence to the contrite of heart; for such a disposition is the most perfect that can be had by sinners, and since it imports pure love of God, it very well disposes them to divine friendship; hence, in the Old Law, from the mercy of God, it sufficed for justification; but the institution of the Sacrament of Penance did not lessen the force and efficacy of charity, nor make the way of salvation narrower, but rather rendered it easier; therefore it is reasonably asserted that perfect contrition immediately justifies.

134. We said, however, not without the intention of the sacrament, because, from the things said, since sacramental confession is necessary in the New Law, the sinner cannot truly be contrite unless he wills to subject his offenses to the power of the keys. Yet it is not required that such an intention be explicit; an implicit one suffices, such as is found in the general will to fulfill all things that are necessary for salvation. From this likewise it follows that a man thus justified is bound to accuse to the priest, at a suitable time, his mortal sins already remitted through contrition, yet not as soon as possible; otherwise the intention would not be sincere. But the absolution of the priest in this case must not be called useless; namely, it will produce grace *ex opere operato*, which indeed will not remit sins, nor make the penitent from unjust to just, but from just more just. Besides, by accusing such sins, the penitent humbles himself before God

and the Church, becomes more secure concerning the remission of sins, offers satisfaction for his sins, receives counsels, and, by completing sacramental penance, is at least partially freed from the punishment perhaps still due. Nor are examples of Scripture lacking, in which a similar recourse is commended. Christ sent to the priests the ten whom He had already healed of leprosy,[1] and commanded Paul, already justified by perfect contrition, to go to Ananias.[2]

[1] Luke 17:14.

[2] Acts 9:7.

135. Disputed question. But it is doubted whether other motives, besides perfect charity, suffice for perfect contrition, and for the remission of sins outside the sacrament. Commonly theologians deny it. Yet Scotists say that the motive of perfect contrition is every motive which looks to God, for example, one which is taken from the virtues of penance, religion, or obedience: for by these virtues we detest sin as an offense against God, and as opposed to His rights and will. But this suffices for perfect contrition. - Suarez and Card. de Lugo hold this opinion as probable, although they do not embrace it.[3] Certain more recent authors also favor this opinion, Hurter, Palmieri, Egger, according to whom the love of hope and of gratitude can suffice for perfect contrition.[4] Indeed this love, as most noble, is commended by Sacred Scripture; indeed scarcely is found, either in the Sacred Letters or among the Fathers, an expression of charity toward God which is not informed by this motive; thus the Psalmist said: "As the hart longs for the fountains of waters, so my soul longs for thee, O God";[5] where love of God is shown as He is good for us; likewise St. Paul:[6] "having a desire to be dissolved and to be with Christ"; which words are referred to the love of hope. Moreover that love is very perfect, and gives the greatest glory to God: for if we love Him as our beatitude, by that very fact we testify that He alone is so perfect that He is able to beatify us.

[3] Suarez, disp. IV, sect. 2, n. 13; Lugo, disp. V, sect. I, n. 3.

[4] Hurter, n. 570; Palmieri, th. 22; Genicot, n. 269.

[5] Ps. 41:2.

[6] Phil. 1:23.

Whence we judge this opinion to be very consonant with divine mercy; and, if admitted, it is far better understood how Jews, who were of stiff neck, could have been justified without a sacrament, and in like manner how non-Catholics, who are in good faith, can obtain pardon of their sins: for an act of love is much more easily elicited from gratitude and hope than from the divine goodness considered in itself. Nevertheless this opinion is not common,[7] and in practice effort must be made to ascend from the love of hope and gratitude to the love of charity. This, moreover, is not so difficult; for contrition perfected by charity can stand together with sorrow over sins conceived from other less perfect motives, namely hope, gratitude, fear of punishments; indeed commonly the soul, almost step by step, from lower to higher motives. This can be inferred from Trent (sess. XIV, ch. 4), where concerning fear of punishments it is said: "For, usefully shaken by this fear, the Ninevites, at the preaching of Jonah full of terrors, did penance and obtained mercy from the Lord."

[7] Cf. Lugo, disp. V, sect. I, n. 3, and Billot, th. 13.

136. Thesis II: For obtaining the remission of sins by the power of the Sacrament of Penance, perfect contrition is not required, but attrition suffices. It is certain against certain older theologians (above, n. 131).

1° The thesis is explained. Imperfect contrition is called attrition; for, as St. Thomas says,[1] in corporeal things those things are called attrite which have been diminished in some way, but not yet perfectly broken into pieces, while those things are called contrite which by division are reduced to the smallest parts; and therefore attrition, in spiritual things, signifies a certain displeasure concerning sins committed, but not perfect; contrition, however, signifies perfect displeasure. - It can be defined as sorrow and detestation of sin proceeding from a supernatural motive, distinct from charity.

[1] St. Thomas, *Supplementum*, q. 1, a. 1.

According to Trent,[2] supernatural attrition can be conceived especially from a twofold motive, "either from consideration of the turpitude of sin, or from fear of hell and punishments"; moreover, fear of hell also involves fear of losing eternal beatitude, as the same Council teaches elsewhere.[3] The first motive is nobler, since it considers sin as opposed to the rectitude of the moral order; but that consideration must be supernatural, namely founded upon motives known by faith, for example, from the fact that mortal sin is injustice against God, disobedience, ingratitude, something unworthy of a Christian man, defiling the soul, etc. - Yet the latter motive, namely fear of hell or of supernatural punishments, although less noble, is nevertheless good and useful. To understand this, a twofold fear of God can be distinguished: filial, or chaste, fear, by which someone fears to offend God from love and reverence; and servile fear, by which God is feared on account of the punishments which He threatens. This latter is likewise subdivided: one is simply servile, by force of which someone not only abstains from the evil deed but also lays aside affection for sin; the other is servilely servile, when someone avoids the evil work, yet retains the affection for sin. Now filial fear is certainly good and honorable, while on the contrary servilely servile fear is evil, since it retains affection for sin.

[2] Trent, sess. XIV, ch. 4.

[3] Ibid., can. 5.

137. 2° The thesis is proved. (A) It is clear from Trent: (a) from the text cited above, n. 126; for there it is declared that contrition is twofold: perfect, which reconciles the sinner to God before the sacrament is actually received; imperfect, or attrition, which "disposes him to obtaining the grace of God in the sacrament of Penance."

We do not deny that certain rigid authors understood the word disposes of a remote disposition, and not of a proximate disposition to justification. But the parallelism between contrition (which certainly is a proximate disposition) and attrition forbids this. Moreover, if the Council used the word disposes, and not suffices, this was done lest the already antiquated opinion of Peter Lombard be condemned; but the mind of the Council is sufficiently evident from the disputations held among the Tridentine Fathers.[1]

[1] Cf. Theiner, *Acta genuina*, t. I, p. 531-600.

(b) It is confirmed by other decrees of the same Council; for Trent teaches that through the sacrament of penance sins are truly remitted.[2] Moreover this proposition of Baius has been

condemned: "The penitent sinner is not vivified by the ministry of the absolving Priest, but by God alone."[3] But if perfect contrition were prerequired for absolution, sinners would never be vivified by the ministry of the priest, since they would already have been justified by contrition.

[2] Sess. XIV, can. 3.

[3] See Denzing., n. 938.

(c) Finally no one can say that the way of salvation is narrower and more difficult under the New Law than under the Old Law; but if perfect contrition together with confession were said to be necessary for the remission of sins, the condition of Christians would be worse than that of the Jews, since the latter were justified by contrition alone, without confession.

138. (B) The same is inferred from the universal practice of the Church in carefully absolving the dying. It has already been said, n. 65-67, that the practice of denying absolution to sinners placed in danger of death was severely rebuked, even when they had offended most gravely; and, according to the discipline received today, absolution is denied to no dying person, provided that he is probably attrite. Now this practice, ancient and universal at once, cannot be explained unless it is admitted that attrition suffices with the absolution of the priest. For if perfect contrition is required, why is the absolution of the priest preached as so necessary? For all concede that by perfect contrition alone, with the intention of the sacrament, without its real reception, sinners are justified. Therefore, if the dying have contrition, they do not need absolution; if they are only attrite, absolution is useless. But once our thesis has been admitted, the matter is easily explained: for attrition alone, which does not justify without the sacrament, remits sins when the absolution of the priest is added; this, therefore, is necessary for all who are only attrite.

139. 3° The controversy concerning the necessity of some love with attrition is set forth. All indeed concede that attrition, necessary for obtaining the remission of sins in the sacrament of penance, must be joined with faith; otherwise it would not be supernatural; and with hope of pardon; otherwise there would be no purpose of a better life. But the question is whether attrition conceived from fear of hell alone suffices, without love of God, for obtaining justification in the Sacrament of Penance. The reason for doubting is that Trent, describing the conditions required for justification in a general way, requires some love:[1] "But they are disposed to that justice, while, stirred by divine grace,... they are freely moved toward God... they are raised into hope,... and they begin to love God as the fountain of all justice..." Other opinions being omitted,[2] two systems on this matter still stand today.

[1] Sess. VI, ch. 6.

[2] We pass over the opinion which Juenin (*De Paenit.*, q. III, ch. 4, a. 2) and Habert (*Theol. dogm. et mor.*, De paenit., ch. 8, a. 4) defend, according to whom contrition from intense charity justifies without the sacrament, and contrition from remiss charity justifies with the sacrament; and also the opinion of Billuart (diss. IV, a. 7), who contends that the love of friendship justifies without the sacrament, and the love of benevolence is required for justification with the sacrament. For these opinions are now antiquated, and deservedly: for from them it would follow that perfect contrition is necessary even with the absolution of the priest; for remiss charity and the love of benevolence belong to perfect contrition, from the things said above, n. 132.

(A) Some, after Pallavicini and Bossuet,[1] hold that together with attrition there is required an initial love of God loved on account of Himself, not indeed a predominant love, by which God is loved on account of Himself above all things, but an incipient love, such as is had by him who strives to elicit contrition from the motive of charity, and truly begins to love God, yet not so that on that account he wills to flee every grave sin; but when fear or hope is added, the will sincerely detests grave offenses and wills to flee them, so that detestation of this kind arises partly from love, partly from fear.

[1] Cf. Pallavicini, *de Paenitent*. ch. 12; Bossuet, *De doctrina C. Trid.* concerning the required love in the sacrament of Penance.

140. (B) But others hold that no other love is required except the love of hope or of concupiscence; but, according to some, this love must be elicited explicitly;[2] according to others, it suffices that it be elicited implicitly;[3] now it is always implicitly contained in sincere attrition which excludes the will of sinning.

[2] Thus Tournely, *De sacram. paenit.*, q. V, a. 3; Wirceburgenses, *De sacram. paenit.*, disp. II, ch. 3, art. 3-4.

[3] Suarez, disp. XX, sect. 2; Lugo, disp. V, n. 133; St. Alphonsus, l. VI, n. 442; Palmieri, th. 32, Coroll.; Tepe, n. 557; Kenrick, tr. XVII, n. 23.

For no one can truly detest sin, with hope of pardon and desire of grace, without by that very fact beginning in some way to love God as good to himself. But they argue thus: if it were proved that some species of nobler love is required, this would be clear either by reason or by authority. But (a) not by reason; for love stands relative to justification as a means to an end; and therefore provided that it is a means apt for obtaining the end, it suffices. Now any love included in attrition that is appreciatively highest is a means apt for obtaining the end, namely for receiving the sacrament with fruit; for by the help of love of this kind, attrition excludes the will of sinning, includes hope of pardon, and becomes a proximate disposition for receiving justification in the sacrament. Therefore it is not proved by reason that a nobler love is required besides the love included in attrition that is appreciatively highest. (b) Nor by authority; for the Tridentine text cited above, "they begin to love God as the fountain of all justice," can be understood of the love of hope, for God loved as the author of our justification is God insofar as He is good to us. Moreover not all the acts described here by Trent are absolutely necessary for justification with the sacrament: some are necessary either within or outside the sacrament, others only outside the sacrament, as Suarez had already noted: for there the Council discusses dispositions for justification in general; but where it treats specifically of the sacrament of Penance, it declares that attrition from fear of hell, which does not suffice without the sacrament, disposes the sinner to obtaining grace in the sacrament. - Therefore we embrace this opinion as much more probable.

141. But when bitter dissensions had arisen between the contritionists and the attritionists, Alexander VII, earnestly desiring to preserve the bond of peace among the faithful, on May 5, 1667, under penalty of excommunication,[1] commanded that: "If hereafter they write concerning the aforesaid matter of attrition... let them not dare to mark either opinion with the note of some 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 hell, which today seems more common among the scholastics, or the opinion asserting the necessity of the said love, until something shall have been defined in this matter by this Holy See." Now nothing

has yet been defined, and each one can adhere to his own opinion. Yet the opinion which requires nothing besides attrition itself has become common, and morally certain.

[1] Which excommunication, however, was not renewed in the Bull *Apostolicae Sedis*, and therefore is no longer in force.

In practice, however, there is no difficulty; as soon as it is clear that the penitent is truly attrite, and detests sins above all things, he can be absolved. For, Scripture bearing witness, "the fear of God is the beginning of His love";[2] and he who hopes for pardon from God already loves Him as the fountain of justice. Yet it is expedient that the motives of perfect contrition be proposed to him, both because they are more perfect, and for the sake of greater security.

[2] Ecclus. 25:16.

142. Corollary. The penitent, by receiving the sacrament, becomes from attrite contrite, not indeed in the sense that attrition can become contrition, since these are two acts distinct in species, but (a) because attrition together with the sacrament is equivalent to contrition with respect to the effect produced, namely the remission of sin; (b) and further because the attrite man, by receiving absolution, at the same time receives habitual grace and the virtue of charity, by which he becomes contrite in habit, able to elicit an act of perfect contrition.

143. Thesis III: Attrition conceived from the foulness of sin, the loss of eternal beatitude, and the incurring of eternal damnation, is true and useful sorrow preparing for grace. It is of faith from Trent against the Lutherans, who contended that servile fear (above, n. 136) is not true and honorable, but makes a man a hypocrite and a greater sinner:[1] "If anyone shall say that the contrition which is prepared by the discussion, collection, and detestation of sins, by which one recollects his years in the bitterness of his soul, pondering the gravity, multitude, foulness of his sins, the loss of eternal beatitude, and the incurring of eternal damnation, with the purpose of a better life, is not a true and useful sorrow, nor prepares for grace, but makes a man a hypocrite and a greater sinner... let him be anathema."[2]

[1] The proposition of Luther, condemned by Leo X, you have in Denzinger, n. 630. The Synod of Pistoia renewed the same error, in Denz., n. 1388.

[2] Sess. XIV, can. 5.

(A) By Scripture. That fear is good and useful which is commended and commanded in the sacred letters; but such is fear that is simply servile: "Holy and terrible is His name: the fear of the Lord is the beginning of wisdom";[3] "The fear of the Lord drives out sin: for he who is without fear will not be able to be justified";[4] "Do not fear those who kill the body, but cannot kill the soul; but rather fear Him who is able to destroy both soul and body in hell."[5] The Fathers frequently use these words to show that fear of hell is truly salutary.

[3] Ps. 110:10.

[4] Ecclus. 1:27.

[5] Matt. 10:28; cf. Luke 12:4.

144. (B) By Tradition. The Fathers often propose fear of judgment and of hell as a motive for detesting and fleeing sin. Thus Chrysostom, who also notes that fear is good from the very

discourses of Christ: "If fear were not good, Christ would not have spent many and long discourses speaking of the punishment and torment to come there. Fear is nothing other than a wall and a fortification and an impregnable tower."[6] Augustine speaks no less eloquently: "Therefore you fear punishment; you do not yet love chastity, you do not yet have charity: you fear servilely; there is dread of evil, not yet love of good. But fear nevertheless, so that this dread may guard you, so that it may lead you to love. For that fear by which you fear hell, and therefore do not do evils, holds you back; and thus it does not permit the inner soul, wishing to sin."[1] And elsewhere he adds: "Fear prepares, as it were, a place for charity... But if there is no fear, there is not by which charity may enter."[2]

[6] Homily XV to the people of Antioch, n. 2, P. G., t. XLIX, p. 156.

[1] St. Augustine, sermon CLXI, ch. 8, P. L., t. XXXVIII, p. 882.

[2] In Epist. I John, tract. 9, ch. 4, P. L., t. XXXV, p. 2047.

145. (C) Theological reason. Attrition from fear of hell imports three things: the will of fleeing punishment, which stands in the manner of an end; the detestation of sin, which is the means to the end; the ordination of this means to obtaining the end. But these three things are good and useful: (a) it is honorable to flee the punishments of hell, since they are something evil and worthy of hatred; (b) likewise there is no one who denies that the detestation of sin is good; (c) but to order the flight from sin to the avoidance of punishment as to an end is not evil, since God Himself uses the threatening of punishments to deter us from sin; moreover, the sinner who flees sin in order to avoid punishment does not exclude a higher motive; for if he excluded it, the fear would be servilely servile. Indeed, this disposition, imperfect in itself, spontaneously tends toward perfection and virtually contains it. For he who, from efficacious fear of hell, hates sin, detests it as the cause of hell, and consequently is disposed to doing whatever is necessary so that, by avoiding sin, he may also avoid hell. But for doing this it is required that he firmly propose to himself to keep all the precepts, of which the first and chief is the precept of loving God above all things; therefore by fear of hell he is induced to loving God Himself.

Nor should it be said that in this case the penitent detests punishment more than fault; for he who flees sin because it causes hell detests sin more than hell, not in this sense, that he ought to be disposed rather to incur damnation than to sin, since it cannot happen that he be damned without sin; but in this different sense, that in practice he ought to be more attentive to avoiding sin, since by avoiding sin he avoids hell, and hell is in no way to be feared if sin is avoided. - The matter is clarified by an example: the prodigal son, who had left his father and had squandered his substance by living luxuriously, was led to penance by hunger, or fear of pains and death, and approached his father again. Now if he had acted from servilely servile fear, preserving affection for the luxurious life, his manner of acting indeed would not have been worthy of praise; but, because, struck by fear, he truly also hated sin as the cause of his misery, he obtained pardon and was restored to his former rights. Thus the sinner who, from fear of hell, truly detests sin as the cause of hell, and, so that he may flee it, sincerely wills to serve God, acts laudably, and, absolution being added, obtains pardon of sins.

Art. III. On Satisfaction

146. Satisfaction (*satis facere*), if the etymon is considered, is the act by which someone does as much as is enough for placating the angry person. But satisfaction, insofar as it is a part of the sacrament, is defined: the voluntary endurance of the punishment imposed by the confessor, for compensating the injury brought upon God, and redeeming the temporal punishment ordinarily due even after the remission of sin.

[1] St. Thomas, Suppl., q. 12 sq.; Suarez, disp. XXXVII-VIII; Bellarmine, l. IV, ch. 1 sq.; Morinus, l. III sq.; Salmantic., disp. X-XI; Drouin, q. XI; Billuart, disp. IX; de Augustinis, th. 21; Palmieri, th. 36-40; Hurter, n. 612 sq.; Egger, n. 584 sq.

147. Catholic doctrine concerning the necessity of satisfaction chiefly embraces two things: 1. that there is in the Church the right and office of imposing upon the Christian sinner a satisfaction proportioned to his offenses (against Protestants); 2. that the intention of satisfying suffices for granting the remission of sins (against the Jansenists).

The former is thus declared by Trent:

"Finally, as to satisfaction, which among all the parts of Penance, just as it was commended by our Fathers to the Christian people at all times, so especially in our age is attacked with the greatest pretext of piety by those who have an appearance of piety, but have denied its power: the holy Synod declares that it is wholly false and foreign to the word of God that guilt is never remitted by the Lord without the whole punishment also being pardoned. For clear and illustrious examples are found in the Sacred Letters, by which, besides divine tradition, this error is most manifestly refuted. Indeed the order of divine justice also seems to demand that he be received differently into grace who before Baptism has offended through ignorance; differently, however, those who, once freed from the servitude of sin and of the devil, and having received the gift of the Holy Spirit, have not feared knowingly to violate the temple of God and to grieve the Holy Spirit. And it befits divine clemency that sins not be remitted to us without any satisfaction in such a way that, occasion having been taken, thinking sins lighter, as injurious and insulting to the Holy Spirit, we fall into graver ones, treasuring up wrath for ourselves on the day of wrath.

"For without doubt these satisfactories punishments greatly recall from sin, and as if by a certain bridle restrain, and make penitents more cautious and watchful for the future: they also heal the remnants of sins, and remove vicious habits, acquired by living badly, by contrary actions of virtues. Nor indeed was any safer way ever judged in the Church of God for removing the punishment impending from the Lord, than that men should frequently perform these works of penance with true sorrow of soul. To these things is added that, while by satisfying we suffer for sins, we are made conformable to Christ Jesus, who satisfied for our sins, from whom is all our sufficiency, having from this also a most certain pledge, that if we suffer with Him, we shall also be glorified with Him."[1]

[1] Trent, sess. XIV, ch. 8.

Therefore there are two chief motives why satisfaction is necessary: that the offense inflicted upon God may be repaired, and that penitents may be made more cautious and watchful for the future.

148. Errors of the Protestants and Jansenists. (A) The Protestants, although they cannot deny the severity of penitential discipline in the first centuries of the Church, nevertheless regard it as an ecclesiastical institution, and deny its divine institution and necessity: for, they say, sin

cannot be pardoned by God unless at the same time there is full remission of the punishment due to sin; besides, if our satisfactions are said to be necessary, by that very fact injury is inflicted upon the infinite satisfaction of Christ, since it appears insufficient. The root of this error is the theory concerning justification by faith alone: for if faith alone fully suffices for justification, satisfactory works become useless.

(B) But on the opposite side the Jansenists, favoring rigorism, wished to restore the penitential discipline of earlier ages, and contended that penitents are not to be absolved unless a laborious and long-lasting penance enjoined upon them has first been completed.

Against this twofold error there will be a twofold thesis.

149. Thesis I: The punishment due to sin is not always remitted by God wholly and at the same time, but, after fault and eternal punishment have been taken away by the absolution of the priest, temporal punishment generally remains to be discharged. It is of faith against Protestants from Trent:[1] "If anyone shall say that the whole punishment is always remitted by God together with the fault, and that the satisfaction of penitents is nothing other than faith, by which they apprehend that Christ has satisfied for them, let him be anathema."

[1] Trent, sess. XIV, can. 12.

150. 1° By Scripture. (A) For Christ willed that the power of the keys be exercised in the manner of a judgment (above, n. 20); but this power includes not only the faculty of remitting sins, but also of imposing punishments, according to that saying: "Whatever you shall bind..."

The Protestants indeed object that sin is not pardoned unless at the same time the punishment is remitted. That this is contrary to Scripture is clearly demonstrated both by facts and by sayings. (a) Wisdom teaches us that Adam did penance and was restored to the state of grace;[2] yet nevertheless he had temporal punishments to discharge: "Because thou hast listened to the voice of thy wife... in labors shalt thou eat of it all the days of thy life... in the sweat of thy face shalt thou eat bread, until thou return to the earth."[3] Moses and Aaron obtained from God pardon of the sin of unbelief, and nevertheless, in punishment for the sin, did not enter the promised land: "And the Lord said to Moses and Aaron: Because you have not believed me... you shall not bring these peoples into the land which I will give them."[4] David obtained pardon for adultery and homicide when he said: I have sinned against the Lord; but nevertheless he had to undergo a most grave temporal punishment: "The Lord also has transferred thy sin; thou shalt not die; nevertheless, because thou hast made the enemies of the Lord blaspheme, on account of this word the son who has been born to thee shall surely die."[5] These punishments indeed were inflicted not only for amendment, as the Protestants will, but also for the chastisement of sin, as is clear from the context, and from the fact that not only adults but even infants die in punishment for sin. (b) Nor did God less clearly manifest His will by words: "Now therefore, says the Lord, be converted to me with all your heart, in fasting, and in weeping and in mourning";[6] "Redeem thy sins by alms, and thy iniquities by mercies to the poor";[7] "Bring forth therefore fruits worthy of penance."[8] Here also belong the texts cited elsewhere (*de Verbo Incarn.*, n. 206 or 1161), by which it is demonstrated that we cannot be saved unless we take up our cross, suffer with Christ, and fill up in our flesh those things which are lacking of the sufferings of Christ; for from these and similar testimonies it is gathered that the Lord did not satisfy for us in

such a way that we are freed from the obligation of satisfying, but so that with Him we may be able to expiate sins more efficaciously.

[2] Wis. 10:1-2.

[3] Gen. 3:17-19.

[4] Num. 20:12.

[5] 2 Kings 12:13-14.

[6] Joel 2:12.

[7] Dan. 4:24.

[8] Luke 3:8.

151. 2° By Tradition. The Protestants themselves are compelled to confess that the Fathers with unanimous voice taught the necessity of such penance; thus Chemnitius[1] says: "Nor indeed am I ignorant that the ancients sometimes commend canonical discipline too broadly and with words too magnificent, as when Tertullian says that by those satisfactions sins are expiated; Cyprian says that by them sins are redeemed, washed away, healed, and the judge is placated; Ambrose, that the punishments of hell are compensated by them; Augustine, that God is propitiated by them concerning past sins."

[1] *Exam. C. Trident.*, p. 4.

This surely is clear from the penitential discipline which flourished in the first centuries.

(A) In the earlier centuries, penance was more prolonged and laborious; it often lasted for many years, and sometimes through the whole of life.

(a) In the churches of Asia Minor, in the third century, three orders of penitents were distinguished: the hearers, who stood at the door of the church, or in the porch; there they heard the reading of the Scriptures and the sacred sermons, but were prohibited from being present at Mass; - the substrated, or kneelers, who were present at Mass within the enclosure of the church, from the doors up to the ambo, but prostrate: upon these the bishops and presbyters imposed the hand; - the standers, who were present at the sacred rite standing with the faithful, but were barred from holy communion.[2] In the fourth century, to these orders were added the weepers, who, clothed in sackcloth and ashes, stood at the threshold of the church, asking with tears and groans the Christians entering to pray for them.

[2] Cf. St. Gregory Thaumaturgus, ep. canonica; P. G., t. X, p. 1019-1048.

(b) In the West, there were likewise various orders of penitents, whose number, however, is not known. We have already heard Tertullian describing the exomologesis flourishing in Africa (n. 57). The one which flourished at Rome is set forth by Sozomen thus:[3] "For there in open view is the place of penitents, in which they stand sorrowful and as if mourning. And when the solemnities of Masses have now been completed, excluded from the communion of sacred things, which it is the custom to offer to the initiated, with groaning and lamentations they cast themselves prone upon the earth. Then the bishop, meeting them opposite with tears, likewise himself is rolled upon the ground, and the whole multitude of the church, confessing together, is bathed in tears... But privately each one, chastising himself of his own accord, whether by fastings or by uncleanness, or by abstinence from

foods or by other ways in which he has been commanded, waits for however much time has been appointed to him by the bishop."

[3] Sozom., H. E., l. VII, ch. 16; P. G., t. LXVII, p. 1459-62.

Moreover, the penance imposed was very laborious; the Council of Agde (year 506), can. 15, orders penitents to lay aside their hair and to change their garments;[1] the Council of Barcelona (year 540) commands (can. 6-7) that with head shaven and using a religious habit, they pass the time of life in fastings and prayers, that they not be present at feasts nor devote themselves to business, and that they live a frugal life in their own homes.[2] St. Leo the Great forbids them to conduct trade, to exercise the office of advocate, to serve as soldiers;[3] St. Siricius exhorts them to abstain from the use of matrimony and from second marriages.[4] And so the state of penitents was quite similar to the state of monks.

[1] In Bruns, op. cit., t. II, p. 149.

[2] Ibid., p. 27.

[3] St. Leo, ep. 167 to Rusticus, ch. 10-13; P. L., t. LIV, 1206.

[4] Siricius to Himerius, ep. Tarraconens., ch. 5; P. L., t. XIII, 1137.

152. (B) From the sixth century, penance became milder and shorter, and at the same time more frequent.

Then the penitential books were published (above, n. 115), in which the punishment inflicted for each kind of sins was determined. We have already related a few examples; certain others we add here from the *Penitential of Theodore*:[5] for voluntary homicide, let the sinner do penance seven years; for the truncation of feet or hands, one year; for a wound, 40 days; for voluntary perjury and inducing others into perjury, seven years; for the greatest theft, three years; for a great theft, one year, if restitution is made, and two years if it is not restored; for a moderate theft, twenty days; for adultery, seven years; for simple fornication, two years; for detraction, 40 days, etc. Yet gradually the punishments imposed were lessened, and confession became a more frequent and more minute declaration of sins.

[5] In Morinus, op. cit., Appendix, p. 41.

153. 3° Reason shows the fittingness of satisfaction. (a) On the part of God: for God, who is offended by sin, is not only a private person, but the legislator and ruler of the whole of human society; but it indeed befits God, as a private person, to remit the offense inflicted upon Himself; yet at the same time it befits Him as legislator that He not remit offenses without temporal punishment, both so that in the future the laws may be better observed by the penitent, and so that others may be deterred from evil and thus the good of society may be promoted, and finally so that the rights not only of mercy but also of justice, so far as can be done, may be preserved.

(b) On the part of the penitent; for, as Trent says,[6] "without doubt these satisfactory punishments greatly recall from sin, and as if by a certain bridle restrain, and make penitents more cautious and watchful for the future: they also heal the remnants of sins, and remove vicious habits, acquired by living badly, by contrary actions of virtues." But if, on the contrary, sins were remitted without any

satisfaction, they would be considered light, and by the very easiness of pardon many would be provoked to sinning again.

[6] Trent, sess. XIV, ch. 8.

Nor should it be said that through baptism the whole punishment is taken away at the same time as the fault: for the condition is not equal of those who are regenerated through baptism and of those who are reconciled to God through penance; the former before baptism offended through ignorance, or at least not with such great malice; the latter, who once were freed from sin and from the servitude of the devil, received grace and the gifts of the Spirit, knowingly violated the temple of God and grieved the Holy Spirit, and consequently do not deserve to receive pardon with the same ease, as Trent argues.[1]

[1] That this was the mind of the ancient Fathers Morinus showed at length, op. cit., bk. III.

154. Corollaries. (A) All and only good and penal works can be satisfactory. For in order that some work be truly satisfactory, it is necessary that it repair the past offense and preserve from future faults; but such is the case with good penal works, and indeed with those alone; for (a) they compensate for the offense inflicted upon God; since, although properly nothing can be taken away from God, nevertheless the sinner, as much as lies in him, takes something from Him by offending His majesty; whence it is fitting, for repairing an injury of this kind, that something be taken away from the sinner in honor of God; and therefore the satisfactory work must be good, so that it be in honor of God, and penal, so that through this something may be taken away from the sinner; but if it were good and not penal, it would indeed be a meritorious work, but not satisfactory; (b) likewise a penal work also preserves from future fault, because a man does not easily return to sins from which he has experienced punishment.

Yet it can be added that scarcely, in the present state of fallen nature, is there any supernaturally good work which is not at the same time arduous and penal; for since we spontaneously tend to creatures and to illicit things, whenever on account of God we act supernaturally, we make the work difficult and consequently penal.

155. (B) But the chief satisfactory works are almsgiving, fasting, and prayer. For (a) satisfaction must be such that through it we subtract something from ourselves for the honor of God; but we have only three goods, namely goods of the soul, goods of the body, and goods of fortune. From the goods of fortune we subtract something through almsgiving; from the goods of the body through fasting; from the goods of the soul through prayer, by which we submit our faculties to God. (b) Besides, there are three roots of sins, namely the concupiscence of the flesh, the concupiscence of the eyes, and the pride of life;[1] but against the concupiscence of the flesh fasting is ordered; against the concupiscence of the eyes almsgiving is ordered; against the pride of life, prayer.[2]

[1] 1 John 2:16.

[2] St. Thomas, Suppl., q. 15, a. 3.

Yet to these punishments, voluntarily undertaken, must be added, according to Trent (can. 13), punishments inflicted by God and patiently endured: for often the Lord permits us to be troubled by

various adversities, hardships, pains of soul or body; when these are patiently endured, especially if we are joined to Christ suffering and dying, we have ample opportunity of satisfying; which kind of penance is more efficacious the greater the alacrity and love with which we embrace it.

156. Thesis II: Penitents who have the intention of satisfying can be absolved before they have fulfilled the sacramental satisfaction. It is certain against the Jansenists. (A) From the practice of the Church it is clear that the fulfillment of the imposed penance is not the condition for obtaining the remission of sins, but only for a more abundant remission of the temporal punishment due to sin. (a) For it is clear that already in the earliest centuries, in many cases at least, absolution was given before satisfaction was fulfilled: 1) in danger of death; for Innocent I writes to Decentius:[3] "If anyone has fallen into sickness and has come even to desperation, he must be released before the time of Easter, lest he depart from the world without communion"; 2) when persecution was pressing; thus St. Cyprian writes:[4] "Deservedly the penance of those grieving was prolonged for a longer time, so that aid might be given to the sick at their departure... But now peace is necessary not for the sick, but for the strong, nor is communion to be given by us to the dying but to the living, so that those whom we stir up and exhort to battle we may not leave unarmed and naked, but may fortify them by the protection of the body and blood of Christ"; 3) when there was danger lest, absolution being delayed, penitents pass over to heretics; hence St. Cyprian says:[1] "If we reject the penance of those who have some confidence of a tolerable conscience, immediately with wife, with children, whom they had preserved unharmed, they are carried off, at the devil's invitation, into heresy or schism." Moreover, in the Council of Ancyra (year 314) it was established (can. 5) "that Bishops, the mode of conversion having been examined, have the power either of using clemency, or of adding more time." From all these things it is gathered that, even in the case of public penance, absolution was sometimes granted before satisfaction had been completed, therefore a fortiori when there was question of hidden sins.

[3] Ep. XXV, ch. 7; P. L., t. XX, p. 559.

[4] Ep. 54 to Cornelius, n. 2.

[1] Ep. 52 to Antonianus, n. 15.

(b) It is certain, further, that long before the Jansenian heresy the practice of absolving penitents, satisfaction not yet completed, flourished in the Church. Thus, in the year 1479, this proposition of Peter of Osma had been condemned by Sixtus IV as scandalous and heretical: "Penitents are not to be absolved, unless the penance enjoined upon them has first been completed."[2] Deservedly, therefore, on Dec. 7, 1690, this proposition of the Jansenists was rejected by Alexander VIII: "The order of placing satisfaction before absolution was introduced not by the polity or institution of the Church, but by the law and prescription of Christ itself, the nature of the matter in a certain way dictating it."[3]

[2] In Denzing., n. 614.

[3] Denzing., n. 1173.

(B) Reason of fittingness. For God immediately remits sins to the perfectly contrite, even when satisfaction has not yet been fully paid, as is clear from the example of David, who first obtained pardon of sin, and afterward underwent temporal punishment; and also from the words of Scripture,

where it is asserted that God remits sins on the very day on which the wicked man shall have been converted from his iniquity.[4] But the Church, in the administration of the sacrament of Penance, uses divine power and can and ought to imitate God; therefore she can absolve penitents before they have fulfilled satisfaction.

[4] Ezek. 33:12.

Dogmatic Part — Chapter III: On the Sacrament of Penance Itself

Concerning the Sacrament Itself

From the things said concerning the power of the keys and the three acts of the penitent, it is permitted to infer that penance is truly a sacrament: we shall briefly declare its existence, constitutive elements, and effects.

Art. I. On the Existence of the Sacrament of Penance

157. Tridentine doctrine. Against the Protestants, who commonly denied that Penance is a sacrament distinct from baptism, Trent declared two things: (a) that Penance is a sacrament instituted by Christ; (b) and indeed truly distinct from baptism: -

[1] St. Thomas, 3, q. 84, a. 1; Suarez, disp. XVII, sect. I; Bellarmine, l. I, ch. 9; Drouin, q. II, § 3; Billuart, diss. I, art. 1; Billot, th. 2; L. de San, n. 289-300.

"But the Lord then especially instituted the sacrament of Penance when, having been raised from the dead, He breathed upon His Disciples, saying: 'Receive the Holy Spirit; whose sins you shall forgive, they are forgiven them; and whose sins you shall retain, they are retained.' By so signal a deed and by words so clear, the consensus of all the Fathers has always understood that the power of remitting sins, for reconciling the faithful who have fallen after Baptism, was communicated to the Apostles and their legitimate successors; and the Catholic Church, with great reason, once rejected and condemned as heretics the Novatians, who obstinately denied the power of remitting. Wherefore this holy Synod, approving and receiving this most true sense of those words of the Lord, condemns the fictitious interpretations of those who falsely twist those words, against the institution of this sacrament, to the power of preaching the word of God and announcing the Gospel of Christ.

"Besides, this sacrament is recognized to differ from Baptism in many ways; for besides the fact that the matter and form, by which the essence of a sacrament is completed, are most widely different, it is certain that the minister of Baptism need not be a judge, since the Church exercises judgment over no one who has not first entered into her through the gate of Baptism. 'For what have I to do,' says the Apostle, 'with judging those who are outside?' The case is otherwise with the household of faith, whom Christ the Lord by the laver of Baptism once made members of His body; for these, if afterward they have contaminated themselves with some crime, He willed not that they be washed by Baptism repeated, since that is in no way lawful in the Catholic Church, but that they be placed as guilty persons before this tribunal; so that by the sentence of priests, not once, but as often as they flee to Him penitent from the sins committed, they may be able to be freed.

"Moreover, one is the fruit of Baptism, and another the fruit of Penance: for by Baptism, putting on Christ, we are made an entirely new creature in Him, obtaining the full and complete remission of all sins; but to this newness and integrity we can by no means arrive through the sacrament of Penance without our great weepings and labors, divine justice requiring this: so that Penance has deservedly been called by the holy Fathers a certain laborious Baptism. But this sacrament of Penance is necessary unto salvation for those who have fallen after Baptism, as Baptism itself is for those not yet regenerated."[1]

[1] Sess. XIV, ch. 1-2.

We shall defend both assertions in one and the same thesis.

158. Thesis: The rite by which the power of forgiving sins is exercised is a true sacrament of the New Law, distinct from Baptism. It is of faith from Trent:[2] "If anyone shall say that in the Catholic Church Penance is not truly and properly a sacrament instituted by Christ our Lord for reconciling to God Himself the faithful as often as they fall into sins after Baptism, let him be anathema." - "If anyone, confounding the sacraments, shall say that Baptism itself is the sacrament of Penance, as if these two sacraments were not distinct... let him be anathema." - The thesis is briefly proved, because, in the manner of a corollary, it is inferred from the things said concerning the power of the keys.

[2] Sess. XIV, can. 1-2.

159. 1° Scripture. For a sacrament of the New Law three things are required and suffice, as was proved in the Treatise on the Sacraments: a sensible sign, productive of grace, permanently instituted by Christ. But these three things are to be found in the rite by which sins are remitted: (A) a sensible sign; for, from the things said, sins are remitted by a judicial act, which imports at least two things, namely the sensible manifestation of sins and the external sentence of the judge absolving the penitent. Besides, a sign of this kind is distinguished from the rite of baptism; for Baptism is conferred by washing, while Penance is under the form of judgment; in Penance sins can be retained judicially, not so in Baptism.

(B) Productive of grace; for grave sins, from the things said, are truly remitted through this rite; but they cannot be blotted out without the infusion of sanctifying grace; for, from the things proved in the Treatise on Grace (n. 132), justification essentially consists in the conferral of habitual grace; therefore a rite of this kind is productive of grace. - But this grace differs from the grace of baptism, since it is properly remissive of sin and can be granted many times, while the grace conferred in Baptism is regenerative, and is conferred only once.

(C) Permanently instituted by Christ; for we have demonstrated that this power was conferred upon the Apostles by Christ Himself risen again, when He said: "Receive the Holy Spirit." But that the same power is perpetual in the Church is clear: (a) from the general principle, conceded by the Protestants themselves, that all prerogatives which are necessary not only for founding the Church, but also for preserving her, were conferred upon the Apostles not for themselves alone, but also for their successors; but the power of remitting sins is no less necessary today than in the time of Christ, since men easily fall into sin; therefore such power was permanently granted. This St. Pacian had already noticed, and from it he thus argued against the Novatians:[1] if the power of remitting sins was not transmitted to the successors of the apostles, why do you say that the power of baptizing was granted in perpetuity? (b) From history, which clearly shows that this faculty was perpetually claimed and exercised by the Church, as the testimonies already adduced prove.

[1] Ep. I to Sempron., n. 6; P. L., t. XIII, p. 1057.

160. 2° By Tradition. From the Fathers, who often compare Penance with Baptism, and assert that in both sins are remitted and grace conferred, although in a different way. We already reported

above the words of St. Ambrose, n. 52. Likewise St. Jerome[2] asserts that sins are remitted "by the blood of the Savior either in the gift of Baptism or in Penance, which imitates the grace of Baptism through the ineffable clemency of the Savior." Nor otherwise St. Augustine:[1] "If it was done by a catechumen (homicide), it is washed away by Baptism; if by one baptized, it is healed by Penance and reconciliation." From these and other testimonies which could be cited, it follows that Penance, no less than Baptism, is a true sacrament, since in both sins are blotted out and grace is infused. - Moreover, from the whole description of penitential discipline it is clear that there is the greatest difference between baptism and penance: for the latter was much more laborious than the preparation for baptism.

[2] *Dialog.* I against the Pelagians, n. 33; P. L., t. XXIII, p. 527.

[1] *De conjug. adult.*, bk. II, ch. 16; P. L., t. XL, p. 482.

161. 3° Reason of fittingness.[2] Indeed it befitted divine mercy to institute a remedy not only against original sin, but also against actual sins committed after Baptism; for man, even regenerated, remains subject to many temptations and easily falls. But surely the best remedy is a sacrament, by force of which we can be more certain concerning sins pardoned, through the judicial sentence passed by the minister of God, and thus be rendered more peaceful: for if each one had to judge concerning his own penance, a broad way would lie open to doubts and anxieties. By force of it also the blood of Christ, flowing down to us, cleanses us from our iniquities, and renders us more ready to offer fuller satisfaction for sins, and also to employ the means by which new offenses can be guarded against in the future; therefore the institution of this sacrament was fitting.

[2] Cf. Roman Catechism, on Penance, n. 14.

Art. II. On the Constitutive Elements of This Sacrament

When the Scholastics adapted their general theory concerning matter and form to sacred rites, they taught that the sacraments consist of a twofold essential element, namely matter and form; this manner of speaking the Church used, especially in the Councils of Florence and Trent. Therefore it is necessary to inquire what the matter and form of this sacrament are. Now both Councils declared that the three acts of the penitent are the quasi-matter of the sacrament of Penance, but that the form is the words of absolution.

§ I. On the Matter of the Sacrament of Penance

162. 1° State of the question. A twofold matter is distinguished in the sacraments: remote and proximate. The remote matter of Penance, or rather the matter to be removed, as some theologians say, or, as is more pleasing to others, the matter about which the sacrament is concerned, is all sins committed after baptism, whether mortal or venial, whether already remitted by absolution or not. Mortal sins not yet accused and absolved are necessary matter, or matter necessarily to be subjected to the keys of the Church; but venial sins and mortal sins already remitted are sufficient and free matter, that is, matter which can, but need not necessarily, be subjected to the power of the keys, as will be declared more fully in the moral part.

[1] St. Thomas, 3, q. 84, a. 2; Suarez, disp. XVIII, sect. 3; Salmant., disp. I, dub. 2; Billuart, diss. I, a. 2; Palmieri, th. 14; Billot, th. 3; L. de San, n. 300-343.

But the question arises concerning the proximate matter of this sacrament; theologians dispute in what, namely, it essentially consists, whether in the three acts of the penitent, or in absolution or some other action. Three opinions especially have come forth on this matter.

163. (A) Some older theologians, such as William of Auxerre and Alexander of Hales, thought that the proximate matter was situated in the imposition of the hand made by the priest while he absolves the penitent. But this opinion is commonly rejected by theologians. A threefold imposition of this kind is indeed commemorated among ecclesiastical authors:[2] the first, which was employed when public penance was imposed; the second, which was repeated over the penitents whenever they were dismissed from the church after the catechumens; the third, finally, in the reconciliation of penitents. But this rite was not regarded as essential, as is clearly gathered from the canon of the First Council of Orange, where it is said: "Those who depart from the body, penance having been received, it has pleased us that they be communicated without the reconciling imposition of the hand, which suffices for the consolation of one dying, according to the definition of the Fathers." Now if the imposition of the hand had been necessary for the remission of sin, certainly the dying would not have been deprived of it.

[2] Cf. Sirmundus, *Historia paenitent. publicae*, ch. VII; Palmieri, p. 159.

164. (B) The Scotists, with whom Maldonatus, Ballerini, Berardi and others agree,[3] teach that the whole essence of the sacrament consists in absolution, which, insofar as it is an external ceremony, constitutes the matter, and insofar as it has the force of signifying, is the form. According to Scotus and his older disciples, the three acts of the penitent are not only dispositions for the valid and fruitful reception of the sacrament, but also conditions without which, having gone before, the minister cannot sufficiently know the cause and pass sentence; for which reason they conclude that the external manifestation of these dispositions is truly of the necessity of the sacrament. According to more recent Scotists, acts of this kind are only dispositions required for the worthy reception of the sacrament; wherefore it is not necessary that they be manifested by an exterior act.

[3] Scotus, in 4 dist. 14, q. 4 and dist. 16, q. 1; Maldonatus, *de Paenitent.*, p. III, th. 7; Ballerini-Palmieri, *de Paenit.*, n. 5 sq.; Berardi, *Praxis Confessar.*, t. IV, n. 2.

But they argue thus: (a) first, the matter was not defined by Trent, as is asserted by certain Thomists; for, as C. Pallavicini relates,[1] the Synod called the three acts of the penitent not matter, but quasi-matter, and declared them necessary not for the essence, but only for the integrity of the sacrament. (b) A sacrament is that which properly confers grace; but only the absolution of the Priest properly confers sacramental grace; therefore it alone is properly the essence of the sacrament. (c) It is certain, from the practice of the Church, that sacramental absolution can be given to those who present no exterior sign of contrition; but if the three acts of the penitent were the matter of the sacrament, this would be invalid, since matter must be sensible; therefore acts of this kind are not the matter of the sacrament, but only dispositions, and the whole essence of the sacrament consists in absolution.

[1] *Historia C. Trident.*, bk. XII, ch. 12.

(C) Yet the more common opinion, which not only St. Thomas and his disciples defend, but also Suarez, the Salmanticenses, De Lugo, Bellarmine, and many others, holds that the three acts of the penitent are truly the proximate matter of the sacrament.

165. 2° Thesis: The three acts of the penitent, contrition, confession, and satisfaction, are the proximate matter of the sacrament of Penance. Thus more commonly.

(A) The Council of Florence, in the Decree to the Armenians, after declaring the necessity of matter and form in any sacrament, adds these things: "The fourth sacrament is Penance, whose quasi-matter is the acts of the penitent, which are distinguished into three parts." Similarly Trent:[1] "But the quasi-matter of this sacrament is the acts of the penitent himself, namely contrition, confession, and satisfaction. These, insofar as they are required in the penitent for the integrity of the sacrament and for the full and perfect remission of sins by the institution of God, for this reason are called parts of Penance." Hence thus: the two aforesaid Councils distinctly commemorated the matter and form of the other sacraments, and when they treated of Penance, they designated no other matter except the three acts of the penitent; therefore those acts are truly the proximate matter of this sacrament, unless perhaps it be said that matter of this kind was intentionally passed over: which can scarcely be admitted in a matter of such great moment. Nor should it be objected that the Councils said quasi-matter, and not matter; "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."[2] Namely, Penance is a sacrament of its own kind, whose matter is not a corporeal element, as in certain others, but the very virtue of penance raised to the dignity of a sacrament, and for that reason it is called quasi-matter.

[1] Trent, sess. XIV, ch. 3; cf. can. 4.

[2] Catechism of the Council of Trent, on Penance, n. 17. - Hence St. Thomas himself used this manner of speaking: "The fourth sacrament is Penance, whose quasi-matter is the acts of the penitent." (*De artic. fidei et eccl. sacramentis*, t. XXVII, p. 180, ed. Vives.)

(B) Besides, Christ instituted this sacrament in the manner of a judgment, in which it is possible to find two constitutive elements, namely the matter of the judgment itself which the penitent provides, and the sentence which is passed by the judge; but the matter of the judgment is provided by the three acts of the penitent, namely by the humble confession of sins, which sincere contrition accompanies and satisfaction follows; therefore acts of this kind are truly the proximate matter of the sacrament. It is indeed objected that grace is conferred only by absolution, and not by these acts, and consequently that they do not pertain to the essence of the sacrament; but undeservedly, for although such acts do not of themselves confer grace, nevertheless, because by the positive institution of Christ they have been raised to the dignity of sacramental matter, they truly concur with the form by which, so to speak, they are fecundated, for producing grace. Nor is it useful to say that contrition is not something sensible; for although it is not sensible immediately and in itself, nevertheless it becomes sensible mediately, insofar as it is manifested through the exterior acts of confession, satisfaction, and other signs of sorrow.[1] Moreover it suffices that the matter be virtually sensible; consequently even a man destitute of the senses, who before falling into this state manifested contrition by words or signs, by that very fact exhibits virtual contrition.

[1] St. Thomas, 3 p., q. 90, a. 2, ad 1.

Yet notwithstanding these things, we freely confess that the opinion of the Scotists is not lacking in probability, nor to be despised in practice: consequently, in a case of extreme necessity, even if exterior signs of contrition are lacking, the penitent is to be absolved under condition.

§ II. On the Form of the Sacrament of Penance

166. Trent teaches[3] that "the form of the sacrament of Penance, in which its force chiefly is situated, has been placed in those words of the minister: I absolve you, etc.; to which indeed, according to the custom of Holy Church, certain prayers are laudably added; yet they by no means belong to the essence of the form itself."

[2] St. Thomas, 3 p., q. 84, a. 3; Suarez, disp. XIX; De Lugo, disp. 13; Salmantic., disp. III; Morinus, l. VIII; Drouin, q. II, ch. 3; Billuart, diss. I, a. 3; de Augustinis, th. 23; Palmieri, th. 12; Billot, th. 3.

[3] Trent, sess. XIV, ch. 3.

This indeed is the form used today in the Western Church; but since in antiquity other forms were employed, it will not be beside the matter 1° to describe these briefly, and afterward to weigh 2° what is required in the present form for validity and lawfulness, 3° whether a conditional form is valid and lawful.

I. Historical View of the Diverse Forms of Absolution

167. 1° The facts are set forth. (A) In each Church, through the first ten centuries, the forms of absolution used were deprecatory, namely: "God, pardon him, absolve him, etc."; but not indicative: "I absolve you, I pardon you, etc."

This is clear: (a) from the testimony of the Fathers, who, with St. Leo, say that in the sacrament of penance the indulgence of God is obtained by the supplications of priests;[1] (b) but especially from the Sacramentaries and Penitentials, where only deprecatory formulas are found. Thus, in the Gelasian Sacramentary, for publicly reconciling a penitent, this prayer is pronounced: "Almighty everlasting God, for Thy mercy relax this servant of Thine confessing to Thee, that the guilt of conscience may not harm him more unto punishment than the indulgence of Thy mercy unto pardon."[2] And afterward various prayers are recited over him. In the same place, for reconciling privately a penitent near death, various prayers are poured forth, which are thus concluded: "Look propitiously upon this servant of Thine, asking for himself the remission of all sins with the whole confession of his heart."[3] - The same is clear from the various Penitentials cited above, n. 114. Similar formulas are found in Halitgar (+831),[4] and in authors of a later age, up to the tenth century. Yet, in the eighth and ninth centuries, imperative formulas are also found joined with deprecatory ones, for example: "May you indeed be absolved by God the Father and the Son and the Holy Spirit, from all your sins."[5]

[1] St. Leo, ep. 108 to Theodore, P. L., t. LIV, p. 1011.

[2] In Migne, P. L., t. LXXIV, p. 1097.

[3] Ibid., p. 1098.

[4] P. L., t. CV, pp. 697, 704.

[5] Thus in the Penitential of Egbert, archbishop of York (around the year 732), in Morinus, op. cit., Appendix, p. 19.

168. (B) From the eleventh century, in the Latin Church, the transition from deprecatory formulas to indicative ones begins, and both are found together in the same documents. Thus, in a certain order of Penance, to the deprecatory formulas this is added:[6] "We also, according to the authority committed to us unworthy ones by God, absolve you from every bond of your offenses, etc." Likewise, in the order of the Church of Reims, in the twelfth century, the form of absolution is read as deprecatory and indicative at once:[7] "May almighty God, who gave to blessed Peter His apostle and to His other disciples His license of binding and loosing, Himself absolve you from every bond of offenses; and, insofar as it is permitted to our frailty, may you be absolved before the tribunal of our Lord Jesus Christ, and may you have eternal life..." - Even at the beginning of the thirteenth century the deprecatory form still flourished; for William of Paris writes these things:[8] "Nor, after the manner of forensic judges, does the confessor pronounce, we absolve you, but rather makes prayer over him, that God may grant absolution and remission and the grace of sanctification." The same is likewise clear from Opuscule 18 of St. Thomas, ch. 5; for when the adversary had said: "scarcely thirty years have passed since all used this deprecatory form alone," the Angelic Doctor does not deny this absolutely, but only corrects it in this way: "How can he bear witness concerning all, who did not see all?" - But a little afterward the indicative form was commonly received in the Latin Church; nevertheless, before it is pronounced, the prayers "May He have mercy," "May the Lord grant indulgence," "May our Lord Jesus Christ absolve you," are recited, which are like a commemoration of the ancient discipline.

[6] *Magna Bibliotheca Patrum*, Cologne, 1618, t. VIII, p. 423-424.

[7] In Morinus, op. cit., p. 48; cf. p. 71.

[8] *De sacram. Paenit.*, ch. 19, Venice, 1591, p. 472, col. 2.

169. (C) In the Eastern Church, after the thirteenth century, the form remained deprecatory; indeed even today it remains among certain persons. Thus, when Morinus asked a certain Greek priest, who presided over the Greek youths being educated in the Roman College, he answered that the form of absolution customarily used by the Greeks was this: "Lord, remit, dismiss, pardon the sins of this N., because Thine is the power, etc."[1] Today certain Orientals, such as the Syrians and Maronites united to the Roman Church, have borrowed the indicative form from the Latin Church; but others retain the deprecatory form. - The Ruthenians, however, although schismatics, use a form which is at once deprecatory and indicative.

[1] Morinus, l. VIII, ch. 12, n. 7, p. 547. - Thus also Denzinger (*Ritus Orient.*, t. I, p. 101): "The form of absolution among the Orientals (Catholics and non-Catholics), if only the Armenians are excepted, is deprecatory." - Cf. Vacant, *Dict. de Theol.*, t. I, p. 205-214, where the various forms of the Orientals are described.

170. 2° Conclusions to be deduced from the facts. (A) With Hurter (n. 626) we hold without doubt that the deprecatory form was valid wherever it prevailed in a general way; for we do not judge that absolutions given in a great part of the Church, through many centuries, were invalid. Moreover the deprecatory form, with the intention of absolving, and with attention given to the circumstances, shows that the priest is the minister of God and absolves only by His

authority, but it does not prevent the priest from being a judge and truly absolving ministerially. Nor can this change in the form be reconciled with difficulty with the opinion set forth in the Treatise on the Sacraments (n. 84), namely that not all the forms of the sacraments were determined by Christ in the lowest species; for, if the Church has the right of determining forms of this kind in species, nothing prevents a deprecatory form, with the intention of passing a judicial sentence, from being valid. But let those who think otherwise see how they can reconcile their theory with the facts.

(B) Whatever may be the case, since already for several centuries the Western Church has prescribed the use of the indicative form, deservedly there would be doubt concerning the value of the deprecatory form in the Latin Church. Besides, we confess that the indicative form is more fitting for the judicial power which belongs to the ministers of the Church. Therefore in practice the formula which is found in the Roman Ritual should be carefully used.

II. On the Things Required for Validity and Lawfulness

The question can be weighed with respect to the words themselves, and with respect to the mode in which they must be pronounced.

[1] In these and the following things, we set forth not only speculative but also practical questions concerning the form, lest we be forced to discuss the same subject twice.

1° On the Words Required for Validity and for Lawfulness

171. (A) For validity. (a) So that the value of the sacrament may certainly be clear, these words are required and suffice: "I absolve you from your sins." For those words are required and suffice for validity which sufficiently declare the effect of the sacrament, the mode by which it is effected, and the subject receiving; but the aforesaid words distinctly declare the effect, that is, the removal of sin, since sins are bonds by which sinners are bound, and the words I absolve you from sins dissolve bonds of this kind; besides, they clearly manifest that sins are remitted in the manner of a judgment, since they are nothing other than an absolving sentence; likewise they indicate the subject, "you, your"; therefore the aforesaid words are required and suffice.[1]

[2] The form of absolution, according to the Roman Ritual, is this: After the penance has been enjoined, the priest says: May He have mercy on you, etc. Then, with the right hand raised toward the penitent, he says: - May almighty and merciful Lord grant you indulgence, absolution, and remission of your sins. Amen.

May our Lord Jesus Christ absolve you, and I, by His authority, absolve you from every bond of excommunication, suspension, and interdict, insofar as I can and you need; then, I absolve you from your sins, in the name of the Father + and of the Son, and of the Holy Spirit. Amen.

May the Passion of our Lord Jesus Christ, the merits of the Blessed Virgin Mary, and of all the Saints, whatever good you shall have done, and whatever evil you shall have sustained, be unto you for the remission of sins, the increase of grace, and the reward of eternal life. Amen.

The prayers May He have mercy and Indulgence "are not to be omitted except for a just cause" (*Codex*, c. 885). The same must be said of the prayer The Passion of the Lord. It is indeed expedient that it not be omitted, since, according to St. Thomas and not a few others, this prayer raises all the good works of the penitent to the dignity and efficacy of sacramental penance (St. Thomas, Quodlibet 3, quest. 13, a. 28). - The word suspension is omitted if there is question of lay persons, since they cannot be suspended.

[1] St. Thomas, 3, q. 84, a. 2.

(b) It is commonly asserted that the words "I absolve you" alone suffice for validity, since these, after the confession of sins, are understood clearly enough of sins; and in reality many Greeks use this simple formula: "I hold you absolved." Yet, according to Lacroix (n. 633) and a few others, the words "from sins" are required, so that the sense of the form may be more clearly determined; and, since there is question of validity, in practice these are not to be omitted, and, if they have been omitted, the form is to be repeated under condition. - Much more probably the word your is not required, when it has already been said I absolve you; but because, according to some, it is required, in practice it likewise must never be omitted.

172. (c) From this it follows that I is not required for validity, if the priest speaks Latin, because it is already contained in the word absolvo. - Likewise the words "in the name of the Father, etc." do not belong to the essence of the sacrament, because they are neither prescribed by Christ nor found in the ancient formulas.

(d) The essential words can be supplied as to validity, though not as to lawfulness, by other equivalent words; for example, you by you plural, or Your Excellency, etc.; I absolve by I pardon or I remit to you your sins.

173. (B) For lawfulness. The form prescribed by the Roman Ritual must be carefully observed in the Latin Church. But for judging the gravity of the sin of a voluntary omission or change in the form, these two things, taken from the Treatise on the Sacraments, n. 33-34, must be noted:

(a) A voluntary omission or substantial corruption of an essential word, or of a word which is probably held as such, is always a mortal sin, because it makes the sacrament invalid, or at least exposes it to danger of nullity, and besides deprives the penitent of sacramental grace; thus to omit you, I absolve, from sins, etc. would be mortal.

(b) But the voluntary omission or corruption of a non-essential word, without sufficient reason, is a grave or light sin, according as the change itself is judged grave or light by the judgment of prudent persons; for, although it does not invalidate the sacrament, it imports an act of irreverence toward the sacrament. For example, omission of the words "in the name of the Father and of the Son, etc." is judged a light sin, while omission of the prior part of the form concerning absolution from censures can be grave, namely if the confessor certainly knows that the penitent is bound by censures.

(c) But in a case of necessity non-essential words can be omitted. Thus, according to the Roman Ritual, in danger of death it will be possible to say briefly: "I absolve you from all censures and sins. In the name of the Father, etc."

174. Corollary. Here theologians ask what the words I absolve you signify. They do not signify: I declare you absolved from sins;[1] for since, from the things said, the ministers of the Church are endowed with true power of absolving the faithful, their words are not merely declaratory, but effect what they signify. But according to the common opinion, the sense of these words is: I absolve you from the bond of sins, or I remit your offenses to you, conferring grace remissive of sin;[2] consequently, according to the opinion which we judge more probable, the remission of sin is signified directly, sanctifying grace indirectly, since in the present order a grave offense is

not remitted except through the infusion of grace. This is the proper sense of the word I absolve according to human usage, which must also be retained in the sacraments.

[1] Peter Lombard and a few other theologians had taught that this is the genuine sense; but this opinion was commonly rejected. Cf. Vacant, *Dict. de Theol.*, t. I, p. 196.

[2] According to Suarez, disp. XIX, sect. 11, n. 13-20, I absolve you signifies: "I confer upon you sanctifying grace remissive of sin"; but this does not please Cardinal de Lugo, disp. XIII, n. 69-74, who rightly notes that the words of absolution do not of themselves directly signify the conferral of grace, although they produce it from the institution of Christ. - Cf. Vacant, *Dict. de Theol.*, t. I, p. 194.

2° On the Mode in Which the Form Must Be Pronounced

The form must be 1° uttered by mouth; 2° directed to one present.

175. (A) Uttered by mouth, that is, not by writing or by nods, but by the living voice. - This indeed cannot be proved from the very nature of the thing, since in the civil forum a judgment can validly be pronounced in writing; but the reason is taken from the positive will of Christ, which is clear not indeed from Scripture, but from the use and practice of the Church, and also from the Decree to the Armenians declaring that the form of this sacrament is the words of absolution which the priest pronounces: for this is understood of words uttered by mouth. The matter is not, however, of faith, nor absolutely certain; whence, according to Sporer, in a case of extreme necessity, a mute priest could, if every other priest were lacking, give absolution by a nod or in writing.

It is not necessary that the words be heard, but it suffices that they be audible. Prudence requires that they be pronounced not in a loud, but in a low voice, lest, if someone is dismissed not absolved, those standing about notice it.

176. (B) Directed to one present. (A) For the words of the form "I absolve you" suppose the penitent to be morally present. But moral presence is that within which men speaking with a common, although somewhat raised, voice can speak with and be heard by one another. St. Alphonsus (n. 429), with many others, thinks that such presence can be extended to about 20 paces, especially where the penitent has not yet gone out from the sight of the confessor.[1] But if the penitent and confessor are in different rooms which in no way communicate with each other, absolution will be doubtful, because it is doubted whether they are morally present.

[1] Speaking speculatively, it could be said, with certain persons, that moral presence can extend even farther, for example to 40 or 50 paces, because even within this distance the human voice is usually heard; but in practice, outside a case of necessity, the safer part is to be followed.

177. (B) Hence, in practice, (a) if the penitent leaves the confessional before absolution is given, as sometimes happens, he can safely be absolved if he is certainly known to be within a few paces; otherwise, let him kindly be called back to the sacred tribunal; but if he is already far away and cannot be found, the matter is to be committed to God; but afterward, if he returns to the same confessor, let him be admonished to grieve over all his sins, even past ones, and let him be absolved.

(b) Likewise a dying man can be absolved already from the door of the room. - In battle a multitude of soldiers can be absolved, although some are at a great distance, because they form one moral whole, which is sufficiently present.

(c) Besides, in a case of necessity, all those who are perceived by some sense, even confusedly, can be absolved under condition, for example those falling from a roof, slipping into a river or sea, even if they are only seen from afar, because it is probable that those who are in some sensible way before the confessor are morally present.

178. 3° Corollaries. (A) Invalid and illicit is absolution given to an absent person, who confesses his sins sacramentally either by letters or through a messenger. This is clear from this proposition condemned by Clement VIII, June 20, 1602:[1] "It is lawful to confess sacramentally by letters or through a messenger to an absent confessor and to obtain absolution from the same absent confessor." Moreover Paul V, on July 14, 1605, in a congregation of the Holy Office, declared that this decree is valid also in the divided sense, that is, concerning confession or concerning absolution separately. Consequently absolution is invalid (a) if someone present confesses and is absolved while absent; (b) if someone absent confesses and is absolved while present. - I said that the absolution is not only illicit, but invalid; for Clement VIII prohibited the condemned proposition from ever being brought into practice in any way; but he could not have prohibited this for the article of death, unless such absolution were invalid.

[1] In Denzinger, n. 962. - Here there is question only of absolution from sins, and not of absolution from censures, which can be granted by letters, a messenger, telegraph, telephone, and other means of this kind, as will be explained in the Treatise on Censures; for when there is question of merely ecclesiastical punishments, the Church can absolve from them in every way that seems good to her.

Yet Clement VIII declared by an oracle of the living voice that he did not intend the case of a dying person destitute of the senses, whom those standing by testify to have previously sought absolution; for he is to be absolved, not indeed by force of a confession made in absence, but because, as one destitute of the senses, he is dispensed from explicit confession. - Likewise not invalid, nor illicit, if a just cause exists, is the absolution given to a penitent who confessed by letters and afterward, being present, says in a general way that he confesses the sins already set forth by letter; for in this way the confession is sufficiently repeated.

179. (B) Absolution given by telephone is very doubtful. Among theologians of today, some hold that it is not clear that this absolution is certainly invalid;[2] for those who speak by the help of a telephone, although they are physically distant, can be said to be morally present, because they truly speak with each other, and the very voice of the one speaking is truly heard by the other, so that it can be recognized as the voice of this or that person. - Others think that it is invalid;[1] for the sacraments were so instituted that they must be administered in a human and natural way; but conversation by telephone is an artificial mode of speaking with one absent, and those speaking thus, in the moral estimation of men, are not considered present, but absent. - The matter was referred to the Sacred Penitentiary, but to the proposed doubt "whether in a case of extreme necessity absolution can be given by telephone?" it replied on July 1, 1884, that "nothing is to be answered"; this indeed can signify that the solution of the doubt does not

belong to the Sacred Penitentiary, whose office is only to solve particular cases, but to the Holy Office.

[2] Ballerini P., n. 1155, *Notanda quaedam circa ritum*; Genicot, n. 267; Sabetti, n. 728, q. 7°; Berardi, *Praxis Confess.*, n. 1132, who nevertheless changed his opinion, in *Nouv. Rev. Theol.* XIX, 393 sq. and 655; Ciolli, *Directoire*, I, p. 180-182.

[1] Eschbach, in *N. R. T.*, XIX, 393; XX, 305; Noldin, n. 236; Haine, III, p. 218-219. Cf. Vacant, *Diction. de Theol.*, I, 242-243.

Whence in practice, outside a case of extreme necessity, to absolve by telephone is altogether illicit, lest the sacrament be exposed to the danger of nullity. But in a case of extreme necessity, a priest is not to be condemned who conditionally absolves by telephone a penitent who, suddenly seized by a most grave illness, should seek absolution from his sins.[2]

[2] Sabetti, n. 728. - The matter can be practical in regions where telephones are found in many private houses, especially if there are few priests and they are distant from certain parishioners.

III. On Conditional Form

Thus far concerning the absolute form, which regularly must be used. Sometimes, however, it is expedient to use a conditional form, namely one which is pronounced not absolutely, but under some condition.

180. 1° On its validity. Gerson (fifteenth century) seems to be the first who explicitly defended the validity of conditional absolution;[3] Cajetan sharply attacked his opinion;[4] yet the more common and morally certain opinion has become that this absolution, the things to be posited having been posited, is valid.

[3] *De Schismate tollendo*, among *Opera omnia*, Antwerp, 1706, t. II, p. 79; *De Unitate Ecclesiae*, p. 118.

[4] *Summula de peccatis*, Lyons, 1551, p. 3.

The general principle is that that form is invalid which leaves the effect of the sacrament in suspense, but that form is valid which by no means suspends the effect.[1]

[1] We proved this in the Treatise on the Sacraments, n. 101.

Now a condition concerning an uncertain future, for example, I absolve you, if within a month you shall make restitution, suspends the effect of the sacrament; for at the time when the sacrament is conferred, the effect is not produced, since the execution of the condition is uncertain, and moreover the intention itself of the Priest remains suspended; but at the time when the condition is verified, the sacrament no longer exists, and consequently cannot obtain its effect.

But a condition concerning the past or the present, for example, I absolve you if you have already made restitution, or if you are living, does not suspend the effect of the sacrament, and consequently does not render absolution invalid; for at the time when the sacrament is effected, the condition is already verified or not. If the former, absolution immediately produces its effect; if the latter, it is immediately invalid.

Nor should it be said that a conditional form stands in the way of the nature of this sacrament, which is administered in the manner of a judgment. For even in human judgments, a conditional sentence is not rarely passed, for example, you will go to prison unless within three days you pay the debt; or I

condemn you to prison, but, if you do not fall again into fault, for a time you will be immune from punishment. Moreover civil judgment is committed to execution by men, while the sentence of the confessor God Himself executes: therefore it suffices that God knows whether the condition has been fulfilled or not.

181. Yet a few theologians, such as the Louvain theologians and Collet,[2] have said that a condition even concerning the present invalidates the sacrament, if it is not a condition of fact (for example, if you are living, if you are capable), but of law (for example, if you are disposed, if you will to make restitution); for through a condition of this kind the nature of judgment is destroyed, since it belongs to the confessor himself to pass judgment concerning these dispositions of the penitent. - But this reason does not hold; for the confessor certainly must judge concerning the dispositions of the penitent, but in a human mode, insofar as can be done; now sometimes he judges that the matter is doubtful, and consequently, if a grave reason is added, absolution is to be granted under condition.

[2] Collet, in Migne, *Theol. Cursus*, t. XXII, 732.

Moreover, so that every doubt may be removed, it suffices that the confessor, doubting concerning the dispositions of the penitent, intend to absolve him according to the intention of Christ and of the Church under the tacit condition: if you are capable, which is held by all as valid.

182. 2° On its lawfulness. (A) Conditional absolution is lawful when these two things concur at the same time: (a) a grave reason for judging that the form pronounced absolutely would expose the sacrament to the danger of nullity; (b) a notable utility for the penitent of receiving absolution immediately.

For (a) the very nature of the sacrament requires that it be administered in the manner of a judgment; but, regularly speaking, a judgment ought to be absolute, especially in the sacred tribunal. For either the confessor is morally certain that the penitent is capable and disposed, and then he must absolve absolutely; or he judges certainly that he is incapable or indisposed, and then absolution must be denied; or he doubts, and then regularly absolution must be deferred, unless a special reason is present for receiving the sacrament immediately. (b) Moreover, if conditional absolution were given easily, both penitents and the confessor himself would easily fall into a certain negligence, and would not much care about arousing the necessary dispositions; from which it would also happen that sacrileges would gradually be multiplied.

183. (B) The chief causes on account of which conditional absolution can be given are:

(a) On the part of the confessor: if he positively doubts whether he absolved or not, - whether he omitted an essential word or not; then let him say, or rather intend (for it is better to conceive the condition in the mind alone): if you are not absolved, I absolve you. - But if he doubts whether he has jurisdiction, or whether the jurisdiction given to him has expired, is extended to such a penitent, or to such a case, and at the same time a grave reason is present for absolving the penitent immediately, then (from can. 209) the Church supplies jurisdiction, and therefore absolution can be given without condition.

(b) On the part of the penitent: in a case of necessity, if the dying person presents doubtful matter or doubtful dispositions, or if it is doubted whether he is still living or capable of absolution.

Also, outside a case of necessity, if those doubtfully disposed are about to contract marriage, or to leave the place, or wish, for a grave reason, for example, to avoid infamy, soon to receive holy communion; - or if there is a founded fear that those doubtfully disposed, if they are dismissed without absolution, will not return to the sacred tribunal, or will fall into despair; - or if there is question of the half-witted, of children whose use of reason is doubtful, and who otherwise would be deprived for a long time of the benefit of the sacrament; - or of the pious, who provide only doubtful matter, and from whom certain matter cannot be obtained, on account of their peculiar dispositions; for these can sometimes be absolved conditionally, lest they lack absolution for too long. For in these and similar cases the two conditions stated above are verified: on the one hand, the absolute pronouncing of the form exposes the sacrament to the danger of nullity; and on the other, there is a sufficient reason for absolving the penitent immediately.

184. (C) Corollaries. (a) A penitent absolved under condition must regularly abstain from communion, since otherwise he exposes himself to the danger at least of material sacrilege. Hence the confessor cannot positively tell such a penitent to receive holy communion. But if he is asked by the penitent, let him answer prudently according to the various circumstances; for example, let him say: "follow the dictate of your conscience."

(b) But there is not given a strict obligation of accusing again sins conditionally absolved, as will be better understood from the things to be said where we treat of confession. For it can prudently be judged that they were remitted; moreover, if the penitent is in good faith, as is supposed, they will be remitted in the following confession.

Art. II. On the Effects of the Sacrament of Penance

185. That the sacrament of Penance produces grace *ex opere operato* is sufficiently clear from the Treatise on the Sacraments.

(A) When the penitent is in mortal sin: (a) the grace proper to this sacrament is first sanctifying grace, or grace remissive of sin. It is called by various names, by which this effect is more clearly declared: grace of resurrection, by which the spiritually dead recover the life of grace; of healing, by which their wounds, with their cooperation, are cured; of reconciliation, by which, the injury inflicted upon God having been repaired, they are received into divine friendship. (b) To this there is annexed a right to receiving actual graces at a suitable time, by which the penitent may be able to satisfy for past sins and to avoid future ones afterward. (c) Moreover eternal punishment is remitted, and the temporal punishment due to sin is diminished. (d) But merits mortified by sin revive.

(B) But when the penitent is already in the state of grace: (a) he receives an increase of sanctifying grace with the right to actual graces, as above; (b) he obtains remission of venial sins more safely and efficaciously; (c) and also partial pardon of temporal punishment.

Since several of these things have already been declared, it will suffice to treat briefly: 1° of the remission of mortal sins; 2° of the remission of the punishment due to sin; 3° of the reviviscence of

merits. - We shall add a few things concerning the remission of venial sin, whether within or outside the sacrament.

§ I. On the Remission of Mortal Sins — I. On the Remission Itself of These Sins

186. 1° From the things said above concerning the power of the keys (n. 20 sq.), it is already permitted to infer that through the sacrament of penance all sins committed after baptism are truly pardoned before God, and that no sin is irremissible. We have already proved this from many testimonies, while at the same time explaining the texts of Scripture and of the Fathers from which the adversaries propose difficulties. - That the same sins are truly blotted out and not merely scraped away, so that they do not return on account of a subsequent sin, was proved in the Treatise on Grace, where we treated of justification.

Here it is enough to solve the difficulty which Protestants and Rationalists today propose, and which in the time of Augustine was already being urged by heretics and pagans: "You," they said, "make men sin, since you promise them pardon if they do penance." Augustine eloquently refutes this, showing that by the promise of pardon souls are induced to penance, while, on the contrary, if this hope is removed, they fall into despair, and consequently into the mire of vices: "If the entrance to penance were closed, would not that sinner add sins to sins all the more, the more he despaired of being forgiven? For he would say to himself: Behold, I have sinned, behold, I have committed a crime, now there is no place of pardon for me; penance is fruitless; I must be damned; why now do I not live as I will? Since I do not find charity there, here at least I shall feed cupidity. Why then should I abstain? Every place there is closed to me: here, whatever I do not do, I lose, because the life which is to be after this will not be given to me. Why therefore do I not serve my lusts, so that I may fulfill and satiate them?... Therefore, if you take away the harbor of penance, they will increase sins by despair." But he who has hoped for pardon cannot increase sins as he wishes; for Scripture admonishes him not to defer penance and not to be hardened in sin; for suddenly he can be struck by death and fall into the hands of the living God. Thus therefore he concludes: "Behold, the providence of God has watched over us for both things. Lest by despairing we should increase sins, the harbor of penance has been proposed; again, lest by hoping we should increase them, the day of death has been given as uncertain."[1]

[1] St. Augustine, sermon 352, n. 9; P. L., t. XXXIX, p. 1559-1560.

187. Corollary. From this it follows that one mortal sin cannot be remitted without another. For (a) sin is not taken away except through the infusion of habitual grace; but any mortal sin is directly contrary to habitual grace and excludes it; therefore one lethal sin cannot be remitted without another: for, if one remains in the soul, it totally excludes grace. (b) Sin cannot be remitted without true penance, to which it belongs to detest sin insofar as it is an offense against God; but the same reason applies to one as to the other lethal sins, all of which truly offend God; therefore someone cannot truly be penitent concerning one sin without repenting of all the others, if he actually thinks of them.[1]

[1] St. Thomas, 3, q. 86, a. 3.

II. On the Mode by Which the Sacrament of Penance Remits Sins

188. The sacrament of penance, like the other sacraments, produces its effects *ex opere operato*, and consequently not only declares that sins have been remitted, but truly causes this remission. Trent openly defined this against the Protestants, who contended that sins are remitted by faith, and that the absolution of the priest is nothing other than a bare ministry of pronouncing and declaring that sins have been remitted:[2] "If anyone shall say 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, provided only that he believes that he is absolved... let him be anathema."

[2] Trent, sess. XIV, can. 9.

But before the matter was defined, certain Scholastics held, with Peter Lombard, that by the absolution of the priest sins are not properly dismissed, but are shown to have been remitted (above, n. 131). Yet their opinion differed greatly from the errors of the Protestants. For they did not teach that sins are remitted by faith alone or confidence, but at the same time through contrition and the ministry of priests. Nevertheless they had not rightly understood what part the sacrament of penance has in the remission of sins; according to them, God worked this remission with the priest, but not through the priest.[3] Afterward, the matter having been better examined, St. Thomas and Scotus and their disciples understood, from the sayings of Scripture and of the Fathers, that the sacraments are not only conditions without which not, but also secondary and instrumental causes of grace, as has been set forth in the Treatise on the Sacraments, n. 44-45.

[3] Richard of St. Victor (*de potest. ligandi atque solv.*, ch. 12) had already refuted this opinion: "There exists an opinion of certain persons concerning the power of binding and loosing so frivolous that it seems rather to be laughed at than refuted. For they think and preach that priests do not have the power of binding and loosing, but of showing men to be loosed or bound. But surely does the Lord say: whatever you shall show bound will be bound, and whatever you shall show loosed will be loosed? They say that apostolic men do not have the power of remitting or retaining sins, when the Lord says this. They say that they have only the power of showing, when the Lord does not say showing." Yet he himself did not think rightly; for he said that sins are remitted through contrition, before absolution is given, but only conditionally, that is, on this condition, that absolution afterward be received: therefore this was not the cause of remission, but only a condition without which not. Cf. Vacant, *Dict. de Theol.*, t. I, p. 174.

§ II. On the Remission of the Punishment Due to Sin

189. (A) The sacrament of penance always remits eternal punishment together with the fault. It is certain; (a) for Trent teaches[1] that a penitent, after receiving absolution, is bound to satisfy through fastings, alms, and prayers, "not indeed for eternal punishment, which is remitted either by the sacrament or by the intention of the sacrament together with the fault; but for temporal punishment, which, as the sacred letters teach, is not always wholly dismissed for them, as happens in Baptism"... (b) The reason is clear from the things said; for the remission of mortal sin occurs through the infusion of habitual grace; but habitual grace makes us sharers in the divine nature, friends of God, and His adoptive children with a right to eternal beatitude, as we demonstrated in the Treatise on Grace (n. 139 sq.); therefore it remits eternal punishment.

[1] Trent, sess. VI, ch. 14.

190. (B) The Sacrament of Penance also diminishes the temporal punishment due to sin, and indeed in a twofold way:

(a) By reason of absolution; for, as Lugo says,[2] since it is certainly for God, when He commutes eternal punishment into temporal punishment, to be able to change it into a graver and more lasting temporal punishment. Therefore we ought to give thanks to God, both because He has remitted eternal punishment, and because He has not commuted it into some other greater temporal punishment, as He most justly could; and in this sense eternal punishment is never remitted without some temporal punishment being remitted at the same time, into which it could have been commuted.

[2] Lugo, disp. VIII, n. 64.

(b) By reason of satisfaction, or of the penance imposed by the Priest; for, according to Trent (ch. 3), satisfaction is one of the three parts which pertain to the integrity of the sacrament and concur toward the full and perfect remission of sins; but satisfaction does not directly concur toward the remission of fault, since this is remitted before satisfaction is completed; therefore it concurs toward the remission of punishment. This indeed it accomplishes *ex opere operato*, according to the common opinion, which holds that the three acts of the penitent are the proximate matter of the sacrament.

(C) The Sacrament of Penance does not always take away the whole temporal punishment, as we have already proved, but sometimes it does accomplish this, namely if contrition is most intense. For since temporal punishment of this kind is finite, contrition can be so intense that it remits it adequately and totally.

§ III. On the Reviviscence of Merits

191. State of the question. When someone is justified by the sacrament of Penance, he receives, together with habitual grace, the infused virtues which he had lost through sin: for since virtues of this kind flow from grace, as properties from essence, when grace is restored, the virtues are likewise restored, and indeed with an intensity proportioned to the perfection of the subject's disposition. But besides this, the question is whether merits mortified by sin revive.

[1] St. Thomas, 3 p. q. 89; Suarez, Opusc. V, *De meritis mortificatis*; Salmantic., *de Merito*, disp. V; Billuart, diss. III, a. 5; Palmieri, th. 19; de Augustinis, p. I, art. 10; Billot, p. 94-108.

For the understanding of this, a few things must be noted beforehand concerning various works in relation to merit. (a) Living works are called those which are done in the state of grace, with actual grace stirring and assisting, both because they are from a spiritually living principle, and because they merit eternal life. (b) Dead works are those which, although good and supernatural, are done in the state of sin, and consequently are not meritorious of eternal life. (c) Death-bearing works are those which deprive a man of the life of grace, such as mortal sins. (d) Mortified works are called those works which, done in the state of grace, are hindered from their effect by subsequent mortal sin, insofar as they are no longer able to lead a man to eternal life. Now the question is whether merits thus mortified can revive. Theologians commonly answer affirmatively, but there is controversy concerning the mode and degree in which they revive.

192. Thesis: When sin has been remitted through penance, works previously done in charity and mortified by subsequent sin revive. Thus commonly.

(a) The matter cannot be proved by Scripture alone; but the Fathers use two texts to propose their doctrine concerning reviviscence. First they allege these words of the epistle to the Hebrews: "For God is not unjust, that He should forget your work and the love which you have shown in His name, you who have ministered to the saints and do minister";[1] but, as the Fathers and theologians argue, here there is question of works done in grace and mortified; for the Apostle addresses the Hebrews, some of whom had fallen into sin; therefore God does not forget the good works of those who do penance, but remunerates them. To the point St. Epiphanius says:[2] "In this you see how he pronounced that that second restoration could by no means be made, and yet he did not exclude from salvation those who repented of their sin; but he also said that they were near to salvation, and that God is rightly the receiver of the things done by those who take up absolute penance for their offenses." The Fathers deduce the same from another place:[3] "So great things have you suffered without cause, if nevertheless without cause"; for Jerome says on this place:[4] "Whoever has labored on account of faith in Christ and afterward has fallen into sin, just as he is said to have suffered the former things without cause while he sins, so again he does not lose them, if he returns to his former faith."

[1] Heb. 6:10.

[2] St. Epiphanius, Haeres., 59, n. 2; P. L., XLI, 1019.

[3] Gal. 3:4.

[4] Comment. on Gal., l. I, ch. 3; P. L., t. XXVI, p. 350.

(b) From Trent also the thesis can be gathered: for it declares that the good works of the just "truly merit an increase of grace and the attainment of eternal life, provided, however, that he has departed in grace";[5] but there it is not required that someone persevere without interruption from first justification until death, but only that he depart in grace; therefore, if someone has sinned mortally and afterward repents, his merits revive.

[5] Trent, sess. VI, can. 32.

(c) It is recommended by reason. Works done in charity, if they are considered according to themselves, always remain in divine acceptance, and therefore they are said to be mortified only because through sin they are hindered from their effect, insofar as one sinning mortally is unworthy of eternal life; but such an impediment is taken away through penance; therefore works previously mortified, through penance, recover the force of leading to eternal life the one who performed them.[1] Moreover God does not will to punish a remitted sin with any eternal punishment; but if merits previously acquired were not restored, once the fault has been remitted, sin would be punished with an eternal punishment; for the privation of glory corresponding to those merits would be a true punishment, and indeed an eternal one; therefore.

[1] St. Thomas, 3, q. 89, a. 5.

193. But concerning the mode and degree in which merits revive, there is dispute among theologians, and nothing certain can be defined:

(a) The first opinion holds, with Banez (2. 2. q. 24, a. 6), that mortified works revive only in this sense, that glory will be given to a just man rising again from sin by a twofold title, namely both on account of the preceding merits and on account of the new ones acquired from the last justification, yet not a greater glory than is due to these latter merits; nevertheless there will be some accidental reward for the preceding works, insofar as the elect will rejoice concerning their reviviscence. Yet this opinion is deservedly rejected, since it seems to deny the reviviscence itself: for what does it profit to receive the same quantity of glory by a twofold title?

(b) The second opinion teaches that all mortified works are indeed restored immediately after penance, with respect to the merit of eternal life, but not with respect to the quantity of habitual grace previously had; namely the habitual grace itself previously lost will not be restored except at the instant of death, or after death, at the first instant of glorification. The reason is that grace in justification is not given except according to each one's disposition and cooperation;[2] but not according to merits previously acquired. Thus Scotus and the Salmanticenses.

[2] This principle St. Thomas explains thus, q. 89, a. 2: "Forms which can receive more and less are intensified and remitted according to the diverse disposition of the subject... And from this it is that according as the motion of free will in penance is more intense or more remiss, according to this the penitent obtains greater or lesser grace."

(c) According to the third opinion, which Dominic Soto and Ledesma defend, merits so revive according to the degree of the present disposition, that if someone elicits an act of contrition as five, he receives ten degrees of grace, five by reason of preceding merits, and five by reason of the actual disposition.

(d) But Suarez (op. cit., disput. II), with many moderns, holds that all merits acquired before are immediately restored to the penitent sinner, both with respect to the right to glory and with respect to grace. For merits of this kind, from the things said, always remain in the acceptance of God, and are hindered from their effect only by mortal sin; therefore, when sin has been remitted, the impediment is immediately removed, and nothing prevents past merits from immediately obtaining their whole effect. We freely embrace this opinion as the more benign, but at the same time we confess that the solution of this question depends on the will of God alone, which is not sufficiently known to us from Scripture and Tradition.

Scholion: On the Remission of Venial Sin

194. Thus far we have directly treated of the remission of mortal sin; yet it is expedient to add a few things concerning the remission of venial sins.

[1] St. Thomas, 3 p. q. 87; Suarez, disp. XI-XII; de Augustinis, p. I, a. 9.

(A) Venial sin cannot be remitted without grace; for, from the things said in the Treatise on Grace, nothing supernatural can be accomplished without grace; but the remission of venial sin is something supernatural, since it removes an impediment by which we are delayed from the supernatural end. Hence in the Second Council of Orange, can. 14 (Denzinger, n. 157), it is read: "No wretched man is freed from any wretchedness unless he is forestalled by the mercy of God."

195. (B) Venial sin joined with mortal sin cannot be remitted without the infusion of habitual grace. For the remission of any fault supposes divine friendship; for it is a favor granted gratuitously,

not owed; but divine friendship is not restored to the sinner except through the infusion of habitual grace. But venial sin in one who is already in the state of grace can be remitted of itself without the infusion of habitual grace; for, as St. Thomas says (q. 87, a. 2), each thing is taken away by its opposite; but the opposite of venial sin is not habitual grace, which is not lost through it, but the fervor of charity; therefore venial sin can be taken away of itself through a fervent act without the infusion of grace. This is illustrated by a comparison: for just as a body can happen to be stained in two ways, by the privation of beauty or by the superaddition of mud or dust, so also the soul is stained in two ways, by the privation of the beauty of grace or by a disordered inclination to temporal things, or venial sin: the former stain can be taken away only by the infusion of grace, but the latter is removed by this very fact, that by an act of fervor the disordered adherence to temporal things ceases.

196. (C) Venial sins of the just can be remitted *ex opere operato* and *ex opere operantis*: (a) *ex opere operantis*, namely through an act of contrition or of perfect charity, according to all, indeed more probably through an act of attrition. The Angelic Doctor (q. 87, a. 1) thus proves that some contrition is required for the remission of venial sin: venial sin, although it is not aversion from God as last end, contains some disorder, insofar as it delays the affection of man, lest it be borne promptly toward God; but such disorder cannot be taken away except by a contrary disposition, namely detestation and retraction of sin: for if the will perseveres in that disordered adherence to temporal things, the sin itself will adhere to the soul, since, while the cause remains, the effect remains.

Surely the best disposition is perfect contrition, since it takes away even mortal sin; but more probably attrition also suffices; for venial sins, if they are compared with mortal ones, are light, and consequently the same disposition is not required for the remission of venial sins as for mortal sins; therefore less perfect contrition, or attrition, suffices. Moreover the one attrite concerning venial sin immediately becomes contrite through habitual charity, as was said concerning the attrite person receiving the sacrament of penance, above n. 142.

Nor is it necessary that this attrition be formal; virtual is enough, for example when someone is borne toward God in such a way that whatever would occur to him that might delay him from this motion would displease him, and he would grieve that he had committed it, even if he does not actually think of it.

(b) *Ex opere operato*, through the reception of the sacraments, provided that there is no obstacle, that is, virtual or actual complacency in venial sin; this indeed is certain concerning Baptism, Penance, and Extreme Unction, which have the remission of sins as their proper effect; it is also asserted more probably concerning the others, which were instituted for the sanctification of souls, and therefore for fostering the fervor of charity, to which venial sins are opposed. But sacramentals, as we said elsewhere, remit venial sins indirectly, by stirring up sentiments of contrition and charity in the soul.

197. (D) One venial sin can be remitted without the others, namely if someone truly grieves over one, but not over the rest. Whence only then is full remission of all venial sins obtained when no affection for venial sins is retained. For from the things said, venial sin is not remitted unless it is at least virtually detested, and moreover one can be retracted without the others displeasing.

Conclusions of the Dogmatic Part

198. 1° Christ truly instituted the sacrament of Penance by handing over to the Church the power of the keys, or the power of remitting and retaining sins, and at the same time by imposing upon the Christian sinner the duty of submitting himself to this power by confession of grave sins, which contrition and the intention of satisfying must accompany.

2° Therefore the Sacrament of Penance flourished from the beginning, with all its essential parts, but the manner itself of administering it was diverse according to diverse times.

3° The present penitential discipline gradually prevailed from a twofold cause especially, namely from a clearer understanding both of divine mercy toward sinners and of the efficacy of absolution.

Scholion: A Comparison Is Instituted Between the Virtue and the Sacrament of Penance

199. From the things said in the dogmatic part of this Treatise, it can be inferred in what the virtue and the sacrament of penance agree and in what they differ: -

(a) By reason of nature. The virtue and the sacrament are concerned with one and the same object, namely personal sin insofar as it is to be retracted and expiated by congruous satisfaction. Wherefore they consist substantially in the same acts, confession, contrition, and satisfaction, yet to be elicited in a diverse way. The confession which the virtue requires is only confession before God, and therefore can be merely internal; confession, in the sacrament, must be made before a priest, and therefore must be manifested by some visible sign. - Contrition, in each case, imports detestation and sorrow concerning sin committed, and also a firm purpose of not sinning henceforth; but, in the sacrament, it must be manifested by some sensible sign, while, in the virtue, it can be merely internal. With the sacrament attrition suffices, while the virtue alone does not remit mortal sin without contrition. Satisfaction, in order to be sacramental, must be determined by the confessor himself; outside the sacrament, it can be chosen by the sinner himself, provided that it is morally proportioned to the sin committed.

The sacrament embraces more elements than the virtue; for, besides the three acts set forth above, it requires the absolution of the priest, which regularly must be preceded by an integral manifestation of mortal sins made to the minister. Moreover, however, not so perfect a contrition is required when absolution is received.

The virtue and the sacrament can be repeated indefinitely, whether with respect to the same sins or with respect to different sins.

200. (b) By reason of effect. In each case, the intended effect is the same, namely the remission of sin through the infusion of sanctifying grace; and so each can be called the second plank after shipwreck. But the mode of operating is diverse: the virtue is only a disposing cause, which does not produce, but obtains the remission of sin *ex opere operantis*; the sacrament is truly an efficient cause, although secondary and instrumental, insofar as, from the power of the passion of Christ, it truly confers grace remissive of sin *ex opere operato*.

(c) By reason of necessity. Each is necessary once grave sin has been posited, yet in a diverse way. The virtue is necessary by necessity of means, and indeed by natural law, not only in intention, but also in reality; the sacrament, as a positive institution, is necessary indeed by necessity of divine precept, indeed, according to some, by necessity of means, but only in intention. Therefore one who cannot actually receive absolution can be saved through perfect contrition with the intention of the sacrament.

(d) By reason of subject. The subject of the virtue is any sinner, even a pagan; while the subject of the sacrament is only a baptized sinner, since baptism is the gate of all the sacraments.

(e) By reason of antiquity. The virtue, which is required by natural law, was necessary at every time, as soon as any mortal sin had been committed; the sacrament, as something positively instituted, was not necessary except at the time when the necessity of it was sufficiently promulgated.

These are the chief differences; the others are already clear from the things said, or will be better understood from the things to be said in the moral Part.

201. Once those things chiefly to be believed concerning the sacrament of Penance have been declared in the dogmatic part, there remain to be set forth the things which have more regard to practice.

All those who have the care of souls know how great is the importance of applying themselves diligently to the study of this matter: for frequently they sit in the sacred tribunal, and there, whether for raising sinners from the mire of vices, or for raising pious persons to higher perfection, they ought to be endowed with accurate and abundant knowledge, all the more because they have manifold and intricate questions concerning every matter that pertains to the spiritual life, which must be solved alone and frequently without delay.

Now the practical doctrine concerning the sacrament of penance is referred to two heads, namely the duties of the penitent, and also the power and duties of the confessor.

Duties of the penitent:
- Contrition.
- Confession.
- Satisfaction.

Confessor:
- Power:
  - Approbation.
  - Jurisdiction.
- Duties:
  - With respect to all penitents.
  - With respect to different penitents.
  - With respect to abuses to be avoided.

Moral Part — Chapter I: On the Duties of the Penitent

Concerning the Duties of the Penitent

202. All the duties of the penitent are reduced to three, namely contrition, confession, and satisfaction, concerning which we shall speak separately.

Art. I. On Contrition

The notion and necessity of contrition having been declared above, n. 127, it will be enough to weigh two things, namely the qualities with which contrition must be clothed for obtaining pardon of sins, and also the qualities of the purpose included in contrition.

§ I. On the Qualities of Contrition

203. Contrition, whether perfect or imperfect, must be clothed with certain conditions, so that it may produce its effects with or without reception of the sacrament. Namely it must be (a) sincere, or internal, since it is sorrow of the soul; (b) supernatural, that is, elicited under the influence of actual grace, and conceived from a supernatural motive, since it is ordered to a supernatural end, namely the remission of sins; (c) universal, namely extending itself to all mortal sins, since the reason is the same for all, nor can one be remitted unless all are remitted, and consequently retracted; (d) appreciatively highest, insofar as sin must be esteemed and detested as the highest evil, and therefore more than any other evil; (e) in order to the sacrament, whenever the remission of sins is to be obtained by absolution. - Concerning these we shall speak separately.

[1] St. Thomas, Supplement, q. 2-3; Suarez, disp. XX, sect. 2; Lugo, disp. V and XIV; St. Alphonsus, H. A., tr. XVI, ch. 2; Collet, in Migne, *Theol. Curs.*, XXII, 196-214; Lehmkuhl, n. 283 sq.; Hilarius Sexten., § 37, n. IV; Konings, n. 1349-1350; Ball. P., n. 42-142; Genicot, n. 272-279; Noldin, n. 244-251.

I. On Sincere or Truly Internal Contrition

204. 1° Principle: Contrition must be sincere or internal, that is, truly conceived in the heart or will; and consequently merely external or feigned contrition does not suffice. It is certain.

(a) According to Trent,[1] contrition is sorrow of soul, and therefore must be conceived in the mind; and also detestation of sin: but detestation is an act of the will.

[1] Sess. XIV, ch. 4.

(b) Whenever contrition is treated in Scripture, the conversion of the heart is required, which, according to biblical usage, signifies the conversion of the will: "Be converted to me with all your heart... and rend your hearts, and not your garments."[2] - "Make yourselves a new heart and a new spirit."[3]

[2] Joel 2:12-13.

[3] Ezek. 18:31.

(c) This is otherwise consonant with reason; for contrition, as the reparation of sin, ought to proceed from that source from which sin came forth; but sin proceeds from the heart or from the will, as Christ Himself bears witness: "For from the heart come forth evil thoughts, murders, adulteries, fornications, thefts, false testimonies, blasphemies";[4] therefore contrition ought to proceed from the heart, or will.

[4] Matt. 15:19.

205. 2° Corollaries. (A) Merely estimated contrition does not suffice; in other words, he who in good faith thinks himself to be attrite, while in reality he is not, does not obtain the remission of sins, although, on account of good faith, he is immune from the sin of sacrilege. Thus commonly against certain ancient theologians, whom Ballerini follows.[5] For merely estimated contrition is not true sorrow of soul, which Trent requires for the remission of sin; it does indeed suffice that someone be in good faith, and consequently immune from the sin of sacrilege; but it does not suffice for taking away the aversion from God already existing, and consequently not for the remission of sin.

[5] Ball. P., n. 52 sq., with the authors cited there. - Palmieri, who edited the *Opus Morale* of Ballerini, notes (in the note to n. 76) that this opinion, although formerly defended by theologians of great name, is today deservedly commonly rejected.

Sometimes, however, there are found sinners of timorous conscience who desire to have sorrow and grieve that they do not grieve, namely who have tried to elicit attrition, but fear lest the proper disposition be lacking to them; then the confessor should inquire whether they seriously will to abandon sin and to use the means for avoiding occasions of sin. If they answer affirmatively, it can be judged that they are truly attrite, although their sorrow is not sensible.

206. (B) The mere affirmation of the penitent does not always suffice for judging that he is attrite; but, in order that a prudent judgment be formed, it is necessary to attend to several circumstances. (a) The reason for the former is that the penitent can either be deceived or deceive the confessor; this can happen especially when he approaches the sacred tribunal not by his own motion, but because he is urged to this by the persuasion of superiors, or parents, or friends, or from habit, or from rule; or when he is moved by imagination and sensibility rather than by a reasonable motive.

(b) The reason for the latter is that the true disposition of the penitent can be discerned from many circumstances: from the character of the penitent, from the motives by which he is impelled to confessing, from the care which he used in preparation, or from a change of life, or flight from occasions of sinning, or use of remedies previously prescribed. And so in doubtful cases let the confessor attend to all these things, as will be declared more fully below, where we treat of the duties of the confessor, namely concerning absolution to be denied or deferred.

207. (C) Contrition, in order to be part of the sacrament, must be manifested by some sensible signs; this is done regularly by the recitation of some formula. No special formula is required, but it is very expedient to recite that which is found in the catechism; yet care must be taken that children and the uneducated do not place their whole contrition in the external recitation of it.

208. 3° Controversy. Here it can be asked whether a formal act of contrition is required for rightly receiving the sacrament of penance, or whether virtual contrition, included in the love of God, suffices. This indeed, if it is perfect, suffices for the remission of sin outside the sacrament; but it is controverted whether it suffices for the reception of the sacrament. Theologians more commonly deny it with Suarez;[1] for contrition is an essential part and the proximate matter of the sacrament; but the proximate matter of the sacrament ought to be the formal act instituted by Christ Himself, nor does another act that only virtually embraces contrition suffice. - Yet some, such as Lugo and Ballerini,[2] affirm it; for those who elicit an act of love certainly place no obstacle to the sacrament; therefore they receive its effect. - But this controversy seems rather useless; for he who loves God above all things and confesses his sins by that very fact formally detests his sins, although he does not express this detestation by explicit words.

[1] Suarez, disp. XX, sect. 6, n. 2.

[2] Lugo, disp. V, n. 92 sq.; Ball. P., n. 80 sq.

II. On Supernatural Contrition

209. 1° Principle: Contrition must be supernatural by reason of the principle and by reason of the motive. It is certain.

(A) By reason of the principle, that is, elicited under the influence of actual grace enlightening the mind and assisting the will. For contrition, as a proximate disposition for obtaining or increasing justification, is a supernatural work; but, from the things said in the Treatise on Grace (n. 50), no supernatural work can exist without actual grace. - But this grace is denied to no one who prays; whence it must be trustingly sought from God.

(B) By reason of the motive, or on account of a motive which is referred to God, according to all, and moreover apprehended by the light of faith, as is commonly held against a few, as Ballerini.[1] For (a) there ought to be a proportion between the means and the end to be obtained; but the end to be obtained, namely the remission of sin through the infusion of sanctifying grace, is altogether supernatural; therefore the act of contrition must be supernatural; but it would not be wholly supernatural unless it were elicited under the influence of a motive known by faith; for on the one hand, an act takes its value chiefly from the motive, and on the other hand, the motive is not supernatural unless it is known by revelation. (b) Besides, Innocent XI, on March 2, 1679, condemned this proposition (57):[2] "It is probable that natural attrition, provided it is honorable, suffices"; therefore it is not probable that such attrition suffices.

[1] Ball. P., n. 48.

[2] In Denzinger, n. 1074. - See this proposition clearly set forth in Viva, *Damnatae Theses*, on propos. 57.

Ballerini indeed contends that it suffices that the motive be apprehended by one who is endowed with supernatural faith, without, however, that motive being perceived by faith properly so called. But in practice there is scarcely any difficulty; for in fact all the motives of contrition which Trent enumerates and which are proposed to the faithful are an object of faith properly so called, and can and usually are apprehended by the light of faith. Therefore no difficulty arises from the common opinion.

210. 2° Corollaries. (A) For truly supernatural contrition all motives which are known by faith suffice, namely not only perfect and imperfect love of God, but also the turpitude of sin, fear of hell and of punishments. - For these are truly supernatural, as will be clear from their exposition.

(a) The turpitude of sin is that moral foulness which arises from opposition to the supernatural order, and can be considered on the part of God, on the part of Christ, and on the part of the sinning soul.[1]

[1] Cf. Lehmkuhl, vol. I, n. 225-226; Reuter, *Neo-conf.* n. 12; Manning, *The Love of Jesus to Penitents*, ch. III; Tanquerey, *De peccatis*, n. 463-465.

On the part of God, mortal sin, of which there is chiefly question, is rebellion against God, who is the supreme Lord; injustice, because it is opposed to the strict right which God has to be our ultimate end; irreligion, because it is opposed to the right which He has to be honored: "by the transgression of the law you dishonor God";[2] ingratitude, because He is the supreme benefactor (creator, conserver, redeemer, sanctifier), and we use His benefits for offending Him, and indeed at the very time when He heaps benefits upon us; insult, since we commit sin in the sight of God: "against Thee alone have I sinned, and I have done evil before Thee";[3] contempt of God, since the vilest creature is preferred to God, according to that saying:[4] "They have forsaken me, the fountain of living water, and have dug for themselves broken cisterns, which cannot hold waters"; impenitence, if someone adheres to sin for a long time.

[2] Rom. 2:23.

[3] Ps. 50:6.

[4] Jer. 2:13.

On the part of Christ, mortal sin is deicide, since it caused the death of the Lord and, insofar as can be done, renews it: "crucifying again to themselves the Son of God";[5] sacrilege, since it is the violation of the divine temple, according to that saying:[6] "the temple of God is holy, which you are."

[5] Heb. 6:6.

[6] 1 Cor. 3:17.

On the part of the soul, mortal sin is spiritual suicide, since it brings death upon the soul; deformity and defilement, since it deprives the soul of its supernatural beauty; submission to diabolical tyranny, since the sinner makes himself the servant of the devil: "for by whom a man is overcome, of him also he is the servant."[7]

[7] 2 Pet. 2:19.

211. (b) Fear of eternal punishments, and the hope of obtaining eternal beatitude, are certainly, according to all, supernatural motives.

But it is controverted whether fear of the punishments of this life is also supernatural and sufficient for contrition. Now it is certain that temporal punishments considered in themselves, insofar as they afflict the sinner with natural evils, are not a supernatural motive; thus the loss of reputation, health, or merely temporal goods, or fear of prison or a fine, and other motives of this kind, do not suffice of themselves for contrition: for they do not cause detestation of sin insofar as it is an offense of God,

nor do they convert the sinner to God, as is seen in the example of Antiochus, who in vain grieved over sins on account of the very bad illness by which he was afflicted.[1] - But if temporal punishments are considered in the light of faith, as chastisement intended by God the avenger for sins, and as, so to speak, the beginning of eternal punishments, they already offer a supernatural motive, and, according to the common and morally certain opinion, suffice for attrition. Thus, for example, the Ninevites did penance on account of fear of the destruction of the city,[2] and, according to Trent,[3] obtained mercy from the Lord; likewise God often threatened temporal chastisements to the Jews, in order to lead them back to Himself.

[1] 2 Macc. 9:11-29.

[2] Jon. 3:4.

[3] Trent, sess. XIV, ch. 4.

Whatever may be the case, it is certain that consideration of temporal losses is most useful for leading hardened sinners to higher and better motives: for if they are terrified by these passing evils, why would they not fear eternal ones, if, at the suggestion of the confessor, they think about them?

212. (B) An explicit act of faith and hope, distinct from the act itself of contrition, is not required. A few theologians had affirmed that this is required, because Trent, discussing the dispositions for justification,[4] enumerates these acts of faith and hope. But this is commonly rejected by theologians, because the Council, discussing contrition, does not require them; moreover, according to St. Alphonsus (n. 439), he who approaches confession truly penitent necessarily elicits explicitly (if not reflexively, at least exercitively) acts of faith and hope; for since he approaches to receive the remission of sins, without doubt he also explicitly believes that they are to be remitted by the power of the sacrament, and explicitly hopes that God will remit sins to him on account of the merits of Christ. Therefore an act of faith or hope distinct from the act itself of contrition is not required. - Yet it is expedient that acts of this kind be recited as a preparation for contrition.

[4] Trent, sess. VI, ch. 6.

III. On Contrition Appretiatively Highest

213. 1° Principle: Contrition must be appreciatively, but not intensively, highest. It is certain.

Appreciatively highest contrition is that by which the penitent practically esteems mortal sin as the greatest of all evils, and is prepared to sustain all things rather than offend God. Intensively highest contrition is that which by its vehemence surpasses every other sorrow.

An act of contrition intensively highest is not required, but an act even remiss suffices, provided that it excludes every affection for mortal sin. For the intensity of an act does not vary its species; and, as St. Thomas rightly says,[1] "however small the sorrow may be, provided it suffices for the character of contrition (i.e., provided we detest sin above all things), it blots out every fault." - Therefore it remains to be proved that contrition appreciatively highest is required.

[1] Supplement, q. 5, a. 3.

(a) Contrition ought to involve that disposition by which, at least through absolution as mediator, the sinner pleases God; but unless someone loves God more than father, i.e., unless he consents to be deprived rather of every created good than of the friendship of God, he cannot please God, according to that saying of Christ:[2] "He who loves father or mother more than me is not worthy of me." (b) From Trent,[3] contrition ought to exclude every affection for sin and every will of sinning; but it cannot accomplish this unless it is highest appreciatively; for unless someone esteems sin as the greatest of all evils, at some time he will choose sin rather than the evil which is apprehended as greatest; therefore. (c) Right reason demands that we pursue with appreciatively greatest hatred that which is truly the greatest evil; but sin, as at least objectively infinite offense of God, and as depriving man of the greatest goods, is the greatest of all evils; therefore it must be supremely detested.

[2] Matt. 10:37.

[3] Sess. XIV, ch. 4.

214. 2° Corollaries. (A) For contrition appreciatively highest, there is not required, nor is it expedient, an explicit comparison of sin with other evils in particular. (a) It is not required; for just as by faith we firmly believe revealed things without comparing divine authority with other authorities, and we love God above all things without comparing Him with creatures, so likewise we can detest sin above all evils without comparing it with the other evils.

(b) It is not expedient; for, as St. Thomas says,[1] just as delectable things move more when considered in particular than in common, so terrible things terrify more if they are considered in particular; therefore it would be imprudent to propose certain evils in species, for example the cruelest kind of death, a most grave injury, or the loss of one's whole fortune, lest perhaps these particular evils move the penitent more than spiritual losses. For all these evils are hypothetical, not impending, nor even probable; if sometimes they occur, the grace of God will be given for patiently undergoing them; meanwhile each day has enough of its own evil. It is enough that penitents resolve within themselves to do, when occasion is given and with the help of the grace of God, all those things which conscience will dictate at that time; for many things appear impossible which, when they occur, become easier by the grace of God.[2]

[1] Quodlibet, I, a. 9.

[2] Therefore the confessor would act imprudently who would address a fragile penitent, asserting that he is well disposed, in this way: "Are you truly prepared to abstain from all and each of these sins, not only for some days, but also through your whole life? If such and such temptation occurs, what will you do? Consider how much violence you must inflict on yourself, how much vigilance, and indeed continual vigilance, you must exercise; think that ordinary means do not suffice, but extraordinary ones are desired, fasts, mortifications, etc. Are you prepared for all these things?" For these or similar words are suited not to arousing contrition, but rather to destroying it. But rather he should be exhorted to use means proportioned to his strength, and confidently to have recourse to God in graver temptations. - Thus almost Berardi, *De Recidivis*, 5th ed., n. 49.

215. (B) For contrition appreciatively highest, sensible sorrow is not required, or sorrow which overflows into the sensitive appetite and breaks forth into tender affections of the heart, sighs, and tears; and consequently neither is sorrow required which is more sensible than that which is often felt on account of temporal losses, for example, the death of relatives and friends. For contrition does not reside in sensibility, but in the will, with the judgment of the intellect

going before; moreover, sensible emotion is not in our power, and it can happen that someone, without sensible sorrow, grieves more vehemently than another who is prone to emotions of this kind. Sensible signs of sorrow are indeed not to be despised; indeed sometimes they are true indications of more vehement contrition; but what must especially be weighed is whether the penitent esteems sin as an evil more grave than the others, and therefore is prepared to suffer other losses in general rather than gravely offend God.

IV. On the Universality of Contrition

216. 1° Principle: Contrition must be universal with respect to mortal sins, but not necessarily with respect to venial sins. It is certain.

(A) With respect to mortal sins, we must detest not only all those which have been declared, but also those which have been omitted on account of forgetfulness or a legitimate reason. For (a) we must detest sins insofar as they are an offense of God and deprive us of His friendship; but this reason extends itself to all mortal sins, even those which could not be declared on account of a legitimate reason; for each and every mortal sin grievously offends God, and indeed in such a way that they deprive us of divine friendship, as is clear from what was said above (n. 210); therefore we must detest all and each.

(b) Moreover, contrition is ordained to the remission of sin; but, in the present order of things, one mortal sin cannot be forgiven without the others, since it is not remitted except through the infusion of sanctifying grace, which cannot enter a soul in which one mortal sin remains; in truth no one can be both friend and enemy of God at the same time: now he who is adorned with sanctifying grace, by that very fact, is the friend of God, while he who retains one mortal sin is His enemy; therefore one mortal sin cannot be forgiven without the others; therefore contrition must extend to all mortal sins, since no mortal sin is remitted without contrition.

(c) Hence Scripture often urges sinners to retract all sins, so that they may be able to obtain pardon:[1] "Be converted, and do penance for all your iniquities, and iniquity shall not be your ruin. Cast away from you all your transgressions... and why will you die, O house of Israel?"

[1] Ezek. 18:30-31.

217. (B) With respect to venial sins, it is not required that contrition extend to all; for venial sins do not destroy the friendship of God, nor separate us from the ultimate end, so that one can be remitted without another. Besides, genuine sorrow can be conceived for one venial sin without being conceived for another, at least when these sins are of diverse kinds; for example, I can grieve over a lie, on account of the special malice inherent in it, without grieving over a slight act of pride or of intemperance.

218. 2° Corollaries. (A) It is not required that the penitent run through each mortal sin and grieve formally and distinctly for each, but it suffices that he detest them virtually and implicitly by a motive common to all. For the motives of contrition are of themselves universal, namely those on account of which we detest sin insofar as it is opposed to the attainment of the ultimate end, or insofar as it offends God, infinitely good and infinitely perfect, etc.; moreover these motives, when they are truly conceived, extend themselves to all and each of the sins, and that

sufficiently, although virtually and implicitly; therefore it is not necessary that each be run through in the mind, and that a formal act of contrition be elicited for each. This, moreover, is often very difficult, and in some cases, for example, in the matter of chastity, dangerous. But as often as it can be done without danger, it is to be recommended, as useful for exciting a more vivid contrition.

This reason, however, evidently does not hold if someone hates some mortal sin on account of its special turpitude; for such a motive does not extend itself to other sins of diverse species; for example, if someone hates theft on account of its special turpitude, it does not follow from this that he detests an act of intemperance.

Hence it is altogether expedient that penitents, for the sake of greater security, conceive sorrow from a universal motive, so that in this way even those sins about which they are not actually thinking can be retracted. And this, moreover, is altogether easy for him who already sincerely grieves over one mortal sin: as soon as he no longer adheres to sin, he does not with difficulty reject all those things which are able to cause the loss of eternal beatitude.

219. (B) He who knowingly and willingly accuses only venial sins, having no contrition for them, sins gravely; for by that very fact he renders the sacrament null, on account of the defect of contrition, and so commits a grave irreverence. - Yet this will scarcely ever happen in practice, since such a man, by the very fact that he avoids mortal sins, is habitually well disposed; whence it will happen most rarely that he approaches the sacred tribunal knowingly and willingly lacking contrition. - For the rest, for the validity of the sacrament, it suffices that in such a case he accuse some sin of his past life for which he sincerely grieves.

220. (C) He who, knowingly and willingly, indiscriminately accuses venial sins for which he grieves and others for which he certainly knows that he does not grieve, more probably does not sin. Some indeed contend that he sins venially, because in some way he deceives the confessor, implicitly saying that he grieves for these sins by the very fact that he confesses them, while in reality he has conceived no contrition for them. - But this reason does not hold; for the confessor can understand, from things commonly occurring, that a penitent of this kind accuses certain venial sins not as matter of the sacrament, but so that he may be better known by the director, or for the sake of humility, or for other reasons. It would indeed be better in this case for the penitent openly to declare that he is not contrite for such or such a sin which he accuses; but he is not strictly held to this. In practice let him try to conceive contrition from a universal motive, which of itself embraces all venial sins, for example, to avoid the punishments of Purgatory, or because sin displeases God; then certainly there will be no sin, and in addition a richer fruit will be received from the sacrament.

3° Scholion: On the Sacrament of Penance as Valid and Formless

221. After what has been said concerning the qualities of contrition, it can briefly be weighed whether the sacrament of Penance can be valid as a sacrament and at the same time formless, i.e., not producing grace, on account of some obstacle; and consequently whether, when the obstacle has been removed, the grace of the sacrament revives. On this matter there is controversy among theologians.

(A) Some[1] say that there is one single case in which this can occur, and they explain their opinion thus: if someone has committed two mortal sins, for example one of theft, the other of blasphemy, and afterward, forgetful of the blasphemy, accuses only the theft and grieves over it on account of the special turpitude of this sin, the sacrament is truly confected, since there are found there all the elements necessary for its validity (on the part of the penitent, a formally integral confession, contrition, and the will of making satisfaction, and on the part of the priest, absolution duly pronounced); nevertheless it does not produce its effect, because the sin of blasphemy is not retracted, and consequently is not remitted. Hence, if afterward the obstacle is removed through detestation of the blasphemy, nothing prevents the grace of the sacrament from reviving. - Some theologians,[2] however, hold that in this case the sacrament is not formless, but immediately produces its effect, because, while the sinner grieves over the theft, he grieves so that he may recover divine friendship and avoid eternal damnation, and therefore his sorrow implicitly extends itself also to the sin omitted through forgetfulness. And this opinion is truly probable, because it happens most rarely that a penitent so considers the special motive of attrition that he does not ascend to another more general one.

[1] Suarez, disp. XX, sect. 5; Lugo, disp. XIV, sect. 6, n. 65 sq.; Salmantic., cap. 5 n. 1-21; St. Alphonsus, n. 444.

[2] D'Annibale, p. III, note 19 to n. 312; Genicot, n. 275; Billot, th. 16, § I.

222. (B) But others[1] admit that the sacrament of Penance can be valid and formless whenever the penitent has attrition which is indeed true and sincere, but not appreciatively highest. According to them, namely, there are sinners who are so attrite that they grieve over all past sins, but not in an appreciatively highest degree, and yet are not conscious of such a defect; now that act of attrition, as being sincere and elicited in good faith, indeed suffices as an integral part of the sacrament, although it does not suffice as a disposition for obtaining absolution from sin: therefore the sacrament is indeed valid, since in it all essentials are found, but formless, because, on account of the defect of full disposition, grace is not produced; but when the obstacle has been removed through appreciatively highest attrition, then grace will be produced through the reviviscence of the sacrament. - That opinion does not lack probability, both because of the authority of the theologians who defend it, and because it rests upon the general principle that the sacraments confer grace, whether immediately or when the obstacle recedes, on all those who do not place a voluntary obstacle; nevertheless it does not pass beyond the limits of probability, because it remains uncertain whether that attrition, sincere but not appreciatively highest, suffices as an integral part of the sacramental sign.

[1] Cajetan, *Opusc. de confessione*, q. 5; Billot, th. 16, § I, with other authors cited in the same place. Some understand in this sense what St. Thomas writes, *Supplement*, q. 9, a. 1.

223. Besides, this controversy does not contribute much to practice, unless you say with Billot that in this way there is better understood the commonly received custom of absolving penitents as often as they sincerely confess their sins with the purpose of not sinning hereafter, without its being morally certain that their attrition is appreciatively highest; for, granted that absolution in this case is valid, sacramental grace, if it is not received here and now, will afterward be received as soon as the penitents have become better disposed.

V. On Contrition in Order to the Sacrament

224. 1° Principle: Contrition must be elicited in order to the sacrament, or a certain moral union is required between the act of contrition and absolution. It is certain.

[2] Suarez, disp. XX, sect. 4, n. 27-30; Lugo, disp. XIV, n. 36-50; Salmantic., cap. 5, n. 22-27; St. Alphonsus, n. 445-448; Billuart, diss. IV, art. 8; Lehmkuhl, 280-282; Genicot, n. 278; Morino, n. 431-434.

For contrition is an essential part or at least an integral part of the sacrament, and consequently must be so united with the sacrament that with it it forms some whole; but the sacrament is a moral whole, not a physical one; therefore a moral union between sorrow and absolution suffices.

225. 2° Corollaries. This union, however, regards both intention and time.

(A) With relation to intention, sorrow conceived for sins must in some way be referred to absolution; otherwise absolution would become invalid or doubtful, on account of the defect of moral union among the various parts of the sacrament.

It is not required, however, that contrition explicitly and reflexively arise from an intention, previously conceived, of receiving the sacrament, whatever a few may have said to the contrary with Lacroix;[1] but it suffices that sorrow conceived before the purpose of confessing flow virtually into confession, and be morally connected with absolution. Thus, for example, he who, on the occasion of a sermon or of pious reading, conceives sorrow without thinking about confession, and afterward, by the force of sorrow thus conceived and persevering, makes a confession, or at least gives some sign of the sorrow previously conceived before absolution, sufficiently orders his contrition to the sacrament. Yet it is better that penitents explicitly elicit or renew an act of contrition in order to confession, before they enter the sacred tribunal, so that their sorrow may be more vivid and richer fruits may be received.

[1] Lacroix, n. 687.

226. (B) With relation to time: (a) contrition must precede absolution, or at least be elicited at that point of time at which absolution is given, because it is certainly a necessary disposition for absolution, and also very probably the proximate matter itself of the sacrament; if therefore contrition does not exist at least at that instant at which *I absolve you* is said, the sacrament will lack its effect.

227. (b) But it need not necessarily precede confession, although this is much better and more prudent. For the Roman Ritual admonishes the confessor that, after the confession has been heard, he should try by efficacious words to lead the penitent to sorrow and contrition;[2] therefore it supposes that the penitent is sometimes not contrite while he confesses his sins, and nevertheless can be absolved, provided that before absolution he is sincerely contrite.

[2] *Ordo ministrandi sacram. Paenitentiae*.

Some contend that this cannot be done, because the confession then is not sorrowful, and in addition the sorrow conceived after confession is not manifested by a sensible sign. But this difficulty, when the matter is carefully inspected, entirely vanishes. Confession indeed must be sorrowful, but for this it suffices that it not be a merely historical account of sins, but be made in order to the sacrament,

with hope of conceiving contrition before absolution. But contrition, even if it is conceived after confession, becomes sensible by the fact that the penitent manifests internal sorrow either by asking for absolution, or by reciting an act of contrition, or by other external signs. - Whence the opinion which we defend is morally certain.

228. (c) An act of contrition once elicited in order to absolution can persevere not only for several hours, but even for several days, provided that it is not retracted by a new mortal sin, and that it perseveres in some effect, for example, the will of confessing, flight from occasions, etc. The reason is that such an interval does not destroy the moral union which must exist among the various parts of the sacrament; for that delay is permitted which can exist among the various judicial acts, since this sacrament is administered after the manner of a judgment.

This indeed can serve to calm the scruples of those who did not renew an act of contrition before confession, and, at that instant at which absolution was conferred, did not think about contrition. But in practice it is certainly expedient that an act of sorrow be elicited in preparation for confession, both so that greater fruit may be received from it, and also for the sake of security, lest perhaps a penitent who, on account of disturbance of mind, does not renew sorrow at the time of absolution, be troubled by anxieties.

229. (d) It is not required that contrition endure after absolution has been received; for true contrition, with grace helping, can be conceived in one instant, and provided that it is conceived and endures at the time when absolution is conferred, the penitent is justified; if afterward he is overcome by temptation, he indeed sins, but the sins remitted do not revive. Yet if it quickly vanishes, it can deservedly for the most part be regarded as suspect.

230. 3° Disputed questions: (a) When a penitent, immediately or a little after absolution, accuses a grave sin omitted through forgetfulness, it is controverted whether or not a new act of sorrow is required for receiving a new absolution. The more probable opinion denies this, provided, however, that contrition was elicited from a universal motive which also embraces the sin given over to forgetfulness; for in this case the judgment had not yet been objectively completed, and besides the contrition previously conceived still perseveres. Some, however, affirm with probability, with St. Alphonsus (n. 448), because the judgment has already been completed, and consequently new proximate matter is required for a new sentence to be pronounced. - Whence, in practice, penitents are to be induced to elicit a new act of contrition; but if this has not been done, penitents are not to be disturbed, since the sin has already been remitted indirectly by the first absolution.

(b) But when, after a long interval, sins already absolved are accused anew, it is doubtful whether the sorrow elicited in the prior confession and not yet retracted perseveres sufficiently for absolution without being actually renewed. More probably a new sorrow is required, because, after a long interval, the sacramental judgment has been completed; therefore, in order that a new one may be begun and completed, there is required not only a new accusation, but a new act of contrition and a new absolution. - Whence in practice penitents are to be admonished to renew their sorrow; this they will gladly do. But if certain devout persons fear that they omitted this in their past life, they are not easily to be disturbed, since one must stand for the validity of the act until the contrary is proved.

§ II. On the Qualities of the Purpose

231. The purpose of not sinning hereafter is required for the validity of the sacrament of Penance, as is evidently gathered from Trent, which declares contrition to be sorrow of soul and detestation, with the purpose of not sinning hereafter. In truth the sinner cannot sincerely detest the sin committed and at the same time will to commit the same sin in the future: for each equally is an offense of God, each is opposed to the obtaining of the ultimate end.

[1] Suarez, disp. XX, sect. 4, n. 31-33; Lugo, disp. XIII, n. 51-64; Salmantic., cap. 5, n. 52-69; St. Alphonsus, n. 450-451; Scavini, n. 292-293; Lehmkuhl, n. 292-298; Muller, § 117; Haine, q. 33-34; Genicot, n. 280-282; Noldin, n. 252-254.

I. On the Purpose with Respect to Mortal Sins

This purpose, however, with respect to mortal sins, must be universal, firm, and efficacious.

232. 1° Universal, that is, extending itself to all mortal sins, not only to those which have been committed, but to any others whatever, as is gathered from Trent saying "with the purpose of not sinning hereafter." - Yet the purpose of avoiding all mortal sins in general suffices, without each being explicitly run through. Hence often the confessor would act imprudently if he demanded from the penitent that he promise to avoid this or that sin in particular, in such or such a difficult circumstance, unless the common good specially requires it, for example, in the case of scandal to be repaired, or the good of a third party, for example, when restitution is necessary, or another grave reason of this kind. Outside these or similar cases, the confessor would act imprudently by demanding a special promise, because the penitent, otherwise sufficiently disposed but still weak, could be terrified by this special difficulty and become indisposed, as we said above (n. 214).

233. 2° Firm, that is, so rooted in the will that the penitent is truly and deliberately prepared to commit no grave sin through fear of any evil or through desire of any good.

(A) To this firmness there is no obstacle from an estimation or fear lest someone in fact fall back into sin: for this disposition is rather an act of the intellect, by which relapse is foreseen, on account of the mutability of the human will, and therefore can exist at the same time with an act of the will by which someone sincerely does not wish to relapse. Penitents, therefore, who are so disposed can be absolved, provided that for the present they sincerely resolve to avoid sin according to their strength, and to trust in the grace of God for the future.

(B) But if a penitent certainly believes that he will relapse, according to St. Alphonsus (n. 451), he lacks a firm purpose; according to Lugo,[1] he can have a firm purpose. With Lehmkuhl (n. 296) and others, we think the distinction must be made in this way: (a) if this persuasion arises only from experienced inconstancy and fragility, and the penitent at the same time trusts in God and wishes to try to avoid sin, he is not for that reason to be judged indisposed; for this persuasion, which often does not differ from a great fear of relapsing, is an act of the intellect foreseeing the future with a certain moral certitude, and can exist with an actual will of fleeing sin. In truth confessors often absolve penitents whom they foresee with moral certitude will relapse, and this foresight, according to all, can be reconciled with the sincere purpose of penitents; why can the same not be said of the

foresight itself of the penitent? Whence the sinner is to be exhorted to confidence and prayer; and if he promises to make efforts, he can be absolved.

[1] Lugo, disp. XIV, n. 137; Ballerini-Palmieri, n. 161.

(b) But if that persuasion arises from despair, he indeed lacks a firm purpose, because he does not have hope. Nor nevertheless is he to be dismissed at once, but he is to be exhorted to consider again the divine mercy, and also the efficacy of divine grace, by whose help he can overcome all difficulties. "But God is faithful, who will not suffer you to be tempted above that which you are able"... "I can do all things in Him who strengthens me."[1] If in truth he conceives confidence in God, and, although he foresees that he will fall, sincerely grieves over his sins and firmly proposes to abstain from them, he can now be absolved.

[1] 1 Cor. 10:13; Phil. 4:13.

234. 3° Efficacious, or having the force of doing what is proposed; now such a purpose can be judged to exist when the penitent sincerely and seriously wills to employ the means for avoiding sin, especially to flee proximate occasions. But it suffices that the purpose be efficacious affectively, so that in soul he is prepared to employ the means; nor is it required that it be efficacious effectively, that is, that sins in fact be avoided. For relapse is not always and of itself a sign of a weak purpose, but more often arises from a change of will; for by nature we are so constituted that easily, when circumstances have changed, we change our counsel; and therefore a firm purpose does not make a man impeccable; thus Peter, who had promised rather to die than to deny Christ, a few hours afterward, from fear of a maidservant, in fact denied Him.

235. 4° But it is controverted whether the purpose must be formal and explicit, or on the contrary a virtual purpose suffices, which is contained in the act of sorrow.

(A) A few affirm that a formal purpose is required, especially because Trent distinguishes this purpose from detestation of sin: now there would have been no necessity of making this distinction, unless the Council had wished to suggest that such a purpose must be explicit. Yet this argument does not hold; for the same Council distinguishes between sorrow and detestation; now, according to all, sorrow implicitly contained in detestation suffices for contrition, without being explicitly elicited.[2]

[2] Thus Canus, *Relect. de Paenit.*, p. 1, q. 2, concl. 1, n. 10; Soto, in 4, dist. 15, q. 1, a. 2; Bellarmine, *De Paenit.*, lib. II, cap. 6.

(B) Others more commonly hold that the purpose virtually included in contrition suffices, provided that contrition is conceived from a universal motive;[3] for if the motive were not universal, but special to the sins accused by the penitent, perhaps it would not extend to all future sins. - The reason is that Trent, although it explicitly mentioned the purpose in the definition of contrition, nevertheless in no way declared that this purpose must be explicit, but rather taught that attrition suffices if it excludes the will of sinning; but sorrow conceived from a universal motive necessarily excludes every will of sinning, since sin is as hateful in the future as in the present or the past.

[3] Suarez, disp. VII, sect. 3, n. 7; Cardenas, p. IV, diss. 2, n. 80, and many others whom Ballerini cites, t. V, n. 97 sq. - St. Alphonsus (n. 450) grants that it is the more probable opinion, but in practice does not permit it to be followed,

because the first opinion is probable: now, where validity is at issue, it is not permitted to follow even the more probable opinion.

(C) Others, finally, distinguish:[1] (a) if someone, thinking about the future, does not wish to elicit an explicit act of purpose, this is a sign that his contrition is not sincere, and consequently that he does not even have a virtual purpose; - (b) but if someone sincerely detests sin and yet does not elicit an explicit purpose, because he is not thinking about the future, the sacrament will be valid. - We observe that this third opinion does not differ substantially from the second, since it grants that an explicit purpose does not pertain to the essence of the sacrament.

[1] Holzmann, n. 401.

236. Whence in practice these things seem to be established: (a) before the fact, an explicit purpose is altogether to be counseled, both for the sake of greater security, and so that the fruits of the sacrament may be richer; (b) after the fact, if someone has elicited a sincere act of attrition without thinking about an explicit purpose, he ought not be compelled to repeat his confessions, because most probably his sins have been remitted; now no one can be compelled to accuse again sins most probably dismissed; besides, sins of this kind, if not yet dismissed, will immediately be remitted and the penitent will receive valid absolution, since he is in good faith. - Moreover, it can deservedly be said with Scavini:[2] "In practice no one ought to be disturbed about this; since it scarcely, and not even scarcely, happens that a truly contrite penitent omits even an explicit purpose, although he does not reflect upon this, which is not necessary."

[2] Scavini, n. 292.

II. On the Purpose of Avoiding Venial Sins

237. 1° Principle: The purpose of avoiding venial sins must indeed be firm and efficacious, but not necessarily universal; for one venial sin can be remitted without another, and consequently with a habitual or even actual affection for other venial sins.

238. 2° Conclusions: (a) The purpose of avoiding one of the venial sins declared is required and suffices. It is indeed required, if other sins are not accused, at least sins of the past life; otherwise absolution would be invalid on account of the defect of purpose and consequently of contrition; and he who knowingly lacked a good purpose would commit sacrilege. - But it suffices, because as soon as one venial sin is held in hatred, it can be remitted without the others. Yet it is better that it be extended to all venial sins which have been accused; and this certainly will not be difficult if a motive of contrition embracing all venial sins is proposed.

239. (b) When the same venial sins are often accused, it suffices to conceive sorrow and purpose concerning their frequency, by firmly resolving to lessen this frequency. For since we cannot avoid all venial sins taken collectively, as was said in the Treatise on Grace (n. 63), it is enough to lessen their number. - Yet it is expedient to conceive sorrow and purpose concerning certain sins in species, especially concerning those which are more deliberate, since they more greatly hinder Christian perfection. Therefore pious penitents who are accustomed to accuse only

venial sins are to be admonished to detest specially one or another and to try to amend it, by determining certain means for attaining this end.[1]

[1] Cf. *Pratique progressive de la Confession*, 2nd ed., Paris, 1900, t. I, p. 62 sq.; t. II, p. 115-144.

240. (c) Absolution is more easily to be granted to those who frequently relapse into the same venial sins than into the same mortal sins.[2] For the occasions of committing venial sins are much more frequent and much more difficult to remove; whence relapse is not a very probable indication that true sorrow is lacking. Besides, if it is lacking with respect to these venial sins, it is easier to excite contrition with respect to the graver faults of the past life, which the pious are accustomed to accuse.

[2] Recidivists are treated below, n. 478, where the office of the confessor with respect to various kinds of sinners is treated.

Practical Conclusion of the Whole Article

241. Since contrition is altogether necessary for obtaining the remission of sins, and besides not a few penitents, even among the pious, are accustomed to spend a longer time in searching conscience than in exciting contrition, let preachers carefully and often instruct the faithful that, when they prepare themselves for confession, they not neglect to conceive sorrow and purpose. Moreover let the confessor ask penitents whether they are truly contrite, at least when he doubts concerning their dispositions; and if he finds certain ones unprepared, let him propose to them motives of contrition adapted to their understanding.[3]

[3] St. Alphonsus piously proposes some of these motives in the golden little work *Praxis Confessarii*, ch. I, § 2, n. 10; for example, the confessor can use these or similar words: "My son, what have you done? You have sinned against God, the highest and infinite good; you have turned your face away from Him, you have despised His friendship and grace; you have crucified Christ, His Son. Come then, because you have offended God, infinite goodness, and His infinitely lovable Son, now repent from your whole heart; detest, above all evils, all the injuries by which you have affected God. Are you not now prepared to suffer all things rather than commit these things hereafter?"

Art. II. On Confession

242. We have already proved that sacramental confession is necessary by divine right (n. 97); but it remains to speak concerning the extension of this precept.

Division:

On the precept of confession.

On the integrity of confession.

On the causes excusing from integrity.

On the means for procuring this integrity.

§ I. On the Precept of Confession

There is a twofold precept concerning confession: divine, which determines the obligation, but not the time in which it must be fulfilled; ecclesiastical, which fixes the time and the other

circumstances. By way of corollary, we shall add a few things concerning the qualities of confession.

[1] St. Thomas, 3, q. 84, a. 5; Suarez, disp. XXXV-XXXVI; Lugo, disp. XV, n. 26-183; Salmantic., cap. II, n. 18-23; Lacroix, lib. VI, p. 11, *de Paenit.*, n. 2002 sq.; Billuart, diss. I, a. 4, § 2; Ballerini-Palmieri, n. 1059-1084; Lehmkuhl, t. I, n. 1202-1205; Marc, n. 1685; Genicot, n. 321-323.

243. 1° On the divine precept. Although Christ did not explicitly define when the precept of confession obliges, from the very nature of this precept and from the doctrine of the Fathers it can be inferred that the divine law of confession obliges sometimes, both per se and per accidens.

(A) It obliges per se: (a) certainly in the article and in very probable danger of death, from whatever cause this danger arises, whether from illness, or from battle, or dangerous childbirth, or from a surgical operation; for he who, placed in such danger, does not fulfill the divine law, rashly exposes himself to the danger of never fulfilling it: and this certainly is the same as violating the divine precept.

Hence the same must be said concerning the case, most rare today, in which someone would foresee that for the rest of his life he would have no opportunity of a confessor.

(b) Probably, according to St. Alphonsus (n. 663) and many others, that precept also obliges sometimes in life, because a sinner is bound not to remain long in mortal sin. - But not a few theologians, both ancient and modern, deny this, because the sinner can be reconciled to God in another way, namely by perfect contrition with the will of receiving the sacrament at a suitable time. - Whatever may be the case, in practice there is no difficulty, since the Church has decreed that all the faithful are bound to confess once a year.

(B) But per accidens it obliges: (a) when holy communion is to be received, if the one about to communicate is in mortal sin, as we said in the Treatise on the Eucharist, n. 140; (b) when the state of grace is required, and at the same time the sinner cannot elicit an act of perfect contrition; (c) when a grave temptation or a depraved habit cannot be overcome without confession; this, however, rarely occurs, since there are other means for overcoming temptations. Whence sinners are to be exhorted, but not compelled, to frequent reception of this sacrament.

244. 2° On the ecclesiastical precept.[1] There have been various ecclesiastical laws concerning this matter at various times; but already from the thirteenth century there has been in force the universal law[2] of confessing sins once a year, promulgated by the Fourth Lateran Council (1215),[3] and its words, somewhat changed in the Code (can. 906), are reported thus: "Every faithful person of either sex, after he has reached the years of discretion, that is, the use of reason, is bound faithfully to confess all his sins at least once a year." Four things are declared there:

[1] Suarez, disp. XXXVI; Lugo, disp. XV, n. 88-183; Ballerini-Palmieri, n. 1059-1084; Lehmkuhl, vol. 1, n. 1202-1205; Marc, n. 1685; Konings, n. 547-548; Genicot, n. 323.

[2] I say universal, for particular laws were already in force before, by which the faithful were commanded to confess sins to their own bishop or priest: concerning this see P. A. Kirsch, in *Archiv fur katholisches Kirchenrecht*, 4th trim. 1904: *Des sacerdos proprius in der abendlandischen Kirche vor 1215*.

[3] In Denzinger, n. 363.

(a) The subject of the precept: "Every faithful person of either sex"; by these words are indicated all the faithful, or the baptized, who are conscious of mortal sin not yet declared in a valid confession; also children who have reached the years of discretion, that is, who are capable of mortal sin. Hence pastors of souls are bound to instruct children concerning confession already from the seventh year of age, and sometimes before they have reached it, if they already enjoy the use of reason; they must absolve those who have accused a mortal sin, even a doubtful one, provided they are well disposed, lest perhaps they waste away in sin. This obligation especially presses in danger of death. But in doubt whether or not they have attained sufficient discretion, they can be absolved conditionally. Therefore confessors who refuse to absolve children committed to them before solemn first communion gravely err: this abuse, already reproved by Pius IX in the year 1855, Pius X again condemned by a decree of the Sacred Congregation of the Sacraments, August 8, 1910.

245. (b) The object of the precept: "let him confess all sins." This certainly is to be understood of mortal sins alone; for the Church by its precept only determined the time at which the divine precept obliges; now the divine precept obliges only to the confession of mortal sins, as Trent openly declares, below, n. 256.

From this it follows that he who has not sinned mortally during the year is not bound, strictly speaking, to confess. Yet it is expedient that even those who have committed venial sins only not abstain from annual confession, lest perhaps, deprived of the grace of the sacrament, they more easily fall into mortal sin.

From this also theologians more probably and more commonly infer that the law of annual confession is not satisfied by a confession of venial sins. Therefore, if at the beginning of the year or at Easter time someone has confessed only venial sins, and afterward, before the end of the same year, falls into mortal sin, he is bound to confess again; for, by accusing venial sins in the previous confessions, he did not fulfill the precept of annual confession, which is restricted to mortal sins. - Some theologians,[1] however, both ancient and modern, with probability think that the law is fulfilled by any valid confession whatever, even of venial sins: and in truth the faithful who have confessed once, whatever sins they have accused, generally think that they have satisfied the precept. Whence in practice a new confession is indeed to be counseled in this case, but not strictly urged.

[1] Thus Palaus, tract. 23, disp. unic., punct. 20, § 3, n. 3, p. 177, where likewise Victor, Reginald, Coninck, Laymann, Bonacina are cited. Cf. Ballerini-Palmieri, n. 1061 and Genicot, n. 323.

246. (c) The manner of confessing: "let him confess faithfully"; by this is signified that the precept is not satisfied by a voluntarily invalid confession, as is clear from the Code, can. 907: "He does not satisfy the precept of confessing sins who makes a sacrilegious or voluntarily null confession."[1] And deservedly; for he who voluntarily makes an invalid confession, by that very fact commits sacrilege; now the ecclesiastical law of confession, which is determinative of the divine precept, cannot be fulfilled by the sin of sacrilege.

[1] Cf. Viva, *Damnatae Theses*, Alex. VII, prop. 14; Vacant, *Dict. de Theol.*, I, col. 737.

247. (d) The frequency of confession is determined by these words: "at least once a year." But since the Council does not determine the time at which this obligation must be fulfilled, there are various opinions concerning the manner of computing the year. Some think the year begins

from the time at which the first mortal sin is committed, - others from January to the following January, - others finally from Easter to the following Easter. This last opinion seems more probable, and in practice easier; for since the faithful are bound to receive communion at Easter time, the usage prevailed that annual confession be made at the same time; this custom Trent approved as pious and deservedly to be retained.[2]

[2] Sess. XIV, ch. 5, at the end.

Hence he who, with the year begun, foresees that he will not have thereafter an opportunity of a confessor before the year has elapsed, and besides is conscious of mortal sin, is bound to make confession while he has the opportunity of a confessor; for since the precept obliges once a year, it must be fulfilled at the time when this is morally possible.

If someone, conscious of mortal sin, has not confessed within the prescribed time, he must confess as soon as morally possible, according to the common opinion, since the law assigns the time for determining the obligation, but not for ending it. A few grave Doctors[3] indeed contradict this, who think that when the time fixed has passed the obligation ceases. But in practice there can scarcely be a difficulty; for St. Alphonsus more probably teaches (n. 669) that he who had not confessed his sins in the preceding year, and in confession manifests mortal sins of both the preceding and the present year, satisfies the obligation of each year, and consequently is not bound to confess twice.

[3] See them apud St. Alphonsus, n. 297 and 668.

248. (e) Formerly it was prescribed to confess to "one's own priest," or pastor, or at least to obtain his permission for confessing to another; but today, the new law being silent, this disposition has been abrogated, so that anyone can confess to any duly approved priest. Whence pastors not only ought not oblige their parishioners to confess to them, but act rightly if they advise them sometimes to approach another confessor, so that sacrilegious confessions may thus more easily be avoided.[1]

[1] St. Thomas, writing at the time when the law of confessing to one's own priest was still in force, has this: "a priest would sin if he were not easy in granting permission to confess to another, because many are so weak that they would rather die without confession than confess to such a priest. Whence those who are too solicitous to know the consciences of subjects through confession cast a snare of damnation upon many, and consequently upon themselves." (*Supplement*, q. 8, a. 4 ad 6.)

(f) Finally, a twofold penalty was inflicted upon those transgressing the precept, namely prohibition from entrance into the church, or excommunication, and privation of ecclesiastical burial; but each, which was *ferendae sententiae*, has likewise been abrogated.

249. 3° On the qualities of confession. Confession, which Christ and the Church require, must be clothed with certain qualities, of which some are necessary, others useful. No fewer than sixteen are numbered by theologians, expressed in these verses:

Let confession be simple, humble, pure, faithful,
And frequent, bare, discreet, willing, modest,
Integral, secret, tearful, hastened,
Strong and accusing, and let it be ready to obey.[2]

[2] In St. Thomas, *Supplement*, q. 9, a. 4, where you will find these conditions accurately explained; cf. *Opusculum* LVII (ed. Rom. LXIV), p. 416-444: t. XXVIII, ed. Vives, *De modo confitendi*.

But since certain of these qualities almost fall back into others, we shall explain only the principal ones. Confession, namely, must be:

250. (a) Pure, that is, made with a right intention, not for moving the compassion of the confessor, or for capturing his benevolence, a fortiori not from jest or mockery, but for obtaining the remission of sins. Hence if it is made exclusively for a mortally evil end, for example, for extorting a sum of money from the confessor, or for seducing him, it will be invalid; but if it is made principally for a good end, and secondarily for an evil end, for example, on account of vainglory or from excessive affection for the confessor, it will be valid although illicit.

(b) Simple and bare, namely not artfully composed, nor embracing superfluous things which do not pertain to confession, such as, for example, the sins of others, or long narrations altogether useless; hence the confessor should not ask concerning the name and family of the penitent, but only concerning his state and condition, insofar as these can serve for knowledge of his sins.

251. (c) Humble and sorrowful, or with a sense of one's own unworthiness and sincere sorrow, after the example of the publican, who struck his breast, saying: "O God, be merciful to me a sinner";[1] not however by boasting about sins or good acts; hence penitents should not excuse their sins by attributing their malice to others (for example, to a spouse, parents, brothers, neighbors).

[1] Luke 18:13.

But if someone has already narrated his sins to a priest in a historical manner, without sorrow, he is not bound distinctly to accuse the same sins to the same priest, who afterward is chosen as confessor, provided that this priest retains a distinct memory of these sins; but it suffices to accuse universally what had previously been narrated. But if the confessor has retained only a confused knowledge of them, it is controverted whether a new distinct accusation is required: St. Alphonsus affirms (n. 502), because the first confession was not sacramental, while the second is not integral unless it is distinct; Lugo,[2] however, denies this, because "the later accusation, referred to the memory which the confessor has of those sins distinctly heard before, is sufficient knowledge, such as is desired in the confessor." - Whence the matter is truly doubtful, and consequently the penitent is not to be compelled, but is to be exhorted to accuse his sins distinctly anew, especially since the confessor can from this make suitable questions and provide salutary admonitions.

[2] Lugo, disp. XVI, n. 638; cf. Ballerini-Palmieri, n. 468-471; see, however, what the *Vindiciae Alphonsianae*, p. 480-484, teach to the contrary.

(d) Faithful and integral, that is, true and sincere, retaining no grave sin, nor likewise accusing sins which in reality were not committed, but candidly setting forth certain things as certain, doubtful things as doubtful, as they are known; concerning which more fully below.

(e) Discreet or prudent, not manifesting the sins or defects of others without necessity; expressing even shameful sins with modest and cautious words, insofar as can be done; omitting useless circumstances, especially if they are dangerous, odious, or scandalous.

252. (f) Vocal, that is, expressed in words, but not by nod, signs, or writings; this is required not from the very essence of the sacrament, or by divine precept, but from custom which has obtained the force of law, so that, according to the common opinion, he would sin gravely who, without any cause, wished to confess only by a sign or writing, when he can easily use his voice. But when a just cause exists, confession can licitly be made by signs or in writing, for example, if the penitent is mute or, on account of illness, can speak only with great difficulty; - or, on account of excessive shame or scruples, could not declare his sins integrally; - likewise if the confessor is somewhat deaf and cannot hear the penitent without bystanders also hearing him. In these cases, however, the penitent, if he is not mute, should at least say: "I accuse myself of the sins which are written on this paper": yet this is not absolutely required for validity.

253. (g) Secret, but not public, and made to the priest alone. Public confession would indeed be valid, and in truth it flourished in the first centuries: but, with Trent as witness (ch. 5), no one is held by divine precept to confess his offenses publicly, nor would it be sufficiently advisable for this to be prescribed by any human law, namely that offenses, especially secret ones, should be opened in public confession. This indeed is so true that, according to the common doctrine of theologians, the penitent is dispensed from the law of integrity when he cannot confess his sins except publicly, with others hearing.

§ II. On the Integrity of Confession — I. On the Necessity of Integrity in Confession

254. 1° State of the question. (A) A twofold integrity can be found in confession: (a) material, or objective, which is the accusation made to one and the same priest of all and each of the grave sins which have been committed after baptism and have never been declared in a valid confession; (b) formal, or subjective, which is the accusation of all mortal sins which the penitent here and now morally can and is bound to confess. Indeed it can happen that, on account of a just cause, for example, ignorance, forgetfulness, or moral impossibility, someone does not confess all the mortal sins committed since the last confession: then the confession will indeed be formally, but not materially, integral.

[1] St. Thomas, *Supplement*, q. 6, a. 1-3; q. 9, a. 2; Suarez, disp. XXII; Lugo, disp. XVI; Salmantic., cap. 8; Lacroix, n. 915-1139; Billuart, diss. V; St. Alphonsus, n. 465-478; Elbel-Bierbaum, Confer. VI-VII; Konings, n. 1359-1366; Kenrick, n. 36-57; Lehmkuhl, n. 301-326; Ballerini-Palmieri, n. 346-364; Berardi, *Praxis*, n. 4488-4531; Genicot, n. 283-291; Noldin, n. 261-270.

Now material integrity is not always required for valid absolution: for Christ, according to His wisdom and mercy, did not will to oblige us to that which is physically or morally impossible; and therefore there are causes excusing from material integrity, as we shall say below. But formal integrity is necessary by divine right for valid absolution of sins, as will appear from the following principle.

255. (B) The necessary matter of confession is all and each mortal sin, committed after baptism and not yet declared in a valid confession. But venial sins committed after baptism, and sins already remitted, are sufficient and free matter, insofar as they can be subjected to the power of

the keys and absolved. Whence there will be a twofold principle: the first concerning necessary integrity, the second concerning sufficient and free matter.

256. 2° First principle: By divine right it is necessary to confess all and each mortal sin, even hidden ones, committed after baptism, of which memory is had after diligent examination.

(A) Trent[1] thus defines this necessity of integral confession: "If anyone shall say that in the sacrament of Penance, for the remission of sins, it is not necessary by divine right to confess all and each mortal sin, of which memory is had with due and diligent premeditation, 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... let him be anathema." Yet the Council acknowledges that sins which escape the memory are remitted by God:[2] "But the remaining sins, which do not occur to one diligently thinking, are understood to be included universally in the same confession: for which we faithfully say with the Prophet:[3] 'Cleanse me, O Lord, from my hidden sins.'" Concerning this exception and others of this kind we shall speak below.

[1] Sess. XIV, can. 7.

[2] Trent, sess. XIV, ch. 5.

[3] Ps. 18:13.

257. (B) The reason for this necessity is drawn from the very will of Christ, who decreed it thus, as is clear from what was said above, n. 97. - But the fittingness of this perfect integrity is drawn from the twofold office of the confessor: (a) insofar as he is judge, the priest cannot render an equitable sentence unless the case has been known integrally, at least substantially; and this indeed is so true that, in human judgments, if some substantial omission is found, the judgment is declared null or is reformed by a higher authority; but the confessor cannot know the case integrally, even substantially, unless the penitent manifests all and each mortal sin, even hidden ones; for one mortal sin is of such great moment that it is able to cause eternal damnation; besides, one is not remitted without the others; therefore all and each must be sincerely set forth.

(b) As physician, the priest cannot heal the spiritual wounds of the penitent unless he knows at least all those which are able to bring death upon the soul; for a bodily physician generally cannot heal a wound or illness unless he has known the other grave ailments of the sick person, since one disease is made worse by the addition of another, and the medicine which is suited to one disease can furnish harm to another; so likewise the spiritual physician can scarcely cure the penitent unless he knows all his grave spiritual diseases, or all mortal sins, since one is likewise aggravated by the addition of others, and that which would be a suitable medicine for one sin would furnish an incentive to another. Therefore it is necessary to declare all mortal sins, so that remedies may be proportioned to the various sins.[1]

[1] Thus almost St. Thomas, *Supplement*, q. 9, a. 2.

258. Note. Since material integrity of confession is necessary by necessity of precept, but not by necessity of means, truly and solidly probable opinions can be admitted in the interpretation of this law, as St. Alphonsus[2] rightly notes: "Nor does it avail to say here that in the matter of the

sacraments we cannot follow opinions only probable, because this proceeds when there is question of the value of the sacrament, otherwise concerning integrity; and as regards the value, it is certain that formal integrity suffices."

[2] St. Alphonsus, *H. A.*, tr. XVI, n. 29.

259. Corollaries. From this two questions disputed among theologians can be solved: (A) Whether sins committed in baptism itself must be accused,[1] for example on account of a defect of faith or of attrition in an adult baptized person?

[1] St. Thomas, 3, q. 69, a. 10, ad 2; Lugo, disp. XVI, sect. 1; St. Alphonsus, n. 427; Lehmkuhl, n. 262; Genicot, n. 258; Noldin, n. 224; Muller, lib. III, § III, n. 6.

In this case baptism is indeed valid and imprints the character, but does not produce grace, on account of the obstacle. According to the principle explained above, the sin which was completed before the impression of the character ought not be accused, because it was truly committed before baptism; but the sin which persevered after the impression of the character must be accused, as having been committed after baptism or at least continued. Now the sin of sacrilege, committed in the reception of baptism, was indeed begun before the impression of the character, but, at least for the most part, endured after the character had been received; and consequently under this respect it must be accused. - Some, however, say that it can scarcely be discerned whether a sin of this kind persevered after baptism had been received or not, and therefore that it must be regarded as doubtful matter and need not necessarily be declared. But it is certainly expedient that it be accused in the following confession; and for the most part the faithful who are conscious of such a sin think that they are bound to declare it.

260. (B) Whether an adult who has been rebaptized conditionally is bound to confess sins committed before the conditional baptism?

A distinction must be made: (a) A Catholic adult, rebaptized conditionally, is not bound again to confess sins already sincerely accused: for if the prior baptism was valid, the absolutions given were likewise valid; but if it was invalid, the later baptism will wash away all sins. - But sins not yet accused by him must be declared, on account of the reason soon to be given concerning a non-Catholic.

(b) A non-Catholic adult, converted to the true faith and rebaptized conditionally, must regularly confess the sins of his past life. For the Sacred Congregation of the Holy Office, in the case of Charles Wipperman, who was rebaptized conditionally after conversion from Lutheran errors, declared on June 17, 1715:[1] "let him confess the sins of his past life, and let him be absolved from them conditionally." So likewise it was decreed in the First Synod of Westminster, for England, with the approval of the Holy Office, December 17, 1868;[2] for the United States of America, in the Instruction given to the bishop of Philadelphia, July 20, 1859.[3]

[1] *Acta S. Sedis*, IV, 320-324; cf. *Collectanea P. F.*, n. 644.

[2] Ibid., n. 955.

[3] Ibid., n. 1689.

In the aforesaid regions, therefore, confession is regularly to be imposed, yet with that moderation which is proper to positive laws. In other regions, this confession is strongly to be counseled, so that the remission of sins previously committed may be more certain.[4]

[4] Recently indeed there was published (*Analecta eccles.*, 1899, p. 489) a decree of the Sacred Congregation of Propaganda Fide, already given July 12, 1869, where it is said: "As regards the doubt proposed by letters of the 29th day of last May, and touching sacramental confession to be required from new converts, it occurs that the response of the Holy Office, feria V, place IV, of the day December 17 of the past year, although given only to the bishops of England who were asking, contains a universal law, and therefore obliges not only in England, but also in other regions." But Roman professors of moral theology think that this is not properly a decree, but only a private response of the Eminent Prefect of this Congregation, and therefore does not have the force of law. Cf. Bucceroni, *Casus conscientiae*, 120, p. 517-521.

The reason for this decision seems to be this: he who receives baptism, whether certainly or doubtfully valid, is presumed validly baptized until the contrary is proved, and therefore is subject to the jurisdiction of the Church; for, by receiving the external rite, he has entered the visible Church, and subjects himself to all the obligations by which the members of the Church are bound, and is bound to fulfill them until it is proved that the baptism was invalid; but one of these obligations is to confess sins; therefore he is bound to fulfill this obligation.

The order to be followed in the reconciliation of heretics concerning whose baptism there is doubt is this: let them abjure heresy and make profession of faith; then let them be baptized conditionally, and finally absolved conditionally. Yet the confession itself can precede baptism, provided that absolution is given after baptism, the penitent summarily repeating the sins accused before baptism.[5]

[5] Thus the Sacred Congregation of the Holy Office, December 7, 1874, apud *Collectanea P. F.*, n. 957.

261. Second principle: All venial sins committed after baptism, and sins both mortal and venial sins already directly remitted are sufficient and free matter of confession.

(A) That sins of this kind are free matter, that is, not necessarily to be accused, is manifestly clear; since Trent declares that venial sins can be kept silent without fault and expiated by many other remedies;[1] but sins already remitted, by the very fact that they have been remitted, need not necessarily be subjected again to the keys of the Church.

[1] Sess. XIV, ch. 5.

(B) That the same sins are sufficient matter, that is, matter from which absolution can be obtained, is demonstrated thus.

(a) With respect to venial sins, we have first of all the practice of the faithful, who for a long time have accused venial sins: moreover the Church not only does not reprove this practice, but rather promotes it; for Trent says:[2] "Venial sins, by which we are not excluded from the grace of God, and into which we fall more frequently, although they are rightly and usefully, and without any presumption, said in confession, as the usage of pious men demonstrates, nevertheless can be kept silent without fault and expiated by many other remedies." And deservedly indeed venial sins are sufficient matter of sacramental confession; for if only mortal sins were accused, whoever had recourse to the sacred tribunal would be judged guilty of grave faults; and thus the burden of confession would be made more grave.[3]

[2] Sess. XIV, ch. 5.

[3] St. Francis de Sales discusses excellently the utility of accusing venial sins, *Introduction a la vie devote*, p. II, ch. 19.

(b) With respect to sins already remitted, Benedict XI has these words:[4] "For the rest, although it is not of necessity to confess the same sins again; nevertheless ... on account of shame, which is a great part of penance, we consider it salutary that the confession of the same sins be repeated." In truth, since acts of penance can be repeated so that the remnants of sins may more and more be wiped away, why cannot faults already remitted be subjected again to the keys, so that they may more and more be blotted out and expiated? Nor should it be said that in human matters no one can be judged and absolved twice in the same tribunal; for, since the remission of sin is made through the infusion of grace, and at the same time is joined with the diminution of punishment, sins already remitted can be accused again for a greater infusion of grace and remission of punishment; besides, the judgment can be repeated, insofar as the confessor is able to judge whether the dispositions of the penitent suffice for absolution or not.

[4] Const. *Inter cunctas*, 1304, *Extravag. Comm.*, l. 5, t. 7, c. 1.

262. From this it follows that in ordinary confession venial sins, either all or a few, can licitly be omitted; likewise, in general confession, not necessarily, those mortal sins can be omitted which have already been directly remitted by sacramental absolution. Besides, if free matter is declared, it is not necessary that the lowest species of each sin be set forth; for if there is no obligation of accusing these sins, a fortiori it is not necessary to declare them in species.

263. Corollaries. (A) But insufficient matter of confession consists of all those moral defects, or imperfections,[1] which do not reach the malice of sin, or indeliberate acts, for example, neglect of a divine inspiration concerning a work of supererogation, involuntary distractions whether in themselves or in their cause. For an imperfection is a voluntary action or omission which is opposed to a divine counsel, but not to a precept; for example, when someone, solicited by grace, neglected to hear Mass during the week, or to visit the Most Blessed Sacrament, while he was being drawn by grace to do this; now such an act, since it is not opposed to a precept, is not a sin. Likewise an indeliberate act, even if it is opposed to a law or precept, is not a sin, because it is not a human act. Now whatever is not a sin cannot be matter of the sacrament of Penance.

[1] On the concept of imperfection cf. *L'Ami du Clerge*, 1901, p. 337-342; *Revue du Clerge Francais*, Dec. 1900, p. 71-84.

Yet often in these imperfections there lies hidden some venial sin of a slightly evil intention, for example, of vanity, of sloth, of which penitents who accuse themselves of these things are more or less conscious. Hence the confessor ought not prevent pious penitents from declaring these imperfections, both because venial fault is accustomed to be mixed with them, and so that they may be better directed; but rather they are to be exhorted to say by what motive they performed these acts; and, if they accuse nothing else, they should kindly be induced to confess again some sin of their past life.

264. (B) The matter of confession is called doubtful if it is not clear whether the act is a sin or not, whether, for example, it is deliberate or not, whether it is a venial sin or a mere imperfection.

Now he who accuses only doubtful matter cannot be absolved absolutely, because the sacrament would be exposed to the danger of nullity; indeed he ought not regularly to be absolved conditionally without a sufficient reason, as we shall explain below where conditional absolution is treated.

Therefore in practice, when a penitent either accuses no sin, or only a sin doubtfully committed, (a) let the confessor ask him about sins which are more commonly committed, for example, against charity, or patience, or truthfulness, or the duties proper to his state; (b) if he obtains nothing certain, let him advise the penitent to declare some certain sin of his past life, whether mortal or venial; this will be easier if the confessor himself proposes these or similar questions: "Have you not in your past life sinned against obedience due to parents, or charity toward neighbor? Have you not consented to motions of anger, etc.?" - If the penitent then accuses no certain sin, let him be questioned concerning the things necessary for salvation; for there is a not improbable suspicion that perhaps he is ignorant of those things which are necessary by necessity of means: in which case, he cannot be absolved unless he is first instructed, as will be said below.[1]

[1] Cf. Reuter, *Neo-Confessarius*, n. 117.

265. (C) From this it can be understood in what sense a generic accusation suffices when there is question of free matter.

There can be a threefold accusation of this kind: (a) an accusation altogether vague and indeterminate, expressed by words or signs, for example, I have sinned, I accuse myself of all the sins of my past life, without its being determined whether these sins were grave or not; this can likewise be done by signs, for example, by striking the breast, or by sighs or tears; (b) accusation of a grave sin in general, for example, I have sinned gravely, without however the genus or species of the sin being determined; (c) generic accusation simply, by indicating the virtue or law against which offense was committed, without the lowest species being determined, for example, I have sinned against charity, against justice, or against the fourth precept.

(a) If there is question of an altogether indeterminate accusation, there is a threefold opinion:

1. Some, with Ballerini,[2] think that this accusation suffices both for validity and for liceity. For that which in necessity suffices for the validity of the sacrament must suffice even outside necessity, since the essence of the sacrament remains the same in each case. Besides, it suffices for liceity; for, as Bucceroni says,[2] with the certain validity of the sacrament standing, illicitness can arise from no other source than from a positive divine precept; but this precept is not had in the case of free matter; therefore in this case an indeterminate accusation is licit. - 2) Others, on the contrary, hold that an indeterminate accusation not only is not licit, but even renders the validity of the sacrament doubtful; thus Laymann, Suarez, Lehmkuhl:[1] for, from the usage and practice of the Church, specific confession of sins, even venial ones, has flourished for a long time outside the case of necessity; now this custom seems to be the interpreter of the divine law; therefore, although accusation of venial sins is not necessary, if someone wishes to be absolved from them he is bound to explain them in species. - Besides, the sacrament of Penance is conferred after the manner of a judgment; but the nature of a judgment demands that the matter be determined, insofar as can be done; in the case of necessity, essential formalities indeed can suffice, but in the ordinary case even less essential ones are required:

whence from the fact that in the article of death an indeterminate accusation suffices, it by no means follows that the same suffices outside the case of necessity, even for validity.

[2] Gury-Ballerini, n. 421, n. b.

[2] Bucceroni, n. 675.

[1] Laymann, lib. V, tr. 6, ch. 5, n. 14; Suarez, disp. XXIII, sect. 1, n. 10; Lehmkuhl, n. 255.

3. Finally, a third opinion, which Noldin (n. 228-229) defends, contends that an indeterminate accusation of this kind does indeed suffice for validity, on account of the arguments of the first opinion, but not for liceity, as is clear from the arguments of the second opinion.

Whence in practice it is altogether to be advised that, even in free matter, at least one sin be declared specifically; for thus the validity of the sacrament is better provided for, and also the spiritual good of penitents, since they conceive contrition more easily and are able to receive more practical counsels if they accuse sins more determinately. - Yet, if penitents are so rude or lacking in memory that nothing can be drawn from them except a generic confession, they can sometimes be absolved conditionally, lest otherwise they remain long without the benefit of the sacrament.

266. (b) An accusation of the second kind, namely *I have sinned gravely*, or *I accuse myself of my mortal sins*, is much more probably valid, indeed also licit, when it is made as a safeguard, after sins not yet remitted have been declared; for mortal sin, even declared in a general way, is not indeterminate matter, but sufficiently concrete, so that judgment can be rendered concerning it; besides, since there is question of free matter, by no law

is it prescribed that sins be declared more specifically. Thus Lehmkuhl (n. 264) with many others.

267. (c) According to all, the accusation of the third kind, namely "I have sinned against such a virtue," without the lowest species and number being declared, altogether suffices in free matter, since certainly a judgment can be pronounced concerning such matter. Indeed this practice is to be recommended to all who accuse only venial sins, especially if they were doubtfully committed, so that the validity and efficacy of absolution may thus be more safely provided for. Yet let care be taken that this declaration not be made by mere custom, but with due attention and with sorrow sincerely conceived.

II. On the Scope or Extension of Integrity

The question can be weighed with respect to 1° the species of sins, 2° their number, 3° circumstances, 4° doubtful sins; 5° by way of conclusion, we shall speak about a lie committed in confession.

1° On Integrity with Respect to the Species of Sins

268. Principle: For the integrity of confession it is required that mortal sins be accused according to their lowest species, insofar as this can morally be done. It is certain.

(A) It is proved: (a) For Trent declares:[1] "priests could not have exercised this judgment when the cause was unknown, nor indeed could they have preserved equity in imposing penalties, if they [penitents] had declared their sins to them only in general, and not rather in species and

individually." Now the expression *in species* is properly understood of the ultimate, or the lowest, species.

[1] Sess. XIV, ch. 5.

(b) The reason is that sins diverse in species carry before themselves an entirely distinct malice, as is explained in the Treatise on Sins; thus, for example, the malice of rash judgment is diverse from the malice of detraction or insult; but the confessor cannot judge rightly concerning the state of the penitent unless he knows the special malice of the sins which are declared; therefore.

Consequently it does not suffice to say: I have sinned against charity; but it must be set forth whether someone sinned by rash judgment, or hatred, or discord, or scandal, etc.

269. (B) It is explained. Yet I said "insofar as this can morally be done"; for (a) there are many penitents who, on account of ignorance, do not distinguish the more minute species of certain sins; these cannot accuse the special malice which they do not know, and of which very probably they are not guilty, since they did not apprehend it. Whence the confessor is not bound to question them minutely about these things, lest he render confession hateful, contrary to the intention of Christ.

This especially occurs with respect to sins of the heart and of the mouth; thus, for example, many do not distinguish among morose delectation, complacency in a sin committed, and desire of committing sin, and think that they accuse all these sufficiently if they say: I had shameful thoughts in my mind and gave consent to them; likewise, with respect to depraved conversations, they establish no distinction among obscene narration, boasting about sins committed, and provocation to evil, and they comprehend all these under this general accusation: I had shameful conversations. Now, if it is clear that they did not apprehend the diverse malices of these sins, and it is feared that minute questions would disturb them or afflict them with weariness, the confessor can for the time abstain from these questions;[1] afterward, however, when occasion is given, he will try to instruct them better.

[1] Thus Berardi, *Praxis*, n. 4505; Genicot, 284; Morino, note 1 to n. 453. Lugo had already gone before them, who in the Preface to the Treatise on Penance writes: "For the practice of this sacrament there must be considered not only what is in some way true as though in the abstract, but also what can and ought to be done morally and in a human way; so that this remedy, full of sweetness and gentleness, not by its difficulty become impossible, or bring excessive horror upon human frailty."

(b) Sometimes also the penitent is excused from accusing the lowest species on account of defect of memory. But he who does not remember the lowest species is bound to declare the generic species; for example, he who knows that he sinned against charity, although he does not remember how, is bound to say: I have sinned gravely against charity. Again, he who is conscious that he has sinned mortally, although he does not remember what kind of sin he committed, must say: I have sinned gravely.

270. Corollaries: (a) For the integrity of confession it does not suffice to express the internal act, but the external act of sin must be declared; for example, he who unjustly killed his neighbor does not satisfy the precept of integrity by saying: I had the desire of killing an innocent person. For although the internal act, with respect to malice, is of the same species as the

external act, nevertheless, according to the common estimation of wise men and of the faithful, it differs morally from it; and deservedly, for words or deeds certainly differ from thoughts and desires, and suppose greater malice; moreover they frequently increase the internal malice, as was said in *De Actibus Humanis*, n. 162. Besides, without declaration of the external act, the confessor can scarcely fulfill his office concerning occasions to be avoided, restitution to be imposed, and remedies to be provided: for all these depend on the external act.

This is true not only of sins of commission, but also of sins of omission; for example, he who omitted Mass on a feast day would not satisfy by saying: I had the desire of omitting Mass.

271. (b) But it is controverted whether an effect mortally evil, foreseen from sin, must be expressed, for example, blasphemy uttered in drunkenness, death following from poison administered. - According to all, per accidens there is an obligation of confessing such an effect, if from the effect that followed a censure, or reservation, or obligation of making restitution is incurred; thus if someone procured an abortion, with the effect following, he must declare this, on account of the censure annexed to this effect.

With these cases set aside, there is a threefold opinion; others more probably with St. Alphonsus (n. 149) affirm, provided the evil effect was foreseen, at least confusedly,[1] and the depraved will was not retracted before the effect was produced; for such an effect, as foreseen, is voluntary in its cause, and consequently a sin. Thus he who becomes drunk while foreseeing that he will omit Mass is bound to confess both the drunkenness and the omission of Mass. Yet the case is excepted in which the evil will was retracted before the effect, for example, if a drunken man, before he has lost the use of reason, has already retracted his sin, although afterward, on account of the absorbed liquor, he loses the use of reason and omits Mass: for then the effect is only materially evil; therefore it suffices to declare: I was drunk and wished to omit Mass.

[1] Yet it must be noted that what is foreseen only confusedly is not as sinful as what is foreseen clearly and distinctly. Cf. Vieux Moraliste, apud *Ami du Clerge*, t. XX (1898), p. 1025-1030 and 1121-1129.

Others, with Lugo,[2] probably deny this, because the whole malice of the act is in the cause, but not in the effect which follows from it; since he cannot actually sin who does not actually act morally; but he who placed the sinful cause does not morally act at the time when the effect is produced, since he is actually sleeping or distracted; therefore that effect is not properly a sin; therefore it suffices to accuse the cause, without the effect being declared.

[2] Lugo, disp. XVI, sect. 9, with the authors whom he cites, n. 440.

272. Some, with D'Annibale,[1] distinguish thus: if an effect of this kind introduces a new sin, and is such that it could follow or not follow from the cause placed, it must be declared; for example, if someone, on account of drunkenness, omitted Mass on a feast day, or blasphemed, or killed, he must signify that, by indulging in wine, he foresaw these dangers, and that in truth while drunk he omitted Mass, blasphemed, killed. Otherwise, the evil effect is not necessarily to be declared: for example, for him who set fire to another's house, or administered poison to a man, it will be enough to say: I set fire to another's house, or I gave poison to someone.

[1] D'Annibale, n. 303 and note 23; Morino, n. 453.

In this variety of opinions, penitents are not to be compelled, but only exhorted, to declare the evil effect. In practice there is scarcely any difficulty, since most of the faithful, ignorant of these distinctions, generally declare those evil effects of which they are conscious.

2° On Integrity with Respect to the Number of Sins

273. (A) Principle: For the integrity of confession, the penitent is bound also to manifest distinctly the number of mortal sins, insofar as it can morally be known. It is certain.

This is clear from Trent, which defines that all and each mortal sin, of which memory is had with due and diligent premeditation, must be accused; and which declares that those who do otherwise and knowingly retain anything obtain pardon of no sin.[2]

[2] Trent, sess. XIV, can. 7 and ch. 5.

274. (B) Corollaries: (a) When the penitent certainly knows the number of sins, he must sincerely confess it, neither greater nor lesser; otherwise it would be a sacrilegious lie. Hence one must not say: I blasphemed about six times, when the number is certainly known; for the word *about* makes the matter doubtful, and so the confessor is deceived.

(b) When, after diligent examination, he does not know the certain number, he must accuse the more probable number, that is, the one which comes closer to the truth, adding the particle *about*, or *more or less*. But this clause, according to St. Alphonsus (n. 466), does not have an absolute sense, but a relative one with respect to the number to which it is added; namely *about three times* is understood as 2-4; *about ten times*: 8-12; *about thirty*: 27-33; *about one hundred*: 95-105; *about one thousand*: 950-1050. Now if the penitent afterward knows that he erred by lessening the number, he is not bound to correct the error in another confession unless the number notably exceeds the approximate number, so that it cannot be included under the particle *about*; thus, if he said about ten, and afterward knew that he had sinned twelve times, he is bound to nothing; otherwise, if in fact he had sinned fifteen times. - But he who in good faith notably exaggerated the number is not bound to repeat the confession, because the greater contains the lesser.

(c) If the penitent cannot even recall the approximate number, because he long fostered a habit of sinning, it suffices that he indicate the duration of the habit, adding, if it can be done, about how often in a day, or week, or month he sinned: for this is more easily recalled than the whole sum of sins. - Indeed, when the habit is such that the individual acts are indeliberate, although the habit itself is gravely culpable, as being not retracted, as often occurs in those who blaspheme, it is not necessary to explain the number of blasphemies, but it suffices to say: I have an inveterate habit of blaspheming inadvertently whenever the occasion presents itself.[1] Likewise, according to Lugo,[2] when rustic or common men confess conversations about shameful matters with companions, which certain men are accustomed to mix in here and there through the whole day while they labor together, both concerning men and concerning women, both concerning married persons and unmarried ones, it suffices to explain the habit and the principal species, without the number being declared, since this is morally impossible.

[1] Thus Sporer, *Theol. Sacram. de Paenit.*, n. 455; Genicot, n. 285.

[2] Lugo, disp. XVI, n. 575.

275. (d) When there is question of internal sins, whether thoughts or desires, which were very frequent daily, it suffices to express this frequency in a general way, by saying, for example: for one month I frequently in a day called down grave evils upon an enemy; or, for two months, often in a day I gave consent to depraved desires. For then the confessor, having heard the space of time, morally speaking, can conjecture what the number of sins was. - Speculatively speaking the penitent would have to say how often, approximately, desires of this kind were interrupted; but in practice the uneducated cannot do this, since they do not advert to this.

276. (e) Those who in good faith accused their sins in an indeterminate and confused way with respect to number, because at that time they could not explain them better, probably are not bound to repeat the confession, if afterward, having become more instructed, they apprehend this

number more distinctly; for the sins which they declared, according to the knowledge which they had at that time, were directly remitted, as being sufficiently contained in this confused accusation; but there is no obligation of again confessing a sin already directly remitted through absolution.[1]

[1] Thus Lugo, disp. XVI, n. 577-588; Genicot, n. 285.

3° On Integrity with Respect to the Circumstances of Sins

277. Among circumstances, some change the species of the sin, because namely they constitute a new malice specifically distinct from the malice of the sin itself: for example, the circumstance of a sacred thing in theft adds to the sin of injustice the special malice of sacrilege; but others only aggravate the malice within the same species, whether by reason of intensity, or by reason of duration, or of mode, etc.: thus the sin of homicide is certainly aggravated by the circumstances by which death is inflicted, for example, by first amputating hands and feet, or gouging out the eyes.

(A) On Circumstances Which Change the Species

278. Principle: For the integrity of confession it is necessary to accuse circumstances which change the species of the sin, if the new malice thus introduced is grave and is apprehended as such. It is certain.

For Trent defines[2] that it is necessary to confess "the circumstances which change the species of the sin." The reason is that those circumstances, by the very fact that they change the species, constitute a new and distinct sin, since they violate a distinct law or are opposed to a distinct virtue.

[2] Sess. XIV, can. 7.

But if the new malice, superadded to the sin, is not grave, or, even if objectively grave, is not apprehended as such by the subject, it does not constitute a grave sin, and consequently need not necessarily be declared.

279. Corollaries. The principal circumstances which are able to change the species are explained here only briefly,[3] since they are declared more fully in various Treatises:

[3] For a fuller exposition of this matter cf. Lugo, disp. XVI, n. 144-390; Suarez, disp. XXII, sect. 4; Salmantic., cap. 8, n. 51-114.

(a) The circumstance of the person sinning changes the species when an external sin against chastity is committed by a person consecrated to God by vow of chastity or by sacred order: for then it is personal sacrilege; - or when the person sinning is married: for it is adultery; - or when someone scandalizes a person whose spiritual care he has by force of his office, for example, if a pastor sins with parishioners, parents with children, a teacher with pupils: for these are bound by justice or piety to promote the spiritual good of subjects, and therefore they sin against one or the other virtue.

(b) Likewise the circumstance of the person with whom or against whom sin is committed changes the species in the matter of chastity, if someone sins with a married person (adultery), or with one related by blood or affinity (incest); - in the matter of charity or justice, if someone has hated, or struck, or calumniated parents, or children, or grandparents, grandchildren, or relatives by affinity in the first degree: for then piety is offended.

(c) The circumstance of place changes the species when sacrilege is introduced from this, for example, when an external act against chastity is committed in a church, or sacred things are stolen there.

(d) The circumstance of end changes the species when in itself it is gravely sinful, for example, if someone utters shameful things with the intention of seducing an innocent person.

(B) On Circumstances Which Do Not Change the Species

280. What is certain? In order to separate certain things from uncertain ones, we establish these points: according to all, circumstances which do not notably aggravate the malice of a sin are not necessarily to be accused. Besides, circumstances whether of scandal, or of erroneous conscience, or of quantity, etc., which make some sin mortal from venial, must be accused; for example, to speak slightly shameful things before innocent children, who from this will take occasion of sinning gravely; - to steal ten asses when someone thinks this is a grave sin; - the quantity of the theft, insofar as it is necessary for discerning whether the sin is grave or slight. Likewise, circumstances which import a censure or reservation must be manifested.

281. What is disputed? But setting aside these cases, it is controverted whether circumstances notably aggravating the malice of a sin within the same species must necessarily be accused.

(a) Suarez, Billuart, Collet, Lacroix, and others[1] affirm. 1) For although Trent does not expressly teach this, nevertheless it insinuates it; since it declares that the circumstances of a sin are to be accused because otherwise it cannot be done that confessors "can rightly judge concerning the gravity of crimes, and impose the penalty which is fitting for those penitents"[1]; but the same reason has force for notably aggravating circumstances; for some of these seem to increase the malice of sin more than some circumstances which change the species; thus he who deliberately and cruelly mutilates an innocent person, by amputating his hands and arms and gouging out his eyes, and afterward kills him, sins more gravely than he who, suddenly moved by anger, kills another with one blow in a church. Besides, a much greater penance must be imposed upon him who stole a thousand gold pieces than upon him who stole only twenty.

[1] Suarez, disp. XXII, sect. 3, n. 5; Billuart, diss. VII, a. 2, § 3; Collet, VI, 321, apud Migne, p. 484; Lacroix, n. 977, and others cited by these authors.

[1] Sess. XIV, ch. 5.

2. The Roman Catechism, the best interpreter of the Council, expressly teaches this:[2] "Nor indeed is it fitting only to explain grave sins by narrating them, but also those things which surround each sin, and greatly increase or lessen its depravity."

[2] *De Sacram. Paenitent.*, n. 39.

3. Reason itself agrees; for, if the penitent is silent about these circumstances, he implicitly denies that his sin has such great gravity: for since there is a twofold manner of committing that sin, one ordinary, the other extraordinary and with peculiar deformity, when the penitent confesses the sin in a simple manner, the confessor neither can nor ought to understand that he sinned otherwise than in the ordinary manner, and so he is deceived with respect to the gravity of the sin.[3]

[3] Thus almost Suarez, n. 10.

(b) A few others with Sporer (n. 410) think that the circumstance *what*, for example, the quantity of the theft, must necessarily be confessed, because it touches the substantial integrity of the sin, but not the others.

282. (c) Yet the more common opinion denies this,[4] with St. Thomas, St. Alphonsus, and most moderns. For 1) while Trent explains the necessity of confessing mortal sins and their circumstances, it always adds this limitation: "circumstances which change the species of the sin"; but such a limitation seems to exclude other circumstances; for if someone, explaining the necessity of confessing sins, were always to add this limitation, "sins which are mortal," he would certainly seem to exclude all venial sins; so likewise the Council, by limiting the obligation of confessing circumstances to those which change the species, deservedly seems to exclude others.

[4] St. Thomas, in 4 dist. 16, q. 3, a. 2, quaestiunc. 5; *Opusc.* 7 (alias 10) ad Lectorem Bisunt., q. 6. After the instruction given for the Roman clergy by Benedict XIII "concerning this matter I think there must not even be disputation" (D'Annibale, III, n. 303, note 20).

Nor should it be said that the Council implicitly taught the obligation of confessing other circumstances, on account of the argument brought above (n. 281); for the confessor can form a prudent judgment as soon as he knows the species of the sin, since circumstances, even notably aggravating ones, do not substantially increase the malice of the sin; for the quiddity of the sin is taken from its specific determination; therefore, by declaring the species, the essence of the sin is sufficiently declared. With respect to penance to be imposed, an equality in every respect is not required, but only a certain equality or proportion between the sin and the satisfaction; moreover this proportion can certainly be determined once the species of the sin is known, without circumstances, even notably aggravating ones, being manifested.

2. The Roman Catechism, when the context is inspected, is not opposed to our opinion, because from the examples adduced there it is clear that there is question here of those circumstances

which make a sin mortal from venial, or change the species; for it says, after the words cited by the adversaries: "for certain circumstances are so grave that the character of mortal sin is established from them alone"; afterward it asserts the necessity of declaring the circumstance of a sacred person in homicide, or of a married person in fornication; and it adduces other examples pertaining to those circumstances which change the species. In the same place it prescribes that circumstances greatly lessening the sin are to be confessed: moreover all acknowledge that this is true only of those which change the species, or make a sin venial from mortal. Therefore the Catechism, rightly understood, rather favors our opinion.

3. Besides, Christ did not will confession to be a torture chamber of consciences, with Trent as witness; but if it were necessary to declare all circumstances notably aggravating the sin, both confessors and penitents would be in straits, since it is often difficult to determine which circumstances are notably aggravating, and consequently necessarily to be accused.

283. As regards practice, the faithful are accustomed to declare the more notable circumstances; and this indeed is generally to be advised to the faithful, not as a precept but as a counsel, both for greater peace of conscience and for receiving richer fruit from absolution. Yet the matter of chastity is excepted, concerning which nothing further is to be inquired beyond that which is necessary for knowing the species of the sin, lest perhaps penitents be scandalized[1] and the confessors themselves be exposed to temptations. - Hence, if penitents in good faith have been silent about circumstances of this kind in previous confessions, they are not to be compelled to repeat confessions, since the obligation of accusing them is at least very doubtful.

[1] Not only can penitents be scandalized in this case, but they can also make sacrilegious confessions; for certain persons are extremely ashamed to report these aggravating circumstances in shameful matter and are silent about them, even if they falsely think that these pertain to the integrity of confession and must be set forth. Cf. Gaume, *Manuel des Confesseurs*, n. 60.

284. Yet, according to all, per accidens there is an obligation of declaring them when the confessor legitimately asks about them. Now he has the right of asking about them when this is necessary for rendering a right judgment concerning the state of the penitent, for example, for knowing whether the penitent is a habitual sinner or not, whether he is in a proximate occasion, or is a recidivist. This is clear from the condemnation of proposition 58 by Innocent XI (March 2, 1679): "We are not bound to confess to a confessor asking us the habit of some sin";[1] for the same reason holds concerning a proximate occasion and frequent relapse as concerning habit.

[1] Apud Denzing., n. 1075. - See this proposition explained apud Viva, *Damnatae Theses*, in prop. 60, n. 16-18.

4° On the Integrity of Confession with Respect to Doubtful Sins

285. For the perfect sincerity of confession it is certainly to be desired that sins be accused as they are known: certain things as certain, doubtful things as doubtful. According to all, this is to be recommended to all, except the scrupulous, for tranquility of conscience and for receiving richer fruits from the sacrament. - But theologians further ask whether there is a strict obligation of declaring doubtful sins.

286. Principle: When a sin is truly doubtful, or doubtfully mortal,[2] after diligent examination, there is no strict obligation of confessing it. Thus commonly.

[2] A sin is truly doubtful when it is seriously doubted whether it was committed, for example, whether someone gave consent to a depraved thought; doubtfully mortal, when it was certainly committed, but there is serious doubt concerning its gravity, for example, on account of lightness of matter, or on account of imperfection of advertence or consent.

For the law of material integrity in confession regards the licit, but not the valid, administration of the sacrament, and consequently the principles of probabilism explained in the Treatise on Conscience can be applied here. According to probabilists, a doubtful law does not oblige; but in this case the law of confessing is doubtful, since there is doubt either about the very existence of the sin, or about its gravity. This can be confirmed from Trent, where it declares that mortal sins must be accused of which, after diligent examination, consciousness is had; but consciousness supposes knowledge, or morally certain knowledge: and therefore consciousness is not had of sins doubtfully committed; but if sins were certainly committed and are doubtfully mortal, consciousness of their gravity is not had. According to equiprobabilists, in the conflict of two opinions equally or almost equally probable, better is the condition of the possessor; moreover in this case liberty possesses, not the law, since the law cannot bind unless it is clear that the sin was committed and at the same time is grave.

Yet equiprobabilists and probabiliorists contend that sins of this kind must be accused if it is more probable that they were committed and at the same time are grave.

287. Practical conclusion. In practice the accusation of doubtful sins is generally to be recommended. But if the doubt turns upon the gravity of a sin certainly committed, a distinction must be made: (a) if it is doubted whether the matter is grave, the uneducated and ignorant are to be admonished to confess doubtful sins, unless they are scrupulous, because they can scarcely discern mortal sins from venial ones; but the learned can indeed form a conscience for themselves, yet are gently to be exhorted to declare doubts.

(b) If it is doubted whether there was full advertence or full consent, the timid can abstain from accusing doubts, because it is presumed that they did not consent gravely; the scrupulous must altogether abstain from this accusation; the lax, or those frequently falling into mortal sins, are to be induced to confess doubts, because, from things commonly occurring, these are judged to have given full consent.[1]

[1] Cf. St. Alphonsus, n. 476; Lacroix, n. 612.

288. Disputed questions. (A) If the sin was certainly committed and mortal, but it is doubted whether it was accused: (a) according to all, it must be declared if the doubt is merely negative, i.e., if there is no positive reason at least probable that such a sin was already accused; for a merely negative doubt does not destroy the morally certain obligation of submitting such a sin to the keys.

(b) But if the doubt is truly positive and seriously probable (which is verified when someone is accustomed diligently to make examination and confession), there is controversy. According to probabilists, the law of confessing in this case is doubtful and consequently does not oblige;

according to equiprobabilists, the obligation of confessing such a sin remains; for in doubt better is the condition of the possessor: moreover the obligation of confessing in this case possesses, since grave sin certainly was committed. Yet St. Alphonsus moderates this opinion, adding (n. 477) that he who was diligent in confessing his sins is not bound to confess, if he doubts whether he omitted some mortal sin, after much time has elapsed from the time when he committed it, since in this case he can believe with moral certitude that he has already confessed it.

In practice we think the penitent is not to be compelled, but only gently induced, to confess sins certainly committed and probably accused.

289. (B) If a sin was accused as doubtful and afterward is known as certain, it is controverted whether there is an obligation of accusing it again as certain.

(a) Many theologians more probably affirm with St. Alphonsus (n. 478), because a doubtful accusation differs substantially from a certain accusation; when therefore the error is recognized, it must be repaired.

(b) Some, however, probably deny this with Lugo and Lehmkuhl,[1] since this sin has already been directly remitted; for the confessor, on hearing it, implicitly said: if you have truly committed the sin, I absolve you; but the sin in fact had been truly committed; therefore it was directly remitted; now a sin directly remitted need not necessarily be subjected again to the keys. - This is confirmed by analogy; he who said that he had sinned about ten times is not bound to repeat the accusation if afterward he becomes more certain that he sinned eleven times, although the eleventh sin was declared as doubtful in the formula *about*; therefore by parity he who accused a sin as doubtful is not bound afterward to manifest the same as certain.

[1] Lugo, disp. XVI, n. 78-83; Lehmkuhl, n. 318; Ballerini-Palmieri, n. 381; Genicot, n. 291.

This reason seems altogether solid, and therefore the faithful who have neglected to accuse a sin of this kind again are not to be disturbed. - For the rest, St. Alphonsus grants (l. c.) that a penitent is not bound to repeat the accusation who confessed a sin which neither he nor the confessor knew to be mortal, although afterward he knows it to be mortal from its kind; for example, one who in good faith had accused pollution as a slight sin of touch: for he declared the sin as it was then in his conscience, and as it now is, and nothing new occurs except that he now knows the matter of this sin to be grave.

5° On Lying and Other Defects Contrary to Integrity

With these things set forth concerning the scope of integrity in confession, a few things remain to be said concerning lying and other defects contrary to this integrity.

290. A lie, or silence, in matter pertaining to confession, is grave sacrilege whenever it turns upon matter necessary for the integrity of confession, or upon dispositions necessary for absolution. It is certain.

For a lie or silence is injurious to the sacrament and destroys its efficacy: for if a mortal sin which must be declared is denied or kept silent, or it is affirmed that contrition is present when in reality it is not had, no sin is remitted, and so an injury is done both to the sacrament and to the blood of

Christ from which the sacraments derive their power; - it is pernicious to the penitent himself, who is deprived of the grace of the sacrament.

It is said: a lie in matter pertaining to confession; for a lie in other matters, for example, by narrating a false history, although it is said in the sacred tribunal and while confessing, does not receive mortal gravity from that circumstance of time and place. It is added: whenever it turns upon necessary matter or dispositions; for to deny some venial sin, or a mortal sin which in no way pertains to the present confession, does not seem to be a grave sin, since of itself it does not impede the effect of the sacrament.

291. Corollaries: (A) He who accuses a recent mortal sin as an old one, not by positively lying, but by leaving the matter in doubt, for example, by making a general confession in which by design he does not distinguish mortal sins committed after the last confession from those which had been committed before, - per se satisfies the substantial integrity of confession, because the circumstance of time in this case does not change the species of the sin; besides, if the confessor does not know sufficiently, from this confused accusation, the state of the penitent, he can question him, and then the penitent is bound to answer sincerely.

I said per se; because per accidens such a way of acting would substantially vitiate the confession, if the species of the sin were not understood; if, for example, the confessor could not discern whether a shameful sin was committed before or after marriage, before or after a vow of chastity.

For the rest, such a way of acting is to be reproved, since it is opposed to perfect sincerity and can prepare a way to sacrilege.

292. (B) On the contrary, according to the common opinion, he sins gravely who confesses a mortal sin not yet accused as an old one already declared before, whether explicitly by saying: "I accuse myself of such a sin which I already declared before"; or equivalently, by using this formula: "then I accuse myself of the sins of my past life, especially of this..." For this manner of speaking is not a mental equivocation, but a true lie, by which the confessor is truly deceived in a grave matter pertaining to confession; for from this he concludes that such a grave sin is not necessary matter.

Some after Ballerini[1] contradict this, because they judge this lie to be slight, since the confessor is not deceived concerning things necessary to be known; yet they grant that he sins gravely who, burdened with one sole mortal sin, would accuse it as remitted before, because then he would deceive the confessor concerning the state of his conscience.[2] This reason seems to militate against their opinion; for even when other mortal sins are present, the confessor is deceived concerning a matter necessary to be known, namely the existence of one mortal sin in the conscience of the penitent. - Whence there must be no departure from the common opinion.

[1] Ballerini-Gury, note to n. 448; Bucceroni, n. 715; Genicot, n. 288.

[2] Genicot, n. 288.

293. (C) He who accuses venial sins to his ordinary confessor, but mortal sins to another, (a) certainly sins mortally if he obtains absolution from the venial sins before he has been absolved from the mortal sins, because he sacrilegiously receives the former absolution

without due dispositions; (b) but if he is first absolved from the mortal sins and afterward from the venial sins, he per se does not sin, provided that he does this for the sake of shame or lest perhaps he be exposed to the danger of keeping back a grave sin, but not for sinning more freely. - It is said per se, because young men who act thus so that they may embrace the clerical state or a religious order,[3] from which otherwise they would be barred, sin gravely per accidens: for then they deceive the confessor in a grave matter pertaining to vocation.

[3] Thus Sabetti, p. 743, q. 5.

Whence in practice the confessor should not curiously inquire whether perhaps the penitent has approached another priest, but on the contrary by his whole manner of acting should show that it is in no way displeasing to him that penitents approach another confessor; indeed sometimes he should offer them the occasion of approaching outside confessors; otherwise, not a few are exposed to the danger of making sacrilegious confessions.[1]

[1] Cf. Zelle, *La Confession*, p. 205 sq.; Brahim, *De reticentia volunt. peccat.*, p. 73 sq.

294. (D) Per se he does not sin who disguises his voice lest he be recognized by the confessor, provided that he opens all his mortal sins; for it is not necessary that the penitent be recognized by name. Indeed it is often expedient that the confessor say nothing from which it would appear that the penitent is known to him, since not a few confess more freely to a priest by whom they think they are not known. - It is said per se, because if this is done by design by a habitual sinner or recidivist, in order to deceive the confessor and more easily extort absolution, it is a sin per accidens.

(E) The penitent is bound to respond sincerely to the confessor asking, as often as the latter legitimately asks, for example, about habit, relapse, proximate occasion, in a word, about those things without which a prudent judgment cannot be rendered. But if the question is indiscreet, for example, concerning name, country, place of dwelling, etc., the penitent is not bound to respond, since these things do not pertain to sacramental confession.

§ III. On the Causes Excusing from Material Integrity

295. General principle: Physical or moral impotence excuses from the material integrity of confession as long as it perseveres. It is certain.

[2] Suarez, disp. XXIII; Lugo, disp. XVII; Salmantic., cap. 8, n. 115-137; Lacroix, n. 1140-1164; Billuart, diss. VII, a. 2, § 1-2; Kenrick, n. 61; Marc, n. 1697-1702; Muller, § 122; Konings, n. 1367-1369; Sabetti, n. 750-751; Scavini, n. 306-307; Lehmkuhl, n. 327-340; Ballerini-Palmieri, n. 349-449; Haine, q. 47-52; Genicot, n. 292-297; Noldin, n. 271-276.

It is proved. For the law concerning the integrity of confession is indeed divine, but positive; but a positive law, even a divine one, does not oblige to that which is impossible or even very difficult, according to that saying: no one is held to the impossible.

It is explained. But impossibility, whether physical or moral, must be true, and indeed not only with respect to one, but also with respect to any confessor who without grave inconvenience can be approached. - Besides, no inconvenience intrinsically annexed to confession excuses from material integrity; such is, for example, even the greatest shame, fear of rebuke, loss of reputation with the confessor, etc. For Christ, in instituting confession, willed to impose upon the penitent all those

inconveniences which are intrinsic to confession and necessarily connected with it. Whence only those great inconveniences excuse from integrity which are extrinsic to confession itself, and are not necessarily connected with it.

296. This impotence excuses only as long as it perseveres, so that, when the impotence ceases, the obligation of declaring the sins in the next confession is now in force. For sins omitted on account of a legitimate cause are indeed remitted indirectly, but not directly; but every sin not yet directly remitted must be subjected to the power of the keys. - Hence proposition 11 was condemned by Alexander VII (September 24, 1665): "Sins omitted or forgotten in confession, on account of instant danger of life, or on account of another cause, we are not bound to express in the following confession."[1] Therefore penitents who cannot make an integral confession are to be admonished concerning this obligation.

[1] Apud Denzing., n. 982. - Cf. Viva, *Damnat. Theses*, on this proposition; Vacant, *Dict. de Theol.*, t. I, col. 736.

But this obligation does not press immediately, but only at the time of the next confession, unless perhaps the excusing cause still perseveres; but when it has ceased, sacrilege would be committed if a sin not yet directly remitted were knowingly and willingly kept silent.

Since the cause excusing from material integrity is twofold, namely impotence both physical and moral, each must be spoken of separately.

I. On Physical Impotence

This impotence arises especially from a threefold cause: from lack of time or strength, - of knowledge - or of speech.

297. 1° From lack of strength or time, namely (a) if a sick person fails after confession has been begun, or is in danger of failing before the confession is finished, or a fortiori if he is already destitute of his senses; (b) if the priest himself will probably die before he is able to hear the whole confession; (c) when shipwreck, fire, or battle is imminent, so that all upon whom death threatens cannot be heard. In this case a brief confession of some less infamous sin can suffice, or even the mere request for absolution with contrition manifested by some sensible sign, for example, by raising the hands or striking the breast; then all can be absolved at the same time by a general formula: *I absolve you from all your censures and your sins*. - Yet if soldiers could be heard individually, for example, on the day or night before battle, that would certainly be better, even if they could not confess all sins, because they could prepare themselves better for absolution.

For the rest, in all the aforesaid cases, more care must be taken to excite contrition, which is altogether essential, than for material integrity, which in these circumstances is not absolutely required.

But a great concourse of penitents on some more solemn feast day by no means excuses; for if this reason were admitted, many would approach the sacred tribunal by design at a time of great concourse, and there would be danger of absolving the unworthy; besides, penitents whose confession cannot be heard can be deferred to another day.

For practice, in regions where there is a great concourse of penitents either every Saturday or on the eve of Feasts, as often happens in the great cities of the United States, it is most expedient that confessors choose other days for hearing the confessions of the pious.[1]

[1] Therefore rightly the Second Plenary Council of Baltimore, n. 291: "We earnestly exhort and beseech pastors of souls that they be ready at the confessionals to hear penitents every Saturday, and on the vigils of Feasts, at least in the evening time, and on Sundays and feast days in the morning before first Mass. For at these hours penitents will not be lacking, provided the confessor himself is not lacking to his office. But if the number of the faithful is greater than that all who approach can be heard in one day, let him also choose other times, other days, which he may devote to this so necessary work. For it would be a most grave crime if by the negligence or idleness of the pastor even one from the flock of the faithful were defrauded of this sacrament. Nor will those who once and again have found that this ministry is unwelcome and troublesome to the priest easily bring their soul to return to confess."

298. 2° From defect of knowledge, namely (a) when someone, after a serious examination has been made, does not remember some mortal sin, from forgetfulness, from inadvertence not gravely culpable, which does not arise from negligence, or from infirmity of nature. Nor is he who is endowed with a weak memory bound to write his sins so that he may accuse them more diligently: for this is an extraordinary means to which no one is obliged; (b) if someone, from ignorance not gravely culpable, thinks that a mortal sin which he committed is either venial, or is not here and now to be accused; but when ignorance of this kind ceases, the precept of declaring it now presses.

299. 3° From defect of speech, if namely someone is mute, or ignorant of the language of the region in which he lives: - (a) if someone is mute and not sufficiently instructed so that he can confess integrally by signs, he is bound to manifest his sins by nods, insofar as can be done; indeed, according to many,[1] he must write them. Yet this obligation of manifesting sins in writing is not to be urged; for it is denied with probability by others,[2] because it seems to be an extraordinary means, and not sufficiently consistent with the secrecy of confession. Hence if the confession is written, let the confessor take care that the writing be destroyed at once, lest perhaps it come into the hands of others. - For the same reason the confessor generally will rightly abstain from making questions in writing, unless however the mute person himself asks this, for the sake of greater consolation and utility.

[1] Thus Lugo, disp. XV, n. 87; St. Alphonsus, n. 479; Lacroix, n. 1194.

[2] Thus Toletus, lib. V, ch. 6, n. 3; Ballerini-Palmieri, n. 391; Lehmkuhl, n. 328.

300. (b) If someone is ignorant of the confessor's language, and cannot approach another confessor by whom he may be understood, let him confess his sins in the best way that can be done, by words or signs. It is indeed permitted, but not necessary, to use an interpreter, on account of the danger of revelation; and if no sin can be manifested in species, for absolution it suffices to manifest sin in general, as is clear from the response of the Holy Office, February 28, 1633.[3]

[3] "Whether in distant regions a Catholic, unconfessed for many years, asking absolution only by signs, on account of defect of language, can be absolved without the help of an interpreter? - R. There is no need of an interpreter in the proposed case, just as also absolution of sins can and must be imparted to one exhibiting the signs which he can... provided they suffice for expressing some sin in species. But in the case in which someone tries as much as he can to exhibit signs of sins in species, but they cannot be understood at all, he can be absolved by the sole manifestation of

sins in general." Sacred Congregation of the Holy Office, apud Bucceroni, *Enchiridion*, n. 504. You will find another decree of the Sacred Congregation de Propaganda Fide apud *Collectanea*, n. 951.

Yet, in the article of death, it is safer to declare at least one venial sin through an interpreter, if the penitent doubts concerning his perfect contrition: indeed St. Alphonsus (n. 479) thinks that this is prescribed by charity toward oneself, which demands that safer means be employed if they are probably necessary for salvation: yet this is rejected by many, as resting upon an antiquated opinion which regarded the value of the sacrament as doubtful, even in danger of death, when no special sin is subjected to the keys. Whence, in practice, a practice of this kind is indeed to be counseled, but not urged.

For the rest, if confession is made through an interpreter, he should be admonished concerning the obligation of preserving secrecy; and, so that the interpreter himself may not know the sins of the penitent, one can proceed thus: let the interpreter turn his face away from the penitent, and recite to him in his own language the general questions proposed by the confessor concerning the precepts of the Decalogue and of the Church; meanwhile let the penitent at each question signify to the confessor by a conventional sign, for example, by compression of the fingers, whether he has sinned or not, and how often, insofar as can be done.[1]

[1] Cf. Haine, q. 49.

II. On Moral Impotence

301. Notion and conditions. This is present as often as integral confession cannot be made without grave spiritual or temporal harm extrinsic to confession itself. Concerning this, however, these things must be noted:

(a) The danger of such harm is not easily to be imagined, but must rest upon a solid foundation. (b) When such danger exists, the penitent is bound to seek another confessor to whom he can confess integrally without harm; this, at least in cities, is generally altogether easy. (c) If confession can conveniently be deferred, with hope of making it integral without grave harm, the penitent is bound to defer it; but there is sufficient reason for not deferring it if the precept of annual confession presses, or the moral necessity of communicating or celebrating, or if otherwise the penitent would be compelled to remain for a long time (beyond three days, according to some; for one day, according to others[2]) in the state of mortal sin. (d) Only those sins should be kept silent which it is necessary to conceal in order to avert the harm; all the others should be candidly declared.

[2] Cf. St. Alphonsus, n. 487; Noldin, n. 273.

It must likewise be noted that to explain in preaching to the faithful the various causes of moral impotence is generally not expedient, lest perhaps, deceiving themselves, they be exposed to the danger of keeping many things silent: these things are necessary to be known by the confessor, not by the faithful.

302. 2° Principal causes. With these things set down, grave harm, sufficient for keeping some sin silent, can arise from a threefold cause: on the part of the penitent, of the confessor, or of a third party.

(A) On the part of the penitent, when it is reasonably feared lest, from integral confession, the penitent be gravely defamed, not indeed with the confessor (for this is intrinsic to confession), but with others: (a) if the penitent confesses in those circumstances in which bystanders, who cannot be removed, will hear the sins, for example, in a hospital, when another sick person lies near the one confessing. This is verified also in the case of a deaf or somewhat deaf person, whose deafness the confessor notices only in the course of confession, and indeed in such circumstances in which this person could not be led to the sacristy without a suspicion arising that he had committed grave sin; for then the confessor must abstain from questions and impose a light penance,[1] lest otherwise the bystanders understand that grave sins had been committed by the penitent. But when deafness is noticed before the beginning of confession, the penitent is regularly to be led to the sacristy or to another place, where he can be questioned without danger of revelation, unless custom or prudent reason is an obstacle.

[1] Often the confessor can impose a penance which is not noticed by the bystanders, for example, by showing the penitent a rosary or a chaplet.

303. (b) If confession, in order to be integral, must be very long, and indeed in those circumstances in which bystanders would very probably be able to infer from that length that the penitent is guilty of many and grave sins; for example, if a sick person, who has already confessed and is about to receive viaticum, recognizes that he is guilty of sacrilege and has several confessions to repeat, it suffices for the time to hear a few mortal sins, lest otherwise the bystanders be able to suspect the matter; likewise a priest about to celebrate immediately and needing a lengthy confession, which would excite the wonder and suspicions of the people; or also a boy who before first communion, with the faithful already gathered in the church, would have to repeat his confessions on account of sacrilege committed. In these or similar cases, it suffices to declare a few mortal sins, and to accuse the rest in the next confession.

(c) If for a grave reason the penitent fears lest the confessor break the law of the seal, either directly (which happens most rarely), or indirectly, for example, by raising his voice higher when mortal sins are accused, so that bystanders can hear him; or lest, from the indiscretion of the confessor, the penitent undergo privation of office or of support.

(d) If he seriously fears that, by recalling sins minutely, especially shameful ones, he may indulge in morose delectation; or lest certain sins

by declaring them, he may be solicited by the confessor to shameful things, because, for example, he knows that this has already happened to himself or to others. These things, however, happen very rarely.

(e) If there is question of a scrupulous person, who, by insisting upon material integrity, will experience greater anxieties.

304. (B) On the part of the confessor: (a) if, in hearing an integral confession, death or a lethal disease threatens the confessor, for example, in time of plague, fire, shipwreck, or because enemies are pursuing; (b) if the confessor, on account of his own frailty, fears very probably that by questioning more diligently he may scandalize the penitent or himself; (c) if the

penitent himself seriously fears lest, by an integral confession, the confessor whose frailty he has clearly known be induced into sin; this certainly will occur most rarely.

305. (C) On the part of a third party: (a) if there is grave danger lest the confessor use knowledge acquired through confession to the temporal or spiritual harm of the neighbor, for example, by casting out of his house a maidservant with whom the penitent sinned; (b) or if the confessor could not confess his own sin without manifesting sins heard in confession, for example, if, immediately after hearing confession, he were to say that he had sinned gravely by asking the name of the accomplice: for thus it would be manifested that the penitent had committed some mortal sin with an accomplice.

306. 3° Disputed question. It is controverted whether there is an obligation of confessing a sin which cannot be explained integrally without the defamation of an accomplice or of a third person before the confessor. This can happen with sins committed between spouses, parents and children, blood relatives or relatives by affinity, or partners in the same affairs. - The question is also extended to the case in which a sin cannot be declared integrally without manifestation of the person against whom the sin was committed, for example, if someone struck his sister, pregnant from sin, and so procured an abortion.

Now all grant that then the penitent is bound to approach another confessor, to whom the accomplice is unknown, if this can conveniently be done. Yet necessity or great utility excuses from this obligation, for example, if danger of death presses, or the precept of annual confession, - if there is a special utility of receiving holy communion soon, - if otherwise someone would be compelled to remain in mortal sin through the whole day, - or if the penitent could open his conscience to another confessor only with reluctance, - or would be deprived of the special consolation which he finds with his ordinary confessor. - All likewise say that the penitent neither can nor is bound to declare a sin which is not necessary matter of confession (because it has either already been accused, or is only venial), if by confessing it the grave sin of the accomplice is manifested. Outside these cases, the matter is controverted.

307. (A) Not a few hold, with Navarro, Valentia, Medina, Ballerini, and others,[1] that the circumstance from which the accomplice would be detected can and must be kept silent, for example, the circumstance of incest in a sin of lust; for the natural precept of preserving the reputation of the neighbor is to be preferred to the positive law of the integrity of confession, especially since the observance of this law is only deferred for a time.

[1] The older authors who follow this opinion are reviewed by Lugo, disp. XVI, n. 393; cf. Ballerini-Palmieri, n. 442-444.

308. (B) Yet the more common and truer opinion, with St. Thomas, Lugo, St. Alphonsus, and most moderns,[2] teaches that an integral confession is required in this case. For the precept of charity forbids only that the reputation of another be injured without a legitimate cause; but here there is a legitimate cause; for on the one hand the injury to reputation is done before the confessor alone, who is bound to keep the matter entirely secret under the most secret seal, and therefore it cannot be regarded as a grave inconvenience; besides, grave inconveniences follow if sins committed with a known accomplice are kept silent; for since there are many sins

of this kind (between spouses, between parents and children, between blood relatives and relatives by affinity), occasion would often be given to anxieties and doubts which the penitent himself would have to solve; penitents would be deprived of those benefits which arise from integral confession, particular counsels, exhortations, etc.; those who have a lax conscience would keep silent about many sins under the pretext that the accomplice could become known to the confessor, and so little by little the law of integrity would be weakened.

[2] St. Thomas, In 4, dist. 16, q. 3, a. 2, quaestiunc. 5, ad 5; Lugo, disp. XVI, n. 394; Suarez, disp. XXXIV, sect. 2, n. 3; St. Alphonsus, n. 409.

Besides, in practice, the faithful, ignorant of these distinctions, for the most part declare sins of this kind without hesitation, and if they keep them silent, they are often in bad faith and think that they have confessed sacrilegiously. - If, however, some ask explicitly about this matter and very much resist manifesting those circumstances from which the accomplice would become known, the obligation of confessing them is not to be urged, because the former opinion does not lack probability.

From this it also follows that mothers and wives are often excused when in confession they manifest the sins of sons and husbands, in order to ask counsel or lessen sorrow; yet they should not be permitted to do this except insofar as it truly contributes to their spiritual good.

309. 4° Scholion. On this occasion it is asked whether it is licit for the confessor to inquire the name of the accomplice.

(A) He sins mortally who inquires the name of the accomplice under penalty of denial of absolution, and even in any way whatever, unless for a most grave cause. Thus Benedict XIV in various Constitutions, the Brief *Suprema*, July 7, 1745,[1] the Constitution *Ubi primum*, June 2, 1746, the Constitution *Ad eradicandum*, September 28, 1746; indeed he established suspension *ferendae sententiae* against delinquents in these words: "Confessors requiring the name of the accomplice under penalty of denial of absolution sin gravely and incur suspension from hearing confessions, but only *ferendae sententiae*."[2] - If the confessor requires the name of the accomplice without threat of denial of absolution, he also sins mortally, unless there is a grave excusing cause, yet without incurring the canonical penalty. - The reason for this prohibition is that a practice of this kind renders the sacrament hateful, and without cause induces penitents to defame the accomplice.

[1] Apud Denzing., n. 1323. - The two former documents are directed to the bishops of Lusitania; but the latter to the universal Church.

[2] Constit. *Ad eradicandum*.

310. Yet the confessor is not prohibited from making those questions which seem necessary for the integrity of confession, or for detecting the nature of the proximate occasion, even if per accidens the accomplice becomes known from this: for example, whether the accomplice remains in the same house, whether he is bound by vow, related by blood or by affinity; for these and similar things the confessor must know for the good of the penitent, and from what was said above (n. 197) this is licit.[3]

[3] That this was not reproved by Benedict XIV is clear from the words in which the Pontiff describes the abuse which he condemns: "If perhaps they had fallen upon penitents having an associate in crime, from the same penitents they would commonly inquire the name of such an associate or accomplice... indeed they would require that not only the name of the same accomplice, but in addition the place of habitation, be designated to them." Apud Denzing., n. 1323. Hence the same Pontiff (*De Syn. dioeces.*, lib. VI, ch. 11, n. 1) acknowledges that sometimes, although rarely, it is licit to inquire the name of the accomplice: "Yet it is certain that it can rarely happen that it is licit for the confessor to ask the penitent for the name of the accomplice, much less to oblige the same to disclose it to him."

The confessor must also, for a most grave cause, for example, lest a member of some community or college corrupt his companions, oblige the penitent to denounce the accomplice to superiors, for example, to father, master, teacher, etc. Yet it is not expedient that the confessor offer himself for making this denunciation, nor, if asked, should he assume this duty, unless however the penitent does not wish to manifest the matter to another; in which case let him ask the penitent to speak to him about this outside confession. The reason is that otherwise confession becomes hateful, at least to others who hear of this matter. - Hence, if the confessor is at the same time the superior who alone can effectively meet the threatening evil, he can require that outside confession the name of the accomplice be manifested to him.

311. (B) Moreover, in the Bull *Apostolicae Sedis*, promulgated by Pius IX on October 12, 1869, an excommunication *latae sententiae*, simply reserved to the Supreme Pontiff, is brought against those "teaching or defending as licit the practice of inquiring from the penitent the name of the accomplice, insofar as it was condemned by Benedict XIV." Hence three things are required for incurring this excommunication: (a) to teach that this practice is licit: therefore those who in fact inquire the name of the accomplice, yet without teaching that this is licit, do not incur the censure; (b) to teach that it is licit under penalty of denial of absolution, for these words are found in the Constitution of Benedict XIV; (c) to teach this rashly, i.e., knowingly and willingly, so that fear or ignorance excuses from the censure, even crass and supine ignorance, provided that it is not affected.

Besides, those who have known that someone has offended in this doctrine, or in practice which introduces suspicion of depraved doctrine, are bound, with the exception of penitents in their own cause, to denounce the guilty person within a month to the Holy Office or to the Bishop.

§ IV. On the Means for Procuring the Integrity of Confession

There are two means necessary for procuring the integrity of confession: the first is ordinary and necessary per se, namely the examination of conscience; the latter is extraordinary and necessary per accidens, namely the repetition of previous confessions or general confession.

I. On the Examination of Conscience to Be Put Before Confession

Three things are to be explained: 1° the necessity of this examination; 2° diligence; 3° the method to be employed in it.

[1] Suarez, disp. XXII, sect. 11; Lugo, disp. XVI, n. 590-595; Salmantic., cap. 6, n. 3-7; Collet, n. 297, apud Migne, *C. Theol.*, col. 478; Stoz, *Tribunal Paenitent.*, p. I, p. 1, n. 1-119; St. Alphonsus, n. 471; Konings, n. 1372-1374; Hilarius a Sexten, § 38, p. 267; Marc, n. 1703-1704; Lehmkuhl, n. 341-344; Genicot, n. 301-303; Noldin, n. 277-278.

312. 1° Necessity of this examination: A penitent who has sinned gravely is regularly bound under grave obligation to make a diligent examination before confession. It is certain.

(A) It is proved. This obligation is logically deduced from the very law of integrity, as is clear from Trent itself:[1] "From these things it is gathered that all mortal sins, of which after diligent discussion of themselves they have consciousness, must be recounted by penitents in confession."

[1] Sess. XIV, ch. 5.

For he who is bound to an end, by that very fact is bound to the means necessary per se for attaining the end; but a diligent examination, regularly speaking, is a necessary means for procuring the integrity of confession for those who have sinned gravely; for if they have committed several mortal sins, they generally cannot remember all of them, on account of the weakness of human memory, unless for some time they have diligently explored the inner recesses of conscience.

Moreover, if a penitent of this kind fails in examination, many inconveniences follow: loss of time for the confessor, who then must propose many questions, and also for other penitents who are compelled to wait longer, - and for the penitent himself the danger of omitting mortal sins through forgetfulness, with the anxieties which follow from this and the obligation of accusing sins so omitted. - Therefore the faithful should be carefully instructed concerning this obligation.

(B) It is explained. It was said: (a) who has sinned gravely; for he who is morally certain that since the last confession he has not sinned mortally is not bound, strictly speaking, to a diligent examination, but only to detecting sufficient matter for the validity of the sacrament; yet he is to be exhorted to make a diligent examination concerning venial sins, so that he may receive richer fruits from absolution.

(b) He is regularly bound; for exceptions are given from a twofold head, both because time is lacking, as can happen with the dying, and because this examination is not necessary, considering the dispositions of the penitent, for example, because he is accustomed daily to examine his sins seriously, or, after their commission, immediately to have recourse to confession.

313. 2° Diligence to be had in the examination: For that examination there is required that diligence which prudent men are accustomed to employ in a grave matter; that is, the highest diligence is not strictly required, which in a matter of the greatest moment is employed by the most cautious men, but ordinary, or moderate, diligence suffices, such as prudent men have in matters of grave moment.

For Christ did not will confession to be a grave and hateful burden, but willed to adapt it to the human condition and infirmity; but if the highest diligence were required in the examination of conscience, confession would be too troublesome and would offer occasion for many anxieties concerning the validity of the sacrament, since there are few who are habitually capable of this diligence. - Hence someone is not strictly bound to the highest diligence, even if he foresees that new mortal sins could thus be detected. - Likewise no one is bound to write his sins, especially since there is some danger that the writing might fall into the hands of others.

Whence he who commits grave negligence in the examination concerning mortal sins, per se sins gravely and is guilty of sacrilege, since he knowingly and willingly exposes himself to the danger of

omitting certain mortal sins in his confession. But slight negligence does not invalidate the sacrament, even if in fact certain mortal sins were omitted. But for discerning whether the negligence was grave or slight, this rule is handed down by some theologians:[1] if after confession it is found that more mortal sins were omitted than accused, the negligence can be regarded as grave; but if many more were declared than omitted, the negligence can be judged slight. This is the objective rule; but attention must also be paid to the subjective dispositions of the penitent, whether or not, at the time of the examination, he was conscious of grave negligence, and foresaw that he would omit several mortal sins.

[1] Stoz, l. c., 16; Sporer, n. 367; Noldin, n. 2.

I said per se sins gravely; because not a few are excused from grave sin by the fact that, on account of ignorance or levity of soul, they thought it enough to respond sincerely to the questions of the confessor: these indeed must be instructed; but, good faith standing, they were not guilty of grave sacrilege.

314. Corollary. The diligence required is different according to the different conditions of penitents, namely according to the different state of conscience, the length of time which has elapsed from the last confession, bodily health, and the diverse instruction of penitents.

(a) Those who confess frequently, rarely commit mortal sins, and daily examine their conscience, can be content with a shorter examination, because grave sins, if perhaps they were committed, will easily occur to the memory. - Yet in practice they are gently to be induced to a diligent discussion of conscience, so that they may detect not only the principal venial sins, but also the causes of the same, by which they may more easily root out their defects.

Hence the timid and the scrupulous ought not spend a long time in examination: for if they had sinned gravely, this certainly would be before their eyes; besides, minute examination can increase scruples. Whence sometimes it is expedient to determine the time which they are prohibited from exceeding in such an examination.

(b) Those who confess rarely, especially if they are involved in various secular affairs and live among many occasions of sin, must examine themselves longer, and diligently reconsider the principal occasions in which they are accustomed to sin; for otherwise they would omit several sins.

315. (c) The sick are not bound to an examination as accurate as those in good health; indeed sometimes they are dispensed from every examination, on account of their excessive weakness; in this case they are kindly to be questioned by the confessor himself with respect to substantial things, since the dying are in some way excused from material integrity, on account of the grave harm which then often arises from a long examination and a lengthy confession. - Therefore the sick should not easily be permitted to defer confession from day to day, under the pretext that they have not sufficiently examined their conscience; but they should be kindly questioned at once by the confessor; it is certainly better to restore them, even imperfectly confessed, at once to the state of grace than, by deferring from day to day, to leave them in the state of damnation. For the rest, if they survive, they will afterward be able to complete their confession.[1]

[1] Cf. Elbel-Bierbaum, Conf. VI, n. 153; Genicot, n. 302.

316. (d) If penitents, otherwise sufficiently instructed, approach the sacred tribunal prepared by no or by insufficient examination, they can kindly be dismissed, so that they may discuss their conscience more accurately before they begin confession, especially if there is question of a long confession; for it is almost impossible that a penitent respond accurately to the confessor asking questions without a prior examination. Yet if it could be foreseen that they would not return, they are to be examined by the confessor himself in the best way that can be done; and if they grieve over their negligence and show forth some zeal for amending life, they can be absolved.[2]

[2] To the point the Roman Catechism, *De Paenit.*, n. 50: "Wherefore if the priest has known that men of this kind are wholly unprepared, he will dismiss them from himself with most humane words, and will exhort them to take some space for thinking about sins, and then return: but if perhaps they affirm that they have applied all their zeal and diligence to that matter (since the priest must fear greatly lest, once dismissed, they return no more), they are to be heard, especially if they show forth some zeal for amending life... For if, once the confession has been heard, he judges that neither diligence in enumerating sins, nor sorrow in detesting them, was altogether lacking in the penitent, he can be absolved."

But if there is question of the uneducated and ignorant, who already made some examination beforehand, although insufficient, generally it is not expedient to dismiss them, because they can scarcely examine themselves better; whence the confessor, by prudent questioning, will obtain more than penitents could detect by a long examination; besides, especially in our times, a dismissal of this kind would often be regarded as a great injury and would keep not a few away from confession. Hence penitents in this case are not to be dismissed unless it is impossible to prepare them for a good confession.

3° Method to Be Preserved in Examination

317. (a) First, let the penitent choose a suitable time, free from other occupations, and implore divine light, since without the grace of God he cannot salutarily explore the hiding places of his conscience.

(b) So that he may more easily come to knowledge of his sins, let him observe some order; if he has not confessed for a long time, let him successively run through the precepts of God and of the Church, the capital sins, and the obligations of his own state: let him especially insist on these, with the confessor admonishing him, since, as experience bears witness, there are many who scarcely think of the duties of their own state. - If he has confessed a short time ago, let him examine himself concerning duties toward God, neighbor, and himself: for this is shorter and in this case fully suffices.

318. (c) Concerning each precept, or each virtue, let him weigh what sins he committed, and how often, by thought, word, and deed, searching his conscience especially about those sins into which he is accustomed more frequently to fall. Besides, he must diligently investigate circumstances changing the species, insofar as this can be done. - It is expedient for the uneducated to begin the examination from deeds, and from these ascend to words and thoughts or desires, because often they do not reconsider internal sins except insofar as they are connected with external ones.

Those who wish to employ the highest diligence in examination not only run through the various precepts of the Decalogue, but also try to recall in what places they were, what affairs they conducted, and how they conducted themselves daily at home, in church, and in their relations with neighbor; but, as we have noted, this exquisite diligence is not of precept.

(d) Many, especially the ignorant, more easily detect their sins if they use some catalogue of sins which is neither too long nor too short: not too long indeed, lest they be compelled to spend much time in this examination; nor too short, so that there may be found there at least the principal sins of which they could have been guilty. Hence a catalogue of this kind, to be truly useful, must be adapted to the various classes of penitents.[1]

[1] Thus, for the younger, cf. Timon-David, *Traite de la Confession des Enfants et des Jeunes Gens*, Paris, 1875, t. I, p. 150-177; Jaggers, *Instructions for first confession*, St. Louis, 1890, p. 133 sq.; Mother M. Loyola, *First Confession*, New York, 1901, p. 34-37; - for pious persons, cf. *Pratique progressive de la Confession*, Paris, 1900, t. I, p. 20-24; t. II, p. 19-23; for priests, cf. Gaduet, *Avis et Examen de conscience*, rendered in English: *Examination of Conscience for the use of priests*, New York, 1885; - for the faithful in general, who make a general confession, cf. *How to make the Mission*, by a Dominican Father, New York, 1897, p. 62-73; Konings, *General Confession made easy*, New York, 1879.

II. On the Repetition of Confessions and on General Confession

When a substantial defect has been committed in confession, it must be repaired either by repetition of confession, or by general confession.

[2] Suarez, disp. XXII, sect. 6-7; Lugo, disp. XVI, n. 596-663; Salmantic., c. 9; Lacroix, n. 1203-1228; St. Alphonsus, n. 498-505; Marc, n. 1706-1713; Lehmkuhl, n. 345-351; Konings, n. 1375-1380; Ballerini-Palmieri, n. 460-477; Hilarius a Sexten, § 38, p. 270-278; Genicot, n. 305-310.

1° On Repetition of Confession

319. Things to be noted beforehand. Confession can be only incomplete, or invalid. (A) It is called incomplete, or materially not integral, when some mortal sin has been omitted from a legitimate cause, for example, from ignorance or inculpable forgetfulness. In this case the confession must indeed be completed by declaring the sin not yet accused; but properly it is not to be repeated, since it was valid, and consequently sins already accused are not necessarily to be repeated.

If a penitent, immediately after absolution, confesses a mortal sin inculpably omitted, he must be absolved again, so that this sin may be remitted directly by absolution. For although, strictly speaking, this absolution could be deferred to the next confession, if it is foreseen that the penitent will return to the same confessor, nevertheless it is better to repeat the formula of absolution; for otherwise the penitent is compelled either to return to the same confessor, or, if he approaches another confessor, to accuse the same sin.

320. (B) A confession, moreover, is invalid when one of the essential conditions necessary for its validity is lacking. Now such invalidity can occur either on the part of the confessor, or on the part of the penitent: -

(a) On the part of the confessor, if he lacked the power of order or of jurisdiction, - or omitted the form or changed it substantially, - or did not have the intention of absolving, - or heard or understood

no sin, because of deafness, sleep, drunkenness, distraction, or some other reason of this kind. Yet the penitent cannot and is not bound to correct these defects except insofar as they are known to him.

(b) On the part of the penitent, by defect of examination, if he was gravely negligent in investigating mortal sins, - by defect of sincerity in confession,[1] if knowingly and willingly he concealed some grave sin, or lied in a grave matter pertaining to confession, - by defect of contrition or of firm purpose, - by defect of knowledge, if someone was ignorant of truths which are necessary by necessity of means.

[1] This defect of sincerity, which occurs not rarely, especially in the young and in women even devout ones, with regard to shameful sins, arises chiefly (a) from a certain shame, by force of which penitents blush to declare sins of this kind to a confessor to whom they are known, especially in places where there is only one confessor; (b) from a certain haste in hearing confessions, or harshness or rigor, or on the contrary from the custom of excusing penitents (by saying, for example, you did not do it voluntarily, etc.), so that they, not wishing to contradict the confessor, scarcely dare to confess consent really given. Cf. Camele, *Opusc. de reticentia peccatorum*, 1897; Zelle, *La Confession*, Paris, 1897, book I, p. 15-81; Drahm, *Opusc. de Reticentia volunt. peccat.*, Brussels, 1900; Mach, *Tresor du Pretre*, Treatise XIV, ch. 10. - Yet certain authors exaggerate the frequency of sacrilegious confessions, because from a few facts known to them, at the time when a mission is being given, they infer that the practice is common; this is contradicted by most experienced and most pious confessors, as Bucceroni rightly notes, at the end of *Instit. Theol. Moral.*, vol. II, p. 537, ed. 1900; cf. Genicot, n. 305, at the end, note 1.

Again, confession is either simply invalid, when the penitent, at the time when he receives absolution, is not conscious of this substantial defect; or invalid and at the same time sacrilegious, when the penitent knows and wills such a defect, so that he truly commits sacrilege by receiving absolution.

321. Principle: Sacramental confession per se must be repeated whenever it is morally certain that it is sacrilegious or invalid. It is certain.

For by the precept of Christ all mortal sins must be subjected to the keys of the Church, so that by virtue of absolution they may be absolved directly; but sins declared in a sacrilegious or invalid confession were not remitted by virtue of absolution; therefore they must again be subjected to the power of the keys, so that they may be absolved.

But if there is only doubt concerning the validity of confession, the repetition of confession is to be counseled, but not strictly imposed; for when an act has certainly been placed, and there is doubt whether it is valid or not, one must stand for its value until the contrary is proved. In practice, moreover, when such a doubt arises, it can be resolved from the manner of acting and the dispositions of the penitent: if he is diligent and of a timorous conscience, he is not bound to repeat the confession, because he is deservedly presumed not to have lacked the essential dispositions; if he is of a lax conscience and very negligent in preparing for confession, the presumption stands against him, and therefore he is to be gently induced to repeat the confessions.

It was said: per se must be repeated; because if the penitent is in good faith (which easily occurs when the confession was simply invalid), and at the same time it is foreseen that perhaps he will not assent to the command of repeating the confession, it is expedient not to warn him concerning the invalidity of this confession, at least here and now: for then he does not sin formally, and the sins not yet validly accused are remitted indirectly through the absolution which he receives in good faith in a subsequent confession.

322. The mode by which confession is to be repeated. (A) If the confession is repeated before a new confessor, one must distinguish: (a) if the confession was not only invalid, but also sacrilegious, the sacrilege voluntarily committed in the previous confession must be accused, - then the sin or sins concealed in that same confession, if it was invalid from defect of sincerity, - afterward all mortal sins invalidly declared in this and in subsequent confessions, and also the various sacrileges which were committed by receiving the sacraments in the state of mortal sin. The reason is that the new confessor, having no knowledge of the previous confessions, must know all mortal sins which have not yet been duly accused in a valid confession.

Yet I said that all mortal sins must be accused which were invalidly declared; for, if someone, unmindful of the sacrilege because of weakness of memory or levity of soul, made certain valid confessions, he is not bound to repeat them, since the sins accused in these were duly absolved.

(b) But if the confession was only invalid, and not sacrilegious, that confession alone must be repeated when such a defect is recognized, but not the subsequent ones, which were valid.

323. (B) If the confession is made before the same confessor, who has already heard the individual sins, has already judged concerning them, and remembers them at least confusedly, or at least remembers the penance imposed for them, one must distinguish thus: - (a) when the confession was sacrilegious, it suffices for the penitent to say: I accuse myself of the sacrilege which I committed in such a confession, by keeping silent about such a sin, which I now accuse (if it was sacrilegious from defect of sincerity), and again I accuse myself of all sins already declared in that same confession and in subsequent confessions, and also of the sacrileges which I committed, for example, by receiving absolution and communion ten times ... The reason is that the preceding confessions, although invalid, were sacramental; hence if the confessor remembers at least confusedly the sins previously accused, he has knowledge sufficient for passing judgment.

(b) If the confession was not sacrilegious, but simply invalid, it suffices for the penitent to accuse himself in a general way of the mortal sins accused in such a confession, which was invalid for such or such a reason, which he explains.

324. But if the confessor does not remember the state of the penitent, nor the penance imposed, and cannot be informed of these things by the penitent, all indeed admit that the absolution will be valid without the distinct confession being repeated; but it is disputed whether in this case the confessor absolves licitly: St. Alphonsus denies it (n. 502), because the priest must form for himself a judgment, at least confusedly, concerning the state of the penitent before he absolves; Lugo and Ballerini affirm it,[1] because it suffices that the priest know that he previously judged concerning these sins and determined that the penitent was to be absolved. This opinion is truly probable, and therefore, since there is question of what is licit, penitents are not to be compelled to repeat a distinct confession.

[1] Lugo, disp. XVI, n. 636; Ballerini P., n. 472; Genicot, n. 306.

325. Corollaries. (A) If a penitent declares sins to a deaf, or hard-of-hearing, or distracted, or sleeping confessor, one must distinguish: (a) if he did this in good faith, the confession is

valid, provided the confessor understood at least some sins, and then only those sins must be repeated which it is clear were not heard; but if it is not known which were heard, the whole confession must be repeated, if it is shorter; but if it is longer, it is not necessarily to be repeated integrally, because the law of integrity is not judged to oblige with so great an inconvenience. (b) But if someone deliberately confesses to a deaf, or distracted, or sleeping confessor, so that he cannot hear all the sins, the confession per se is sacrilegious, because of defect of sincerity, and therefore is to be repeated. It is said per se, because if someone did this because of ignorance, not knowing such a confession to be sacrilegious, the same can be said as concerning him who is in good faith.

326. (B) Rustics, children, and the unlearned, who in good faith confessed their sins only in a confused way, not distinctly explaining the species and number, were indeed validly absolved, because material integrity does not pertain to the essence of the sacrament; but the question is whether afterward they are bound to complete their confessions, if they become more learned, by explaining the species and number omitted. St. Alphonsus (n. 504) affirms it with most theologians, because otherwise the present confession would not be truly integral; yet a few deny it with Tamburini, Berardi, Ballerini,[2] for various reasons: (a) because, since these rustics are accustomed to have a uniform life, a prudent confessor, from the confession of one year, can easily conjecture how much they sinned in preceding years; (b) because sins accused in a confused way, as they were then known, were directly absolved, and therefore do not need to be subjected to the power of the keys. - Therefore in practice these certainly are to be induced, if it can be done, to complete past confessions; but if this seems too burdensome to them, they are not to be disturbed.

[2] Tambur., *Methodus Confess.*, book 3, c. 2, n. 9; Berardi, n. 4522; Ball. P., n. 475; Genicot, n. 307. - Lugo, however (disp. XVI, n. 588), distinguishes between number and species: if the number was accused in a confused way in good faith, the penitent is bound to nothing, as we said above (n. 158); but if the confusion concerns species, the penitent, having become more learned, must complete his confession; for in the former case the sins, as having been accused specifically, were remitted directly; in the latter, only indirectly.

327. (C) When the penitent has frequently relapsed into the same mortal sins, without any amendment, and without any resistance to the first temptations which occur, it must often be presumed that the previous confessions were made without sufficient sorrow and purpose, and therefore are to be repeated; for he who in confession truly grieves and resolves amendment applies at least some effort before the relapse, and generally abstains from sin for some time. But it must be said otherwise if he has persevered for some time, or before the fall resisted the first temptations.[3]

[3] Thus St. Alphonsus, n. 505; concerning this more fully it will be said below, where there is question of recidivists.

2° On General Confession

328. Notion and usefulness. General confession is the repetition of all or of several confessions, and therefore completes either the whole life, or a notable part of life. It can be necessary, useful, or harmful according to various circumstances.

[1] Besides the authors cited where the repetition of confession was treated, cf. Aertnys, *Theol. Pastoralis*, n. 245-261; Marc, *Tresor du Pretre*, Tr. XIV, c. 10; Gousset, n. 443-447; Gaume, *Manuel des Confesseurs*, ch. V, a. 10, where (n. 428) you will find a method of making a general confession, taken from the works of St. Leonard of Port Maurice.

(A) It is necessary, and therefore regularly to be enjoined, when it is morally certain that several of the previous confessions were invalid or sacrilegious, as was explained above (n. 211).

(B) It is useful, and therefore to be counseled, for all those who, although they are not strictly bound to it, can receive richer fruits from it, namely: -

(a) For those who reasonably doubt concerning the value of past confessions, in order to obtain peace of conscience and to remove anxieties of soul, which often hold one back from good, provided however that they are not scrupulous.

(b) For those who wish to establish a new and more perfect manner of living, for example, recent converts, those who enter the religious or clerical state; for by making a general confession then, the malice of sin appears much more manifestly, and a greater horror against sin arises; humility greatly increases from the knowledge of our infirmity; more intense contrition and a firmer purpose are conceived; occasions of sin are better foreseen and guarded against; greater graces are received, and therefore strength is increased; a most pleasant peace and tranquility comes to the soul, and a new impulse is given for leading a more perfect life.

329. (c) In certain periods of life, in which a greater infusion of grace is desired, for example, before first communion, before contracting marriage, at the time of a public mission, of spiritual exercises, or of a jubilee. Yet in these or similar circumstances it is not to be proposed as necessary, especially to those who have already once or a second time made a general confession: for it suffices for these to repeat their sins from their last general confession. Therefore those confessors are to be reproved who regularly demand from new penitents a general accusation of sins, under the pretext of directing them better: for this often renders confession odious, and the intended end, namely the direction of souls, can be obtained in other ways. Likewise it must be noted that a general confession which is imposed on the unwilling, when it is not necessary, often does more harm than good.

330. (d) In a dangerous illness, if the sick person has strength; for it happens not rarely that some of those who had previously made sacrilegious confessions wait until their final illness to repeat them. Hence they are kindly to be asked whether they have anxieties concerning their past life, or whether they fear to present themselves before the Supreme Judge, and they are gently to be exhorted to a general confession, so that they may be able to meet death quietly and confidently. Sometimes also it is expedient that a confessor unknown to them be sent to them, to whom, if they wish, they may manifest their conscience more freely.

331. (C) But general confession can be harmful, and therefore regularly to be prohibited: (a) to the scrupulous and the excessively fearful, who have already once completed a confession of this kind; for after any new general accusation new anxieties and new scruples arise, because they fear that they have not set forth some sins, or have not set them forth duly.

(b) To those who are endowed with a vivid imagination (especially women), and at the same time have sinned much and gravely against chastity, especially if some inclination toward carnal pleasures

remains; for the distinct and minute recollection of those sins, with the aggravating circumstances which would then naturally occur to the imagination, would probably lead these penitents into danger of sinning internally.

332. Mode of receiving a general confession. (a) First of all let the confessor kindly inquire why the penitent wishes to make a general confession, so that he may know whether it is necessary, or only useful: for if it is necessary, it must be more accurate. Sometimes, however, he discovers that a confession of this kind, which was thought only useful, is in fact necessary; hence let him permit the penitent to set forth all those things which burden his conscience, and let him kindly assist him by opportune questions.

(b) From the very beginning let him exhort the penitent with most humane words to perfect sincerity, and suggest that he first accuse those things by which he is more troubled, or the accusation of which seems more troublesome to him, for example, sins against chastity; for when these have been set forth, the heart of the penitent is unloaded, and the rest of the confession is rendered easier.

333. (c) Let him assist the penitent by asking questions discreetly and kindly, especially if he is uneducated and ignorant: but if he sees that the penitent has prepared his accusation in order, generally let him not interrupt him with many questions, lest perhaps afterward he be disturbed, thinking that he omitted something. Likewise let him grant the penitent sufficient time to explain those things which seem necessary to him; otherwise he perhaps will not be tranquil, because he could not say all those things which were troubling his mind. - A fortiori let him not rebuke him harshly when a graver sin is accused, lest perhaps the penitent, terrified by this severity, keep something silent; but on the contrary let him encourage him with paternal affection to open all things candidly, since God is ready to pardon even the gravest offenses to those who sincerely repent.

(d) If the confessor, in asking about sins, himself proposes a number, for example, did you do that ten times, a hundred times? generally it is expedient to propose a greater number rather than a lesser, since it is easier for the penitent to lessen it than to increase it. Indeed, if the penitent immediately assents once such a number has been proposed, it will be opportune soon to add: did you not do that more often?

(e) When the accusation of sins has been finished, let the confessor gently say: does nothing else trouble your conscience? If so, say it, and I will question you again. - If nothing seems to remain, the penitent must be warned not to be disturbed if afterward he remembers a grave sin which he did not declare: for it suffices to confess it in the next confession, if it has not yet been validly accused; but if it had previously been validly declared, it is not necessary to repeat it.

334. N. B. Here we do not append a Catalogue of sins, according to which the confessor may question penitents: for this, as to its form, must be different according to different regions and the various conditions of penitents. Younger confessors indeed act very well who compose for themselves such a catalogue in the vernacular language, accommodated to the character of the penitents; in order to write it more diligently, they will usefully read the works indicated above where the examination of conscience was treated (n. 318), and will take counsel from senior

priests, who, in that region, have heard confessions for a long time, the more so because in some places a special manner of speaking is employed for declaring this or that sin.

Art. III. On Satisfaction — Preliminary Notes on the Notion and Species

335. After the confession has been heard and opportune corrections and warnings have been given to the penitent, the confessor enjoins a salutary satisfaction, which is called sacramental penance. Satisfaction, insofar as it is a part of the sacrament, is defined: the voluntary endurance of a penalty, imposed by the confessor, for compensating the injury brought upon God, and for redeeming the temporal penalty ordinarily due even after sin has been remitted. - It is therefore distinguished from those penalties which are voluntarily assumed or are sent by God: for these indeed have a satisfactory force ex opere operantis, but they are not sacramental, and therefore they do not operate ex opere operato.

A twofold satisfaction is distinguished: (a) satisfaction in voto, which is nothing other than the sincere will of accepting and fulfilling the penance to be enjoined by the confessor; this is an essential part of the sacrament, according to the Thomists, or at least a necessary disposition, according to the Scotists, so that, if it were lacking, the sacrament, according to both schools, would be invalid; (b) satisfaction in re, which is the actual fulfillment itself of the penance enjoined: this is not an essential part, or a necessary disposition, but only an integral part of the sacrament, so that, if it is lacking, the sacrament is not invalid, but only incomplete; hence sins remitted by absolution do not revive, even if the penance is voluntarily omitted, but in this case a new sin is committed, as will be clear from what is to be said below.

Since the necessity of satisfaction was proved elsewhere (n. 149), four things remain to be explained: -

1° The obligation of imposing sacramental penance;

2° The qualities of this penance;

3° Its commutation;

4° Its fulfillment.

§ I. On the Obligation of Imposing Penance

336. I. Existence of this obligation. The confessor is regularly bound to enjoin satisfaction, or penance, upon the penitent whom he absolves. It is certain.

[1] Trent, sess. XIV, ch. 8; Ritual, Order for the ministering of the Sacrament of Penance; Suarez, disp. XXXVIII, sect. 3; Lugo, disp. XXV, n. 47-58; Salmant., n. 15-25; Lacroix, n. 1229-1250; Billuart, Diss. IX, art. 2; Stoz, book II, n. 110-111; Elbel-Bierbaum, conf. IX, n. 223-224; St. Alphonsus, n. 506 sq.; Kenrick, n. 99; Marc, n. 1715-1718; Konings, n. 1391; Muller, § 126; Lehmk., n. 353-355; Baller. P., n. 478 sq.; Hilar. a Sexten, § 39; Genicot, n. 311; *Ami du clerge*, t. XXII (1900), p. 906-907.

1° It is proved. (A) For the Council of Trent openly teaches this (l. c.): "Therefore the priests of the Lord must enjoin salutary and fitting satisfactions, according as spirit and prudence shall suggest, in view of the quality of the crimes and the ability of the penitents; lest perhaps, if they connive at sins

and deal too indulgently with penitents, by enjoining certain very light works for very grave offenses, they be made participants in others' sins."

(B) The same is clear from the various offices of the confessor. (a) As minister of the sacrament, he must procure not only all things which regard its essence, but also its integrity: otherwise he would not be a faithful minister of sacred things; but satisfaction, from what has been said, is an integral part of the sacrament, since it is intended for extinguishing or lessening the temporal penalty due to sin. (b) As judge, he is bound to punish sin with a suitable penalty; otherwise equity would be harmed, since the order of divine justice requires some reparation for sin. (c) As physician, he must cure the wounds already inflicted upon the penitent and guard against future ones; but both are done by imposing salutary penalties; for penitential works, according to Trent (ch. 8), "also heal the remnants of sins, and remove vicious habits acquired by living badly, by contrary actions of virtues"; moreover they make penitents more cautious and more vigilant for the future, since they do not return so easily to sins from which they have experienced penalty.

337. 2° It is explained. Yet I said "regularly," because per accidens the confessor is not bound to enjoin satisfaction when the penitent morally cannot fulfill it, for example, if he is deprived of his senses, or near death and at the same time very weak; in this last case, however, it is better to enjoin a light penance, for example, a striking of the breast, an act of love of God, an invocation of the Most Holy Name of Jesus, at least in the heart, or only patience in bearing pains. - Likewise, if a scrupulous person returns more often within a brief interval of time with new faults omitted through forgetfulness, and is absolved, it is not necessary to impose a new penance, when the confessor judges that the one already enjoined suffices for this new absolution. But for the most part it is not expedient to impart absolution so frequently to the scrupulous. - Certain authors also say that the same penance can be imposed on a penitent who, immediately after absolution, accuses a sin omitted through forgetfulness,[1] because the confessor can judge that it suffices also for the new sin recently accused; and we think this truly probable whenever this sin does not substantially change the state of the penitent's conscience. Nevertheless St. Alphonsus (n. 513) contradicts it, because the same work, already enjoined by way of satisfaction, cannot again be imposed under the same title. Hence in practice it is better to impose at least a light penance, provided it is foreseen that the penitent will willingly accept it.

[1] Lacroix, n. 1239; Ball. P., n. 494; Genicot, n. 311.

It was also said "upon the penitent whom he absolves," because, if no absolution is given, it is not necessary to enjoin a penance, since the sacrament is not effected; yet this is very useful, so that the penitent may thus be better prepared for absolution and a shorter satisfaction may be imposed when he completes his confession.

338. II. Gravity of this obligation. (A) If there is question of mortal sins not yet declared, this obligation per se is grave; for in this case a grave injury is done to the sacrament, - and also to the penitent, who remains liable to undergo heavier temporal penalties, and is deprived of an opportune remedy against future sins.

(B) But if there is question only of venial sins, or of mortal sins already declared, for which a penance was formerly enjoined and fulfilled, it is disputed; some say that the obligation even in this case is grave, lest the sacrament remain defective; more probably, however, with Lugo,[2] others hold that the confessor then does not sin mortally if, contempt aside, he does not enjoin a penance; for it does not seem to be a grave disorder to absolve light sins without any satisfaction, since the sacrament in this case remains incomplete only in a light matter. - Besides, this controversy scarcely concerns practice; for a prudent confessor will not voluntarily omit imposing a light penance in this case, and, if he omits it through forgetfulness, he commits no sin.

[2] Lugo, disp. XXV, n. 49.

339. III. On the time at which it must be imposed. Regularly speaking, penance must be enjoined before absolution, as is clear from the Roman Ritual, according to which the imposition of satisfaction follows opportune corrections and precedes absolution. And deservedly; for the judicial order demands that the accused promise satisfaction before he is absolved. If, however, it was omitted through forgetfulness, it can be enjoined immediately after absolution, because then it is morally united to the absolution. But if this defect is noticed only after a few days, in the next confession a penance can be imposed which extends to the sins declared in both confessions; but it is not certain that the sacrament which had been incomplete because of the defect of satisfaction is thereby made integral, because the moral union between the absolution previously given and the imposition of penance is now lacking. Whatever the case, penitents are not to be disturbed about this, since satisfaction in re is not required for the validity of absolution.

§ II. On the Qualities of Sacramental Penance

340. I. Principle: The confessor must enjoin salutary and fitting satisfactions, according to the quality of the crimes and the ability of the penitents. It is certain from Trent, cited above (n. 336).

[1] St. Thomas, *Suppl.*, q. 15; Suarez, disp. XXXVIII, sect. 4-6; Lugo, disp. XXV, n. 60-67; Salmant., cap. 10, n. 26-47; Lacroix, n. 1233 sq.; Billuart, l. c.; St. Alphonsus, l. c.; Lehmk., n. 355-362; Ballerini P., l. c.; Hilarius a Sexten, l. c.; Genicot, n. 312 sq.; Noldin, n. 289 sq.; *Ami du Clerge*, l. c., 1048 sq.; Gaume, *Manuel*, n. 402 sq.

1° Satisfactions of this kind must be salutary, that is, apt for promoting the salvation and spiritual good of the penitent; and therefore both vindicative, for punishing and expiating past sins, and medicinal, for guarding against future relapses. Now every supernaturally good work is penal or vindicative, since it is arduous to refer our works to God. But in order that it be medicinal, it must heal the wounds of the soul and remove vicious habits, acquired by living badly, by contrary actions of the virtues. Therefore let the confessor take care, "as far as can be done," says the Ritual, "that he enjoin penances contrary to sins: for example, alms upon the avaricious, fasts or other afflictions of the flesh upon the lustful, offices of humility upon the proud, exercises of devotion upon the slothful." Yet this is not to be understood in such a way that different satisfactions are enjoined for each sin accused by the same penitent, but that a contrary penance is imposed for the graver sin into which the penitent will relapse more frequently.

341. 2° They must be fitting, that is, proportioned to the gravity of the crimes, to the quantity of penalty which remains to be paid, and also to the ability of the penitents.

(A) Proportioned to the gravity of the crimes: for the confessor is bound to this as judge and physician. Hence a confessor sins gravely who, without just cause, enjoins a light penance for sins certainly mortal;[1] for if they are doubtfully grave, a grave satisfaction is not required, since in doubt odious things are to be restricted.

[1] According to D'Annibale (n. 347), then only does the confessor sin mortally when he enjoins the very lightest penances for the gravest sins.

Now, according to present discipline, that penance is judged grave which corresponds to a work which is imposed or can be imposed under grave obligation by the Church, for example, to hear Mass once, to fast, to recite the rosary, indeed even a third part of the rosary, or five decades, to read the Office of the Blessed Virgin Mary, or the seven Penitential Psalms, the Litany of the Saints with the prayers that follow, to make the way of the cross, to meditate or read a pious book or perform other works for a quarter of an hour. But a light penance is judged to be the psalm *Miserere* or one of the customary psalms, the Litany of Loreto or of the Most Holy Name of Jesus or of the Sacred Heart, acts of faith, hope, and charity, five times the Our Father and Hail Mary. Nevertheless a penance light in itself can become grave if the penitent must recite it not once, but several times.

If not one, but several mortal sins have been committed, regularly a graver penance must be enjoined, and indeed one graver in proportion as the sins are more numerous and graver; not, however, in an arithmetical proportion, so that for one hundred mortal sins it would be one hundred times greater; for if the matter were so, already it would be morally impossible to fulfill the penance.

342. (B) Proportioned to the quantity of penalty which remains to be paid: -

(a) Granted that the contrition was more vehement, by that very fact the temporal penalty to be paid is lessened, and therefore the penance can be less. From this, however, it does not follow that no satisfaction is to be enjoined when sorrow is very intense, because the confessor does not know whether it is so vehement that it deletes the whole temporal penalty. Besides, one so disposed will willingly accept a grave penance.

(b) A lighter satisfaction can also be enjoined at the time of a Jubilee, or on the occasion of gaining a plenary indulgence, because by indulgences the temporal penalty is extinguished or lessened. Indeed, formerly certain theologians contended that in these circumstances sacramental penance could be altogether omitted: yet Benedict XIV and Leo XII rejected this, warning that some penance must be imposed on those who are to gain the jubilee.[1]

[1] Benedict XIV, Constitution *Inter praeteritos*; Leo XII, Constitution *Caritate Christi*.

(c) Certain saints were accustomed to enjoin a light penance, because they themselves made satisfaction for penitents by fasting, mortifications, and other arduous works; this can be done, for, by virtue of the communion of saints, the satisfactions of one can profit another.

343. (C) Proportioned to the ability of the penitents, or, as the Ritual says, "with regard had to the state, condition, sex, age, and disposition of the penitents"; in other words, according to their strength and dispositions.

(a) According to the penitent's strength; thus a light penance is to be enjoined upon the sick, because they are not capable of fulfilling a graver one; but if hope of recovering health shines forth, it is expedient that another work be enjoined to be performed conditionally (that is, if he recovers). When the sick are very weak, the confessor laudably assists them to fulfill the penance immediately; otherwise they could forget it. - Likewise, fasts are not to be imposed on children or youths who are not robust, or on workmen wearied by continual labor; nor lengthy prayers or pilgrimages on servants and maids, or even on women placed under the authority of a husband; nor alms on the poor; nor any work which conflicts with the duties of one's own state.

Nor should perpetual penances be enjoined, for example, entrance into a religious order, - or penances for a long time, for example, for a year, for five months, etc., because such penances generate anxiety, and, after some time, easily fall into oblivion; and if various confessors were to do this, penitents would be bound by innumerable bonds, to the great detriment of souls. Nor should penances be intricate; otherwise they will be given over to oblivion. - Hence, if the recitation of some prayer is prescribed for six or eight days, it is expedient to warn the penitent that, if he omits to recite it on one day, he can recite it on the following day, so that anxieties may thus be avoided. In one word, let nothing too arduous be imposed, either in itself or relatively to various penitents; for example, regularly children should not be ordered to ask pardon from their parents for disobedience or for petty thefts, lest confession be rendered odious to them.

344. (b) According to the dispositions of the penitent; namely, no satisfaction should be enjoined which the penitent probably will not accept or will not perform; for example, he should not be ordered, by way of penance, to visit enemies or to ask pardon from the one whom he offended, when it is foreseen that this is altogether repugnant to him.

Hence, with St. Charles Borromeo and St. Francis de Sales admonishing,[1] sometimes it helps to ask him whether he can perform the penance imposed on him; otherwise the confessor will lessen or change it. "It is safer," says Gerson,[2] "with a small penance which is willingly undertaken and will likely be fulfilled, to lead the confessed to purgatory, than with a great one not to be fulfilled to hurl them into hell." For experience shows that many are deterred from confession by fear of receiving an excessive penance.[3]

[1] St. Charles Borromeo, *Instruct. Confess.*, ap. *Acta Eccles. Milan.*, t. I, p. 655-656, Lyons edition, 1683; St. Francis de Sales, *Avertissement aux Confesseurs*, *Oeuvres*, t. VI, p. 143, Vives edition.

[2] *Regula Mor.*, p. 2, c. *de Poenit.*, ap. St. Alphonsus, n. 509.

[3] To the point St. Thomas, *Suppl.*, q. 18, a. 4: "And because satisfactory penalties to be inflicted are medicines, just as medicines determined in the art are not suited to all... so also satisfactory penalties determined in the canons are not suited to all, but must be varied according to the judgment of the priest regulated by divine instinct. Therefore, just as a physician sometimes prudently does not give a medicine so efficacious that it suffices for curing the disease, lest because of the weakness of nature a greater danger arise, so also the priest, moved by divine instinct, does not always enjoin the whole penalty which is due to one sin, lest someone weak, from the magnitude of the penalty, despair and withdraw wholly from penance." Cf. St. Alphonsus, n. 510, with the authorities cited there.

II. Causes for Lessening Penance

From what has already been said, it is clear that there are causes which excuse from enjoining a penance proportioned to the sins, either by imposing a moderate one for grave offenses, or one less

grave than the multitude of sins deserves. It will be helpful to explain these.

345. 1° On the part of the penitent, the principal causes are: (a) bodily infirmity, or weakness of mind, from which it happens that he can fulfill a proportionate penance only with difficulty.

(b) Moral infirmity, from which it is greatly feared that the penitent, although sufficiently attrite, will not pay a grave penance; then, moreover, it is expedient that, besides a light supererogatory work enjoined, another work be added which is already prescribed from elsewhere, for example, hearing Mass on Sunday, abstinence from meat on Friday.

(c) Extraordinary contrition, by which the penalty to be paid is lessened, as above.

(d) A founded hope of enticing the sinner to more frequent use of the sacraments, if a lesser penance is enjoined, since by reception of Penance and the Eucharist the temporal penalty due to sins is lessened; or of inducing him voluntarily to inflict greater penalties upon himself.

346. 2° On the part of the confessor, the will of making satisfaction for penitents, such as there was in certain saints, for example, St. Francis Xavier, who was accustomed to expiate the offenses of penitents by bloody scourgings.

3° On the part of the Church, which on certain occasions grants a plenary indulgence either in ordinary form, or under the form of a Jubilee, through which the penalty due to sin can be paid in full, when the things to be placed have been placed.

In these various cases, however, it is expedient to warn penitents concerning the insufficiency of the work enjoined, so that they may voluntarily make satisfaction in other ways.

III. Corollaries

From these things it is given to understand 1° what kind of work can be enjoined by way of satisfaction, and 2° what the principal penances are which should be imposed.

347. 1° Sacramental penance can be any good and supernatural work: (a) whether external or internal, because, although it is doubted whether a merely internal work, for example, meditation, can be enjoined by human authority, this difficulty is not verified in the case, since the priest in the sacred tribunal exercises not human, but divine authority. Nor can it be said that a merely internal act is not sensible matter of the sacrament; for an act of this kind is made sensible through the imposition of the priest and the acceptance of the penitent. - Yet it is generally fitting to enjoin some external work upon the uneducated and unlearned, since merely internal acts are more difficult for them.

348. (b) Public or private; yet confessors "should not impose manifest penance for occult sins, however grave," as the Ritual rightly says; for otherwise a suspicion of grave sin committed would easily arise, and thus the seal of confession would be violated; for example, if a wife is ordered to fast for two or three days after confession, the husband will suspect that she has sinned gravely. But for public sins a public work can be enjoined, especially if some reparation is necessary for removing scandal, as happens, for example, when someone has contracted marriage before a non-Catholic minister. Sometimes, however, even for public offenses,

prudence suggests that public penance should not be imposed on one who is reluctant, lest sinners thereby be deterred from the sacred tribunal, especially since often the reparation of scandal can be made in another way, for example, by public reception of the sacraments, hearing Mass, or visiting a church.[1]

[1] Cf. St. Alphonsus, n. 512; Ciolli, I, n. 39. - Nor should satisfactions be imposed which expose the penitent to the mockery of others, for example, to pray in church with arms extended, or publicly to ask pardon.

349. (c) A supererogatory work or a work otherwise due; for even a work prescribed from elsewhere is satisfactory by its nature, and its satisfactory value can be elevated to the efficacy of sacramental satisfaction by the power of the keys. Nevertheless it is generally expedient to enjoin supererogatory works, so that an occasion of doing more good may be given to penitents. Hence a work imposed by way of satisfaction is not judged to be the same as that which is already prescribed by law, unless this is expressly declared by the confessor; for example, if hearing Mass is enjoined, the penitent is understood to be bound to hear Mass outside the prescribed time. - But if a work otherwise prescribed is explicitly imposed, for example, hearing Mass on Sunday, its culpable omission will be a twofold sin, because a twofold precept is violated, one general, imposed by way of law, the other particular, by way of command. - The cessation from some good work can also be prescribed, for a brief time, not because such cessation is good in itself, but insofar as it gives occasion for cultivating other virtues, especially obedience and humility.

350. (d) A conditional work can also be enjoined, for example, a prayer to be said or a confession to be made under the condition of relapse. It is certain that this is licit, if at the same time another absolute penance is prescribed.

According to a few,[1] this is also licit if it alone is enjoined; for, as they say, the special effort applied to guarding against the fall is a sufficient penance. Yet this reason does not seem solid; for this effort was not elevated to the efficacy of sacramental satisfaction by the fact that the priest prescribed a prayer under the condition of relapse. Hence prudent confessors will follow the common opinion.

[1] Ballerini P., n. 524; Genicot, n. 314.

351. 2° The principal penances which can be enjoined are reduced to four heads: almsgiving, fasting, prayer, and patience in penalties inflicted by God.

(A) It is proved. For (a) as St. Thomas rightly argues,[2] satisfaction must be such that through it we subtract something from ourselves for the honor of God; but we have only three goods, namely goods of the soul, goods of the body, and goods of fortune; from goods of fortune indeed we subtract something through almsgiving; from goods of the body, through fasting; from goods of the soul, through prayer, by which we submit our faculties to God. (b) Moreover there are three roots of sins, namely concupiscence of the flesh, concupiscence of the eyes, and pride of life; but fasting is ordered against concupiscence of the flesh; almsgiving is ordered against concupiscence of the eyes; prayer, against pride of life.

[2] St. Thomas, *Suppl.*, q. 15, a. 1 and 3.

Yet to these penalties, voluntarily undertaken, there must be added, according to Trent (can. 13), penalties inflicted by God and patiently tolerated: for often the Lord permits us to be troubled by various adversities, hardships, and pains of soul or body, and by patiently tolerating these, especially in union with Christ, we have a very ample opportunity of making satisfaction. Therefore patience in adversities can also be enjoined as sacramental penance.

352. (B) It is explained. (a) Under the name of almsgiving are comprehended all works of charity, whether corporal or spiritual; corporal, for example, to visit the sick, the poor, those detained in hospitals or in prison; to serve them and provide help; to give food to the hungry, drink to the thirsty, clothing to the naked, freedom to captives; - spiritual, for example, to instruct the ignorant, to teach Christian doctrine, to give counsel to those who labor under doubt, to correct delinquents, to console the sorrowful, to forgive injuries, to bear patiently the defects of others, to pray for others.

But as to alms, let these words of the Ritual be noted: "Let confessors not apply pecuniary penances to themselves; nor let them ask or receive anything from penitents as the reward of their ministry."

353. (b) Under the name of fasting are understood all acts of mortification, whether external or internal, such as: fasting, whether entire (which today it is often not expedient to impose), or partial, by subtracting a part of breakfast or supper; - abstinence from meat, or from a certain food, but especially from intoxicating drink; - moderation in sleep, play, hunting, banquets; - abstinence from dances and the theater, from useless and dangerous conversations; mortification of excessive curiosity in sight, hearing, and in reading books or newspapers; - interior acts of obedience, humility, charity, etc.

354. (c) Under the name of prayer can be understood: prayers properly so called, for example, to recite five Our Fathers and Hail Marys, acts of faith, hope, and charity, the rosary, litanies, certain psalms, hymns, morning and evening prayers, the Office of the Blessed Virgin Mary, or a part of the Breviary; to say ejaculatory prayers from the heart; to hear Mass; - mental prayers, namely to make some meditation on the last things, or on the Passion of Christ or on other mysteries of faith; pious reading of some chapter of Sacred Scripture, especially of the Gospel, or of the excellent book *The Imitation of Christ*, etc., with some meditation upon the things which are read; - to repeat the offering of oneself and of all one's acts early in the morning and often during the day; - practices adjoining prayer, such as the visitation of churches, the exercise of the way of the cross, the hearing of a sermon, frequent reception of the sacraments, sacramental confession immediately after a fall.

355. (d) Finally, patience can be specially enjoined, for a determined time, upon those who labor much, or sustain bitter pains, or suffer persecution; then it is expedient to suggest a brief act of resignation, for example, *Into thy hands, O Lord, I commend my spirit*; not my will, but thine be done; for thee, O Jesus, to suffer and be despised.

356. 3° So that these penances may be medicinal, the prudent confessor will select those which are more directly opposed to the vices of the penitent, according to that saying: contraries are cured by contraries. We append certain examples with respect to the capital sins: (a) To the

proud can be enjoined an attentive consideration of their own misery and infirmity, and of their own sins, so that from this they may more easily elicit an act of humility; to those who glory in their qualities and merits he will propose for meditation these or similar words: "For what hast thou that thou hast not received? And if thou hast received, why dost thou glory as if thou hadst not received?"[1]

[1] 1 Cor. 4:7.

(b) Upon the avaricious, and those retaining another's goods, he will impose certain alms or restitution, together with meditation on death, which separates us from all things, or on the poverty of Christ.

(c) For the lustful can be prescribed flight from proximate occasions, mortification of the senses, avoidance of idleness, frequent consideration of the penalties of hell, prayer to the Blessed Virgin which begins: *O Domina mea*...

(d) For the gluttonous and drunken: some subtraction of food and drink, abstinence from intoxicating drink, flight from taverns or companions with whom they are accustomed to become drunk.

(e) For the envious: reparation of the harms which by their envy they have brought upon others, prayer for those whom they envy, some meditation or pious reading on the motives of charity.

(f) For the angry: to be silent for some time when the first movements of anger arise, flight from occasions, mortification of pride which often moves to anger, consideration of the evils which frequently follow from anger.

(g) For the lazy and slothful: consideration of the brevity of this life and therefore of the necessity of doing good while there is time; assiduity and perseverance in certain prayers to be recited for some time, a greater effort for two or three days.

These indeed are by way of example;[1] the rest you will find among the authors of ascetical theology.

[1] Cf. *Ami du Clerge*, t. XXII, 1900, p. 1049-1050.

§ III. On the Commutation of Penance

When an enjoined penance morally cannot be fulfilled, under certain conditions it can be changed.

[2] Suarez, disp. XXXVIII, sect. 10; Lugo, disp. XXV, n. 95-113; Salmant., n. 71-99; and other authors cited above.

357. I. Principle: Sacramental penance already enjoined can be changed for a just cause, not indeed by the penitent himself, but by a confessor having authority. It is certain.

1° It cannot be changed, even into a more perfect one, by the penitent himself; for the changing of penance imports a new judgment, which cannot be passed except by a judge; moreover no work can be elevated to the dignity and efficacy of sacramental satisfaction except by the authority of the minister himself.

2° It can be changed either by the same confessor or by another having jurisdiction; for penance is enjoined by way of a particular law; now a law can be changed either by the legislator or by his successor, but in sacramental confession.

It is controverted whether a penance imposed by a superior on account of reserved cases can be commuted by an inferior. Some affirm this probably with Vasquez;[3] for, once the reservation has been removed by the absolution of the superior, any confessor can pass judgment concerning these sins and therefore impose a new penance. But many more probably deny this with Lugo and St. Alphonsus;[4] for the accessory follows the principal; but judgment in the principal cause, namely in reserved sins, pertains only to the superior; therefore likewise judgment concerning the accessory, namely concerning the penance. - Nevertheless St. Alphonsus concedes that this can be done if a grave cause is present and access to the superior is not easy: for then the consent of the superior is deservedly presumed. For the same reason this can be admitted if the penitent would approach the superior only reluctantly.

[3] Vasquez, q. 94, a. 2, dub. 3, n. 9; Elbel-Bierb., n. 242; Ball. P., n. 533.

[4] Lugo, n. 104; St. Alphonsus, n. 529.

358. II. Conditions so that penance can be changed. 1° There must be a moral union between the commutation of penance and absolution; for the elevation of some work to the dignity of sacramental satisfaction cannot be done, even by the minister, except insofar as he is judge, or insofar as he pronounces absolution.

Hence (a) the same confessor can certainly change the penance immediately after absolution, before the penitent departs, because the judgment already pronounced still morally perseveres. Indeed grave authors, such as Lugo,[1] probably hold that this can be done outside confession, even after a notable time, provided the confessor remembers the sins at least confusedly; for even in this case the penance is morally united with the absolution: for if today's absolution can be united with a confession made eight days before, the changing of penance, even after eight days, is morally united also with the past absolution; nor can the judgment be said to be altogether complete except by the execution of the sentence, or the fulfillment of the penance. Nevertheless St. Alphonsus contradicts this (n. 529, dub. 3), because, if such an interval is present, a new judgment is made and a new absolution is required so that the penance can be changed. It is expedient to follow this opinion at least with respect to those who confess frequently; but if there is question of those who approach the sacred tribunal only rarely, Lugo's opinion can be brought into practice without scruple, since here there is no question of the validity of the sacrament.

[1] Lugo, disp. XXV, n. 112.

(b) But if the commutation of penance is sought from another confessor, he cannot change it except in the sacred tribunal, after some confession has been heard, and with a new absolution: otherwise there would be no union between satisfaction and absolution.

359. 2° For making a commutation there is further required sufficient knowledge of the state of the penitent; otherwise the new penance can be neither proportioned nor medicinal.

Hence, if the penitent approaches the same confessor, who remembers the state of the penitent at least confusedly, it is not necessary to repeat the confession; if he approaches another confessor, more probably it is not necessary to repeat the entire confession, but it suffices either to declare the penance already previously imposed, or to make a summary confession: for this suffices for knowing the state of the penitent with respect to the penance to be enjoined.

360. 3° A just cause is also required, which can be either notable usefulness for the penitent, or difficulty in the execution of the prior penance. Hence a change can be made even if it is not requested by the penitent, provided however that he consents; for he can indeed oppose the change if he regards it as a burden.

But once the commutation has been made, much more probably the penitent can, if he wishes, choose the satisfaction previously enjoined, because the commutation, as favoring the penitent, is judged to be made under this condition: unless the penitent wishes to return to the former one.[1]

[1] Thus St. Alphonsus, *H. A.*, tr. XVI, n. 61, with the authors cited there.

§ IV. On the Fulfillment of Penance

We shall speak both of the obligation and of the manner of fulfilling penance.

[2] Suarez, disp. XXXVIII, sect. 7-9; Lugo, disp. XXV, n. 68-94; Salmant., n. 48-70; Lacroix, n. 1273 sq.; St. Alphonsus, n. 515-527; and the other authors already cited.

I. On the Obligation of Fulfilling Penance

361. 1° Existence of this obligation: The penitent is bound to accept and fulfill the penance reasonably enjoined upon him by the confessor. It is certain.

For (a) the Fourth Lateran Council, after enunciating the law of annual confession, adds:[3] "and let him strive according to his strength to fulfill the penance enjoined upon him." Moreover, according to the testimony of Trent (above, n. 336), the confessor has the right and office of imposing penance; but such a right would be useless unless the penitent were bound to accept and fulfill it. (b) Moreover, the penitent, no less than the confessor, is obliged to procure the integrity of the sacrament; but, from what has been said, sacramental penance is an integrating part of the sacrament; therefore.

[3] Ap. Denzing., n. 363.

362. Corollaries. (a) Yet this obligation does not bind if the confession is invalid, or absolution was not given: for then the sacrament does not exist, and therefore no obligation arises from it.

Nevertheless, if the confessor imposes some medicinal penance as a condition of future absolution, it must be performed, not indeed as an integrating part of the sacrament, but as a preparation for absolution. The same must be said if a penance is prescribed in a confession which absolution does not follow, for the purpose that a lesser one can be enjoined at the time when the penitent is absolved, as often happens: for then it must be fulfilled by reason not of absolution received, but of absolution to be received.

(b) If the penitent thinks that the satisfaction is too burdensome, he can ask that it be changed or lessened, and regularly the confessor will acquiesce in his desire. Yet if the confessor is unwilling to moderate it, the penitent can depart without absolution and confess his sins to another priest, or accept the penance and ask from another confessor that he commute it.

363. 2° Gravity of this obligation: The penitent is bound under grave obligation to fulfill a penance which is legitimately enjoined under grave obligation. It is certain.

(A) It is proved. For the confessor, as judge, has the power of commanding under grave obligation those things which in a grave matter pertain to the integrity of the sacrament; but penance pertains to the integrity of the sacrament, and indeed in a grave matter, when it is imposed for grave offenses; therefore.

364. (B) It is explained. Now the confessor is judged to oblige under grave obligation when he imposes a grave satisfaction for mortal sins not yet accused, unless he says the contrary; for the gravity of the obligation must be proportioned to the gravity of the matter.

Yet the confessor can, according to the more common opinion, impose for grave sins a grave penance under light obligation only, because any legislator can prescribe grave matter under light obligation. Yet this is not expedient, according to St. Alphonsus (n. 518), except when another penance has already been imposed under grave obligation; then another, graver one can be added under light obligation, in order to consult the penitent's weakness.

When the penance is light, it obliges only under light obligation. But if a satisfaction grave in itself is imposed for venial sins or for mortal sins already remitted, more probably it obliges only under light obligation, because the confessor is judged not to have wished to oblige under grave obligation; or if he did wish it, he exceeded his power, since penance must be proportioned to the gravity of the sin. Yet the case is excepted in which a grave penance is enjoined for light sins which strongly dispose toward mortal sins, so that this danger may be removed; but this is done not by way of satisfaction for sins, but for urging the natural obligation of avoiding proximate occasions.

365. Corollary. He who culpably omits either a part or a circumstance of the penance sins gravely or not, according as this part or circumstance is notable or not. But in order to judge whether it is notable or not, one must inquire whether, all things considered, in itself or in relation to the penitent, it causes grave or light trouble, according to the judgment of prudent men; for example, if someone is ordered to recite the rosary before an image of the Blessed Virgin, this circumstance is light; if he is ordered to recite it with arms extended, it seems to be grave. In practice, circumstances of this kind should be imposed only with great circumspection.

II. On the Manner of Fulfilling Penance

366. 1° Principle: Penance must be paid in that manner, in itself or in its circumstances, in which it was enjoined by the confessor. It is certain.

For penance is imposed by way of an ecclesiastical precept, and therefore, as an ecclesiastical law, it must be fulfilled both in itself and in its circumstances.

367. 2° Corollaries. (A) As to time: (a) the penance must be fulfilled at the assigned time, or, if no time was set, as soon as morally possible: for the intention of the confessor, the integrity of the sacrament itself, and the good of the penitent require this. - Yet it is not strictly required that it be fulfilled before absolution or communion.

(b) Therefore he sins gravely who, without reason, defers for a long time a grave penance imposed under grave obligation. But what time is long, theologians dispute; a delay for three or six months seems grave to many, while some think it is grave only when the penitent is thus exposed to the

danger of omitting it altogether. - Even when a time has been determined by the confessor, a brief delay will not be a grave sin. - But if the penance is light, no delay, however great it may be, will be a grave sin. Yet all are to be advised to fulfill it immediately after confession has been completed, lest perhaps it fall into oblivion.

(c) If the penance has not been paid at the set time, the burden of performing it as soon as possible remains, since the time was prescribed not for ending the obligation, but for urging it.

368. (B) Strictly speaking, penance is validly fulfilled, according to the common opinion, by one who is in the state of mortal sin; for penance, even fulfilled in this state, is a good and penal work, and therefore suffices for satisfying the precept.

Nevertheless, according to St. Alphonsus (n. 523), he who acts thus sins venially, because he places an obstacle to one of the effects of the sacrament, namely, remission of penalty. But Lugo[1] holds very probably that this is free from all fault; it is true indeed that penance in this case is not satisfactory de condigno; but as soon as the sinner, by recovering the state of grace, removes the obstacle, satisfaction produces its effect, that is, remission of penalty.

[1] Lugo, disp. XXV, n. 40, with the authors cited there.

He who, while fulfilling penance, sins venially, for example, by distractedly reciting the prayers enjoined, is not deprived of the fruit of satisfaction ex opere operato, because venial sin does not prevent the remission of temporal penalty due to other sins.[2]

[2] Lacroix, n. 1247; Muller, § 127, n. 6.

369. (C) Regularly satisfaction is to be performed by the penitent himself, and not by another, unless with the consent of the confessor; for it is an integral part of the sacrament, and therefore must be performed by the penitent himself, just as contrition and confession; hence this proposition 15 was condemned by Alexander VII (24 Sept. 1665):[3] "The penitent can by his own authority substitute another for himself, who may fulfill the penance in his place." - Yet the confessor can permit satisfaction to be performed by another when there is question of almsgiving; but it is controverted whether he can permit this with regard to other works, such as fasting, a pilgrimage, etc., when a just cause is present.[4] Whatever the case, this is not expedient, at least generally, and if someone cannot pay the penance, it is better that another be imposed which he can perform.

[3] Ap. Denzing., n. 986; cf. Viva, in Propos. XV; Vacant, *Dict. de Theol.*, I, 738.

[4] Suarez affirms it, disp. XXXVIII, sect. 9; Lugo denies it, disp. XXV, n. 82.

370. (D) It is controverted whether the enjoined work must be performed from the intention of fulfilling penance. (a) Not a few deny this with Lugo;[5] for by the very fact that the work imposed by the confessor and accepted by the penitent is performed, it attains to the dignity and efficacy of sacramental penance, even if it is carried out from mere devotion and not from the intention of making satisfaction.

[5] Lugo, disp. XXV, n. 34.

(b) Many others affirm it with Vasquez and Lacroix;[6] for, in order that some work can be a sacramental satisfaction, it must be connected with the sacrament by the penitent, explicitly or implicitly; but it is connected with the sacrament only by force of intention; therefore.

[6] Lacroix, n. 1286, with the authors cited there; Berardi, *Praxis*, n. 4547.

In our judgment, the matter can be arranged thus: if someone performs the work imposed by the confessor, not indeed thinking of paying the penance, but nevertheless not ordering that work to another end, he truly fulfills the penance by force of the intention which he had in accepting the satisfaction; but if he positively orders this work to another end, for example, to fulfilling some precept, the penance is not fulfilled, since the penitent positively intends something else; thus, for example, if the rosary is imposed on him who recites it daily, the penitent can at his own judgment choose that the first rosary be said for the sake of devotion, and the second as sacramental penance.

371. (E) If someone has forgotten the enjoined penance, even culpably, he is not bound to repeat the confession in order to receive another penance, according to the common opinion;[1] for no one is bound to repeat his sins when they have already been directly remitted: for this would be a most grave burden; and therefore the fulfillment of the penance can be regarded as morally impossible. But if someone is guilty of culpable forgetfulness, it will be enough to accuse this sin of negligence. Yet he is bound to approach the same confessor, if he conveniently can, and presumes that he is still mindful of the penance: for this is not a grave burden; but he is not strictly bound to request a commutation of the penance from another confessor, although this is laudable, useful to the penitent himself, and therefore to be recommended.

[1] Cf. Lugo, disp. XXV, n. 87; St. Alphonsus, n. 520, with the authors cited there.

Moral Part — Chapter II: On the Confessor

On the Confessor

We shall speak 1° of the power required in the confessor; 2° of his offices.

Art. I. On the Power Required in the Confessor

372. Preliminary notes. By divine law a twofold power is required in the minister not only for licitly, but also for validly administering the sacrament of Penance, namely the power of order and of jurisdiction; by ecclesiastical law, jurisdiction cannot be conferred except on those who have been found suitable (*Codex*, c. 877).

The twofold power of order and jurisdiction was necessary at all times, as was said above, n. 72-92; and, before Trent, according to the common opinion, it sufficed for the valid administration of the sacrament.[1] But the Tridentine Fathers, fearing that jurisdiction might sometimes be granted to those who are not suitable for hearing confessions, decreed that no one could hear the confessions of seculars unless approved by the Ordinary: "Yet the holy Synod decrees that no one, even a regular, can hear the confessions of seculars, even priests, nor be reputed suitable for this, unless either he has a parochial benefice, or by the Bishops, through an examination, if it shall seem necessary to them, or otherwise, he is judged suitable, and obtains approval, which is to be given gratuitously."[2] These words indeed are understood by all not only concerning the liceity, but also concerning the validity of absolution; for the Council declares that no one, unless approved, can hear the confessions of seculars, nor be suitable for this.

[1] A few indeed said that, even before Trent, approval was necessary for those who enjoyed only delegated jurisdiction; but they can prove this by no solid argument, as may be seen apud Suarez, disp. XXVIII, sect. 3, n. 2-4.

[2] Sess. XXIII, ch. 15 on Reformation.

373. Therefore two things (according to can. 872) are desired in the minister for the valid administration of the sacrament: priestly order and jurisdiction, which must be preceded by a judgment of suitability. Concerning the former enough has been said elsewhere; concerning the latter it must be spoken in the following order: -

On the prior judgment of suitability;

On jurisdiction, whether ordinary or delegated;

On the jurisdiction which the Church supplies;

On the jurisdiction of regulars;

On jurisdiction with respect to nuns;

On the limitation of jurisdiction, or the reservation of cases.

§ I. On the Prior Judgment of Suitability

We shall explain 1° its notion; 2° its necessity; 3° the manner of passing it.

374. I. Notion. The judgment of suitability is the authentic judgment of the Ordinary concerning the suitability of a priest for receiving confessions.

It is called: (a) a judgment, that is, an act of the intellect, yet manifested by external signs; (b) authentic, or pronounced by a legitimate superior, and indeed in an authoritative manner; but the legitimate superior in this matter is the Ordinary, or he who has episcopal, or quasi-episcopal, jurisdiction, and therefore the vicar general, the vicar capitular (in the United States, the administrator of the diocese), or a regular prelate enjoying quasi-episcopal power in some territory; (c) concerning the suitability of a priest..., namely, concerning the gifts required for usefully receiving confessions; these gifts are chiefly, on the part of the intellect: knowledge, by which the principles and rules of moral theology are known; and also prudence, for applying the same to particular cases; on the part of the will: integrity of morals and piety.

375. What today we call the judgment of suitability until now was called approval;[1] but now the Code does not speak of approval as of a positive act to be put first, but only of the judgment of suitability, which often the bishop pronounces only by the very act by which he grants jurisdiction. Hence we think one should not linger over this notion of approval.

[1] Suarez, disp. XXVIII; Lugo, disp. XXI; Salmantic., cap. 11, n. 86-110; Lacroix, n. 1485-1547; Billuart, diss. VI, a. 5; Elbel-Bierb., Confer. XI, n. 278-287; St. Alphonsus, n. 542-552; Lehmk., n. 379 sq.; Kenrick, n. 121 sq.; Hilar. Sexten, p. 326-334; Baller. P., n. 546-587; Noldin, n. 329-333; Vacant, *Dict. de Theol.*, I, 1700-1707.

Long ago approval, or the judgment of suitability, and jurisdiction were conferred at the same time. From this it happened that these words are taken promiscuously; indeed in some Pontifical Constitutions approval designates not only the judgment concerning suitability, but also the permission or faculty of hearing confessions, and therefore jurisdiction.

376. II. Necessity. 1° According to the Code (can. 877), the judgment of suitability is necessary for all confessors, even regulars, for licitly hearing confessions: "Let both local Ordinaries not grant jurisdiction, and religious Superiors not grant jurisdiction or license for hearing confessions, except to those who have been found suitable through examination, unless there is question of a priest whose theological doctrine they have ascertained from elsewhere." This law has rightly been established, so that unskillful and unworthy ministers might be kept away from the sacred tribunal.

2° It was expressly declared by Pius V that doctors and lectors of Sacred Theology are not exempt from this law.[1] But those who possess a parochial benefice to which care of souls is attached do not need special approval; for by the very fact that they are deputed to this office, they are implicitly recognized as suitable for hearing confessions. Moreover, one who is not endowed with doctrine and prudence must not be assumed as pastor (can. 453), and the Ordinary can compel a pastor, and indeed even a canon, concerning whose suitability doubts arise, to a new test of doctrine.[2]

[1] Constitution *Romani Pontificis*, 8 Aug. 1571.

[2] "If after jurisdiction or license has been granted they prudently doubt whether a priest previously approved by them still remains suitable, let them compel him to a new test of doctrine, even if there is question of a pastor or penitentiary canon" (Can. 878).

3° Exempt regulars today need approval for receiving the confessions of regulars of their own order;[3] but in this case let the religious Superiors judge concerning their suitability (can. 877).

[3] Exempt regulars are those who pronounce solemn vows, such as Franciscans, Dominicans, Benedictines, and also certain Congregations enjoying this special privilege, such as the Congregation of the Most Holy Redeemer. - Concerning all those things which pertain to the approval of Regulars, Piat Montensis discusses fully, *Praelect. Juris Regularis*, Tournai, 1898, t. II, p. 170-205; cf. the compendium of the same work, by V. ab Appeltern, 1903, p. 549-560.

377. III. The manner in which it is conferred. 1° Approval must be obtained from the Ordinary of the place in which the confession is received, but not from the Bishop of the penitent or of the confessor. This today is certain from several Pontifical Constitutions[1] and from the Code, c. 874 and 877. This indeed has been wisely established; for approval supposes knowledge not only of the priest to be approved, but also of the faithful for whom he is approved; now the Bishop of the place where confessions are heard is judged to have this knowledge alone. - Hence a priest approved in one diocese cannot validly absolve in another, unless he is approved by the Bishop of this diocese. - From this it likewise follows that a Bishop can approve not only his own subjects, but also foreign priests, for receiving confessions in his diocese.

[1] Thus Constitution of Urban VIII *Cum sicut accepimus*, 12 Sept. 1628; Clement X *Superna*, 21 June 1670; Innocent XII, 19 April 1700, *Cum sicut non*, where these things are read: "Confessors, both secular and regular... can by no means hear confessions without the approval of the Ordinary and diocesan Bishop of the place in which the penitents themselves live and choose confessors... nor can approval once or several times from other local Ordinaries suffice for this..." Cf. Constitution of Benedict XIV, *Apostolica Indulta*, 5 Aug. 1744.

378. But the Ordinary of the place can do this either by himself or through another specially deputed for this, for example, through archpriests, or vicars forane, or through Superiors of Regulars with respect to their subjects, etc. For the whole matter is committed to the judgment of the Ordinary, from the Code (can. 877).

379. 2° The Bishop can confer approval either after a prior examination,[2] or without an examination, when he knows from elsewhere the suitability of the confessor; this is clear from Trent, declaring that a priest can be approved by Bishops "through an examination, if it shall seem necessary to them, or if otherwise he is judged suitable," and from the Code cited above, n. 376. Regulars themselves can be compelled to undergo this examination. - Both seculars and regulars can be obliged to a new examination, if the Bishop judges this opportune.[1]

[2] In many places, no other examination is required from those who in seminaries have devoted labor to the study of theology, except that which they already underwent before sacred orders, especially the priesthood. As to others, let these words of Kenrick, n. 126, be noted: "This custom has prevailed among us, that priests coming from elsewhere, and bringing suitable testimonials with them, and regulars, are not subjected to examination; but all are held by the Tridentine law; and it is plainly expedient that day by day stricter discipline in this matter be observed: by which means very many errors would be avoided."

[1] Code, c. 877.

380. 3° The Ordinary should not revoke approval from one who truly remains suitable, since in this matter he acts as judge, who is bound to pass judgment according to truth; therefore he sins if he revokes or suspends it without cause.[2] Nevertheless one to whom approval has been denied even unjustly cannot validly absolve, since jurisdiction also has been denied to him, without

which absolution is invalid.[3] - Besides, the Bishop is not bound to confer jurisdiction on every suitable person: for this is left to his judgment.

[2] Code, c. 880.

[3] From the old law it was clear from the condemnation of proposition 13 by Alexander VII, 24 Sept. 1665, apud Denzing., n. 984; cf. Viva, op. cit. on proposition XIII; Vacant, *Dict. de Theol.*, t. I, p. 736-737.

381. 4° Approval can be limited with respect to time, place, or kind of persons whose confessions the approved priest is permitted to receive: for the whole matter is committed to the judgment of the Bishop.

§ II. On Jurisdiction, Whether Ordinary or Delegated

382. Ordinary jurisdiction is that which by the law itself is attached to an office; delegated jurisdiction is that which has been committed to a person (can. 197).

[4] St. Thomas, *Suppl.*, q. 8, a. 4-5; Suarez, disp. XXV-XXVI; Lugo, disp. XIX; Salmant., cap. 11, n. 4-85; Lacroix, n. 1548-1574; Billuart, diss. VI, a. 2-3; St. Alphonsus, n. 537-569; Marc, n. 1749-1752; Lehmk., n. 372-386; Konings, n. 1393-1394; Ballerini P., n. 588 sq.; Haine, q. 71-72; Genicot, n. 325-329; Noldin, 334-344.

I. On Ordinary Jurisdiction — 1° On Those Who Have Ordinary Jurisdiction

383. Principle: All those obtain ordinary jurisdiction on whom there is conferred an office to which it is attached by the law itself. It is certain.

These are:[1] the Pontiff for the whole Church, the Cardinals of the Holy Roman Church, the Ordinary of the place for his territory, the pastor for his parish, and others who are in the place of the pastor; moreover also the penitentiary canon of a collegiate church, and exempt religious Superiors for their subjects.

[1] Code, c. 873.

(A) The Pontiff for the universal Church, and indeed for both forums, as was proved in the Treatise on the Church, n. 198-202; all Cardinals (and not only the major Penitentiary, as formerly), for the internal forum and everywhere in the world.[2] - Nuncios or Apostolic Delegates now have only delegated jurisdiction, according to the tenor of their mandate.

[2] Code, c. 873 and can. 239, § 1, n. 1.

384. (B) The Ordinary of the place, and therefore those who are designated by this name: the Bishop for his diocese, in both forums, yet dependently on the Roman Pontiff, who can limit his jurisdiction; vicars general, likewise in both forums, yet dependently on the Bishop, so that, when he dies, their faculties expire by that very fact; when the Bishop has died, the vicar capitular (in the United States, the administrator of the diocese), for both forums.

Moreover, from the Code, c. 401, "the penitentiary canon, both of the cathedral church and of a collegiate church, obtains by law ordinary power, which however he cannot delegate to others, of absolving even from sins and from censures reserved to the Bishop, in the diocese even outsiders, and diocesan subjects even outside the territory of the diocese."

385. (C) The pastor in his parish, in the internal forum only; this power belongs to removable pastors, who in France are called *succursalistes*; likewise to vicars who are endowed with full parochial power, namely vicars oeconomi, substitutes, and sometimes assistants, but never coadjutors.[3]

[3] Code, can. 451, § 2, 2° and can. 473, 474, 475, 476.

386. (D) Exempt religious Superiors, namely abbots, provosts general, provincials, and local superiors, have from the law,[4] and according to the norm of the Constitutions, ordinary jurisdiction over their subjects; for by virtue of their office the care of the souls of their subjects is incumbent on them.

[4] Code, c. 873, § 2.

387. Corollary. In three ways penitents can become subjects of those who are endowed with ordinary jurisdiction:

(A) By reason of domicile or quasi-domicile; namely, all those who have a domicile or quasi-domicile in some diocese or parish are by that very fact subjected to the ordinary jurisdiction of the Bishop of this diocese or of the pastor of this place. Now domicile is acquired by residence in some parish or quasi-parish, or at least in a diocese, apostolic vicariate, or apostolic prefecture; this residence is either joined with the intention of remaining there perpetually, if nothing calls one away from it, or is prolonged to a completed ten years;[1] quasi-domicile, moreover, by residence as above, which is either joined with the intention of remaining there at least for six months, or has in fact been prolonged for the greater part of a year (or for six months).[2] - He who has two domiciles, or a domicile in one place and a quasi-domicile in another, is subject to the ordinary jurisdiction of the Ordinary or pastor of each.

[1] Code, c. 92, § 1.

[2] Code, c. 92, § 2.

(B) By reason of privilege of state, or enrollment: (a) those who are of the family of Cardinals are reputed their subjects; hence Cardinals are able to choose as confessor, both for themselves and for their family, any priest, who, if he lacks jurisdiction, obtains it by the law itself;[3] (b) likewise novices, domestics, and perpetual table-companions of some monastery or religious house are reputed subjects of the superior of this house.

[3] Code, c. 239.

(C) From the Code,[4] vagi, who have no domicile, and travelers, who have a domicile elsewhere but make a journey through another diocese or parish, and also Catholics of any Oriental rite, can be validly and licitly absolved not only by the pastors of the places where for the time they are staying, but by all priests of either clergy approved in some place for hearing confessions, whether furnished with ordinary or delegated jurisdiction.

[4] Code, c. 881.

2° On the Properties of Ordinary Jurisdiction

388. (A) Those who are endowed with ordinary jurisdiction can validly absolve their own subjects, wherever they may be, even outside their own territory and outside the diocese, without needing the approval of the Bishop of that place where they hear confessions;[5] the reason is that ordinary jurisdiction is not only local, but also personal, and therefore follows persons wherever they have gone.

[5] Code, c. 881, § 2.

(B) Ordinaries of places can delegate their jurisdiction to priests, both secular and religious, even exempt religious.

(C) By law pastors enjoy jurisdiction for their own territory only;[1] but by custom, in certain regions,[2] they validly hear confessions not only in their own parish, but in the whole diocese, yet by delegated right. They cannot, however, do this licitly without the permission of the pastor or chaplain of that place where they receive confessions.

[1] Code, c. 873.

[2] Thus Lehmk., n. 376, says: "In Germany now for several centuries that custom has prevailed, by force of which pastors are judged approved for the whole diocese." Baller. P., n. 556: "It seems possible to conclude that, where no other custom prevails and the Bishop does not expressly restrict it, the pastor can hear confessions throughout the whole diocese." Therefore in practice let the diocesan Statutes and Letters by which faculties are granted be carefully read.

But whether today they can delegate other priests to hear confessions in their parish we shall consider below (n. 392).

3° On the Acquisition and Loss of Ordinary Jurisdiction

389. Ordinary jurisdiction begins with the possession of the benefice or office, and ceases with its loss. For, as was said, it is attached to the office itself. Now an office is lost by resignation, privation, removal, transfer, the lapse of a predefined time,[3] and, after a condemnatory or declaratory sentence, by excommunication, suspension from office, or interdict.[4]

[3] Code, c. 183.

[4] Code, c. 873, § 3.

II. On Delegated Jurisdiction

390. 1° Its nature. Delegated jurisdiction differs from ordinary jurisdiction especially in two things: (a) he who possesses ordinary jurisdiction exercises it by his own right and name, whereas the delegate acts in the name and by the right of the principal, from whom he received jurisdiction; (b) ordinary jurisdiction is exercised validly over subjects everywhere in the world, without new approval, whereas delegated jurisdiction cannot be exercised outside the territory for which it was granted.

391. 2° On the right of granting delegated jurisdiction. (A) In general the Code (can. 199) establishes these things concerning the power of delegating and subdelegating. "He who has ordinary power of jurisdiction can delegate it to another in whole or in part, unless something else is expressly provided by law. - Even power of jurisdiction delegated by the Apostolic See

can be subdelegated either for an act, or even habitually, unless the industry of the person has been chosen or subdelegation prohibited. - Power delegated for the universality of affairs by one who below the Roman Pontiff has ordinary power can be subdelegated in individual cases. - In other cases delegated power of jurisdiction can be subdelegated only by an expressly made concession; but delegated judges can subdelegate some non-jurisdictional article even without an express commission. - No subdelegated power can again be subdelegated, unless this has been expressly granted."

(B) With respect to the penitential forum: (a) the Supreme Pontiff can delegate for the whole Church. Moreover, those who are delegated by the Supreme Pontiff, even in a transitory manner, for example, apostolic delegates who are deputed for carrying out some mission for a time, can subdelegate others either for an act, or even habitually. (b) The Ordinary of the place in which confessions are received (under which name come the vicar general, Administrator, Vicar and Apostolic Prefect, and likewise those who, when the aforesaid are lacking, meanwhile succeed in the governance according to the prescription of law) can delegate priests, both secular and regular, in his territory, as is clear from can. 874: "The Ordinary of the place in which confessions are received confers delegated jurisdiction for receiving the confessions of any persons, whether secular or religious, upon priests, both secular and religious, even exempt..." (c) The penitentiary canon, although his jurisdiction is ordinary, does not enjoy the faculty of delegating (*Codex*, c. 401).

392. (d) Hence, once the Code had been promulgated, a controversy arose concerning the power of delegating belonging to pastors. 1) Some thought that pastors could, at least in urgent cases, delegate other priests to hear the confessions of their subjects, by force of the general principle that those having ordinary power can delegate it. 2) But the Pontifical Commission for authentically interpreting the Canons of the Code, on 16 Oct. 1919, declared that pastors, vicars of pastors, or other priests delegated for the universality of cases cannot delegate to secular or regular priests jurisdiction for receiving confessions, nor extend beyond the circumscribed limits jurisdiction to those already approved, but need for this a special faculty or mandate of the Ordinary of the place. And deservedly; for the Code designates no one except the Ordinary of the place as the source from which delegation is to be received, and positively denies this faculty of delegating to the penitentiary canon; hence by being silent about the pastor, it denies him the same faculty; - moreover, already for three centuries, the whole jurisprudence tends to this, that the Ordinary of the place be constituted, for seculars, the sole source of delegated jurisdiction.[1]

[1] J. Creusen and A. Vermeersch, *Summula novi juris*, 1918, n. 346; A. Boudinhon, *Rev. du cl. fr.*, 15 Apr. 1919, p. 96, and 1 July 1919, p. 73.

In practice, however, there is scarcely any difficulty; for Bishops are accustomed to grant to pastors living within the limits of the diocese the faculty of calling pastors exercising ministry in contiguous places of their diocese and of conferring jurisdiction on them; moreover recourse to the Bishop is easy today.

393. 3° On the various modes of delegating jurisdiction. Delegated jurisdiction can be acquired in two ways: from man and from law.

(A) From man, or from a Superior having ordinary jurisdiction, or from a delegate who can subdelegate. But this delegation must be received from the Ordinary of the place in which absolution is given, not from the Ordinary of the penitent or of the delegate.[2]

[2] Code, c. 874, § 1.

So that jurisdiction may validly be obtained, (a) there is required an express concession, whether in writing or by words, and a presumed one does not suffice; (b) this concession must be free, and not extorted by force or threats;[3] (c) nor does it suffice to write to request jurisdiction, but the response of the one delegating must be received, in whatever way transmitted, directly or through another.

[3] According to all, it is illicit to extort jurisdiction by grave fear, and most Canonists hold that jurisdiction thus extorted is invalid; thus Reiffenstuel, l. I Decret., tit. 40, n. 62; Schmalzgrueber, ibid., n. 19; De Angelis, ibid., n. 6. - Yet some doubt concerning this, such as Pirhing, n. 33; Lacroix, n. 1554. Cf. c. 103. - There will usually be no difficulty in practice, since the Church supplies jurisdiction in the case of common error and speculative doubt, as will be explained below.

But the Superior can grant jurisdiction in a twofold manner: directly, when he commits the power of absolving to the priest himself; indirectly, when the faculty of choosing any priest as confessor is granted to the penitent.[1]

[1] Thus, at the time of a Jubilee, the Supreme Pontiff generally grants to seculars and regulars the faculty of choosing a confessor for themselves.

394. (B) From law, or from the Code: (a) Cardinals and Bishops, whether residential or titular, from the accepted authentic notice of canonical provision having been completed, can choose for themselves and their families a priest for receiving confessions; if he lacks jurisdiction, he obtains it by the law itself, even with respect to reserved sins and censures also, with the sole exception of censures reserved to the Apostolic See in the most special manner and those which are attached to the revelation of the secret of the Holy Office.[2]

[2] Code, c. 239 and 349.

(b) Any priests undertaking an overseas journey, provided they have from their own Ordinary, or from the Ordinary of the port, whether initial or intermediate, the faculty of receiving confessions, can during the whole journey validly and licitly absolve both the faithful sailing with them, and the faithful who for any reason come to the ship, and those who, when they themselves call at land in passing, ask to confess to them, and can validly and licitly absolve them even from cases reserved to the Ordinary of the place.[3]

[3] Code, c. 883.

395. (c) "All priests of either clergy approved for hearing confessions in some place, furnished with either ordinary or delegated jurisdiction, can also validly and licitly absolve vagi and travelers from another diocese or parish approaching them, and likewise Catholics of any Oriental rite."[4]

[4] Code, c. 881.

(d) Chaplains of soldiers can hear the confessions of soldiers even outside the diocese of the approving Bishop, when the soldiers are in camp or on a journey; during war they receive very ample

faculties not only with respect to soldiers, but also with respect to the faithful of the regions in which they accompany the army.[5]

[5] Thus, for example, the Sacred Penitentiary, 18 Dec. 1914 (*A. A. S.*, VI, 712), granted to chaplains of soldiers that, while they accompany the army, they may receive the confessions of any faithful approaching them and use in their favor the faculties granted to them for the forum of conscience.

4° On the Acquisition and Loss of Delegated Jurisdiction

396. Delegated jurisdiction begins at that instant at which its concession, authentically delegated in writing or by words, becomes known.

397. But it ceases: by revocation by the one delegating directly intimated to the delegate, or by resignation of the delegate directly intimated to the one delegating and accepted by the same;[1] but it cannot be revoked without grave cause;[2] by completion of the mandate, lapse of the time, or exhaustion of the number of cases for which it was granted;[3] nevertheless, for the internal forum, an act placed through inadvertence after the time has elapsed or after the number of cases has been exhausted is valid;[4] moreover, if some confession has been begun, jurisdiction endures until the penitent is absolved; when the final cause of the delegation ceases;[5] sometimes by the death of the one delegating or by his cessation from office, namely when the delegation was made for a particular case and the confession has not yet begun; but not when it is granted until revocation (which commonly occurs), or until the good pleasure of the see.

[1] Code, c. 207.

[2] Code, c. 880.

[3] Code, c. 207.

[4] Code, c. 207.

[5] Code, c. 207.

§ III. On the Jurisdiction Which the Church Supplies

398. When jurisdiction is lacking, whether ordinary or delegated, the Church can supply it; indeed it cannot supply that which is not subject to its authority, for example, a defect of matter or form in the sacraments; but since jurisdiction is subject to its power, it can provide it extraordinarily, when it was not regularly conferred. This jurisdiction which the Church supplies differs from ordinary or delegated jurisdiction in this, that it is conferred only in the very act of confession and afterward is extinguished, whereas the other is given before confession and remains after absolution.

[6] Suarez, disp. XXVI, sect. 4 and 6; Lugo, disp. XVIII, n. 15-40 and disp. XIX, n. 28-35; Salmantic., cap. 11, n. 72-77; Lacroix, 1548, 1559; Billuart, diss. VI, a. 4; St. Alphonsus, n. 560-563 and n. 571-574; Muller, § 137; Lehmk., n. 387-392; Haine, q. 73; Ball. P., n. 591-599 and n. 628-638; Marc, 1753-1756; Genicot, n. 330-332; Noldin, 345-351.

Now there are especially three cases in which the Church in fact supplies jurisdiction: 1° in the article of death; 2° in the case of common error; 3° in the case of probable jurisdiction.

I. On Jurisdiction in Danger of Death

399. Principle: Every priest, even not approved, can validly absolve those who are in the article or danger of death from all censures and sins. It is certain.

1° The principle, insofar as it is certain, is proved by this declaration of Trent:[1] "Very piously, lest anyone perish on this very occasion, it has always been preserved in the same Church of God, that there be no reservation in the article of death; and therefore all priests can absolve any penitents from any sins and censures."

[1] Sess. XIV, ch. 7.

The Council was speaking of the article of death; but the Code speaks more precisely: "In danger of death all priests, although not approved for confessions, validly and licitly absolve any penitents from any sins or censures, however reserved and notorious, even if an approved priest is present."[2] Now such danger is judged to be present when it is prudently feared that death may shortly occur, for example, in grave sickness, a difficult surgical operation, laborious childbirth, on a long and dangerous voyage, etc.

[2] Code, c. 882.

(a) It is said "all priests"; by these words, as being most ample, any priest is signified, even one not approved, irregular, suspended, excommunicated even as one to be avoided, schismatic, heretic, apostate, provided he is truly marked with the priestly character.

(b) It is said "from any sins and censures," because in danger of death every reservation ceases, lest anyone perish on this occasion. Yet if someone, bound by a censure reserved in the most special manner to the Supreme Pontiff, afterward recovers, he must recur to the Sacred Penitentiary or to the Bishop or another endowed with the faculty; but if he was absolved from a censure ab homine, he must, under penalty of falling back into it, recur to him who imposed the censure.[3]

[3] Code, c. 2252.

400. 2° Formerly it was controverted whether, in the article of death, a priest not approved validly absolved if an approved priest was present or could be present. But now the matter has been decided from the Code, in the canon cited.

II. On Common Error

401. "In common error or in a positive and probable doubt, whether of law or of fact, the Church supplies jurisdiction for both the external and internal forum (can. 209)."

By force of this canon, a colored title is no longer required with common error, and therefore all the difficulties previously raised concerning this title vanish.

But a priest who absolves outside the case of necessity, certainly knowing that he lacks a true title of jurisdiction, or jurisdiction legitimately conferred by a competent superior, sins gravely and indeed incurs suspension.[1]

[1] Code, c. 2366.

But error is common when the confessor is judged by most of the faithful of some place to have jurisdiction; it is private when he is thought by only a few to possess it.

402. By right and deservedly the Church wishes to provide for the common utility; but when the error is private, it does not supply jurisdiction, because the utility of a few is not a sufficient reason for departing from the general rules; moreover he who has been thus deceived can be instructed by others, and thus correct the defect admitted.

III. On Speculatively Probable Jurisdiction

403. Speculatively probable jurisdiction is present when, antecedently to confession, a priest, according to an interpretation of the law which is not certain but truly probable, or with a positive doubt of law, enjoys jurisdiction in the case.

404. Now in this case the confessor acts validly, because the Church certainly supplies jurisdiction, if it is truly lacking, from c. 209 of the Code.

Indeed the priest who absolves with probable jurisdiction acts licitly, at least when a grave reason is present, as St. Alphonsus says (n. 573): for the Church willingly supplies jurisdiction when a just cause is present; but it is not judged to wish confessors to rely on probable jurisdiction without a reasonable cause. - Yet not a few, with Lugo and Ballerini,[2] think this is licit even without a special reason, since it is certain that in this case jurisdiction is supplied; and this opinion is truly probable.

[2] Lugo, disp. XIX, n. 30; Ballerini P., n. 631-635; on the contrary, cf. *Vindic. Alphons.*, p. 485-501.

405. 2° But doubtful jurisdiction is that whose uncertainty depends upon a fact, for example, when there is doubt whether jurisdiction was granted by the Superior, whether it still endures or has expired, whether such a censure is reserved or not. Now even in this case the Church supplies jurisdiction, from the same canon 209; but it is not licit to use this without a grave reason.

§ IV. On the Approbation and Jurisdiction of Religious

On this matter we set forth the rules of the Code.

[1] The matter concerns both religious of simple vows and religious of Orders, or regulars. Cf. Code, c. 488, 804.

406. (A) Religious, even exempt, receive jurisdiction for receiving the confessions of seculars or religious from the Ordinary of the place in which the confessions are heard; but they cannot use the same without at least the presumed permission of their own superior. Moreover, Ordinaries are not to grant jurisdiction habitually except to religious presented by their own superior, nor are they to deny it without grave cause to those who are presented by the superior; nevertheless this ought not to be done without a previous examination by which they have been found suitable, except in the case of a priest whose theological doctrine has been ascertained from another source.[2]

[2] Code, c. 874, 877.

407. In an exempt clerical religion, for receiving the confessions of the professed, of novices, or of others dwelling day and night in the religious house by reason of service, education,

hospitality, or infirm health, delegated jurisdiction is also conferred by their own Superior according to the norm of the constitutions; and it is lawful for him to grant it even to priests from the secular clergy or from another religion.[3]

[3] Code, c. 875, § 1.

408. In an exempt lay religion, the Superior proposes the confessor, who nevertheless must obtain jurisdiction from the Ordinary of the place in which the religious house is found.[4]

[4] Code, c. 875, § 2.

409. With regard to novitiates and Seminaries this restriction is to be noted: "The master of novices and his associate, the superior of a Seminary or college, are not to hear the sacramental confessions of their pupils living with them in the same house, unless the pupils, from a grave and urgent cause, in particular cases spontaneously ask it."[5] Likewise religious Superiors can, the things to be observed by law having been observed, hear the confessions of subjects who ask this of them spontaneously and of their own accord; but they are not to do this habitually without grave cause.[6] Indeed, "all religious superiors are strictly forbidden to induce persons subject to them in any way to make a manifestation of conscience to them. Subjects, however, are not so prohibited that they cannot freely and of their own accord open their soul to superiors."[7]

[5] Code, c. 891.

[6] Code, c. 518, § 2.

[7] Code, c. 530.

410. (B) On the absolution of Regulars themselves. (a) In the several houses of a clerical religion, several confessors legitimately approved should be deputed, with the power of absolving even from cases reserved in the religion.[8]

[8] Code, c. 518, § 1.

411. (b) A religious, even an exempt one, for the quiet of his conscience, can approach a confessor approved by the Ordinary of the place, even if he is not numbered among those designated; and the confessor can absolve any religious even from sins and censures reserved in the religion.[1]

[1] Code, c. 519.

412. (c) Also in lay religions of men an ordinary and an extraordinary confessor should be deputed; and if a religious requests some special confessor, the superior should grant him, in no way inquiring into the reason for the petition, nor showing that he bears it with displeasure.[2]

[2] Code, c. 528.

§ V. On the Approbation and Jurisdiction with Respect to Religious Women

413. Religious women are of two kinds: some emit solemn vows and are called nuns; others emit simple vows and are called sisters.[3] A twofold confessor is assigned to both: ordinary and extraordinary.

[3] Code, c. 488, n. 7.

414. (A) On the ordinary confessor of religious women. (a) The necessity of special jurisdiction is asserted in this way in the Code:[4] "Any contrary particular law or privilege being revoked, priests, whether secular or religious, of whatever grade or office, need peculiar jurisdiction in order validly and licitly to receive the confessions of any religious women and novices... This jurisdiction is conferred by the Ordinary of the place where the house of the religious women is situated."

[4] Code, c. 876.

415. (b) The unity of the confessor is declared in this way: "For each house of religious women only one ordinary confessor is to be given, who is to receive the sacramental confessions of the whole community, unless because of their great number or for another just cause there is need of another or of several."[5]

[5] Code, c. 520, § 1.

416. Nevertheless certain exceptions are given so that the liberty of approaching other confessors may remain secure in certain circumstances: (a) "if any religious woman, for the quiet of her soul and for greater progress in the way of God, asks for some special confessor or spiritual director, the Ordinary should easily grant him, but should watch lest abuses creep in from this concession; and if they creep in, he should cautiously and prudently eliminate them, the liberty of conscience being preserved."[6] (b) All religious women, when they are gravely sick, even though danger of death is absent, can call any priest approved for receiving the confessions of women, even if he is not designated for religious women, and during the continuance of the grave illness can confess to him as often as they wish; nor can the Superior forbid them either directly or indirectly.[1] (c) From can. 522, for the tranquility of her conscience, a religious woman can approach any confessor approved for women; and from the decision of the Pontifical Commission (24 Nov. 1920), that confession is licit and valid, provided it is made in a church or even semi-public oratory, or in a place legitimately designated for hearing the confessions of women, and therefore in the chapel itself of the community.

[6] Code, ibidem, § 2.

[1] Code, c. 523.

417. (c) The conferring of jurisdiction is thus determined: 1) "If the house of religious women is immediately subject to the Apostolic See or to the Ordinary of the place, he chooses the priests for confessions, both ordinary and extraordinary; if it is subject to a regular Superior, he presents the confessors to the Ordinary, to whom it belongs to approve them for hearing the confessions of those nuns, and, if there is need, to supply for the negligence of the superior."[2]

[2] Code, c. 525.

418. 2. "The ordinary confessor of religious women is not to exercise his office beyond a three-year period; nevertheless the Ordinary can confirm him for a second, indeed even for a third three-year period, if either, on account of a scarcity of priests suitable for this office, he cannot provide otherwise, or the greater part of the religious women, including those who in other affairs do not have the right of casting a vote, have agreed, by secret votes, to the confirmation of the same confessor; nevertheless for those dissenting, if they wish, provision must be made otherwise."[3]

[3] Code, c. 526.

419. (B) On the extraordinary confessor. According to the Code:[4] (a) an extraordinary confessor is to be given to each community of religious women, who should come to the religious house at least four times in the year, and to whom all the religious women must present themselves, at least to receive a blessing; (b) besides, Ordinaries should designate several priests for the individual houses, to whom they can easily have recourse for the sacrament of penance in particular cases, without its being necessary to approach the Ordinary himself each time; (c) if any religious woman requests one of these confessors, no Superior may, by herself or through others, directly or indirectly, inquire into the reason for the petition, oppose the petition by words or deeds, or show in any way that she bears it with displeasure. But a Superior who has acted contrary to these prescriptions is to be warned by the Ordinary of the place; if she offends again, she is to be punished by him with privation of office, the Sacred Congregation of Religious nevertheless being immediately informed.[5]

[4] Code, c. 521.

[5] Code, c. 2414.

420. (C) On those things which pertain to both confessors. (a) With regard to the required qualities, "for the office of confessor of religious women, both ordinary and extraordinary, priests are to be deputed, whether from the secular clergy or religious with the permission of Superiors, outstanding in integrity of morals and prudence; they are moreover to be forty years of age, unless, in the judgment of the Ordinary, a just cause demands otherwise, and are to have no power in the external forum over the same religious women."[1]

[1] Code, c. 524, § 1.

421. (b) With regard to a new deputation: An ordinary confessor cannot be appointed extraordinary, nor, apart from the cases reviewed above, be deputed again as ordinary in the same community, unless after a year from the completed office; but an extraordinary confessor can immediately be appointed as ordinary.[2]

[2] Ibid., § 2.

422. (c) With regard to the governance of the community, the confessors of religious women, both ordinary and extraordinary, are in no way to mix themselves into the internal or external governance of the community.[3]

[3] Ibid., § 3.

423. (d) With regard to the removal of confessors, "the Ordinary of the place can, for a grave cause, remove the confessor of religious women, both ordinary and extraordinary, even if the monastery is subject to regulars and the priest himself for confessions is a regular; nor is he bound to indicate the cause of removal to anyone, except to the Apostolic See, if it is required by it; but concerning the removal he must warn the regular Superior, if the nuns are subject to Regulars."[4]

[4] Code, c. 527.

§ VI. On the Limitation of Jurisdiction, or the Reservation of Cases

424. Preliminary notes. 1° Jurisdiction can be limited in various ways by legitimate superiors, but especially by the Roman Pontiff, who has supreme jurisdiction in the whole Church. For ecclesiastical superiors can grant it, or not; therefore a fortiori they can confer it in a more or less limited manner, according as they shall judge this expedient in the Lord. Hence jurisdiction can be limited with respect to men, insofar as the faculty of absolving is restricted to certain men or classes of men, for example, when it is said, women or nuns excepted; with respect to place, for example, within the limits of one parish; with respect to time, so that when a certain time has elapsed it expires; with respect to sins, insofar as the superior can reserve to himself absolution from certain graver sins. Concerning this Trent says (ch. 7): "It has 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 anyone whatsoever, but only by the highest priests; whence deservedly the Supreme Pontiffs, according to the supreme authority handed down to them in the universal Church, have been able to reserve to their own particular judgment some graver causes of crimes."

[5] Suarez, disp. XXIX-XXXI; Lugo, disp. XX; Salmantic., ch. 13; Lacroix, n. 1599-1698; Pauwels, *de Casibus reservatis*, in Migne, *Theol. Curs.*, t. XVIII, p. 935-1604; Stoz, lib. II, Appendix; Elbel-Bierbaum, Conf. 13-14; St. Alphonsus, n. 578-602; Kenrick, n. 153-180; Ball. P., Appendix to t. V, *De casuum reservatione*; Bucceroni, *Commentarii de casibus reservatis*, Rome, 1889; Lehmk., n. 402-417; Marc, n. 1766-1779; Muller, § 141-145; Konings., n. 1400-1403; Genicot, n. 342-350; Noldin, n. 361-376; Legoux, *Supplementum de Casibus reservatis*, at the end of the work whose title is: *Decrets du C. de Rouen et Statuts Synodaux*, Coutances, 1890, p. 105-126.

425. 2° When jurisdiction is limited with respect to sins, there is present a reserved case, which can be defined as a sin whose absolution is not permitted to any confessor, but remains with the legitimate Superior or his delegate. Therefore reservation consists in this, that the power of absolving from certain graver sins is denied to some priest, while the faculty of absolving from the rest is granted; directly, therefore, it affects the confessor, by restricting his power, and only indirectly the penitent.

426. 3° Sins can be reserved in a twofold manner: with censure and without censure.[1] The former likewise are reserved in a twofold manner: because of the censure, when the censure rather than the sin is reserved, and thence, once the censure has been removed, the sin can be remitted by any confessor; or because of the sin, when the sin itself is reserved because of itself, and, the censure having been removed or not incurred, the sin remains reserved,[2] and

because of sin. This distinction must be kept before the mind especially where absolution from censures is treated.

[1] A censure, which is treated in a special Treatise, is a spiritual and medicinal penalty by which a baptized man, delinquent and contumacious, is deprived by ecclesiastical Superiors of the use of certain spiritual goods. Three kinds are distinguished: excommunication, suspension, and interdict.

[2] These notions are according to the mind of the Code. Cf. can. 894 and 2363.

427. These things having been set down, we shall speak 1° on the power of reserving; 2° on the conditions required for reserving; 3° on the principal reserved cases; 4° on absolution from reserved cases.

I. On the Power of Reserving

428. 1° The existence of this power. It is of faith, from Trent,[1] that Bishops have the power of reserving cases to themselves, not only with respect to external polity, but also before God: "If anyone shall have said that Bishops do not have the right of reserving cases to themselves except with respect to external polity, and therefore that the reservation of cases does not prohibit a priest from truly absolving from reserved cases: let him be anathema." - This is also clear from the Code, c. 893, cited below, n. 429.

[1] Sess. XIV, ch. 11.

Moreover, the end on account of which cases are reserved is twofold: (a) penal, that graver delicts may be punished more gravely, while delinquents are compelled to appear before a higher judge and to receive from him a more difficult penance; (b) medicinal, both because the difficulty of obtaining absolution from reserved sins more strongly deters, and because ecclesiastical Superiors, as being more learned and prudent, are judged more suitable for curing graver spiritual diseases. Today, however, this latter end is rarely attained, since delinquents are for the most part absolved by ordinary confessors, who obtain from Superiors the faculty of absolving from reserved cases.

429. 2° On those who can reserve sins. The power of reserving belongs to all those who by ordinary right can grant the power of hearing confessions or impose censures. It is certain from the Code: "Those who by ordinary right can grant the power of hearing confessions or impose censures can also, with the exception of the Capitular Vicar and the vicar general without a special mandate, call some cases to their own judgment, limiting the power of absolving in inferiors. This calling is called the reservation of cases."[2] Hence (A) the Supreme Pontiff can reserve cases for the whole Church; for since he possesses supreme power over the universal Church, he can call greater causes to his own tribunal for both forums, and consequently withdraw them from the judgment of bishops, as was said in the Treatise on the Church, n. 199-202.

[2] Code, c. 893, § 1.

430. (B) Bishops can reserve cases to themselves for their dioceses, but "they are not to reserve sins unless, after the matter has been discussed in the diocesan Synod, or outside the Synod after the Cathedral Chapter and some of the more prudent and more approved curators of souls of

their diocese have been heard, the true necessity or utility of the reservation shall have been established."[1]

[1] Code, c. 895. Benedict XIV had already wisely given these rules, *De Synodo dioeces.*, lib. V, ch. 45: (a) It is fitting that Bishops not use the faculty of reserving cases except in Synod, although they can exercise it whenever they wish; for they will act more cautiously if they bring into counsel upright priests taught by long experience. (b) They ought not be too facile in multiplying reservations; but they should reserve to themselves only the more atrocious and graver crimes, ten or twelve at most; otherwise they will render confession odious. (c) Sins which are frequently committed, even if they are carnal, are not to be reserved except with great circumspection, on account of the danger of infamy which is incurred by those who are often compelled to approach extraordinary confessors, or to return several times to ordinary confessors. (d) Merely internal sins, however grave, are never to be reserved. (e) Sins already reserved to the Supreme Pontiff they should not superfluously reserve to themselves.

(C) "Among the superiors of an exempt clerical religion, only the Superior general, and in monasteries of their own right the Abbot with the proper council of each, can reserve the sins of subjects."[2]

[2] Code, c. 896.

(D) Pastors, of themselves, could reserve cases for their own parish; but today, since in fact they do not confer jurisdiction, they cannot limit it.

II. On the Conditions Required for a Sin to Be Reserved

431. 1° In order that some sin may be subject to reservation, it must be clothed with four conditions; it is required that it be:

(A) Mortal, not only by reason of the object, but also by reason of the subject, that is, committed with full advertence and full consent; for venial sins would be reserved in vain, since there is no obligation to confess them. - Besides, the sinner must know the special malice on account of which the sin is reserved; for example, if incest in the second degree is reserved, the reservation is not incurred by one who sins with a blood relative, if he does not know that incest in this degree differs specifically from simple fornication; yet such ignorance is not easily to be supposed.

(B) External as well as internal; for although the Church could reserve internal sins, since here there is question of the internal forum, it has not been accustomed to do this, lest occasion be given to anxieties, which often occur concerning thoughts, namely whether one has consented to them or not. Indeed, according to the common opinion, the external action must be grave according to itself; therefore if it were light, although the internal act were a grave sin, the reservation would not be incurred; for example, if someone, intending gravely to strike a cleric, lightly touched him. - Nevertheless, it is not necessary that the sin be public, or that it have come to the knowledge of anyone; it is enough that it be committed externally, although secretly.

432. (C) Complete, or consummated in the species which is reserved; for reservation, as penal and odious, must be restricted. Hence where homicide is reserved, the mere attempted crime (by inflicting a wound or offering poison) does not suffice, but it is required that death follow. Nevertheless, an exception is made if this attempt itself is reserved; for example, not only those perpetrating a duel, but also those provoking to it, fall into the reserved case.

(D) Certain, that is, certainly reserved, certainly committed, and certainly mortal; hence if there is serious doubt whether the reserving law extends itself to this case, or whether the sin was really committed, or whether it is grave subjectively or objectively, the reservation is not incurred: for odious things must be restricted.

433. 2° Formerly it was disputed whether or not the impubes - that is, males before the fourteenth year, females before the twelfth - incur reservation. Now it appears evidently to be the mind of the Code that the sins of the impubes are not reserved.[1]

[1] Can. 897 and 2230.

434. 3° Whether ignorance excuses from reservation.

(A) If the sin is reserved because of a censure, it is commonly held that neither the censure nor the reservation is incurred by those who are ignorant of the censure, provided this ignorance is not crass or supine;[2] but it is incurred by those who know the censure, although they are ignorant of the reservation of the censure.

[2] Code, c. 2229, § 3, n. 1.

435. (B) If the sin is reserved because of itself, the difficulty increases. (a) Some affirm that the reservation is not incurred,[3] because reservation is a medicinal penalty, established for deterring men from certain graver sins; but he who is ignorant of the reservation is not deterred from these sins; therefore for him the end of the reservation ceases, and consequently the reservation itself. - These, however, admit that the penitent who has committed a reserved sin is regularly to be warned about the reservation, so that in the future he may be deterred from this sin. (b) But the more common opinion holds, with St. Alphonsus (n. 581), that reservation is incurred even by those who are ignorant; for reservation is not directly a penalty regarding penitents, but a restriction of jurisdiction regarding confessors; hence priests can do nothing in reserved sins, because they lack jurisdiction over them. - In practice: if there is question of a papal case, it is probable that the will of the Supreme Pontiff is that those who are ignorant do not incur the reservation; for Benedict XIV, in the Constitution *Sacramentum Poenitentiae*, reserving the sin of false denunciation, did this "so that such wicked boldness and such detestable crime may be restrained by fear of the magnitude of the penalty"; and indeed these words signify that the reservation is penal and medicinal, and therefore is not incurred by those who are ignorant. - But if there is question of an episcopal case, many Bishops have declared that ignorance does not excuse from reservation, while a few others have signified that it does excuse. Therefore their intention in each diocese should be diligently inquired into.

[3] Salmantic., Tr. XVIII, ch. 6, n. 12; Ball. P., n. 727 sq.; Noldin, n. 369.

436. 4° On the conditions to be observed in reservation. 1) "The cases to be reserved should be altogether few, namely three or, at most, four, from only the graver and more atrocious external crimes specifically determined"; 2) "the reservation itself is not to remain in force longer than is necessary for rooting out some public, established vice and for restoring Christian discipline which perhaps has collapsed";[1] 3) "all are to abstain entirely from reserving to themselves those sins which already are reserved to the Apostolic See even by reason of a censure, and

regularly also those to which a censure, although reserved to no one, has been attached by law";[2] 4) "once reservations have been established which they have judged truly necessary or useful, the Ordinaries of places should take care that these same reservations be brought to the knowledge of subjects in whatever way seems better to them, and that they not grant to anyone and indiscriminately the faculty of absolving from reserved cases."[3]

[1] Code, c. 897.

[2] Code, c. 898.

[3] Code, c. 899.

III. On the Principal Reserved Cases

Reserved cases are distinguished into three kinds: papal, episcopal, and regular, according as they are reserved to the Pope, to the Bishop, or to a regular Superior.

436. 1° Papal cases are of two kinds: some are reserved because of censure, and these are treated in the Treatise on Censures; but one is reserved because of itself,[1] namely the calumnious denunciation of a confessor concerning the crime of solicitation, when, that is, someone falsely accuses an innocent confessor before ecclesiastical judges as guilty of solicitation to shameful things, whether by himself or through another.

[1] Code, c. 894. - Cf. Benedict XIV, Constit. *Sacram. Poenitentiae*. - In order that the case be reserved, the false denunciation must be canonical, or before ecclesiastical judges; if it is made before others, it is reserved only because of the annexed censure.

This case is so reserved that even those who obtain the power of absolving from cases specially reserved to the Roman Pontiff cannot absolve from it unless they are expressly enumerated in the concession; hence it can be called most specially reserved.

437. 2° Episcopal cases are of two kinds: (A) some are reserved to the Bishop by common law, by reason of censure; and these are six, reviewed in the Code.

(a) Those professed of perpetual simple vows, and likewise all presuming to contract marriage, even only civilly, with some person from the aforesaid persons; (b) those procuring abortion, the effect having followed; (c) for the four others see the Treatise on Censures.

(B) Others are reserved to the Bishop by particular law, whether through plenary or provincial Councils, or through diocesan Statutes; these therefore it is fitting to read attentively, so that each one may know excellently which cases are reserved in his own proper diocese.

In the United States of America two cases are reserved to the Bishop for all dioceses, namely an excommunication latae sententiae (a) against those who, after they have obtained a civil divorce, have dared to attempt marriage; (b) against Catholics who have contracted or attempted marriage before a minister of any non-Catholic sect.[1] Besides, in individual dioceses certain special cases are reserved; concerning these, read the Statutes.[2]

[1] Thus in the Plenary Council of Baltimore III, n. 124 and 127.

[2] Thus, for example, in the dioceses of Trenton and Wilmington, priests are suspended ipso facto, by a suspension reserved to the Ordinary, if they shall have retained for three months the title of ecclesiastical goods in their own name;

or if without the license of the Bishop they shall have attempted to sell any thing belonging to the legal ecclesiastical Society (Church corporation). (*Synod. Trenton.*, n. 327; *Synod. Wilmingt.*, n. 259).

3° Regular cases are assigned in each religion. But concerning these there is no reason why we should be anxious, since every confessor can absolve religious from them (Code, c. 519).

IV. On Absolution from Reserved Cases — 1° On Absolution from Episcopal Cases

438. From cases reserved to the Bishop, the following can absolve:

(a) by ordinary power, the one reserving, his successor in office, or his superior, provided he has true jurisdiction over the subjects of the one reserving (for example, the Supreme Pontiff); for all these can reserve, therefore also absolve from reserved cases, since the same power suffices for removing and for establishing a reservation.

439. (b) By delegated power, all those who have obtained this special faculty from a legitimate Superior, namely from him who can delegate. Now these things are established in the Code.[3]

[3] Code, c. 899-900.

440. 1. With regard to reserved sins: "The faculty of absolving from reserved cases belongs by the law itself to the penitentiary canon"; "it should be granted habitually at least to vicars forane, with the added faculty, especially in places of the diocese more remote from the episcopal see, of subdelegating, as often as confessors of their district, if and when they have recourse to them for some more urgent determined case"; "by the law itself, from cases which Ordinaries in any way have reserved to themselves, both pastors, or others who in law are considered in the name of pastors, can absolve during the whole time useful for fulfilling the Easter precept, and also individual missionaries at the time when missions happen to be held for the people"; "any reservation lacks all force: when the confession is being made either by the sick who cannot leave the house, or by spouses for the purpose of entering marriage; - whenever either the legitimate Superior has denied the faculty of absolving sought for some determined case, or, in the prudent judgment of the confessor, the faculty of absolving cannot be sought from the legitimate Superior without grave inconvenience of the penitent or without danger of violating the sacramental seal; - outside the territory of the one reserving, even if the penitent departed from it only to obtain absolution."

441. 2. With regard to reserved censures: "the reservation of a censure in a particular territory does not exercise its force outside the boundaries of that territory, even if the censured person leaves the territory to obtain absolution; but a censure ab homine is reserved everywhere, so that the censured person can be absolved nowhere without the due faculties."[1]

[1] Code, c. 2247, § 2.

442. 3. Besides, in the article and danger of death, any priest can absolve from all reserved cases.[2] Nevertheless there remains the obligation, for the penitent if he recovers, of

recurring to the Superior, at least in the case of a censure ab homine.

[2] Code, c. 882.

443. 4. "In more urgent cases,[3] if namely censures latae sententiae cannot be externally observed without danger of grave scandal or infamy, or if it would be hard for the penitent to remain in the state of grave sin for the time necessary for the competent Superior to provide, then any confessor in the sacramental forum can absolve from the same, however reserved, with the burden imposed of recurring, under penalty of reincidence, within a month at least by letter and through the confessor, if this can be done without grave inconvenience, the name having been withheld, to the Sacred Penitentiary[4] or to the Bishop or another Superior furnished with the faculty, and of standing by his mandates. - Nothing prevents the penitent, even after the absolution has been accepted as above, and even after recourse has been made to the Superior, from approaching another confessor furnished with the faculty, and from him, after the confession at least of the delict with the censure has been repeated, obtaining absolution; when it has been obtained, he receives the mandates from the same, and is not afterward bound to stand by other mandates arriving from the Superior. - But if in some extraordinary case this recourse is morally impossible, then the confessor himself (except in the case in which the censured person was one absolving an accomplice) can grant absolution without the burden mentioned above, nevertheless imposing the things to be imposed by law, and imposing a fitting penance and satisfaction for the censure, so that the penitent, unless within a fitting time to be fixed by the confessor he shall have performed the penance and given satisfaction, falls back into the censure."[1]

[3] Under the new legislation, a more urgent case for a reserved sin without censure can scarcely, or indeed hardly at all, occur. Cf. Code, c. 899, § 2.

[4] The confessor can use this or a similar form when he writes to the Major Penitentiary: - Most Eminent Prince, Titius has contracted a censure reserved in a special manner or simply reserved (here the cause of the censure is described, for example, because of the reading of books defending heresy, or because of enrollment in the Masonic sect, etc.). Since he could not approach a confessor furnished with the due faculties, nor be dismissed without absolution, and otherwise seemed rightly disposed, he received absolution from me. But in order to obey the decrees of the Church, by these letters through me, the undersigned confessor, he has recourse to the Holy See, ready to receive mandates and to fulfill the penance which Your Eminence will deign to prescribe as a penalty for the delict.

Reverently kissing the hands of Your Eminence, with the greatest devotion by which it is fitting, I remain,

Your Eminence's most obedient and most humble servant,

N. N.

Let it be clearly indicated to whom and in what place the response is to be directed. The letters are to be furnished with a seal, and thus inscribed externally (in the vernacular language, lest curiosity be excited): To the Most Eminent and Most Reverend Lord Cardinal Major Penitentiary, - Palazzo della Cancelleria Apostolica, Rome.

[1] Code, c. 2254.

2° On Absolution from Papal Cases

444. From these cases the following can absolve: 1) by ordinary power, both the Supreme Pontiff and the Major Penitentiary; 2) by delegated power, Bishops and priests delegated by the Holy See, or by another Superior having the faculty of subdelegating: "From a censure reserved to the Apostolic See, these and others can absolve who have obtained from it the power of absolving, whether general, if the censure is simply reserved, or special, if it is reserved in a special manner, or finally most special, if it is reserved in a most special manner."[2] Thus delegation is always required also for absolving from a sin reserved to the Apostolic See without censure.

[2] Code, c. 2253, § 3.

445. 3. Those who, placed in danger of death, have received from a priest lacking a special faculty absolution from some censure reserved in the most special manner to the Apostolic See, are bound, after they have recovered, within a month, by the obligation of recurring, under penalty of reincidence, to the Sacred Penitentiary or to the Bishop or another furnished with the faculty, and of obeying their mandates.[1]

[1] Code, c. 2252.

446. 4. In more urgent cases, the rule already set forth above concerning episcopal cases, n. 443, is to be followed.

Besides, the faculty of dispensing from all irregularities arising from an occult delict (except, however, that which touches those who have perpetrated voluntary homicide or procured the abortion of a human fetus, and all cooperating persons, and also that which would have been brought to the judicial forum) belongs to any confessor in more urgent occult cases in which the Ordinary cannot be approached and danger of grave harm or infamy is imminent, but only for this, that the penitent may be able licitly to exercise the orders already received.[2]

[2] Code, c. 990.

3° Things to Be Noted with Regard to Cases Whether Papal or Episcopal

447. (a) When the penitent accuses a reserved sin (reserved by the Pope or by the bishop), the confessor should immediately weigh whether or not all the conditions necessary for incurring the reservation are present. If it is established that the sin is truly reserved, and at the same time the confessor lacks the due faculties, then, unless there is urgency, he should admonish the penitent either to approach the Superior, or to return after a few days, when, namely, the necessary faculties will have been obtained: penitents will generally choose this latter; in which case they can be permitted to declare the other sins.

448. (b) A confessor, lacking special faculties, who knowingly, outside the case of necessity, absolves from reserved sins, sins gravely; nevertheless the absolution is valid if, together with the reserved sins, another sin has been declared: for once a non-reserved sin has been directly remitted, the others are remitted indirectly.

But if this was done through inadvertence or ignorance, and afterward the confessor notices it, he must admonish the penitent about the error committed, if this can easily be done, so that the error may be repaired; otherwise, he should leave him in good faith. - But if the penitent himself afterward knows (which rarely occurs) that he was absolved from a reserved sin only indirectly, he should accuse this sin to a confessor furnished with the special faculty; but he is not bound to repeat the other sins.

With regard to censures: "if a confessor, ignorant of the reservation, absolves the penitent from the censure and the sin, the absolution of the censure is valid, provided it is not a censure ab homine or reserved in the most special manner."[1]

[1] Code, c. 2247.

449. (c) "One seeking absolution must indicate all the cases; otherwise the absolution is valid only for the expressed case; but if the absolution, although a particular petition has been made, has been general, it is valid also for those withheld in good faith, except a censure reserved in the most special manner to the Apostolic See, but not for those withheld in bad faith."[2]

[2] Code, c. 2249.

(d) Very probably the reservation is removed through an invalid or sacrilegious confession made before a confessor who enjoys the faculty of absolving from reserved cases, provided the reserved sin itself is not withheld; for since the Superior has already judged concerning the reserved case and proposed fitting remedies, the reason for the reservation has ceased. - Say the same probably if the reserved sin, in a non-sacrilegious confession, was omitted through forgetfulness; for the Superior, through indirect absolution, is judged to have removed the reservation.

Nevertheless, according to St. Alphonsus,[3] an invalid confession, whether made culpably or inculpably in a jubilee, is excepted, since the Pontiff does not confer the faculty of absolving from reserved cases except so that the faithful may gain the jubilee. But if the confession was valid, although the reserved sin was omitted through forgetfulness, the reservation is removed.[4]

[3] Lib. VI, n. 598.

[4] Cf. Lugo, disp. XX, n. 99.

450. (e) When the faculty of absolving from reserved cases is granted to some confessor, certain conditions are attached, whether general or special.

1. The general conditions are customarily expressed under this formula: the things to be imposed by law having been imposed. Six are numbered: reparation of harm; reparation of scandal; removal of the occasion of sinning; promise concerning the crime not to be perpetrated again; promise of fulfilling the things which the Superior has prescribed or afterward will judge should be prescribed; acceptance of a special penance.
2. But the special conditions are various according to the various cases, and are found in the little document sent by the Superior, which therefore must be diligently read.

(f) No special form is required for absolution from sins reserved without censure. - If there is question of sins reserved with censure, likewise no special form is required, since the customary one

contains these words: "from every bond of excommunication, suspension, and interdict." For it is said in the Code: "The absolution of a censure in the sacramental forum is contained in the customary form of the absolution of sins prescribed in the ritual books; in the non-sacramental forum it can be given in any manner whatsoever, but for the absolution of excommunication it is regularly fitting that the form handed down in the same books be used."[1]

[1] Code, c. 2250, § 3.

Art. II. On the Duties of the Minister

We shall speak: I on his duties with respect to all penitents in general; II on his duties with respect to the various kinds of penitents; III on certain abuses to be avoided.

§ I. On the Duties of the Minister in General

Preliminary Notes[2]

[2] St. Alphonsus, *Praxis Confessarii*, ch. I; Lehmk., n. 418; Berardi, *Praxis*, n. 4701; Gaume, *Manuel*, ch. I; Stang, *Pastoral Theol.*, Bk. II, ch. 4, § 26-28; Aertnys, *Theol. Pastoralis*, n. 26 sq.

451. 1° The principal function which the confessor exercises in the sacred tribunal is certainly the office of judge: for this follows openly from the fact that the sacrament of Penance must be administered in the manner of a judgment. But because this sacrament was instituted not only for destroying past sins, but also for guarding against future ones, the confessor must also perform the parts of a physician, by suggesting opportune remedies. And since one of human infirmities is ignorance, which can be cured only by salutary doctrine, it is necessary that he discharge the office of teacher, by instructing the ignorant. But these various offices tend to this, that they generate or nourish the spiritual life; and therefore the confessor is truly the spiritual father of penitents, and cannot fruitfully exercise his duties unless he loves them with a paternal affection, adhering to the footsteps of St. Paul, who said concerning the faithful committed to him:[3] "My little children, with whom I am again in travail until Christ be formed in you." - "Though we could have been a burden to you as apostles of Christ, yet we became little ones in your midst, as if a nurse should cherish her children."

[3] Galat. IV, 19; I Thess. II, 7.

452. 2° But while the confessor exercises his various offices, he must regard three things: (A) the good of the sacrament; namely insofar as, as a faithful minister, he must procure, as far as can be done: (a) the validity of the sacrament, which depends not only upon the correct use of matter and form, but also upon the dispositions of the subject; (b) its integrity, with regard to the accusation of sins and the imposition of satisfaction; (c) its legitimate administration, by observing all those things which are prescribed by the Church, and by taking care that nothing be done by which the sacrament is rendered odious to penitents.

(B) The good of the penitent; for the sacraments are for men. Hence he will assist the penitent, in the best way possible, (a) so that he may confess his sins sincerely and integrally; (b) so that he may detest the same with supernatural hatred, by proposing opportune motives of contrition; (c) so that he may guard against future sins, by prescribing salutary remedies and the means for persevering.

(C) The public good, that is, not only the good of the penitent himself, but also of the other faithful, by guarding, for example, lest the frequent and protracted confession of certain persons, or the granting or denial of absolution, cause some scandal or other evil in the community.

But in order that we may comprehend all these things in an order at once chronological and logical, we shall speak of the duties of the confessor: 1° before the act of confession; 2° in the very act of confession; 3° after confession.

I. On the Duties of the Confessor before the Act of Confession

These duties are two: 1° the obligation of hearing confessions; 2° the obligation of preparing oneself for receiving confessions.

1° On the Obligation of Hearing Confessions

An obligation of this kind arises either from justice or from charity.

[1] Suarez, disp. XXXII, sect. 1; Lugo, disp. XXII, n. 1-13; Billuart, diss. VI, a. 10, § 1; Marc, n. 1802-1803; Hilar. Sexten., § 46, p. 404-405.

453. (A) Principle: From justice, pastors and other priests having the care of souls are bound under grave obligation, either by themselves or through others, to hear the confessions of their subjects, as often as these reasonably ask to be heard.[2] It is certain.

[2] Code, c. 892, § 1.

For those who take upon themselves the care of souls bind themselves to this by a tacit contract with their subjects, from whom they receive support under the condition of ministering the sacraments; and with the ecclesiastical Superior, who does not commit the care of souls to anyone except under the condition that the duties of this office be faithfully fulfilled: now one of these duties is to hear the confessions of subjects.[1]

[1] Cf. *Syn. Theol. Dogmat., De Sacramentis,* n. 104.

454. Corollaries. (a) In the case of extreme necessity, when, namely, the danger of damnation is imminent, for example, if someone near death is in mortal sin and has no other remedy besides confession, because, for example, he does not know how to elicit an act of perfect contrition, his own pastor, or another having the care of souls, is bound under grave obligation, even with danger of life, to absolve his subject; for the good shepherd gives his life for his sheep. - Indeed, the same is commonly taught in the case of quasi-extreme necessity, namely when someone is in probable danger of damnation, for example, if there is question of a dying sinner who had lived little as a Christian, and indeed can elicit perfect contrition, but only with great difficulty. For if all priests, even if they do not have care of souls, are bound to expose their life for their neighbor in extreme necessity, the pastor, who is more bound than others, will be bound also in quasi-extreme necessity.[2] This can be confirmed from a decree of the Sacred Congregation of the Council, 1576, where it is declared that "the pastor is bound to minister to his parishioners suffering from plague only the sacraments necessary for salvation, namely Baptism and Penance."[3]

[2] Thus Lugo, disp. XXII, n. 10; and the authors cited there, Valentia, Reginaldus, Bonacina, St. Alphonsus, H. A., Tr. VII, n. 28. - Here, moreover, it is to be noted that by many authors that necessity is called grave which, for the sake of clarity, we have called quasi-extreme; but afterward they distinguish at least implicitly between grave necessity, which carries with it proximate and probable danger of damnation, and that which constitutes only danger of grave, reparable spiritual harm.

[3] In St. Alphonsus, l. c.

455. (b) But in the case of grave necessity, namely when without confession they would incur grave spiritual harm, yet reparable harm - for example, if sinners are laboring under a grave sickness, or are bound under grave obligation to confess, or also if the faithful are assaulted by grave temptations which can be overcome only with difficulty without recourse to the sacred tribunal - pastors and others having the care of souls are bound under grave obligation to hear the confessions of their subjects, even with grave inconvenience. - With respect to the sick, let these words of St. Charles Borromeo be considered:[4] "At whatever hour of the day or night the pastor shall be called for the sacraments to be ministered to the sick, he shall interpose no delay; indeed he shall warn the people beforehand, that when there is need of parochial administration, they may freely summon him, without any regard had of time, or of distance of place, etc." The reason is that otherwise certain sick persons can die without absolution.

[4] *Acta Eccl. Mediolan.*, part 4; in St. Alphonsus, n. 58.

456. (c) In common necessity, when, namely, penitents ask reasonably, that is, on account of true spiritual utility, pastors and other ministers by office are indeed bound to hear the confessions of subjects, yet in such a way that, on account of a legitimate impediment, they can send penitents away to another short time;[1] for since the necessity is not urgent, the law does not oblige with so great an inconvenience.

[1] A good pastor will send penitents away to another time only rarely and for a grave reason, but rather will put into practice this admonition of the Plenary Council of Baltimore II (n. 280): "Let him show himself always prompt and ready when he has been summoned to undertake this office, especially by the needy and by men of lower condition, and by those whom he has known to be loaded with the burden of sins, or to have been absent from confession for a long time."

Hence they sin gravely if they declare that they do not wish to hear confessions except rarely and on a few determined days, for example, once or twice in any month; or if they often show themselves difficult and morose in receiving confessions; for thus confession is rendered odious, and not a few faithful are deterred from its practice. But if someone once or twice, outside urgent necessity, refuses to hear the confession of someone, even without a legitimate reason, he does not sin gravely, generally speaking, because the harm which is inflicted is easily repaired. - But he does not sin in any way if he dismisses those who wish to confess too frequently and without a special reason; for these do not ask reasonably.

(d) If the pastor has suitable coadjutors, he is not so strictly bound to receive confessions by himself, but can satisfy this office through vicars, unless he is required by name. Nevertheless it is altogether fitting that pastors in this matter furnish a good example to vicars, by hearing confessions when they are not impeded by more serious business.

457. (B) From charity, even priests not having the care of souls are sometimes bound to hear confessions; for charity obliges us to assist our neighbor placed in spiritual necessity, as is proved in the Treatise on the Virtues, where Charity is treated.

(a) In the case of extreme necessity, when the dying person cannot morally elicit an act of contrition, they are bound to absolve him, even with danger to their own life, if his own priest is lacking; for in extreme necessity we are bound to prefer the necessary spiritual good of our neighbor to our own temporal good.

(b) In the case of quasi-extreme necessity, when the dying person can elicit an act of perfect contrition only with difficulty, a simple priest is bound, if his own priest is lacking, to hear the confession, even with grave inconvenience. But it is disputed whether he is bound to this even with danger of life; the more common opinion affirms, after St. Alphonsus,[2] because if the dying person is left unabsolved, he remains in probable danger of damnation; now the order of charity demands that we expose our temporal life to probable danger in order to rescue the spiritual life of our neighbor from an equal danger. - Yet others with Lugo[1] probably deny this, because while the neighbor can absolutely free himself from danger, we are not bound with so great an inconvenience to succor him who can provide for himself at a lesser cost. Nevertheless, according to the same authors, the case is excepted in which the whole community would be in grave necessity, for example, when a contagious and grave disease is raging: then even a simple priest, if the pastor is lacking, would be bound to hear confessions, even with danger of life; because in grave necessity of a community it can scarcely happen that there is not extreme necessity with respect to some.[2]

[2] St. Alphonsus, H. A., Tr. XVI, n. 125.

[1] Lugo, disp. XXII, n. 12.

[2] Thus Lugo, l. c., n. 13.

Note. But in all these cases, in order that there be a grave obligation of receiving confessions with danger to one's own life, three things are required: that the necessity of the neighbor be morally certain; that likewise the hope of validly absolving the dying person be certain; that from the death of the priest greater evils not follow, for example, the probable damnation of many others, if there is not another priest in this place.

2° On the Obligation of Preparing Oneself for Receiving Confessions

The confessor must prepare himself for receiving confessions by acquiring the qualities which are necessary for rightly fulfilling this office: on the part of the intellect, knowledge and prudence; on the part of the will, goodness of life.

A. On the Knowledge Necessary for the Confessor

458. Principle: The confessor is bound under grave obligation, outside the case of necessity, to have that knowledge which is called competent, that is, that by which he can solve the cases which commonly occur in the place where he is accustomed to hear confessions, and at least prudently doubt concerning the more difficult ones, so that he may be able to consult books or other more learned persons. - It is said outside the case of necessity; for if necessity presses, not only extreme but also grave, a less learned confessor licitly receives confessions, since for

the most part the ignorance of the confessor does not hinder the validity of the sacrament, but only its integrity or fruitful administration; now in a case of necessity it is lawful to administer the sacrament even with the danger that it remain invalid or defective. But a priest who fears that the sacrament may be null can absolve only conditionally.

[3] Suarez, disp. XXVIII, sect. 2; Lugo, disp. XXI, n. 70-74; Salmantic., ch. 12, n. 3-13; Billuart, diss. VI, a. 9, § 2; St. Alphonsus, n. 626-628; Lehmk., n. 438-441; Hilar. Sexten, § 44, p. 391-394; Marc, n. 1786-1787; Genicot, n. 355-356; Noldin, n. 391-392; Segneri, *Il Confessore istruito*, ch. I.

For, this knowledge being lacking, he exposes himself to a proximate and morally certain danger of fulfilling his office badly, with injury to the sacrament and harm to penitents. Indeed, as minister, he must procure the validity and integrity of the sacrament; as teacher, he is bound to instruct the ignorant; as judge, he must render an equitable judgment concerning the gravity and number of sins, define whether restitution is to be made or not, whether certain impediments stand in the way of a marriage to be celebrated or not, how dispensations can be obtained, understood, and put into execution, whether the penitent is to be absolved or not; as physician, he must investigate the cause of spiritual diseases and propose opportune remedies. But all these things certainly require no mediocre knowledge; when this is lacking, the sacrament is exposed to nullity, and penitents suffer detriment in a most grave matter, according to that saying of Scripture:[1] "But if the blind man offers guidance to the blind, both fall into the pit." - Hence St. Alphonsus deservedly says:[2] "I affirm that that confessor is in the state of damnation who, without sufficient knowledge, exposes himself to receiving confessions."

[1] Matt. XV, 14. Cf. *Syn. Theol. Fundam.*, Prologomena, n. 14-17.

[2] St. Alphonsus, *Praxis*, n. 18.

459. Nor let it be said that sound sense or natural judgment plainly suffices for solving cases. - It indeed suffices for knowing the first principles of morals, but not for the ultimate conclusions of these; nor certainly does it help much for detecting positive laws concerning vows, justice, the administration of the sacraments, the scope and limits of jurisdiction, reserved cases, impediments of marriage and dispensations, and other things of this kind. Besides, natural and sound judgment, which for the application of principles and rules is not only useful but necessary, is helped not a little by the study of theology, where there are to be found warnings and counsels which the common sense of wise men has elaborated and digested through many centuries. He would lack sound judgment who would despise the wisdom of other prudent men.

Nor does experience alone suffice: this indeed is of much profit, especially for better scrutinizing the interior dispositions of penitents, and also for applying rules according to the various circumstances of places, times, and persons. But without knowledge, it serves little and sometimes does much harm; for there is no lack of confessors who, after thirty or forty years spent in the exercise of the sacred ministry, solve cases against all the principles of sound doctrine, because they were accustomed to do this from the beginning; and, as Habert rightly warns,[1] "the long experience of a confessor who lacks study and knowledge is an antiquity of error."

[1] Habert, *Praxis Sacram. Paenit.*, Tr. I, ch. 4; cf. *Ami du Clerge*, t. XIX, 1898, *Notes d'un Vieux Moraliste*, pp. 1009, 1057 sq.

460. Corollaries. (a) The same knowledge is not required in all confessors, but greater or lesser according to the diversity of places and persons. Thus, generally, greater knowledge is necessary in a city, where penitents of every kind are accustomed to confess, than in a humble and remote village, where only the confessions of rude and simple persons are received.

(b) A priest sins gravely who, while he certainly knows that competent knowledge is lacking to him, accepts the office of confessor; nor does the approbation given by the Bishop excuse him, since this supposes knowledge but does not supply it. In doubt, however, whether it is lacking or not, he can follow the judgment of the Bishop. - A Bishop also sins gravely when he approves as confessor one whom he knows to be ignorant, because thus he cooperates in his sin. Nevertheless he is excused if he approves one less suitable for small and remote places, when he cannot find a more learned one, because it is better for the faithful to have an unlearned confessor than none. Nevertheless the Bishop must warn this man of the obligation of acquiring competent knowledge as soon as possible.

461. (c) Therefore, under grave obligation, alumni of Seminaries who wish to devote themselves to the sacred ministry are bound to study theology for a long time and seriously, not only dogmatic but also moral theology, so that they may be made suitable for exercising the office of confessor. - Besides, no confessor, even one approved, ought to discontinue the study of theology, especially moral theology; for from so many matters so diverse and differing among themselves, especially from those which are prescribed by positive law and occur more rarely, many things very easily fall from the memory unless they are read again and again.[2] - For this reason the Church wills that not only among secular priests, but also among regulars having the care of souls, collations or pastoral conferences be held frequently; yet in order that these may be truly useful, it is necessary that those who participate in them prepare themselves for them by consulting approved authors; otherwise time is wasted in vain.[1]

[2] Benedict XIV does not hesitate to assert (*Instit.*, XXXII, n. 4) "that some priests, namely, who at the beginning took up the office of confessor most excellently, afterward, after a long time, with all care of studies neglected, lose the former knowledge of moral theology, so that those who had been most skilled in this sort of art, finally, instructed only with a slight and confused knowledge of the art itself and with its first rudiments, are scarcely numbered among beginners." - Cf. Plenary Council of Baltimore III, n. 189.

[1] Hence one of the questions to which Bishops must respond when they prepare the report on the state of their churches is this: "whether conferences of moral theology, or of cases of conscience, are held... and how many times they are held, and who are present at them and what profit is had from them." Cf. Plenary Council of Baltimore III, n. 189-193; *Collect. P. F.*, n. 108.

(d) When difficult cases occur, it is not expedient to solve them immediately, but it must be said to the penitent that he should give time for considering the matter more maturely; meanwhile he can be absolved, provided he is prepared to obey the decision to be given; for thus many errors are guarded against, especially if books or more learned persons are consulted. Indeed, it is very useful for new confessors, even when they had to solve a case immediately, to consult books and more experienced persons about the same case, so that thus they may know whether they acted rightly or not; for thus defects admitted can be repaired and future errors guarded against.

B. On the Prudence Required in the Confessor

462. (a) Notion. To knowledge there must be added prudence, which in general is the faculty of choosing all the best means for obtaining the end. Now the end which the confessor must intend is the glory of God and the salvation of souls; hence he is a prudent confessor who is furnished with the faculty of applying general principles and precepts to various penitents, according to the variety of circumstances, so that he may safely lead them to Christian perfection and eternal life. But for this it is required that he treat diverse penitents not in the same way, but according to their diverse character and condition, according to that saying of the Apostle:[3] "I became all things to all men, that I might make all saved."

[2] St. Alphonsus, H. A., Tr. XXI, n. 4; Habert, *Pratique du Sacr. de Penitence*, Paris, 1748, Tr. I, ch. 4, p. 100-131; Hilar. Sexten, p. 394-398; Aertnys, *Th. Past.*, n. 9-12.

[3] I Cor., IX, 22.

463. (b) Necessity. This prudence is indeed required: in questions, which must be adapted to the character, age, and condition of each penitent, taking care especially lest he teach unknown sins to simple and innocent persons; - in forming judgment concerning the morality and gravity of actions, attention being given not only to external circumstances, but also to the subjective dispositions of each one; - in exciting contrition, by proposing motives according to the mind, character, and sins of each person; - in suggesting remedies which truly heal the various spiritual diseases by taking away the cause of sins; - in giving counsels, whether for fulfilling the various duties of states, or for progress in the practice of virtues; - in imposing satisfactions, not only according to the quality of the crimes, but also according to the spiritual diseases and strength of penitents; - in giving, deferring, or denying absolution, by rightly judging concerning the dispositions of penitents, especially when there is question of those in occasions and of recidivists; - in receiving the confessions of women, by avoiding whatever could scandalize others or himself, and cause some detriment to the penitents themselves. In one word, in almost every step he must be cautious and circumspect; for "the rule of souls is the art of arts."

464. (c) The means by which prudence is acquired. First of all, prudence should be sought from him who is the author of wisdom; for since it is a supernatural virtue, it can especially be obtained and increased by prayer. - But the conditions which are desired for the increase of this virtue are, besides knowledge, concerning which we have spoken: purity of intention, by which he wishes to please God alone, and not men; to sanctify and save souls, but not to conciliate them to himself: for God is accustomed to illuminate those who seek nothing except the divine glory, while he blinds the vain and proud; - circumspection, by which he considers not only a single aspect of the matter, but the various circumstances of persons and cases, and also the principles which are applicable to these circumstances; hence let him not be hasty in judgment, but spend the due time for considering the matter, and, if some doubt remains, let him not affirm more than he knows; - docility of mind, which is necessary especially for younger men: but this requires that, rightly distrustful of themselves, they frequently seek the counsels of learned and experienced men, so that they may use their knowledge and experience: "No one in those things which fall under prudence suffices for himself as to all things," as St. Thomas rightly says; - long practice joined with knowledge and circumspection; for those who for a

long time have attentively scrutinized the hiding places of consciences, and often have ascended from effects to causes, or conversely have descended from causes to effects, know much better how one ought to question, when to warn penitents or to leave them in good faith, by what methods to prepare a way for themselves into their souls, what judgment to make concerning dispositions, etc.; for experience is the best of teachers.

C. Goodness of Life Required in the Confessor

465. Notion and necessity. This goodness does not consist only in the state of grace, which is certainly required for avoiding the sacrilegious administration of this sacrament, but in the combination of those virtues which are desired for fruitfully discharging this office. Indeed, he must handle the wounds of sinners, even the most shameful, in such a way that he himself is not contaminated; besides, he must lead others into the way of sanctity. But unless he is endowed with special goodness, he will with the greatest difficulty avoid stains, while he frequently receives the confessions of those who are accustomed to accuse shameful things; and besides he will with difficulty lead others in the way of perfection, if it is unknown to himself.

[1] Habert, op. cit., Tr. I, ch. 2, p. 9-40; Hilar. Sexten, § 44, p. 387-391; Gaume, *Manuel*, n. 1-28; 129-166.

466. The principal virtues which are necessary for the confessor in order to discharge his office fruitfully are:

(a) Supernatural zeal of souls, by which he loves penitents with a special charity as spiritual children committed to him by God, so that he may lead them to eternal beatitude, - and as brothers redeemed by the blood of Christ, to whom he must apply the merits and satisfactions of the Lord, by forming or increasing Christian virtues in their hearts. - Therefore he will not prefer the rich and noble to the poor and rude, nor devout or little-devout women to men burdened with grave sins: he will embrace all with paternal affection, but especially those who are more miserable and guilty of graver sins. He will show himself meek and kind to all, putting on the bowels of mercy, not only when he questions and instructs, but also when he corrects: "Since benevolence often does more toward those to be corrected than austerity; exhortation more than threat; charity more than power."[1]

[1] Trent, sess. XIII, ch. I de Reformat. - Concerning paternal charity toward penitents St. Alphonsus treats excellently, H. A., Tr. XXI, n. 1-3.

(b) Patience, which is certainly necessary for instructing the ignorant and rude, for disposing those who approach unprepared, especially if they have sinned much and scarcely have a spark of contrition; for kindly receiving those who make lengthy confessions, especially if the confessor has already sat for long hours in the sacred tribunal. - Therefore let him think of the patience of Christ, and keep before his eyes that it often happens that from impatience the confessor is disturbed more and more, and penitents are exposed to the danger of withholding sins.

(c) Fortitude, lest from vain fear and pusillanimity he omit to warn and correct, especially the rich, the noble, and the powerful, and to prescribe salutary remedies to them.

(d) Exceeding purity, lest while he cleans the filth of others, he himself be stained. Hence, in the confession of women, let him generally abstain from every affectionate word; let him be cautious and

brief in questioning about the matter of chastity; let him not fix his eyes on the face of penitents, and let him avoid excessive familiarity, whether within or outside confession. Nor let him trust too much in past chastity, or in the sanctity of penitents; for, as St. Augustine testifies, even most holy men have fallen, and the more holy women are, the more they attract.[1]

[1] Thus St. Thomas (*Opusc.* LVII, *De modo confitendi*, p. 439, t. XXVIII ed. Vives), referring to these words of Augustine: "Speech with women must be brief and rigid. Nor yet because they have been holier are they therefore to be less guarded against. For the holier they have been, the more they attract, and under the pretext of a pleasant conversation there mixes itself the most impious birdlime of lust." In the same place St. Augustine declares that great Prelates have fallen, concerning whose fall he presumed no more than concerning Jerome and Ambrose.

II. On the Duties of the Confessor in the Very Act of Confession

In the very act of confession the confessor must especially provide four things: 1° as judge, he must instruct and know the cause through legitimate questions; 2° as teacher, he must teach and warn the penitent; 3° as physician, he must cure his wounds, by disposing him for absolution and prescribing remedies to him; 4° as minister and judge at the same time, he must give or defer absolution.

1° On the Obligation of Questioning Penitents

Since the confessor is a judge, he cannot pass sentence unless he knows the cause: but for this it is often not enough that he hear the penitent, but it is required that he question him.

[2] St. Thomas, in 4, dist. XIX, q. 2, a. 3 in Expos. textus; Suarez, disp. XXII, sect. 3; Lugo, disp. XXII, n. 14-22; Salmantic., ch. 12, n. 14-28; St. Alphonsus, n. 629; Marc, n. 1804-1807; Lehmk., n. 418-422; Hilar. Sexten, p. 413-421; Aertnys, *Th. Pastor.*, n. 27-47; Noldin, n. 395-396; Konings, n. 1424-1426; Segneri, op. cit., ch. 2.

467. Principle: The confessor is bound to question the penitent, of itself under grave obligation, as often as he judges probably that he, either culpably or inculpably, is omitting certain things necessary to be known for absolution. It is certain.

It is proved: (a) By the authority of Lateran Council IV, saying:[3] "But let the priest be discreet and cautious... diligently inquiring both the circumstances of the sinner and of the sin." Likewise one reads in the Roman Ritual:[4] "If the penitent has not expressed the number and species and circumstances of sins necessary to be explained, let the priest prudently question him."

[3] In Denzing., n. 363.

[4] *Ordo ministrandi Sacr. Paenit.*

(b) Theological reason. For the confessor, as judge, must know both the sins which the penitent has committed and his dispositions; but not rarely the penitent, because of ignorance or confusion, is silent about sins, or at least about the number or circumstances of sins; more often he says nothing concerning his own dispositions; therefore the confessor cannot know all these things except by questioning. - Besides, as physician, he must prescribe opportune remedies; now he cannot suggest them unless he questions about occasions and habit and also other causes of sin, since most penitents are altogether silent concerning these things.

468. Corollaries. (a) The confessor is not bound to question penitents who, on the one hand, seem sufficiently instructed, and, on the other, are diligent in confessing, such as those are accustomed to be who frequently receive the sacraments, unless, however, in some case, from

their accusation, a probability arises that something necessary to be known is omitted. - On the contrary, those are ordinarily to be questioned who rarely approach the sacred tribunal, especially if they seem little instructed, because deservedly their accusation is presumed not to be integral.

Therefore the practice of those is to be disapproved who never question penitents, indeed do not even allow them to bring the confession to its end, but, after a few sins have been heard, immediately impart absolution: such a manner of acting often disturbs souls, rather than tranquilizing them, and is the cause why even grave sins are kept silent.

(b) The confessor is not bound to greater solicitude in questioning than penitents are in confessing; indeed, strictly speaking, he is bound to less, since the integrity of confession directly obliges the penitent and only indirectly the confessor. Therefore he is bound to employ only ordinary and moderate diligence, which is proportioned to the diverse capacity of penitents. Thus a rude and uncultivated person is not to be examined as accurately as one well instructed, nor a sick person as a healthy and robust one, because they are not bound to so minute an examination.[1]

[1] This Lugo excellently declares, disp. XVI, n. 594.

(c) If, from slight negligence, inadvertence, frailty of memory, or distraction, or fatigue, the confessor omits to inquire about something which of itself is necessary for the integrity of confession, there will be no sin or only a light sin; for no one is bound to the impossible: now when many confessions are received, it is morally impossible always to avoid these defects. - Likewise, when moderate diligence has been employed, he does not sin who abstains from further questions, lest he render confession odious, although he foresees that with greater diligence more sins could be detected: for it is better that confession lack material integrity than that it become odious to many.

469. On the qualities of questioning. Questioning must be moderate, discreet, opportune.

(a) Moderate, that is, not about curious or useless matters which are foreign to confession, but only about those things which regard the state of conscience. Hence the confessor should not question about all sins, but only about those which have probably been committed by the penitent, according to each one's condition and dispositions. Likewise let him question each one according to the knowledge with which he is furnished, not according to the knowledge with which the confessor himself is endowed: and therefore if children, the ignorant, half-witted persons, etc., have only a confused knowledge of sins, he will seek something more precise in vain: the more he questions, the less these understand.

Nor should the confessor think that it is necessary to pronounce a certain judgment concerning the gravity or lightness of all the sins which are declared: provided he is endowed with competent knowledge and acquires sufficient knowledge of the dispositions of the penitent, by employing ordinary diligence, he can form a wise judgment and leave the rest to God. Besides, even if in forming judgment concerning the gravity of delicts he should err, the absolution is valid.

For the most part it is not expedient to ask the rude whether they regarded such or such a sin committed by them as mortal: for not rarely they will answer, not according to the truth of the matter, but according to that which occurs to their mind. Nevertheless, in certain cases, especially when there is question of chastity, and it is feared that perhaps by a direct question the penitent may

be scandalized, the confessor can ask whether in doing that he was conscious that he was sinning gravely.

470. (b) Discreet, or prudent, both in the things about which he questions and in the manner of questioning, avoiding all those things which could probably scandalize penitents, or teach them those things which it is better to be ignorant of.

This is especially to be attended to in the matter of chastity with regard to younger persons, who perhaps do not yet know sins of this kind.[1] Besides, since it is established by experience that sins against chastity are not accused by some unless a question is asked about them, it is expedient to propose certain questions about this matter, yet prudently. Namely, the confessor should first use general terms, so that the penitent, if he is guilty, may understand; but if innocent, may learn nothing new; for example, have you sinned against modesty, decency, purity? - Afterward he should begin from lighter sins, and, according to the answers received, proceed to graver ones; for example, let him ask about thoughts, - about words heard or spoken, - about looks, - excessive familiarities, - touches with themselves, with others, of the same or of the other sex, etc. - Nevertheless, it must be noted that not a few, rude and ignorant, do not declare thoughts and desires, because they do not know that merely internal sins are to be accused; hence, even when they answer negatively about thoughts, a question can be proposed about immodest actions; afterward, if they answer affirmatively, it can be asked whether they also thought about these things before or after the actions committed, and whether they had a desire of performing them more often.

[1] "But let him take care not to detain anyone with curious or useless questions, especially younger persons of either sex, or others, by imprudently questioning concerning that which they are ignorant of, lest they suffer scandal and thence learn to sin." (*Rit. Rom.*, l. c.)

Those words which could excite dangerous curiosity, such as pollution, fornication, sodomy, bestiality, etc., are to be carefully avoided with younger persons who are presumed innocent.

With regard to married persons, inquiry can be made whether they have fulfilled their duties toward the other spouse, without express mention being made of the conjugal debt, - or whether anything reproaches them with regard to the use of marriage; if they answer negatively, nothing more is to be inquired, unless there is a special reason; if affirmatively, it suffices to propose those questions by which it can be known whether they voluntarily take means for impeding the conception or birth of offspring.

In one word, in this matter this rule handed down by almost all is to be observed: It is better to be deficient in many things with regard to integrity, than to abound in one thing with probable ruin of the penitent.

471. (c) Opportune, that is, made at a suitable time and in a suitable manner.

Before confession, if the penitent is unknown, it should be kindly inquired from what time he has confessed - whether he was absolved - whether he is perfectly at peace concerning his past life? - If he is troubled, he should be led by paternal words to explain the cause of his anxiety, saying, for example, that all solicitude can easily be expelled by a candid confession, and all sins, even the gravest, are forgiven to the contrite in heart. - Questions can indeed be asked at the beginning about

state and condition; but they are often better made in the course of confession, when an opportunity is given, lest from the beginning the penitent be overwhelmed with questions.

In the very act of confession, generally let him propose only few and brief questions, for example, about number and circumstances changing the species; but let him not interrupt the penitent too frequently, so that he may be able to confess in order all things which he remembers. Let him hear patiently and kindly the sins which are accused; if useless things are related, let it be said courteously that it is not necessary to say these things; if the greatest sins are declared, let no sign of astonishment or horror be given, but rather let a few things be said about the divine mercy, which remits the gravest delicts; if the penitent hesitates and confesses his sins only with difficulty, let him be led to perfect sincerity by a few more humane words, and helped by some questions. Let every rebuke be abstained from before the confession is finished.

After the confession has been heard, the penitent must be questioned about those things which he probably omitted, by going through those things which he himself declared. If there is question of those who are very timid, it is often profitable, after a paternal exhortation, immediately before absolution, to ask with paternal affection whether something burdens their conscience: for there are those who do not uncover all sins until, by most humane words, the confessor has won their confidence for himself. - If then a previously withheld sin is accused, let the confessor act most mildly, and propose motives of contrition, not only with regard to this sin, but also with regard to the malice of withholding it.

472. Corollary. From this it can be inferred what the confessor ought to do when he doubts concerning the sincerity of the penitent, or is morally certain that a grave sin is being withheld by him.

In the forum of penance there is a received axiom: the penitent is to be believed as much when speaking for himself as against himself. This indeed is wholly valid when there is only doubt concerning the sincerity of the penitent; for he himself is at once the accused and the witness, and his testimony of itself is better than any other, since he knows better than anyone else whether he has sinned or not, and whether the sin committed has already been remitted or not. - But if the matter is morally certain, it is doubted whether the aforesaid axiom can be applied. Hence:

(a) If the confessor only doubts concerning the sincerity of the penitent, he can indeed question him diligently and exhort him to perfect sincerity; but if the penitent affirms that he has accused all things, he is to be absolved, by force of the aforesaid axiom.

(b) If he knows with moral certainty that a grave sin was committed which is being withheld, first he must weigh whether the penitent is in good faith, ignorant of the gravity of this sin, or thinking that he has a motive for withholding it for a time, or whether probably this sin was confessed before another; for if something of this kind can be presumed, the penitent is to be believed.

But if nothing of this kind is probably presumed, a distinction must be made from what source the confessor knew the sin: - if by his own experience he knows that the sin was committed, for example, he saw a homicide perpetrated, he must convince the penitent, and if this man proceeds to deny everything (which will rarely happen), he is to be dismissed without absolution, as being indisposed. - If he knew it from the testimony of others, outside confession, he must question the penitent

specially about this sin; but if the penitent denies it, more probably he can be absolved, because the penitent is to be believed rather than others who perhaps were deceived; yet probably St. Alphonsus (n. 631) teaches that in this case absolution is to be denied, if the witnesses are so grave that they render the matter morally certain. - Finally, if he knew it from the confession of another (for example, of a fiancee, wife, etc.), the confessor cannot question specially about this sin, but only generally, as persons of the same condition are accustomed to be questioned, lest perhaps the sacramental seal be violated. Nor is it expedient in this case to ask from the accomplice permission to use this knowledge for convicting the guilty person: for this would render confession odious. But if the penitent, having been generally questioned, is silent about the sin, it is better to give absolution, at least under condition, lest perhaps a suspicion arise that absolution is denied because of the confession of the accomplice. Yet probably St. Alphonsus (l. c.) asserts that absolution is to be denied.

2° On the Obligation of Teaching and Warning Penitents

The confessor is bound not only to question penitents, but also to instruct and warn them, if they are ignorant of truths necessary to be known, whether speculative or practical.

[1] Suarez, disp. XXXII, sect. 4; Lugo, disp. XXII, n. 23-37; Salmantic., ch. 12, n. 32-45; Stoz, lib. II, n. 126-131; St. Alphonsus, n. 608-616; Lehmk., n. 442-446; Muller, § 150; Ball. P., n. 811-831; Hilar. Sexten, § 46, p. 407-412; Genicot, 357-359; Noldin, n. 393-394.

(A) On the Obligation of Teaching the Ignorant

473. Principle: The confessor must teach penitents those truths which are necessary for rightly receiving the sacrament, unless absolution can be deferred to another time. It is certain.

For since he is the minister of the sacrament, he must procure its valid and licit administration; since he is a teacher, he is bound to teach those things which are necessary for its valid and licit reception. These things having been set down:

(a) A penitent who, whether culpably or inculpably, is ignorant of truths necessary by necessity of means, must be instructed about these before he can be absolved; for he is incapable of justification, and therefore of absolution.

Now there are two truths which are certainly necessary by necessity of means, namely the existence of God and his Providence, or faith that God exists and is a rewarder; therefore no one can be absolved without explicit faith in these truths.

But besides, it is probable that faith in the mysteries of the Most Holy Trinity and of the Incarnation is necessary by necessity of means; and since in matters of this kind the safer opinion must be followed, no one can be absolved, outside the case of extreme necessity, unless he conceives explicit faith in these mysteries; otherwise the sacrament is exposed to danger of nullity.[2] But if there is question of a dying person whom it is impossible to instruct about these things, he can and must be absolved conditionally: and if he afterward survives, he is to be instructed and again absolved. - Yet it is not required that there be scientific knowledge of these mysteries; but it suffices that it be believed, with regard to the Trinity, that there are three distinct persons, the Father and the Son and the Holy Spirit, and that these three are one God; with regard to the Incarnation, that the Son of God made man redeemed us by his death. Therefore the confessor can teach these briefly and easily.

[2] Hence the Holy Office, 25 Jan. 1703, declared "that the missionary is bound to explain to an adult, even a dying one who is not wholly incapable, the mysteries of Faith which are necessary by necessity of means, such as especially the mysteries of the Trinity and Incarnation" (*Collect. P. F.*, n. 549). This was declared concerning an adult with respect to baptism; but the reason is the same with respect to absolution.

474. (b) Likewise he must be instructed, before he is absolved, who is ignorant of the dispositions necessary for fruitfully receiving the sacrament, namely contrition, firm purpose, and the manner of confessing integrally; otherwise he is exposed to the danger of receiving absolution invalidly or illicitly. But if the penitent has already at other times been warned several times in vain, absolution can be deferred, so that he may be more diligent in learning these things.

475. (c) If the penitent does not know the truths which are necessary by necessity of precept - for example, the mysteries of faith contained in the Creed, the precepts of the Decalogue and of the Church, the doctrine concerning the Sacraments which he must receive, and other things necessary for the right formation of Christian life - he cannot be absolved unless he seriously promises to learn all these things morally as soon as possible, according to his capacity; for unless he promises this, by that very fact he is indisposed, since he does not wish to fulfill a grave precept. - A confessor who does not have the care of souls is not bound to instruct the penitent concerning these things, except perhaps from charity; if at the same time he is a pastor, or one having the care of souls, by office and from justice he must provide him the means of acquiring this knowledge, by assigning a place and time for receiving instruction.

(d) If the penitent is ignorant of those things which are necessary for rightly fulfilling his office, he regularly cannot be absolved unless he is prepared either to leave the office, - or to acquire the required knowledge, meanwhile abstaining from exercising those functions by which grave harm would probably be inflicted on his neighbor. For one who does not wish to promise this is indisposed, since he exposes himself to a proximate danger of causing grave harm; thus a judge, physician, pastor, laboring under ignorance, can gravely harm the fortunes of citizens, the health of bodies, and the salvation of souls. - It is said regularly, because if there is no hope that the warning will be of profit, nor is scandal feared, the warning about leaving the office can be omitted, provided the obligation of acquiring the necessary knowledge as soon as possible is urged.

(B) On the Obligation of Warning Penitents

476. Principle: When the ignorance of the penitent concerns the liceity of some matter, a warning is to be given if, all things considered, it will be of profit to him or to the community; otherwise, for the time, it must be omitted. It is certain.

The reason is that the confessor is bound to procure the good of the penitent and the general good of the community committed to him; therefore, if the warning profits both, it certainly must be given; if it profits the community and harms the penitent, it must be seen on which side the greater good lies; now, generally, the common good must be preferred to a particular good. But if it is foreseen that it will be harmful, it must for the time be abstained from.

477. Corollaries. (a) If the penitent, from an erroneous conscience, judges that something is a sin which in reality is not such, or that something is grave which in fact is light, he must be

warned about this error, since it is harmful to him: for he formally commits grave sins. This is true even if it is foreseen that perhaps, from this warning, he will more often commit venial sins.

(b) If, on the contrary, the penitent regards as licit what is truly prohibited, or as light what in reality is grave, a distinction must be made: if the ignorance is vincible and gravely culpable, he must be seriously warned; for this cannot harm him, since, on account of culpable negligence, he is already guilty of mortal fault; but rather it can profit him, since from this warning he can draw strength for avoiding evil; thus, for example, a father of a family must be warned who doubts whether he is bound under grave obligation to educate his children in a Christian manner. - But if the ignorance is invincible, or inculpable, the penitent must indeed be warned as often as fruit is hoped for, at least for the future, and graver inconveniences are not feared; for even material evil is disorder, and of itself harms both individuals, by preparing a way for formal sin, and society, by disturbing the order instituted by God.[1] But where greater inconveniences prudently threaten either the penitent himself or a third person, he must be left in good faith: otherwise the sin will become formal from material; moreover, from two evils the lesser is to be tolerated so that the greater may be avoided. - In doubt whether the warning will be useful or harmful, it is generally to be omitted, unless the good which is hoped for greatly surpasses the evil which is feared.

[1] This the *Vieux Moraliste* lucidly sets forth, in *Ami du Clerge*, XXI, 1899, p. 1169 sq.

478. We declare the matter briefly by examples. (a) If a penitent in good faith has invalidly contracted marriage, he is generally not to be warned before the marriage can be revalidated, lest perhaps meanwhile he sin formally. - If the penitent is going to accept the warning, but at the same time it is foreseen that grave harm will befall others (for example, children, in the case in which putative spouses are separated), the warning is to be omitted.[2]

[2] Lugo, disp. XXII, n. 27.

(b) But the penitent is to be warned if otherwise there is danger lest he be strengthened in a depraved habit which afterward he will overcome only with difficulty; for example, if a boy falsely thinks that pollution is not a grave sin; - if ignorance induces or leaves a danger of formal sin, for example, if there is question of a proximate occasion of sin; - if ignorance concerns the first principles of morals or proximate conclusions, because then it is foreseen that it will cease shortly, and therefore the warning is useful for the future; - when the common good requires it, for example, if there is question of avoiding scandal, or of grave temporal or spiritual harm which the whole community will suffer from the fault of administrators; - when, from the circumstances, the silence of the confessor can be understood as positive approval of an evil matter. Hence, if the penitent asks, the confessor can rarely dissemble the truth; nevertheless he is not bound to say more than he is asked; for example, if someone, after a simple vow of chastity, has contracted marriage, and inquires whether the marriage is valid and whether the debt can be rendered, the answer can be given affirmatively, without its being added that to ask the debt is illicit.

3° On the Obligation of Disposing Penitents

The confessor, insofar as he is father and physician, is bound to dispose those who are indisposed for absolution, and to furnish remedies to those spiritually wounded, so that they may guard against

future sins.

[1] Lugo, disp. XXII, n. 49; Lacroix, *Tract. Theol. de Offic. Confessarii*, l. III; St. Alphonsus, n. 608; *Praxis*, n. 10; Reuter, n. 116; Muller, § 153; Marc, n. 1811-1812; Hilar. Sexten, p. 421-424; Ball. P., n. 313-322 and 832; Lehmk., n. 447-455; Salvatori, *Istruzione pratica pei Confessori novelli*: rendered in English by W. Hutch, London, 1885, Part II; Gaume, n. 217-218.

(A) On the Obligation of Disposing the Indisposed for Absolution

479. Principle: The confessor is bound from charity, as far as can be done, to prepare the indisposed for absolution, by proposing motives of contrition. It is certain.

(a) For from charity he is bound to procure the good of the penitent and to turn away grave harms from him; but a sinner who is dismissed without absolution incurs grave harm, since he is exposed to the danger of remaining for a long time in the state of mortal sin, and perhaps of being deterred from confession. Besides, an indisposed person cannot be absolved; therefore, as far as can be done, that is, if there is a founded hope and at the same time time for disposing him to contrition, the confessor from charity must provide this.

(b) The Roman Ritual inculcates this obligation:[2] "And he will strive to lead him to sorrow and contrition by efficacious words, and he will induce him to amend and better institute his life, and will hand on remedies of sins." Likewise Leo XII[1] earnestly exhorts confessors to fulfill that office and censures those who neglect it: "Many present themselves indeed to ministers of penance entirely unprepared, yet very often such that from unprepared they can be made prepared, if only the priest, having put on the bowels of the mercy of Christ Jesus, who came not to call the just, but sinners, knows how to act with them studiously, patiently, and meekly. But if he omits to provide this, certainly he himself is no more to be called prepared for hearing than the others for approaching to confess." - St. Alphonsus (n. 608) teaches that this obligation is of itself grave.[2]

[2] *Ordo administrandi Sacr. Paenit.*

[1] Encyclical *Caritate Christi*, 25 Dec. 1825.

[2] "Wherefore I do not know how those sluggish confessors can be excused from fault who, as soon as they have known the penitent to be not sufficiently disposed, dismiss him, with no or very little diligence first applied to curing him. For I say that the confessor is bound from a rigorous obligation of charity to dispose him as much as he can." And he adds: "Nor ought it be a care to him that other penitents are waiting; for then the confessor is not bound to attend to the good of others, but only to the good of his penitent." This indeed is true if there are other confessors for hearing the other penitents, or if these can wait patiently and without grave inconvenience; for if a long delay would bring grave inconvenience to others, who perhaps are in greater necessity, the confessor must choose the lesser of two evils. Cf. Ball. P., n. 832.

480. Corollaries. (a) If the confessor prudently judges that the penitent is well disposed, he is strictly bound to nothing. Nevertheless it is expedient to exhort to contrition all concerning whom it is probably doubted whether they are sufficiently disposed, or at least to inquire whether they have elicited an act of sorrow and firm purpose; for thus the fruit of the sacrament is received more securely and abundantly.

(b) To excite the indisposed to contrition, the confessor should accommodate himself to the mind of each one, proposing motives which are proportioned to their capacity: the brevity of life, the nearness

of death, which imposes an end on all pleasures and honors, the uncertain hour of it, the detriment of the soul and the peril of eternal salvation, saying, for example: "Do you wish to be a reprobate? If you cling to this sin, you are going to hell, and if you die in this state, you will be consigned to eternal torments." Let him also recall the benefits of God bestowed upon us, and his mercy, which is prepared to embrace prodigal sons, and also the blood of Christ poured out for us: "Who ever did for you what Christ did? And do you wish to betray him? That you may please yourself and others, do you not hesitate to crucify him anew in your heart? Ought you not rather to renounce creatures, pleasures, honors, than God and Christ?" With these or similar things, which the confessor will easily find if he reads and prays, he will be able, with grace helping, to move not a few penitents.[1]

[1] Motives of contrition clearly set forth for various kinds of sinners you will find in Salvatori, op. cit., part I.

(B) On the Obligation of Furnishing Remedies against Relapse

481. The confessor as physician must investigate the cause of spiritual diseases, and prescribe salutary remedies so that future falls may be guarded against.

(a) He must investigate the cause of the diseases: otherwise they cannot be rooted out radically; and unless they are rooted out, they will again produce evil effects, just as an evil tree brings forth evil fruits.

Therefore by prudent questioning let the confessor discreetly inquire concerning the circumstances of places and persons by which the penitent is induced to sin, and also concerning his depraved habits; so that thus he may detect whether the principal cause of sin is an external occasion, and what it is; or an internal cause, namely pride or vain glory, - disordered love of money, - or sensuality and pleasure. Indeed, once the disease has been detected, it will be easier to choose opportune remedies.

482. (b) He must prescribe remedies, whether general or particular.

Among the general remedies, these especially are to be inculcated: 1) frequent prayer, at once humble and trusting; for temptations are salutarily overcome and depraved habits are eradicated only through grace; now grace is obtained especially through prayer.

2. Frequent reception of the Sacraments of Penance and the Eucharist, by which grace is conferred ex opere operato and a right is acquired of receiving supernatural help at the opportune time; confession immediately after a fall should especially be advised, lest the sinner fall into depraved habits: for by this remedy many have been saved. - It is also expedient to assume, as a penalty for relapse, a voluntary penance determined beforehand.
3. Pious consideration of the last things, by which so many sins are guarded against, according to that saying: "In all thy works remember thy last things, and thou shalt not sin forever";[2] likewise the reading of pious books.

[2] Eccli., VII, 40.

4. Constant recollection of the divine presence, especially when temptation presses: "God sees me, he beholds my heart; how can I do this evil before God?"

5. Serious examination of conscience, by exploring not only the sins themselves, but their causes, and afterward eliciting acts of sorrow and firm purpose.

6. Flight from evil companions, who are often the cause of sin, and flight from other occasions of sinning; conversation with the pious and good; and also enrollment in some Sodality, where, besides companionship with pious brothers, there are helps for establishing life in a Christian manner.

7. The practice of certain chastisements of the flesh, and the mortification of passions even in licit things, by which illicit things may more easily and efficaciously be rejected: "But those who are Christ's have crucified their flesh with its vices and concupiscences."[1]

[1] Galat., V, 24.

8. Acts of charity toward God repeated frequently through the day; special devotion toward the Most Holy Sacrament, the Most Sacred Heart of Jesus, the Blessed Virgin Mary, and the guardian Angel; and so that these may be exercised better, a few works are to be determined which are done faithfully and constantly: but many works or prayers should not be prescribed which overwhelm penitents and soon bring weariness to them.

But particular remedies are those which are opposed to each vice; for contraries are cured by contraries, and habit is conquered by habit. It would be too lengthy to report them here; we shall treat of these where we treat of Vices and Virtues.[2]

[2] Meanwhile there can be read, besides the authors of Ascetical Theology, Lacroix, n. 1825; Du Jardin, *De officio sacerdotis, qua judicis et medici*, in Migne, *Theol. Curs.*, XXII, 1288-1350; Reuter, n. 56-98; Lehmk., n. 448-454.

4° On the Obligation of Granting, Denying, or Deferring Absolution

After all the things described above have been carried out, the confessor as judge must pass sentence, and impart, deny, or defer absolution, according as the state of the penitent shall have demanded.

[3] Suarez, disp. XXXII, sect. 5; Lugo, disp. XXII, n. 38-48; Salmantic., ch. 12, n. 29-45; Lacroix, *Tr. theol. de Offic. confess.*, l. I, c. 4; St. Alphonsus, n. 462 sq. and 604-606; Billuart, diss. VI, a. 10, § 4; Lehmk., n. 428-431; Muller, § 154; Bucceroni, *Comment. de absol. danda, diff., deneganda*, Rome, 1889; Noldin, n. 400.

(A) On Granting Absolution

483. Principle: Absolution generally and of itself must be granted under grave obligation, from justice, to a penitent guilty of grave sin who with moral certainty is well disposed. It is certain.

For the confessor, by receiving the confession of the penitent, binds himself by a quasi-contract to pass sentence according to the institution of Christ; but according to the institution of Christ, absolution must of itself be granted to the well disposed, since this sacrament was instituted for remitting sins. Therefore he must of itself absolve the disposed by force of a tacit contract, and therefore from justice; and indeed under grave obligation, if the penitent is in the state of mortal sin, because he is unjustly deprived of the greatest good.

484. (a) Nevertheless it is said generally and of itself, because regularly absolution granted at once is of more profit than if it is deferred; for he who is absolved emerges from the dangerous state

of sin, receives sacramental grace, and therefore the right to obtain actual graces at the opportune time; wherefore he is able to resist temptations more efficaciously and to tend toward the practice of virtues. - Nevertheless, sometimes and accidentally, absolution can be deferred even to one sufficiently disposed, when the confessor prudently judges this to be truly useful to the penitent. For on the one hand, the penitent, although he has a right to absolution, does not have a strict right to be absolved immediately; and on the other, the confessor, since he is not only judge but physician, must intend the greater utility of the penitent; but sometimes delay is more useful to the penitent, especially to one in an occasion or to a recidivist, so that from the difficulty of obtaining absolution he may conceive a greater horror of sin and a firmer purpose of avoiding it. But generally this delay will not be of profit unless the penitent consents to it; for if he bears the matter with displeasure, it is to be feared lest he be alienated from confession. In practice, therefore, the confessor must inquire whether the penitent in this case is prepared willingly to return after a few days.

Nor is it ever expedient to defer absolution for a long time, for example, for a month or fifteen days; because it is a grave inconvenience to remain long in mortal sin, both because of the danger of death, and because of merits lost.

(b) It is said to one guilty of grave sin, because if only venial sins, or mortal sins already remitted, are accused, sometimes to defer a penitent, even one rightly disposed, is not a grave sin, because no grave injury is inflicted upon him; indeed, if this is done from a reasonable cause, it will be no sin.

(c) It is said, who with moral certainty is disposed; here there is question of moral certitude broadly taken, which excludes prudent doubt, but not necessarily every doubt; for when there is question of the dispositions of the penitent, absolute certitude cannot be had, but that persuasion suffices which is very probable.

(B) On Denying Absolution

485. Principle: Absolution is to be denied to those who with moral certainty are incapable or unworthy. It is certain.

For in either case absolution is invalid; now knowingly and willingly to minister a sacrament in a certainly invalid manner is grave sacrilege.

Now the incapable are those perpetually insane, - not yet baptized, - those who are already certainly dead, - or who do not know the truths necessary by necessity of means, - or who certainly are not morally present.

486. But the unworthy, or indisposed, can be considered, according to St. Leonard of Port Maurice:

(a) those who knowingly and willingly do not wish to leave a proximate and free occasion of sinning; (b) those who knowingly and willingly do not wish to put away grave enmities or hatred; (c) those who are not prepared to make necessary restitution or reparation of harms, when they are able; (d) those who refuse to leave arts or occupations gravely sinful; (e) those who refuse to labor for correcting a depraved habit; (f) those who do not wish to employ remedies truly necessary for avoiding relapse; (g) those who are not prepared to remove the scandal which they have given or are

giving to others.[1] - To these can be added, in a general way, all those who do not wish to fulfill a grave obligation known to themselves; or who refuse to confess their sins integrally, unless by a grave reason, at least a putative one, they are excused from material integrity. For in these or similar cases the essential condition required for the validity and liceity of absolution is lacking, namely contrition.

[1] This the Roman Ritual briefly summarizes thus (*Ordo minist. Sacr. Paenitentiae*): "Let him not absolve those who are incapable of such a benefit; such are: those who give no signs of sorrow, who do not wish to put away hatreds and enmities, or to restore another's goods if they can, or to leave a proximate occasion of sinning, or in another way to abandon sins and amend life for the better; or who have given public scandal, unless they publicly make satisfaction and remove the scandal."

But before absolution is denied, the confessor must exhort these sinners to contrition, as we said above; for if, first unprepared, then by a fervent exhortation they conceive attrition, they can now be absolved at once. Besides, only with kindly words must the confessor deny absolution, by explaining the reason why it cannot be granted and declaring that he will gladly grant absolution as soon as the penitent is disposed.

(C) On Deferring Absolution

487. Principle: Absolution is to be deferred to those who are plainly doubtfully disposed, unless a grave reason urges that they be absolved under condition. It is certain.

For it is not lawful to expose the sacrament to danger of nullity, unless there is a grave reason: for this is prohibited by the reverence due to the sacrament.

488. Now, according to St. Leonard, those are considered doubtfully disposed: (a) who have relapsed in the same or a worse manner, without employing the remedies prescribed by the confessor, and without a serious effort at amendment; (b) who answer only coldly that they are sorry, especially if they have already relapsed rather often; (c) if they show a great affection for sin, or have drawn great utility or great pleasure from sin, or devote their whole effort to satisfying the passions; (d) when they rashly excuse their sins, or enter into contention and altercation with the confessor, or seem to boast about the sin committed; (e) when they approach the sacrament not spontaneously, but only by command of parents or others, or from mere custom, or to please others, or from fear lest they lose reputation; (f) if they refuse a moderate penance proportioned to their strength.

But when the doubtfully disposed can be conditionally absolved has already been set forth, n. 182.

489. Corollary. When there are on both sides reasons seriously and solidly probable, so that the penitent is prudently judged to be disposed, yet there is still prudent doubt concerning his disposition, the confessor prudently defers absolution or grants it under condition, according as, from the various circumstances, delay is foreseen to be useful or harmful to the penitent. Namely, if delay is judged very probably useful to the penitent, because, after some time, he is going to approach the sacred tribunal better disposed, he should be dismissed kindly; but if he probably will not return, because he is not endowed with firm faith or virtue, after fervent exhortation to sorrow and firm purpose, he can be absolved under condition, according to

most theologians.[1] For moral certitude is not always required for absolving, but sometimes a prudent judgment suffices, which is had in the case.

[1] Thus Suarez, disp. XXXII, sect. 2, n. 1; Sporer, n. 801; Faure, *Dubitat. theologicae*, ed. 4, Louvain, 1865, dub. I-II, p. 9-22; Lehmk., n. 428; Genicot, n. 367. - Certain ones, however, from these authors, Faure and Genicot, seem to proceed further and to teach that those who are probably disposed can always and without condition be absolved; but it is commonly held, and deservedly, that this is lawful only for a grave reason, and indeed conditionally. Cf. *Vindiciciae Alphons.*, p. 710-752.

This can be drawn from these words of the Catechism of the Council of Trent (n. 50): "For if, after confession has been heard, he shall have judged that neither diligence in enumerating sins nor sorrow in detesting them was wholly lacking to the penitent, he can be absolved"; now if it is prudently judged that the penitent is contrite, it is judged that sorrow was not wholly lacking. St. Alphonsus seems to contradict this conclusion when he says (n. 459): "That the confessor may absolve the penitent, he must be morally certain concerning his disposition"; but elsewhere he teaches (n. 432) that a penitent about whom there is doubt whether he is rightly disposed can be absolved under condition if it is prudently feared that he will not return again to confession and will waste away in his sins. Hence it can be said that in the former assertion of the Holy Doctor the general rule is contained, but in the latter the exception.

III. On the Duties of the Minister after Confession

They are two: to correct defects, or errors, if any have occurred; and to observe the seal.

1° On the Obligation of Correcting Defects, or Errors

490. A threefold defect can occur: (a) concerning the value of the sacrament, for example, if the confessor has not absolved, or has absolved without jurisdiction, or has absolved one indisposed; (b) concerning the integrity of the sacrament, for example, if the confessor has omitted necessary questions about the species and number of sins, or has imposed no penance; (c) concerning the obligations of the penitent, for example, if he has not warned concerning the removal of an occasion of sin, or has not obliged to due restitution, or, on the contrary, has obliged to undue restitution.

[1] Suarez, disp. XXXII, sect. 6; Lugo, disp. XXII, n. 50-77; Salmantic., ch. 12, n. 46-56; St. Alphonsus, n. 619-622; Billuart, diss. VI, a. 10 § 8; Ball. P., n. 836-861; Lehmk., n. 470-474; Noldin, n. 410-414.

(A) On an Error Concerning the Validity of the Sacrament

491. Principle: An error invalidating the sacrament, committed from grave fault of the confessor, and with grave harm of the penitent still persevering, must from justice be repaired under grave obligation, even with grave harm of the confessor. It is certain.

For the confessor, from a quasi-contract with the penitent, and therefore from justice, is bound to impart valid absolution to one rightly disposed; therefore, if from grave fault he has absolved invalidly, by that very fact he is an unjust damager, and so he is bound under grave obligation to repair the grave harm unjustly inflicted, even with grave inconvenience.

It is said: (a) from grave fault, because if the error was committed without fault or with only light fault, say from forgetfulness or a certain negligence, there is indeed an obligation of repairing the harm, at least from charity, but not with great inconvenience; - unless, however, the penitent were in grave danger of dying in the state of mortal sin, because he is in the article of death;[1] or in probable danger of no longer confessing, because he is about to undertake a long and dangerous journey.

[1] Nor is the priest excused from this office by the fact that he administered viaticum to the dying person; for it is very probable, but not certain, that by viaticum mortal sins are remitted for him who is in good faith (*De Sacramentis*, n. 54); now when there is question of eternal salvation, the safer part is to be followed. Cf. Lehmk., n. 471, note 1.

(b) From fault of the confessor; for if the error comes from the part of the penitent, because, for example, he was knowingly indisposed, the confessor is indeed bound to repair the harm as a cooperator, but not so strictly, except in the case of extreme necessity, because the penitent can provide for himself otherwise, by making a new confession.

(c) With grave harm still persevering; for if the harm is light, for example, because the penitent had not accused mortal sins; or if the harm does not persevere, because the penitent approached another confessor by whom he was validly absolved, the obligation no longer urges.

492. Manner of repairing the defect. (a) If defects are detected immediately or shortly after confession, and the penitent is still morally present, he can be absolved again, even without a previous warning, provided it is established that he is rightly disposed; if he is too far away, he should be recalled to the sacred tribunal, if this can be done without inconvenience; otherwise, the confessor himself should approach the penitent and absolve him.

(b) But if the error was not repaired immediately or after a short time, let the confessor induce the penitent to confess again to him; let him exhort him to be sorry not only for those accused in the present confession, but for the past ones, especially for those accused in the last confession; and let him absolve him rightly.

(c) But if this cannot be done, the confessor, after first obtaining from the penitent permission to speak with him about a matter pertaining to confession, should warn him of the invalidity of the absolution, so that the error may be repaired.

(B) On an Error Concerning the Integrity of the Sacrament

493. When the error concerns not the validity but the integrity of the sacrament, a distinction must be made:

(a) If the error was positively committed, so that the penitent was deceived from the words or manner of acting of the confessor concerning some doctrine (for example, understood that such a sin is light which in reality is grave, or that it is not necessary to accuse individual mortal sins), the confessor is bound to correct the error, even outside confession, after first obtaining the permission of the penitent, provided this can be done without grave harm or scandal. For each one is bound to repair the harm which he has positively inflicted and to remove its cause: and this in the case cannot be done except by correcting the error. - But if this cannot be done without grave harm, he is not bound to warn the penitent outside confession: for grave harm excuses from material integrity, and the error can afterward be corrected in confession.

(b) If the error was only negatively admitted, for example, from the fact that the confessor omitted to question about species and number, or to prescribe proper remedies, the confessor must not repair the defect outside confession; because on the one hand such a defect is accidental and easily reparable, and on the other a warning outside confession often brings annoyance to the penitent. But when the penitent has returned to the same confessor, the defect is to be corrected, since this can be done without grave inconvenience.

(C) On an Error Concerning the Obligations of the Penitent

494. When the error admitted concerned the obligations of the penitent, with temporal harm of a third party or of the penitent himself, which can occur in the matter of restitution, a distinction must be made:

(a) If the confessor positively and culpably (which is to be understood of grave fault) led the penitent into error, for example, by asserting that restitution must be made when no such obligation was urgent at all, or vice versa, he is bound under grave obligation from justice, even with grave inconvenience, to correct the error, whether within or outside confession (permission having first been obtained). For each one is bound to guard against harm following for others from his action; and if he has culpably omitted to do this, or then only warned when the penitent has already become unable to repair the injustice, the confessor is bound to repair the harm itself that followed from this action, since he is truly the efficacious, unjust, and culpable cause of this harm, insofar as he is an unjust cooperator or counselor. - But if the confessor corrected the error at an opportune time, he is bound to nothing, because he is no longer the efficacious cause of the harm.

But one who, without grave fault, positively committed an error of this kind, is indeed bound from justice to warn the penitent, but not with grave inconvenience; but if he culpably did not correct the error when he could conveniently have done this, he is bound to restitution, not indeed by reason of the error, which is inculpable, but by reason of the omitted retraction, which is truly the unjust and efficacious cause of the harm.

495. (b) If the confessor behaved only negatively, even if culpably, by omitting to warn the penitent about restitution to be made, - not from justice, but only from charity is he bound afterward to warn the penitent. For he is not obliged from justice in the sacred tribunal to guard against harm to a third party, but only to procure the good of the penitent; therefore if he is silent about restitution to be made, he is not guilty of injustice; unless, however, the penitent had asked the confessor to warn him about the obligation of restoring; for then silence is equivalent to a positive affirmation. But from charity he is bound to warn the penitent, with greater or lesser inconvenience according to the gravity of the harm and of the fault; for he must guard against the penitent being incited to violate justice from such an omission.

2° On the Sacramental Seal

496. The sacramental seal, or seal of confession, is the strictest obligation of keeping under secrecy those things which have been known by sacramental confession. It is called a seal, because letters which are intended to be kept entirely secret are customarily marked with a seal. - We shall speak of the obligation, subject, matter, and violation of the sacramental seal.

[1] St. Thomas, *Supplem.*, q. 11; Suarez, disp. XXXIII; Lugo, disp. XXIII; Salmantic., ch. 14; Morinus, lib. II, c. 19; Stoz, lib. II, n. 183-331; Lacroix, n. 1933-2001; St. Alphonsus, n. 633-661; Billuart, diss. VIII; Elbel-Bierb., Confer. XIX-XX; Lehmk., n. 456-475; Marc, n. 1860-1869; Ball. P., n. 899-1024; Genicot, n. 379-393; Noldin, n. 415-426.

(A) On the Obligation of the Sacramental Seal

497. Principle: There is the strictest obligation, under grave obligation, of keeping silent outside confession about sins which have been known by auricular sacramental confession, unless the penitent has given permission to speak. It is certain. - This obligation as to substance arises from natural and divine law, but it was more explicitly determined by ecclesiastical law.

(a) From natural law. Between the confessor and the penitent there exists an implicit pact, by force of which the latter confesses his sins only under the condition that they be kept entirely secret: this is an entrusted secret, which all those who by force of their office furnish counsels to others, for example, advocates and physicians, are bound from justice to keep; therefore whoever violates this secret, of itself sins gravely against justice. - Besides, the confessor, by revealing the sins which he knows from confession, unjustly harms the reputation of the penitent, whenever at least this sin of his remains occult.

498. (b) From divine law, at least implicit. For although Christ said nothing explicitly on this matter, He certainly willed the sacrament of Penance to be administered in such a way that the faithful would not be kept away from it. But if occult sins entrusted to the confessor were manifested, many of the faithful would be kept away from the sacred tribunal: for with reason they would fear lest, by such manifestation, they should lose the esteem of others, especially of parents, relatives, and friends; often the peace of families would be disturbed, if the secret delicts of one spouse were manifested to the other, or if the sins of parents became known to the children, etc.; indeed, sometimes the knowledge of certain crimes would come to the ears of judges, with the greatest danger and harm to penitents. All these things would often render confession odious, scandalous, and truly harmful. Therefore Christ, in instituting the sacrament of Penance, implicitly at least willed that occult delicts declared in confession be kept under the most secret seal.

499. (c) From ecclesiastical law. The law of sacramental secrecy is ancient, and coeval with auricular confession, although from the beginning it was not so strictly observed. As long as public confession flourished, there was no obligation of keeping silent about sins publicly accused. But whenever occult sins were privately accused, the law of secrecy was in force.

Thus St. Ambrose, according to the testimony of Paulinus,[1] spoke to no one except the Lord alone about sins which penitents themselves had confessed secretly; likewise St. Augustine says that secret sins must be corrected secretly:[2] "In secret we ought to correct, in secret to reprove; lest, wishing to reprove publicly, we betray the man"; St. Leo reproves, as contrary to the apostolic rule, the practice of reading publicly the occult delicts accused in confession, "lest many be kept from the remedies of penance, while they either are ashamed or fear that their deeds be disclosed to their enemies, by whom they could be struck according to the constitution of the laws";[1] but Sozomen, describing the qualities with which the penitentiary, whose office was to hear confessions, ought to be adorned, says

that he ought to excel in taciturnity and prudence;[2] but why in taciturnity, unless that he might keep occult delicts under the seal?

[1] Migne, *P. L.*, t. XIV, 40.

[2] *Serm.* 82, cap. 8, ap. Migne, *P. L.*, t. XXXVIII, 511.

[1] Ep. 168 ad Episcopos Campaniae, ap. Migne, t. LIV, 1211.

[2] Sozom., *H. E.*, lib. VII, c. 16, ap. Migne, *P. G.*, t. LXVII, 1458 sq.

But an explicit and universal law concerning keeping secrecy was enacted by the Fourth Lateran Council,[3] and renewed in the Code, can. 889; indeed, from can. 2369, a confessor directly violating the seal incurs an excommunication reserved in a most special manner to the Holy See; but one who violates it only indirectly "is to be suspended from the celebration of Mass and from hearing sacramental confessions, or even, according to the gravity of the delict, is to be declared incapable of receiving them"; and he is to be punished by the other penalties *ferendae sententiae* indicated there.

[3] Ap. Denzing., n. 363.

Finally, by the sense of the faithful and of confessors, and by the consent of theologians, the law of secrecy has become most strict, so that today every revelation which would render confession odious is to be carefully avoided.

500. Corollaries. (a) Violation of the seal imports a twofold, and sometimes threefold, malice: against religion, or against the reverence due to the sacrament; - against justice, by revealing an entrusted secret; - often also against justice in another way, by manifesting the occult delict of one's neighbor.

(b) A law of this kind is so strict that in no case can it be relaxed without the free and certain consent of the penitent. The penitent can indeed freely yield his own right, since the secret was instituted in his favor; but consent cannot be presumed; it must be given explicitly or implicitly by signs free of doubt. Moreover, the confessor will use rarely and prudently even consent freely given, lest confession be rendered odious to others who do not know that this consent was given.

501. Hence no end, however good and useful, excuses violation of the seal:

1. Not the good of the confessor himself, whether temporal, since the confessor ought rather to die than to wound the seal, following in the footsteps of St. John Nepomucene, who, on account of sacramental silence invincibly kept, was adorned with the palm of martyrdom;[1] - or spiritual, since he is excused from the material integrity of confession when he cannot declare his sins integrally without wounding the seal; yet this rarely occurs, since more often a confessor can be found to whom the penitent is unknown. The reason is that the public spiritual good of the whole community, for which, according to what has been said, the custody of the sacramental seal is necessary, must be preferred to private good, whether temporal or even spiritual.

[1] Cf. *Breviar. Rom.*, For some places, May 16.

2. Nor the good of the penitent himself; for example, if from his confession it is known to me that he is innocent, I cannot declare it, lest perhaps, when I affirm that one is innocent and keep silent about another, it be understood that this other is guilty. - Nor the good of a third person: for example, if by the confession of Paul the murderer I have known that Peter is not guilty of the homicide, I cannot say this, lest perhaps suspicion arise that I speak thus from violation of the seal, and Paul himself be accused of the crime.

3. Nor the good of the commonwealth itself, for example, in the case of a traitor, because by the inviolable custody of the seal, in a general way, the good of the commonwealth is better provided for than by its violation; moreover, spiritual good is to be preferred to temporal good. Hence a confessor, questioned before a tribunal about those things which he has known by confession, can and ought, even with an oath, to say that he knows nothing concerning this matter: for this is a restriction which all can understand, if they wish, since it is known that it is not lawful for confessors to reveal a secret entrusted to them.[2]

[2] In many States the sacramental seal is recognized by civil law as inviolable, and there it is sufficient for confessors to declare that they cannot answer anything, since they are bound by the seal or professional secret: thus in France. But in certain others, for example, in England (cf. Stephen, *Comment. on the Laws of England*, London, 1895, vol. III, p. 579), this privilege is by no means recognized; and therefore confessors must say that they know nothing. - In the United States of America, the common law is the same as in England, but in certain States, particular law favors the seal.

Nevertheless, in all these cases, the confessor who knows by confession that grave harm threatens himself, or some private person, or the commonwealth, can and ought to warn the penitent that he prevent that harm by himself or through another, for example, by manifesting the matter to a superior; and he can deny absolution to one refusing to do this, as one indisposed; but he himself cannot reveal the secret without the free permission of the penitent.

(c) Likewise the obligation of keeping secrecy is so strict that in this matter it is not lawful to follow merely probable opinions; because here there is question not of the lawful alone, but of spiritual harm to the whole community which must necessarily be avoided. Therefore, whether there is question of probability of law, for example, when it is disputed whether this or that falls under the seal; or of probability of fact, for example, when it is doubted whether something was known from confession or in some other way, the opinion favoring the seal must be followed, even if the other is truly probable.

502. (d) Nevertheless this obligation arises only from a truly sacramental confession, that is, one made in order to obtain absolution, but not from a simulated confession, made to ask for alms or to seduce the confessor, without the intention of receiving the sacrament: for the reasons adduced above have force only concerning sacramental confession. - But even in this case, only for a grave cause ought the confessor to use knowledge acquired in this way, for example, in defense of himself, if he has been unjustly denounced to the Bishop by a person to whom alms were deservedly denied; for scandal of the faithful, who perhaps think that the confession was truly sacramental, must be guarded against insofar as this can be done.

Hence also those things which, outside confession, are manifested to a priest for the sake of spiritual direction do not fall under the sacramental seal, but only under an entrusted secret, though generally a most strict one.

(B) On the Subject of the Seal

503. Principle: Not only the confessor, but also all those who by chance or by industry, that is, illegitimately, mediately or immediately, have heard something from sacramental confession, are bound to keep the seal. Thus from can. 889.

For all these were sharers in the sacramental secret; therefore they are sharers in the obligation of keeping it.

504. Corollaries. The following are bound to keep the seal: -

(a) A cleric or layman who, pretending that he is a priest, received the confession of one who in good faith confesses to him, at least according to the common opinion, which in practice must be wholly observed, from what was said above (n. 501); for the confession, although invalid, is made in order to obtain absolution, and therefore must be protected by the seal.

(b) A confessor who, even outside the sacred tribunal, is consulted by a penitent about sins to be accused in a confession to be made to him; for such consultation is a confession begun; but more probably not one who is consulted about a confession to be made to another, because this is not a confession begun; nevertheless, in this latter case the law of an entrusted secret is in force.

(c) One who has read the written confession of another, already handed to the confessor, whether while it is in the hand of the confessor, or after absolution left in the confessional, or lost by the confessor; for in all these circumstances it is connected immediately with confession. But if someone has read a paper on which the penitent described his sins by way of an examination of conscience, before he has used it in the act itself of confession, he is not bound by the seal, but only by the law of natural secrecy.

(d) An interpreter employed for carrying out the confession; or one who, being asked, has written the confession of another; bystanders who, whether by chance or by industry, hear sins declared in confession; or all those who have heard from the confessor or from others sins accused in the sacred tribunal. Indeed, all those who attempt to hear persons confessing by that very fact violate the law of the seal.

(e) Superiors from whom, outside confession, the faculty of absolving from reserved sins is sought, insofar as they can say or do nothing from which it would become known which subject has fallen into a reserved sin.

(f) A consulter, or theologian, to whom a case of conscience is referred with the permission of the penitent: for then he becomes a sharer in the secret.

But the penitent himself is not bound by the law of the sacramental seal, which has been established in favor of penitents, not of confessors; but by the law of natural and religious secrecy, he ought to keep silent about what he has heard in confession, if those things cannot be manifested without harm to the confessor. - Hence a prudent confessor will beware lest he say things which he would not wish to become known to others: for often penitents converse among themselves about what they have heard in the sacred tribunal.

(C) On the Object of the Seal

505. Principle: All those things fall under the seal which were known in confession, or on the occasion of sacramental confession, and cannot be revealed without confession being rendered odious. It is certain.

It is plain from the very end for which the seal was instituted; since it was instituted for this end, that the faithful not be kept away from confession; but that which renders confession odious either to the penitent himself or to others, by that very fact deters some of the faithful from it; therefore.

506. Corollaries. Some things fall directly, but some indirectly, under the seal.

Directly under the seal fall all those things which are declared as matter of confession, or for a fuller understanding of it; namely, all sins, mortal or venial, past or proposed, that is, those which the penitent intended to commit. Nor are public sins excepted, when they are known from confession, both because the confessor by his testimony confirms them and renders them more public, and because penitents would fear lest the confessor reveal their sins under the pretext that they are public.

Nevertheless, he would not violate the seal who said that some penitent had confessed venial sins, or that he lives so innocently that he commits only a few venial sins; for no one, without a special privilege, can be wholly immune from venial sins. But it is not lawful to reveal some venial sin in species, or even to say that such a penitent accused himself of many venial sins.

507. Indirectly under the seal fall all those things which can lead to knowledge of the sins of the penitent, or bring a burden upon him, such as: -

(a) Circumstances of sins, whether useful or superfluous, which the penitent sets forth in order to declare his sins better, even after absolution has been received, provided they are connected with the confession itself (for example, attendance at theaters, reading of certain books), and have something sinful about them: for all these things morally form one whole with the sins themselves. - Yet those circumstances do not fall under the seal which, although useful for confession, bear nothing sinful or odious in themselves, for example, that such a penitent is married, a magistrate, a soldier, etc.; nor the public sins of another which the penitent mentions in order to explain his own, for example, if he says that he has wished evil to the author of some publicly committed crime.

(b) Defects of the penitent manifested by confession alone, for example, illegitimate birth, lack of manners, ignorance; and therefore sins committed in the confession itself, although not accused, for example, impatience, insults against the confessor himself; for revelation of these defects certainly brings a burden upon the penitent. But natural defects known from elsewhere, for example, deafness, do not fall under the seal.

As to scrupulosity, it is matter of the seal if it is accused as a moral defect, or for declaring other sins, or if it becomes known by the fact that many things are accused as sins which are not sins: because then it is truly a defect known by confession alone. But if it becomes known from the manner of speaking and answering, it is matter of natural secrecy, if it is not otherwise publicly known.

(c) The penance imposed, unless it is very slight, because otherwise occasion would be given for suspecting the penitent to be guilty of mortal sins or of many venial sins.

508. (d) The sins of an accomplice, whether legitimately or imprudently revealed to the confessor, or the sins of others declared so that one's own sins may be better set forth (for example, I hated my father because he had struck my mother); for such manifestation would render confession odious. Hence the confessor cannot use this knowledge to warn or correct the accomplice, except with the express permission of the penitent: indeed, he will use this permission, spontaneously given, very rarely, lest the accomplice suspect that the seal is being violated.

(e) The virtues and gifts of God, and the good works of the penitent, are not matter of the seal, unless they are manifested for better declaring a sin, for example, abuse of grace; for their manifestation does not render confession odious. But all these things are the object of natural secrecy during the life of the penitent; but after he has died, for a grave cause they can be revealed, for example, for the beatification of saints.

(f) Absolution denied is matter of the seal, since manifestation of this matter is certainly odious; hence, if parents, teachers, and others question confessors about absolution given to children, pupils, etc., they are to be referred to the penitents themselves. - Although absolution given does not fall under the seal, the confessor acts imprudently by saying that he absolved such a one, because, when he is silent, suspicion will arise that absolution had been denied. - Access to confession is not matter of the seal, both because it is known outside confession, and because it is not odious; therefore he does not violate the seal who says: Titius confessed to me, or did not confess to me. Yet if someone secretly confesses to another, this is the object of natural secrecy.

(D) On Violation of the Seal

509. Principle: The seal is violated as often as things contained under the seal are manifested with probable danger of making known the person who accused them, or as often as someone uses knowledge had from confession with burden to the penitent, or with danger of rendering confession odious. It is certain.

Explanation. The seal is wounded in two ways: directly, when that which is matter of the seal is expressly revealed and at the same time the person who did it is designated; it is not necessary that the person be known to the hearers, provided that he is sufficiently determined; nor is it necessary that the hearers know that the priest is speaking about things heard in confession, but it suffices that in reality he so speak from sacramental knowledge. - It is violated indirectly by saying, or doing, or omitting something from which either the object of the seal can be known, even probably, or confession can be rendered odious.

Direct revelation of the seal is unheard of in our days. Yet it cannot be said that a secret of this kind has never been directly violated; for it is reported sometimes, although very rarely, that the seal also was directly broken;[1] but so few facts of this kind are narrated, even concerning wicked priests, that it can deservedly be said that not without a special providence of God is the sacramental seal so faithfully kept.

[1] One of these facts is related in the *Life of St. Thomas of Villanova*, ap. *Acta Sanctorum*, t. XLV, p. 894-896. Namely, a certain murderer confessed his crime to an unknown priest, who in fact was the brother of the one killed; the confessor, after questions about the name of the murderer and the circumstances of the crime, manifested all these

things to another lay brother, so that he might make the same things known to the judges. Wherefore the murderer was condemned to death; but when before execution he refused to confess his sins, Thomas of Villanova approached him, and learned from him that he refused to confess because he had been condemned from violation of the seal. After the matter had been investigated more maturely, the confessor confessed his crime and was condemned to perpetual prison, while the murderer was freed, because the judges acknowledged that no guilty person could be proved from the violated sacramental seal.

Direct violation of the seal admits no smallness of matter; for even direct manifestation of venial sins would be very odious to penitents and would keep them from the sacrament. - But indirect violation sometimes admits smallness of matter, namely when the burden arising from it is very slight. But confessors ought to be wholly cautious, since even the indirect manifestation of some defect of a penitent easily brings a great burden or scandal.[1]

[1] From the Instruction of the Holy Office, June 9, 1915, when something is narrated positively and concretely as heard in confession, it must always be judged that from this confession is rendered odious in the mind of the hearers. Therefore confessors are strictly forbidden to do this, not even in passing, neither directly nor indirectly in their public or private discourses. Let Ordinaries gravely warn transgressors, strike recidivists with suitable penalties, and denounce them to the Holy Office.

510. On the Various Ways of Violating the Seal Indirectly. The seal is wounded indirectly by words and deeds: -

By words:

(a) If the confessor, in narrating some fact, relates such circumstances that the penitent can probably be known; for example, the first one who confessed to me committed adultery; - or if to a public fact known outside confession there is added some circumstance known by confession alone; - or, if after hearing a few confessions, he says that he heard such a grave sin; for from this each penitent incurs some suspicion.

(b) If it is said that such a penitent was not absolved, or only after some trial: for from this it is inferred that his sins were grave.

(c) If the confessor warns parents or superiors of the penitent to watch especially at such a time or place.

(d) If one penitent is praised before others for purity of conscience, so that suspicion is cast upon the others; but not if he is praised simply, without any comparison, although it is better to say nothing in species about qualities of penitents known by confession alone.

(e) If the penitent is rebuked or questioned in a loud voice, or if the confessor, after hearing a sin, groans and exclaims; from which it can be understood that the penitent has sinned gravely.

511. (f) If two confessors of the same penitent converse together about his sins, without special permission; or, if the confessor speaks about these things with others who know these sins from elsewhere, for example, with parents, or with the other spouse; indeed, if with the penitent himself outside confession he speaks, without his permission, about things heard in confession; but not if the penitent himself begins to speak about his confession, because then he implicitly gives permission to speak.

(g) If a depraved habit, known by confession, is revealed as prevailing in some congregation, or monastery, or parish, unless in this last case the village is very large (containing more than 3000 inhabitants); for the infamy of this sin redounds upon the whole community; thus, for example, if it is said of some monastery: sacrileges are committed there; or of a small town: adultery, sodomy, fornication, etc., prevail here. - Hence a preacher who addresses a small community of nuns or religious ought not to describe some particular sin accused by one or another of the members, lest the penitents think that this is done because of the sin which they declared; yet he can describe in a general way the defects customarily committed in all monasteries.

(h) A pastor who makes known to missionaries or outside priests the principal vices prevailing in the community, so that they may correct them, does not violate the seal, if the place is large and the vices sufficiently common; but, if from knowledge of confession he were to say that incest, or another vice, prevails in a few families, he would wound the seal.

512. The seal is violated by deeds:

(a) If someone, after hearing a confession, changes his manner of acting toward the penitent, by addressing him with harsher words, or by depriving him of his former benevolence; for example, if he no longer entrusts the keys of the chest to a servant whom from confession he has found unfaithful;[1] or even changes his manner of acting with regard to others, for example, by rebuking or expelling the accomplices of the penitent.

[1] It is disputed whether in this case the confessor can in the confession itself command the servant to return the keys spontaneously; Elbel affirms (n. 514), Lugo denies (n. 123), because such a command would bring a burden upon the penitent, and we think this opinion more probable.

(b) "Both superiors existing for the time, and confessors who afterward have been appointed superiors, can in no way use for external governance the knowledge which they have had concerning sins in confession" (Code, can. 890, § 2[2]), and deservedly, since such a manner of acting of itself tends to deter penitents from perfect sincerity.

[2] These words are taken from the decree of Clement VIII (May 26, 1593) issued for Regular Superiors. (Among the Constitutions of Urban VIII ap. *Bullarium Magnum*, t. IV, p. 68). On November 18, 1682, the Holy Inquisition extended this principle to all confessors, by condemning this proposition: "It is lawful to use knowledge acquired from confession, provided it is done without direct or indirect revelation and burden to the penitent, unless some other much greater burden would follow from non-use, in comparison with which the former is deservedly condemned. Then there was added the explanation or limitation that it is to be understood of the use of knowledge acquired from confession with burden to the penitent, with any revelation excluded, and in a case in which a much greater burden of the same penitent would follow from non-use." - It was established that "the said proposition, insofar as it admits the use of knowledge with burden to the penitent, is to be wholly prohibited, even with the said explanation or limitation." (Ap. Denzing., n. 1087.)

Therefore it is not lawful to use this knowledge to remove an unworthy person from office, to deny him a vote, to shut the penitent in a room lest he go out to sin, to dismiss a servant, etc.

Yet the confessor can use the knowledge of confession when no danger of revelation is feared, and no burden for the penitent or for others: for the good of the penitent himself, namely by praying more fervently for him, or by acting more kindly with him, because this cannot be displeasing to the penitent; for the good of others, by using experience acquired for a more prudent administration of the sacrament, whether with regard to questions to be asked, or with regard to counsels to be given;

or for preaching in a more practical way, provided, however, that nothing be said which renders confession odious; for his own amendment, by reforming his own morals, by performing his offices more diligently, and by fleeing occasions of sin more watchfully.

513. (c) It is not lawful to refuse to hear the confession of a penitent who, from a previous confession, is known to be indisposed, for example, because he does not wish to leave a proximate and free occasion of sin: for this is the greatest burden to the penitent; yet at the beginning of the confession he can dismiss him, if he finds him to be the same indisposed person, although it is better to dispose him, if this can be done.

(d) A priest who from confession alone knows that ambushes are being prepared for him, or that the wine which he is about to use for Mass has been infected with poison, cannot flee or omit Mass, if from this others could conjecture that the seal is being violated in this way, or if a burden is brought upon the penitent himself; but if neither of these things is verified, he can flee or abstain from Mass. Besides, in every case the confessor, within the sacred tribunal, can ask permission to use this knowledge for preserving his life; but if the penitent refuses permission, the confessor must expose his life rather than violate the seal. Nevertheless, if it were certainly established that the penitent revealed these ambushes in the sacred tribunal for precisely this end, that the confessor could not flee, a confession of this kind is not sacramental, and therefore does not oblige to the seal.

514. Corollaries: (a) on giving or denying a confession certificate. In certain regions the confession certificate is in use, that is, written testimony concerning a confession made on such a day by such a person; it is given especially to those who wish to make the paschal Communion or to celebrate marriage, and it is written thus: "I heard such a one in confession, on the day[1] ..."; but nothing must be said about absolution given or denied.

[1] *Statuts Synodaux de Paris*, 1902, n. 423.

Now a certificate of this kind can be granted to all those who make a sacramental confession, whether they are absolved or not; hence it cannot be denied to an indisposed penitent who asks it outside confession: for if it were denied, the confessor would use the knowledge of confession with burden to the penitent. Nor likewise can it be denied to an indisposed person asking within the tribunal, when the penitent is in those circumstances in which it is customarily given, because this would be implicitly to say that the penitent was not duly confessed; outside these circumstances, it can be denied or granted, according to the laws of prudence; today it is rarely expedient to deny it, as often as the penitent has seriously accused at least one sin, lest from such denial he be kept away from the sacraments for a long time.

But if the penitent makes only a simulated and mocking confession, or if he asks for a certificate without confessing any sin, generally the certificate must be denied; for on the one hand the seal is not wounded, since it arises only from sacramental confession, and on the other hand, by handing over the certificate the confessor in some way cooperates in the unworthy reception of Matrimony or the Eucharist. - I said generally, because if from denial of the certificate, where this is required for marriage, scandals were prudently feared, a certificate could be given in which it is declared that such a one approached the sacred tribunal on such a day.

515. (b) If the confessor in a difficult case needs counsel, he can have recourse to a theologian to whom the penitent is unknown, or, if this cannot be done, present the case in such a way that danger of revelation is absent, for example, by setting forth the case as fictitious and therefore omitting circumstances from which the penitent could be known. Permission can also be sought from the penitent for taking counsel from another confessor concerning a matter pertaining to confession; but if this is denied, and at the same time there is danger of revelation, the confessor, after imploring divine light, should consult approved authors and solve the difficulty in the best way he can.

Note. (c) That the seal may be better kept, confessors ought to avoid mixing into conversations remarks about things heard in confession; this is enjoined in certain diocesan Statutes; thus in the Synod of Mechlin: "We strictly enjoin confessors that in common conversations they never intermix words about things heard in confession, nor report the scruples, internal vexations, and foolish things of those confessing, even with the penitent's name kept silent, under the pretext that matters of this kind are not sins."[2]

[2] The Second Synod of Trenton made this decree its own, n. 110. Cf. Second Plenary Council of Baltimore, n. 290.

§ II. On the Duties of the Confessor with Regard to Various Kinds of Penitents

516. Preliminary Remarks. Since the penitents who approach the sacred tribunal are diverse, the manner of acting with them also must be diverse, accommodated to the character and temperament of each, and also to age, sex, condition, and needs: for those who are light and those who are constant in mind, the scrupulous and the lax, the young and the old, men and women, magistrates and workers, relapsed sinners and the pious, cannot be treated in the same way. Therefore the confessor must become all things to all, that he may make all safe. Hence he ought to study not only Moral Theology, but practical Psychology, habits, passions, and virtues, and also Pastoral Theology, where the application of general principles to various kinds of penitents is more fully set forth; and moreover the treatise On the Obligations of Various States; and also Ascetical Theology, that he may direct pious persons into the way of perfection.

But here we shall note only a few things about those kinds of penitents in whose confession a special difficulty is more commonly found, referring, for the rest, to approved authors who have written fully on this matter.[1] We shall treat, namely:

[1] St. Alphonsus, *Praxis confessarii*; M. Fornarius, *Institutio confessariorum*; Reuter, *Neo-Confessarius*, parts II-III; Lacroix, lib. VI, n. 1794-1932; Gaume, *Manuel des Confesseurs*; Ciolli, *Direttorio pratico del confessore*, translated into French by Mazoyer, *Directoire pratique du Jeune Confesseur*, Paris, 1899; Aertnys, *Theologia Pastoralis*, Tournai, 1893; Hilar. a Sexten, *Tr. Pastoralis de Sacram.*, Mainz, 1895, § 47-57; Lehmk., n. 476-522; Berardi, *Praxis Confessariorum*; Dubois, *Pratique du zele ecclesiastique*, translated into English: *Zeal in the Work of the Ministry*.

1° of those who need special instruction: children, the rude, the semi-fatuous, the deaf and mute;

2° of those for whom it is more difficult to conceive contrition: those in occasions of sin, those with habits, and relapsed sinners;

3° of those who need special care: the pious and the dying.

I. On the Manner of Acting with Those Who Need Special Instruction — 1° On the Confession of Children

517. (A) We have already said that children who have attained the use of reason are bound by the precept of confession; now generally they attain sufficient discretion around the seventh year; yet this depends not on age alone, but also on keenness of mind and education, and on other circumstances of time and place; for example, they become mature earlier in warmer regions than in colder ones. - They are judged to enjoy the use of reason with relation to confession when they explain their sins distinctly, aptly answer questions proposed by the confessor, and understand that grave delicts are punished with eternal punishments; on the contrary, if they can say nothing except formulas committed to memory, if they answer affirmatively to all questions proposed, without any discrimination, and even though in this way they contradict themselves, they are deservedly judged to lack the use of reason. But in doubt whether they have attained sufficient discretion, outside danger of death, they are not bound to confess.

[2] On the spiritual care of the rude and of little ones read the golden little works of St. Augustine, *De catechizandis Rudibus*, ap. Migne, *P. L.*, XL, 310-347; of Gerson, *De Parvulis ad Christum trahendis*; cf. Reuter, n. 99-118; 192 sq.; *Statuts Synodaux de Paris*, 1902, n. 407-409.

518. (B) Children must be received with special kindness and paternal affection, so that, far from being deterred from the sacred tribunal, they may rather approach it gladly and confess their sins sincerely. - They should be persuaded first to explain their sins; then they should be helped by opportune questions: whether they have kept silent about any sin out of shame; - whether they have recited morning and evening prayers; - whether on Sundays or feast days they have assisted at the sacrifice of the Mass, whether they talked during it; - whether they have sworn, blasphemed, or used indecent words; - whether they have been disobedient to parents, or lacked due reverence toward them; - whether they have quarreled with others, given way to anger or envy, struck others or called them by an ignominious name, or given bad example; - whether they have heard, said, or done anything shameful, which they would blush to say or do before their parents; - whether they have committed little thefts or brought harm upon others; - whether they have told lies, in jest or to harm others; - whether they have eaten meat on forbidden days; - whether they attend a Catholic school and study catechism, etc.[1] Let the confessor beware lest he be excessive in questioning, lest children conceive a horror of confession. Concerning chastity let him propose only those questions which do not excite the curiosity of the innocent, and yet furnish the guilty an occasion of manifesting their delicts: for certain boys and girls say nothing about this matter unless they are questioned.

[1] You will find an excellent catalogue of sins which are more commonly committed by children in Mother M. Loyola, *First Confession*, p. 34-36.

519. (C) After the confession has been heard, children are to be instructed concerning the means to be used for avoiding sins, and concerning the foulness of sin, yet without exhibiting as grave a sin which is only light;[2] but let them be taught to flee even light delicts, so that they may avoid the punishments of Purgatory and please Christ Jesus, who for them suffered such bitter torments and death itself. They are to be exhorted to contrition not by a long exhortation, which perhaps, their mind being distracted, they will not understand, but by questions

accommodated to their capacity, for example: "My son, could you endure the fire of hell for a quarter of an hour? - Do you wish to crucify anew Christ, who suffered and died for you? - Do you wish gravely to offend your heavenly Father, who has bestowed so many benefits upon you and bestows them daily? - Are you not sorry for the sins by which you have deserved hell, offended Jesus and God? etc." - If they have accused only venial sins, speak to them in a similar way about Purgatory and the other evils arising from sins of this kind.[1]

[2] Sometimes children sin mortally subjectively in those things which of themselves are light, because from the manner of speaking of parents or others they have understood that these are grave: this erroneous conscience should be prudently corrected.

[1] And indeed, since in children neither affection for sins nor inveterate passions are present, very little suffices so that, by the help of divine grace, which certainly will not be lacking, they may be rightly disposed. Cf. Berardi, *De Recidivis*, n. 191, where you will also find a method, under the form of dialogue, for disposing children.

A penance fitting their age will be enjoined, lighter than for adults, which they should perform at once, lest it fall into oblivion.

520. (D) As to absolution: (a) it certainly cannot be denied to children who have committed grave sins, if otherwise they seem sufficiently disposed, as St. Alphonsus rightly teaches;[2] hence the practice of those who dismiss without absolution children who have not yet been admitted to first Communion is wholly to be reproved, as we said above (n. 244). (b) But if it is doubtful whether they have the use of reason, or whether they are sufficiently disposed, they are to be absolved under condition in danger of death, or when the precept of annual confession urges, and several times in the year, lest they remain in the state of sin, if perhaps they have sinned gravely; outside these cases, they should be dismissed kindly for a time with a simple blessing. (c) But if they have accused only venial sins, let him excite them to contrition; and if they are sufficiently disposed, they are to be absolved, lest they lack sacramental grace; if after exhortation they remain doubtfully disposed, several times, but not as often as they confess, they are to be absolved conditionally, that they may recover sanctifying grace, if perhaps by a grave sin, of which they are unmindful, they have lost it.

[2] *Praxis Confess.*, n. 91.

2° On the Confession of the Rude, the Semi-Fatuous, and the Mute

521. (A) On the rude. Here there is question not of those who, although uncultivated in human matters, are well instructed in matters pertaining to salvation; but of those who are ignorant in the business of salvation. It has already been said (n. 473 sq.) how they are to be instructed before or after absolution. Here only a few things must be said concerning certain difficulties which occur in their confession.

(a) Some have scarcely anything to accuse; this can arise from defect of matter, of examination, or of knowledge. If the first, that is, if in fact they have abstained from graver sins because of continuous labors, and otherwise they are not accustomed to accuse lighter delicts, they should be taught how they can confess venial sins and avoid them in the future, and also how much it profits to declare and detest again the graver sins of their past life. If from defect of examination, they should be kindly helped to search the hidden places of their conscience, as was said above, n. 316. If from defect of

knowledge, they should be instructed in the tribunal itself concerning those things which are necessary for receiving absolution validly and lawfully, and afterward concerning the other things which are necessary by precept.

(b) Others can scarcely conceive contrition, because they are hardly able to think about motives; therefore these motives should be proposed to them in simple speech, by way of dialogue, as we said concerning children.

522. (B) On the semi-fatuous. Those perpetually insane cannot receive absolution; but one must speak otherwise of the semi-fatuous.

(a) If they certainly can distinguish between good and evil, although somewhat obscurely, and otherwise seem well disposed, they can be absolved not only once, but several times in the year. But since, on account of slowness of mind and weakness of memory, they are scarcely able to retain in memory even necessary truths, the confessor will take care so to dispose them that they elicit the necessary acts of faith, hope, and contrition; thus, for example, he can proceed: "Do you believe in one God? Do you believe that He punishes the wicked and bestows rewards upon the good? Do you believe that there are three persons in God, distinct and perfectly equal, and that the Son of God for our sake became man and redeemed us by His blood, etc.?" Let him proceed in the same way as to the motives of contrition.

(b) If there is doubt about the sufficient use of reason and whether he can sin gravely or not, the semi-fatuous person must be instructed and disposed in the best way possible, and absolved under condition in danger of death, indeed several times in life, at least once a year, lest he remain in mortal sin, if perhaps he has committed any.

523. (C) On the mute and the deaf. (a) These are not strictly bound to write their confession, above, n. 299; but they should be gently induced to do this, if they are able to write, since in this way the integrity of confession is better procured.

(b) Since today deaf-mutes can be instructed rather easily, the pastor or confessor ought to take care that, insofar as possible, they be sent to those schools where they are able to learn Christian doctrine, so that they may better confess and detest their sins.

(c) But if they have not been instructed by these new methods, the confessor should first inquire from their relatives what sins they more frequently commit; then he should lead them into some hidden place, where by signs they may attempt to declare at least in a confused way certain sins and to express their contrition; by certain signs, for example, by raising eyes and hands to heaven, let him exhort them to contrition, and absolve them absolutely or conditionally, according as he will be certain or doubtful concerning their dispositions.

II. On the Manner of Acting with Those in Occasions of Sin, Those with Sinful Habits, and Relapsed Sinners

A special difficulty is found in absolving these, because unless they wish to remove the occasion of sin, eradicate the depraved habit, or avoid relapses, they do not seem to be truly contrite. That this may be better understood, one must speak separately of each.

[1] Since the Older authors only touch this matter in passing, the Moderns and more Recent authors especially are to be consulted: St. Alphonsus, n. 452-464; *Praxis Confess.*, n. 63-80; Lacroix, n. 1819-1832; Billuart, diss. VI, a. 10, § 5-6; Reuter, n. 168-188; Konings, n. 1429-1481; Marc, n. 1819-1831; Aertnys, n. 298-351; Ball. P., n. 167-312; Lehmk., n. 485-494; Hil. Sexten, § 55-56; Muller, § 156-157; Genicot, n. 369-374; Noldin, n. 401-409, but especially Berardi, *de Recidivis et Occasionariis*, who discusses these at length.

1° On Those in Occasions of Sin

We shall set forth the notion and species of occasions of sinning; and also the manner of acting with those in occasions.

524. Notion and Species of Occasions. (A) Notion. An occasion of sinning is an external person or thing enticing to sin. Hence it is distinguished from those internal principles which incline to sin, such as concupiscence, evil habits, etc. It is also distinguished from danger of sinning, which can be both external and internal: therefore danger extends more broadly than an occasion of sinning, or, in other words, every occasion of sin is a danger, but not every danger is an occasion. - Nevertheless an external occasion is not truly dangerous unless there is at the same time an internal propensity to evil. Hence, in practice, two things concur to constitute an occasion: an external object enticing to sin, and an interior inclination to sin.

525. (B) Species. An occasion of sin is twofold: remote and proximate. (a) The former is that which constitutes only a slight danger of sinning, because it has some, but not great, force for enticing to sin, so that those who are placed in it generally do not sin. Concerning this there is no special difficulty: for it is established that such occasions exist everywhere, so that to avoid them it would be necessary to go out of this world.

(b) The latter, or proximate occasion, is that which constitutes grave danger of sinning, so that those placed in it frequently fall into sin.[1] Here we treat only of an occasion of committing mortal sin. But since danger of this kind can be more or less certain, we note that the rules handed down below must be understood more strictly concerning those who are in certain danger of sinning, but more mildly concerning those who are only in probable danger; for they must be applied not mathematically, but morally.

[1] Certain ones, however, with Ballerini (n. 168) and Genicot (n. 371-372), judge only that occasion to be proximate in which solid probability is lacking that a person can use it without sin, or, in other words, that occasion which induces a morally certain danger of sinning. See this restriction refuted in Berardi, op. cit. *De Occasion.*, n. 9-12; Aertnys, ap. *N. R. T.*, t. XXXII, 1900, p. 500 sq.

Now the gravity of this danger can be discerned in two ways: by experience, namely if someone, placed before in the same circumstances, generally or at least frequently sinned; for example, if someone entering a tavern is rather often made drunk, the occasion is proximate; if very rarely, it is remote; - from what commonly happens, even when experience is lacking. For although a certain person has never sinned, sometimes it can be foreseen that he will very probably sin, if he is exposed to such a dangerous occasion; for example, if some younger girl, light in mind and weak in will, is going to live alone for a long time with a vicious man, it is greatly to be feared lest, given human weakness, she fall into sin; therefore such cohabitation, even before any sin has been committed, is a proximate occasion.

526. (C) On the Species of Proximate Occasion. Proximate occasion is subdivided according to the person, duration, and cause.

(a) On the part of the person, proximate occasion is absolute or relative: absolute, when, human fragility being considered, it constitutes grave danger for all, for example, the reading of a very obscene book, long cohabitation with a concubine; relative, when it induces grave danger not for all, but only for this or that person, because of his special fragility or past falls; thus entrance into a tavern for one who is frequently made drunk there is for him a proximate occasion, but not for all; a prolonged conversation with a girl is a proximate occasion for a young man who pursues her with impure love, but not for all.

(b) On the part of duration, the occasion is continuous, or *in esse*, when it always, or at least habitually, accompanies the person, for example, unjust retention of another's goods, retention of an obscene book or picture, or a vicious person living in the same house; - or interrupted, or absent, when it occurs or is approached only at intervals; for example, entrance into a tavern where someone incurs danger of drunkenness; access to feasts at which detraction is habitually committed; conversation with a mistress who does not live under the same roof.

(c) On the part of the cause, the occasion is voluntary or necessary: voluntary, when it can be freely dismissed without grave inconvenience, for example, access to theaters, conversation with depraved companions, gambling, etc.; necessary, when it cannot be dismissed without grave inconvenience, whether physical or moral. Now an occasion is physically necessary if it can in no way be dismissed, for example, if someone is detained on a ship or in prison with depraved companions, if one living in concubinage is in the article of death and time is lacking for expelling the concubine; it is called morally necessary if it cannot be dismissed without grave temporal or spiritual harm, for example, without loss of office or function, without scandal, etc., as will be explained more fully below.

527. (D) Principal Occasions of Sin. That the rules concerning those in occasions may be better understood, it is expedient to review the principal occasions, while noting, however, that these are not always and for all proximate, but that judgment concerning their proximity must be made according to the notion handed down above; these matters are treated more fully in the various Treatises of Moral Theology.

(a) Against faith: reading of newspapers, periodicals, or non-Catholic books; - more intimate and more frequent familiarity with non-Catholics; - attendance at schools and colleges in which no religion, or a false religion, is taught; - service among heretics, or irreligious masters; - attendance at non-Catholic sermons; - mixed marriages, etc.

(b) Against chastity: concubinage; - cohabitation of persons of diverse sex who are by no means joined in lawful marriage; - conversations with depraved companions; - certain dances which, because of the persons, the kind of dancing, and the circumstances of place and time, are more dangerous; attendance at theaters, especially those which inflame lust both by the things exhibited and by scenic dances (*ballets*); - reading of obscene or erotic books; - retention of statues, images, and photographs which today easily corrupt morals among the young; - certain less honorable games among persons of diverse sex; - more frequent and protracted visits of lovers, especially when one alone remains with one alone for long hours, as often happens in certain regions, with great detriment to souls; -

domestic dangers, which arise either from members of the family, or from servants, or from masters; - certain arts which are dangerous because of depraved conversations or more intimate relations between persons of diverse sex, etc.

(c) Against temperance: taverns and eating-houses; - frequenting of those who indulge in drunkenness, especially on Saturday or on other days on which workers are accustomed to receive wages; - certain festivities, whether religious or civil; - sometimes wedding feasts, and in certain regions vigils beside the bodies of the dead (*wakes*); potation by equal draughts (in English, *habit of treating*), etc.

(d) Against justice: certain public and political offices, which easily furnish a means of becoming rich unjustly; - certain businesses, and stock-exchange speculations, which are not immune from fraud, etc.

528. On the Manner of Acting with Those in Occasions. One must distinguish between a free proximate occasion and a necessary one.

(A) On a Free Occasion of Sinning

Principle: One who knowingly and willingly refuses to leave a proximate and voluntary occasion lacks true contrition, and therefore cannot be absolved. It is certain.

It is proved: (a) One who knowingly and willingly is placed in a proximate occasion, and at the same time has no grave reason for remaining in it, by that very fact shows that he loves the danger of sinning, and therefore sin itself, since he foresees that in this occasion he will probably sin; for one who wills the end, that is, avoidance of sin, by that very fact wills the means, that is, avoidance of grave danger of sinning. But one who loves sin is not truly contrite; therefore he cannot be absolved. - Hence Scripture[1] deservedly says: "He who loves danger shall perish in it"; that is, one who knowingly and without any necessity exposes himself to danger of sinning is deprived of the abundant grace necessary for resisting, and falls into sin.

[1] *Eccli.*, III, 27.

(b) Wherefore, on March 2, 1679, this proposition 61 was condemned by Innocent XI: "He can sometimes be absolved who is placed in a proximate occasion of sinning, which he can and does not wish to omit, indeed which he directly and deliberately seeks, or into which he thrusts himself."[1]

[1] Ap. Denzing., n. 1078; cf. Viva, op. cit., in Proposit. XLI Alex. VII, where this proposition of Innocent is explained.

529. Explanation: it was said knowingly and willingly; for sometimes penitents, because of ignorance or levity of mind, are not conscious that they are placed in a proximate occasion; this can occur especially when there is question of interrupted and relative occasions, for example, of certain readings, visits, spectacles, companions, etc. Now if in such a case the confessor foresees that warning these penitents will be useless, indeed harmful, he can leave them in good faith, according to the principles set forth above (n. 477), and absolve them, provided that otherwise it is established that they sincerely detest their sins: which they can do in the case, since they are persuaded either that the occasion is not proximate, or that there is no grave obligation of leaving it. But afterward, if they again sin in the same occasion, they must

gradually be instructed about fleeing this occasion; which indeed they will understand better if by their own experience they know that they frequently sin because of it.[2]

[2] Cf. Berardi, op. cit. vol. II, n. 32 sq., where particular cases are presented.

530. Corollaries. (a) One who is placed in a free and continuous proximate occasion (for example, in concubinage) regularly is not to be absolved before the occasion has in fact been removed. Thus commonly with St. Alphonsus (n. 454). For although the penitent can be contrite before he has removed the occasion, it is greatly to be feared lest, if he is absolved immediately, he will not in fact take away the occasion: for removal of such an occasion is a very arduous thing, and it does not happen unless someone inflicts great force upon himself; moreover, if the occasion is not taken away before absolution, the penitent after absolution will easily deceive himself; for an occasion always present often blinds the mind and weakens the will, so that a purpose previously elicited sincerely is rendered ineffective. Hence the confessor, as a physician, ordinarily ought not to absolve the penitent, lest perhaps he expose him to danger of relapse.[3]

[3] A few indeed hold the contrary (Ball. P., n. 176; Genicot, n. 373; Noldin, n. 408), because the confessor does not have the right of prescribing such a remedy, since it is not established that it is necessary; nevertheless they admit that prudence sometimes advises that, even immediately the first time, absolution be deferred until the occasion has actually been dismissed, where such delay is judged likely to profit the penitent.

I said regularly; for there are cases in which absolution can prudently be given before the dismissal of the occasion: when the occasion, although continuous, is not so dangerous, for example, if there is question of restitution, and the penitent sincerely promises to restore as soon as possible and has not previously broken his promise; - when the penitent has already employed means for removing the occasion, for example, if he has told the maidservant with whom he used to sin to leave the house at the end of the week; - when he exhibits special signs of sorrow, from which it can be judged that his purpose is most firm; - or if he is in moral necessity of receiving absolution immediately, for example, if there is question of one dying, of those betrothed about to contract marriage, of those who cannot defer Communion without danger to reputation, of those who cannot approach the same confessor, as travelers, or those who are converted at the end of a mission; - finally, when they are so disposed that, unless they are absolved immediately, they probably will not return.

531. (b) One who is placed in a proximate voluntary and interrupted occasion, for example, by frequenting eating-houses, depraved companions, or dangerous spectacles, can be absolved immediately, provided he sincerely promises that he will avoid this occasion. But if he has broken this promise several times (for example, three times), absolution must be denied until by flight of the occasion he has shown a sincere purpose of amendment.

The reason for the former is that an interrupted occasion is more easily broken off than a continuous one, and does not constitute so grave a danger; hence the purpose of avoiding it can be firm and efficacious even before proof. The reason for the latter is: one who has broken faith cannot easily be believed; moreover he becomes a relapsed sinner, and one must act with him in the manner to be explained below, n. 539 sq.

(B) On a Necessary Occasion of Sinning

532. State of the Question. From what has already been said (n. 526), it is easily understood what a physically necessary occasion is. But a morally necessary occasion is called one which cannot be left without grave spiritual or temporal harm, concerning which, in individual cases, the confessor must prudently judge, with all circumstances considered. We shall bring forward only a few examples, from which judgment can be formed in the others.

(a) Grave spiritual harm is judged to be present: 1. when the penitent cannot leave the occasion without casting himself into another similar or worse one: such is the case of a maidservant who, because of her beauty and moral fragility, in all the houses in which she has stayed has found the same or worse dangers. Yet illusions must be guarded against; for example, a master who has often sinned with a younger maidservant easily believes that he will be in equal difficulty with a new servant; yet this is often false, especially if he chooses an older servant, less attractive, grave in character and pious. 2. When the occasion cannot be avoided without injustice or another sin; for example, ordinarily a husband cannot leave his wife, or conversely; nor a son or daughter the paternal home; a soldier the army before the appointed time; a nun the convent; nor a hired physician the care of some person; nor a servant before the established time. 3. When the occasion cannot be avoided without grave scandal or another spiritual evil of others; for example, a mother of a family who cannot be separated from her husband without scandal of neighbors or spiritual harm of the children; or a master who cannot cast out a maidservant immediately after a mission without exciting scandal. But here also illusions must be guarded against; often one living in concubinage will say that the maidservant cannot be cast out without scandal, while on the contrary scandal is removed by her casting-out, provided that it is done prudently, at an opportune time, and under a reasonable pretext.

533. (b) Grave temporal harm is judged to exist when the occasion cannot be dismissed without notable loss of life, reputation, or fortune; for example, if someone would have to abandon his own office or art, by which he sustains himself or his family, as a merchant who in trading finds an occasion of committing fraud; a physician who in exercising his art finds dangers of sinning; a pastor by hearing confessions; a woman by receiving guests. This is especially true when at the same time some spiritual harm is present because of dangers arising from poverty or idleness.

But if the harm is only light, when all things have been carefully inspected, the occasion cannot be called morally necessary. Hence this proposition 41 was deservedly condemned by Alexander VII, March 18, 1666: "A concubinarius is not to be obliged to cast out his concubine, if she were too useful for the delight of the concubinarius, commonly for his pleasure, while, if she were lacking, he would lead life with too much hardship, and other foods would affect the concubinarius with great weariness, and another maidservant would be too difficult to find."[1] And by Innocent XI, on March 2, 1679, proposition 62: "A proximate occasion of sinning is not to be fled when some useful or honorable cause for not fleeing occurs."[2]

[1] Ap. Denzing., n. 1012; cf. Viva, loc. cit.

[2] Denzing., n. 1079.

Hence a fortiori a proximate occasion is not to be sought directly, even under the pretext of a spiritual or temporal good; for proposition 63 was condemned by the same Innocent: "It is lawful to seek directly a proximate occasion of sinning, for our own or our neighbor's spiritual or temporal good."[3]

[3] Denzing., n. 1080.

534. Principle: One who is placed in a necessary proximate occasion is not sincerely contrite, nor worthy of absolution, unless he is prepared to make the occasion from proximate morally remote, by employing the means necessary for this. It is certain.

For one who does not wish to use these means by that very fact shows that he loves the danger of sinning in which he is placed, and consequently sin itself; for one who sincerely wills the end, that is, in this case, avoidance of sin, by that very fact wills the means necessary for the end, that is, those things which at least morally remove the occasion. - But on the other hand, those who sincerely wish to use the necessary means by that very fact show that they do not wish to sin; and with God helping, "who will not suffer you to be tempted above that which you are able," they can safely hope, by the help of these means, to overcome the dangers.

It was said necessary means, because absolutely speaking the penitent is not bound to employ all useful means, but only those which are truly necessary; and there is place there for good faith in the manner set forth above (n. 529).

535. Corollaries. (a) The principal means by which a necessary occasion can be made from proximate morally remote are of three kinds:

1. Some tend to lessen the force of the occasion; such are words said seriously and firmly to the accomplice in order vividly to express horror of this or that sin; - the threat that the whole matter will be disclosed to those who can bring a remedy, for example, superiors, parents, masters; - avoidance of every familiarity or solitary conversation with the accomplice; indeed, to flee his sight, neither to speak of him nor think of him, insofar as it can be done; - if some circumstances generate a proximate occasion, for example, an evening conversation with a maidservant, they must carefully be taken away; likewise, if danger arises from the fact that the accomplice enters the room, let the door be closed and locked, etc.
2. Others lessen the force of concupiscence: assiduous labor, so that in this way the evils which idleness is wont to teach may be avoided[1]; - modesty of the senses, especially of the eyes: "I made a covenant with my eyes, that I would not even think of a virgin"[2]; - mortification of curiosity and of other passions: for those who are accustomed sometimes to resist their inclinations in lawful things resist unlawful things much more effectively; - by avoiding, or vigorously putting to flight, depraved, indeed dangerous, thoughts, especially about the beloved person; - by leaving dangerous readings; - by abstaining from excessive drinking; - by restraining concupiscence through moderate bodily exercise, etc.

[1] "For idleness has taught much malice." (*Eccli.*, XXXIII, 29.)

[2] *Job*, XXXI, 1.

3. Finally others increase spiritual strength: every morning and evening, and also when temptation urges, to pray fervently: "Watch and pray that you enter not into temptation"[3]; - daily before the image of the Crucified to renew the purpose of sinning no more; - frequently to have recourse to the Blessed Virgin; - often to think about the last things;[1] - to read pious books; - to recite pious aspirations and to walk in the sight of God; - to receive the sacraments assiduously, and especially after a fall to approach the confessor at once[2], etc.

[3] *Matt.*, XXVI, 41.

[1] If someone does not know how to meditate and is addicted to sins, let him say to himself daily, before sleep: if I continue to live thus, I shall be devoted to eternal punishments.

[2] St. Philip Neri gave to a certain young man, who was sinning gravely almost daily, scarcely any other penance except that, if he relapsed, he should return at once to confession; the penitent obeyed, and Philip always absolved him, and always imposed upon him the same penance; by this means, in a very short time, the young man was amended and came forth as an angel. Cf. Berardi, n. 82.

Yet these means, as St. Leonard[3] rightly notes, are not all to be employed at the same time, but now these, now those, according to the character of the persons, the nature of the occasions, and other circumstances.

[3] St. Leonard, *Discorso mistico*, n. 20.

536. (b) If those placed in a necessary proximate occasion always relapse in the same way, after several paternal instructions, exhortations, and rebukes, they cannot be absolved unless they present extraordinary signs of contrition, or leave the occasion, even with very grave inconvenience. Thus commonly, with St. Alphonsus (n. 457), against a few.[4]

[4] Baller. P., n. 192 sq.; Genicot, n. 374; Noldin, n. 409. They allege also Lugo, disp. XIV, n. 157 sq.; but Lugo himself admits (n. 160) that these frequent relapses, without amendment, create some presumption against such an occasionary, and therefore the necessity of certain special signs for destroying that presumption. - Cf. *Vindic. Alphons.*, p. 603-620.

Explanation: 1. First indeed the necessary remedies are prescribed to the one in the occasion; if he has neglected them, he must be seriously warned two or three times to employ them; but if again he has neglected them, he must be dismissed without absolution, unless extraordinary signs of contrition are exhibited, as we shall say concerning relapsed sinners, on account of the reason there adduced.

2. If he has employed at least some means, with some amendment, he can be absolved and must be exhorted to greater efforts.

3. But if he has employed the means, and after several trials there is no amendment nor at least probable hope of amendment, he is not to be absolved before he dismisses the occasion or brings special signs of a better purpose. For in this case the danger of sinning is so grave that, all things considered, to remain in this danger is now a sin. Wherefore the words of Christ[5] pertain here: "If your eye scandalizes you, pluck it out and cast it from you: it is good for you to enter into life with one eye, rather than having two eyes to be cast into the gehenna of fire"; by these words it is signified that we ought to suffer all harms, even the gravest, rather than incur eternal damnation, and therefore the loss of grace.

[5] *Matt.*, XVIII, 9.

Ballerini indeed objects that the hypothesis of St. Alphonsus must be denied; for if up to now there has been no amendment, from this it can only be concluded that the means were not sufficient, or were neglected. We admit indeed that it rarely occurs; for one who seriously employs opportune remedies is generally amended. But sometimes there are those who do not use these seriously unless absolution is deferred until they either dismiss the occasion or present extraordinary signs of contrition.

2° On Those with Sinful Habits

537. (A) Notion. A person with a sinful habit, or habituated in sin, is called one who has contracted an internal facility of committing the same sin from acts often repeated.[1] Therefore a sinful custom or habit is distinguished from an occasion of sinning, in that the latter is extrinsic to the sinner himself, while the former is internal; nevertheless it is often connected with an occasion, insofar as not rarely it arises from this or at least is much increased by it.

[1] Concerning habits in general and their influence on the will, it is spoken in Fundamental Moral Theology; meanwhile see, if you wish, besides the classical authors, *Vieux moraliste* ap. *Ami du Clergé*, XXI, 1899, pp. 529, 593, 673 sq.

How many acts suffice for contracting a depraved habit cannot be determined absolutely. For this depends on the character of the one sinning, namely his greater or lesser fragility; on the nature of the sin, since in certain matters, for example, in the matter of chastity, depraved habits are acquired more easily and more promptly; on the manner in which the sin is committed, with greater or lesser adhesion of the will; and also on the longer or shorter time which has intervened between the various acts: thus one who sins several times on the same day, and afterward abstains from the same sins for a long time, does not so easily contract a habit as one who regularly commits the same sins once or twice daily, or each week. - Let the confessor attend especially to this: the more easily some sin is committed, the more acts are required to constitute a habit; thus more acts are required for internal sins, which are more easily completed than external ones, more for those which are perpetrated alone than for those which require an accomplice. Hence, according to St. Alphonsus,[2] to commit an external sin five times in a month, provided some interval intervenes between the various acts, suffices for contracting a habit; while, if there is question of internal sins, a much greater number is required; but if there is question of external sins which can be perpetrated only with an accomplice, a smaller number is required; for example, one who fornicates once a month for a year can be called habituated.

[2] *Praxis Confess.*, n. 70.

Again, one must distinguish between a habit contracted deliberately, with perfect choice of the will, and a habit formed from mere fragility: in the former case, as often happens for habits of theft and hatred, those with sinful habits generally sin because of a habitual perversity of the will, and therefore they repent with more difficulty; in the latter case, for example, if there is question of sins of the flesh, intemperance, or anger, they offend because of the vehement impulse of passion, and when this has passed, they more easily abhor their sin.

538. (B) Principle: Those with sinful habits can be absolved as often as they exhibit themselves truly and sincerely disposed to employ those means which are necessary for conquering the

habit. It is certain.

For a depraved habit of itself is not a sign of indisposition, but only renders relapse more probable; now, if someone retracts the habit and sincerely wishes to employ the means for conquering the habit, by that very fact he shows that he is well disposed, and therefore he can be absolved; moreover, by employing the prescribed means, he will lessen and gradually extinguish the force of the habit: for custom is conquered by contrary custom.

But the means to be suggested are general, such as prayer, meditation, remembrance of the presence of God, flight from the occasion if the habit arises from an occasion, frequent reception of the sacraments, etc.; or particular, namely those which are opposed to the depraved habit, for example, mortification of the senses for conquering impurity, abstinence from intoxicating drink for overcoming intemperance, as is explained elsewhere in the Treatise on Sins and on Virtues.

539. Corollaries. (a) One with a sinful habit, who for the first time confesses the depraved habit, regularly ought to be absolved, although no amendment has preceded, provided he seriously promises to use the means necessary for eradicating the habit. For since he has not violated promises, and is supposed sincere, he can and ought to be believed. - Yet it is said regularly, because if the habit is very rooted and has been contracted deliberately, sometimes it is expedient to defer absolution for a short time, so that the penitent may conceive a more vivid horror of sin and more strenuously employ the prescribed means.

(b) One with a sinful habit, who had already rather often confessed the depraved habit, but had not been warned about the remedies to be employed, can be absolved if, better instructed, he promises to use them. For if he did not employ the necessary means, this must be attributed to ignorance rather than malice; moreover, since he seriously promises to use them, he shows himself well disposed.

(c) But if he rejects means truly necessary for conquering the habit, generally absolution is to be denied.[1] For one who wills the end wills the means; and one who does not will the means does not will the end, that is, in this case, he does not wish to flee sin. - It is said generally, because if the penitent rejects certain means in good faith, because he does not think them necessary, and is prepared to employ others, although, in the judgment of the confessor, they are less efficacious, he can for a time be left in good faith and absolved.

[1] Deservedly, therefore, this proposition 60 was condemned by Innocent XI, March 2, 1679: "To a penitent having a custom of sinning against the law of God, of nature, or of the Church, even if no hope of amendment appears, absolution is neither to be denied nor deferred: provided he says by mouth that he is sorry and proposes amendment." (Ap. Denzing., n. 1077; cf. Viva, on this proposition.) Now when necessary means are rejected, there is no hope of amendment.

3° On Relapsed Sinners

540. (A) Notion. In general, a relapsed sinner is called one who, after he has confessed certain sins, often relapses into the same without amendment. Therefore he differs from one who merely has a sinful habit, who indeed often relapses into the same sin, but has not yet confessed this depraved habit.

With regard to absolution, one must distinguish between those who are formally relapsed sinners and those who are such materially only.

Now, that someone may be formally a relapsed sinner, three conditions are simultaneously required: (a) that, after he has confessed a depraved habit, he was seriously warned by the confessor concerning the gravity of the fault and the means necessary for avoiding it; (b) that he has fallen into the same sins, but not others of a different kind; (c) that, without amendment, he has relapsed in almost the same way, with the same facility, immediately or shortly after confession, without serious effort either to repel temptations or to employ the means of amendment.

One is called materially relapsed who indeed has often relapsed, but (a) either had not been seriously warned by the confessor; (b) or, although warned, did not relapse into the same sins, but into others of a different kind; (c) or, although warned and relapsed into the same sins, exhibits some amendment, because he has not sinned so often, or at least for some time seriously tried to resist temptations, or employed at least some one of the assigned means, although, because of the greater vehemence or frequency of temptations, in fact he has sinned as often as before.

541. As to materially relapsed sinners, there is no special difficulty: if they have not yet been admonished, let the confessor seriously admonish them and propose means to them: if they sincerely promise to employ these, they can be absolved. If they bring some signs of amendment, they are to be exhorted to make greater efforts; if, one vicious habit having been corrected, they have fallen into another, new remedies are to be proposed for destroying this also.

Therefore the whole difficulty concerns formally relapsed sinners. Rigorists, imbued with Jansenist principles, hold that they are not to be absolved unless they have proved amendment by long experience. A few others[1] think they can be absolved as often as they bring ordinary signs of disposition, and sincerely say that they are disposed. St. Alphonsus,[2] walking a middle way, teaches that generally they are not to be absolved unless they present extraordinary signs of contrition. His doctrine, if rightly understood, seems to us to be followed.

[1] Faure, *Dubit. theolog.* dub. 3; Baller. P., n. 225-345; Genicot, n. 370.

[2] Cf. *Vindic. Alphons.*, p. 647-788.

542. (B) Principle: Formally relapsed sinners regularly cannot be absolved, unless by special signs they show that they are truly contrite. Thus commonly.

For frequent relapse into the same sins, without amendment, shortly after absolution, generates a prudent presumption of a weak purpose; for one who firmly purposes to avoid sin and to employ the means necessary for this, regularly does not change his mind so easily, nor so suddenly. But this presumption regularly cannot be destroyed except by special signs of contrition or of firm purpose; for common signs had already been given before and were found ineffective. Therefore more than ordinary signs are desired in this case.

Yet it is said regularly; for sometimes there are found penitents who are so changeable in mind that they can be sincerely contrite, and nevertheless, because of innate changeableness and fragility, fall

into the same sins as soon as a vehement temptation arises; these can be absolved, provided it is established, with all things considered, that they are sufficiently disposed.

543. (C) Corollaries. (a) When a relapsed sinner brings certain special signs of contrition, he can be absolved at once. For relapse is not in itself an absolute sign of indisposition, since it can arise from mere fragility, but only generates a presumption of a weak purpose; but this presumption is destroyed by special signs of contrition; therefore, notwithstanding frequent relapse, the penitent in this case can be absolved.

But these signs are called extraordinary, not in the sense that extraordinary contrition is required, since simple attrition suffices with absolution; but in the sense that they must be more proving than those which had been given before by the same penitent. Therefore these signs are not something absolute, but wholly relative; nor can they be truly useful unless at the same time there are considered the character of the penitent, the temptations by which he is attacked, and other circumstances; hence much in this matter must be committed to the prudence and discretion of the confessor.

544. These things being posited, the principal extraordinary signs of contrition are: (a) tears poured forth not on account of some human motive (for example, because a girl was abandoned by her lover), but on account of the offense of God and the ruin of one's own soul; (b) heartfelt words, that is, manifesting a compunct heart and a firm will of avoiding sins; (c) spontaneous confession, made not from mere custom, but from the internal impulse of grace, especially when notable difficulties for confessing have been overcome, for example, after a great internal conflict, after a long journey, or when someone consents to undergo grave harm or grave inconvenience; but a confession is not judged spontaneous if it is made from the persuasion of parents or superiors, from the obligation of the paschal precept where this is commonly fulfilled, or from the custom of confessing on certain feasts; (d) spontaneous flight from the occasion, for example, by seeking reconciliation with an enemy, by restoring what has been taken, by dismissing a concubine; (e) manifestation of a firm and generous will, shown by deeds, for example, by manifesting sins previously concealed, making a general confession, or approaching the sacred tribunal notwithstanding the mockery of friends, etc.; (f) detestation of sin immediately after a fall, because then relapse can be attributed to mere fragility; (g) an unusual fear struck in from some event, for example, the death of a relative or friend, public or private calamity, fear of imminent death; (h) reception of more abundant grace, for example, on the occasion of a mission or spiritual exercises; in one word, all those things from which a sincere purpose of amendment can prudently be inferred.

545. (b) If the relapsed sinner brings none of these signs, he is not immediately to be dismissed without absolution, but is to be disposed to contrition by a fervent exhortation, as was said above (n. 479).

That the confessor may accomplish this more easily and efficaciously, he must attend to these things. 1. If the defect of disposition arises from ignorance alone, or inadvertence, or fragility, it will be rather easy to excite the penitent to contrition, by instructing him and proposing to him motives of

sorrow accommodated to his capacity, especially if it is done by way of dialogue, so that the penitent cannot be distracted in mind.

2. If the defect of disposition arises from affection for sin, the difficulty indeed increases, but it is not insuperable. For the penitent, from the fact that he approaches the sacred tribunal, conceives at least some desire of conversion; moreover God is accustomed to grant grace to men of good will; therefore if the confessor, moved by prudent and ardent zeal, with paternal charity warns the relapsed sinner concerning the dangers in which he is placed, and suggests to him the means by which he can overcome temptations, he can make him well disposed; which indeed he will recognize from the very manner of speaking and acting of the penitent, for example, if he says that he has acquired a new knowledge of his own iniquity, or that he is prepared seriously to employ the prescribed means.

Here, however, it is worth noting that those who relapse from intrinsic facility are more easily made contrite than those who relapse from an extrinsic occasion. Thus those who consent to blasphemies, shameful thoughts and desires, or pollution, are made contrite rather easily; hence they can more easily be absolved, especially if they promise that they will return to confession immediately after a fall. But the proud are made contrite with more difficulty, who pursue a determinate person with hatred; the impure, who cling to some person with mad love, or spouses who abuse marriage; the avaricious, who have become richer from the goods of others; the timid, who by fear of men are deterred from fulfilling their duties. Of these indeed one must never despair; but to dispose them for absolution is very difficult.

546. (c) If, after a fervent exhortation, the relapsed sinner remains doubtfully disposed, he can indeed be absolved conditionally, if a special necessity urges, according to the principles set forth above (n. 487). But if there is no necessity of this kind, absolution is regularly to be deferred, especially when the penitent is placed in a proximate occasion, - or, though warned several times, has not yet restored, - or delay is judged opportune for striking salutary fear into the heart of the penitent.

547. (d) If finally it is morally certain that the relapsed sinner remains indisposed, absolution is to be deferred, not indeed for a long time, but for a few days, not with severe words, but with the most humane, by explaining the reason why absolution is deferred, and by assigning the means which must be employed for obtaining contrition shortly.

It was said: not for a long time, lest he come into desperation and sin more often; for relapsed sinners from intrinsic fragility a delay of eight or ten days suffices; for relapsed sinners from an occasion, a delay of fifteen days.

With most humane words, lest penitents bid farewell to confession; which Leo XII[1] explains very well thus: "Wherefore, if there is a just cause why absolution is to be deferred, it is necessary that he persuade those confessing, with words as humane as possible, that this is wholly demanded both by his own charge and office and by their own salvation, and that he very gently entice them to return as soon as possible, so that, those things which shall have been salutarily prescribed having been faithfully performed, they may be refreshed, loosed from the bonds of sins, by the sweetness of heavenly grace."

[1] Encycl. *Caritate Christi*, Dec. 25, 1825.

By explaining the reason ... so that in this way it may be understood that absolution is deferred not from hatred or anger, but from paternal solicitude.

By assigning means, so that the penitent may know what must be done that he may be better disposed for absolution; for delay of itself will not change his mind unless at the same time remedies are prescribed to him. - In this way absolution, sweetly and firmly delayed, can correct relapsed sinners, if not for the present time, at least for the future.

III. On Those Who Need Special Care: the Pious and the Dying — 1° On the Manner of Acting with Pious Persons

548. Since there are many penitents who, with God's help, avoid mortal sins and tend to spiritual perfection, confessors ought to devote themselves to the study of Ascetical and Mystical Theology, that they may wisely direct these in the way of God; otherwise, they will either have no care for pious persons, or will lead them into the way of error, illusion, and hallucination. Here we can note only a few things, referring the confessor for the rest to approved authors.[2]

[2] Cf. St. Thomas, in the second part of the *Sum. theolog.*; Alvarez de Paz, *De Vita spirituali et ejus perfectione*; Philip of the Most Holy Trinity, *Summa Theologiae Mysticae*; St. François de Sales, *Introd. à la Vie Dévote* and *Traité de l'Amour de Dieu*; Schram, *Instit. Theologiae Mysticae*; Scaramelli, *Direttorio ascetico*; *Direttorio mistico*; Msgr. Gay, *De la Vie et des Vertus chrétiennes*; Ribet, *La Mystique divine*; *L'Ascétique chrétienne*; Faber, *All for Jesus*; *Growth in Holiness*; Saudreau, *Méthode pour diriger les âmes*, Paris, Vic et Amat.

549. (A) Preliminary Remarks. (a) Let the confessor not try to lead all pious persons living in the world to the highest degree of perfection: for there are those who are truly devout and rightly perform ordinary good works, without nevertheless being called to a higher perfection.

(b) Not all the devout are to be directed in the same way, but attention must be given to their character and condition, and also to the inspirations which they receive from the Holy Spirit.

As to character, those endowed with a different temperament must be treated differently. The phlegmatic must be stirred up, lest they become asleep, tepid, and lax; the choleric and nervous must be moderated, lest they suddenly wish to attain a higher degree and afterward fall; the melancholic need consolation, lest they be oppressed by sadness and a broken spirit; the sanguine must be persuaded that they do all things deliberately and constantly, lest, moved by sudden ardor, they undertake something above their strength, and afterward, cast down, fall into desperation.[1]

[1] These temperaments are treated in the Treatise on Human Acts, n. 120.

With regard to condition of life, married persons and celibates are not to be directed in the same way, nor those who are bound to labor assiduously and those who enjoy much leisure, etc. Nothing must ever be counseled which can obstruct fulfillment of the duties of one's state.

Since the Spirit of God is manifold in His gifts, and inspires various souls variously, let the confessor carefully inquire whether and how each devout person is drawn by grace to this or that virtue; likewise let him ask light from God: for he ought not to go before divine inspirations, but rather to follow them.

550. (B) Method to be Followed. (a) First of all, the devout are to be taught that perfection is not properly situated in spiritual exercises, or in the practice of mortification, or in this or that devotion, but in the love of God for Himself, and in the love of neighbor for God: "Of itself and essentially, the perfection of the Christian life consists in charity, principally indeed according to the love of God, but secondarily according to the love of neighbor." This love indeed is not to be placed in sensible affection, but in the prompt and generous will of doing and suffering all things for God, and therefore of willing all things which God wills, because He wills them, in the way He wills, and as long as He wills. From this it follows that perfection is to be sought not in a few heroic acts, but in individual and ordinary actions performed for God with a prompt and fervent mind.[2]

[2] St. Thomas, 2. 2., q. 184, a. 3.

But since, in the present state, we cannot love God and neighbor as we ought unless we deny ourselves, mortification of the external and internal senses, and also of the passions, is a necessary means for attaining perfection: "But those who are Christ's have crucified their flesh with its vices and concupiscences."[3] - Moreover, since we have been redeemed and sanctified through Christ, we cannot attain Christian perfection except through Christ, and with Christ, and in Christ: hence, in the present order, no one can be perfect except by intimate union with Christ. Therefore the greatest devotion must be inculcated toward Christ the Redeemer, and the various mysteries of Him, especially the Passion; and toward Christ hidden in the Eucharist, whose hidden life pious persons should strive to contemplate and imitate by devout visits.

[3] *Galat.*, V, 24. - Recall to memory what was said concerning the four wounds of human nature in the Treatise on God the Creator, n. 198.

But since Christ came to us through Mary, we can approach Him more promptly and safely through Mary: to Jesus through Mary. Nor indeed must devotion toward the Saints be omitted, who, since they have imitated Christ, can by examples and intercession lead us to the Lord. Yet let the confessor take care that this devotion be regarded only as a means for promoting imitation and love of Christ.

551. (b) Let the confessor keep before his eyes that there are three degrees or states of perfection, according to the diverse degrees of charity, namely the state of beginners, of those progressing, and of the perfect; to which correspond the three spiritual ways: purgative, illuminative, and unitive.

Beginners are those who are not only retarded by concupiscences and passions, but also are in danger of sometimes falling into mortal sin. These are in the purgative way, because they purge themselves from sins by mortifying the passions and at the same time fostering charity. - Those progressing, their passions now calmed, more easily devote themselves to the operation of the virtues, especially the moral virtues, and to the increase of charity; hence they are in the illuminative way, because, since they are more immune from vices and concupiscences, they are more often illuminated by God. - But the perfect, their passions having been subdued, become accustomed to the exercise not only of moral virtues, but also theological virtues, and promptly and delightfully devote themselves to the love of God; hence they walk in the unitive way, because they are united to God more intimately and more frequently. - In practice, however, these degrees are not so clearly distinct; and there is no state or degree which does not in some way participate in another degree; therefore in any state one must

unceasingly devote oneself to mortification, to the moral virtues, and to the theological virtues; but in the first degree one must insist more on mortification; in the second, on the moral virtues; and in the third, on the theological virtues.

552. (c) The general means by which the degrees of perfection are climbed step by step are spiritual exercises and frequent reception of the sacraments.

Among pious exercises, three are especially profitable, besides frequent assistance at Mass and visitation of the Most Holy Sacrament: meditation, frequent remembrance of the presence of God, and sincere examination of conscience. 1. According to St. Alphonsus,[1] the confessor ought before all else to dispose the devout to make mental prayer, because prayer and sin cannot dwell together; and moreover by meditation divine love is enkindled. Most persons, even the rude, can make some meditation if, after pious reading, they think seriously about the things which they have read and ask these three things of themselves: how can these things be brought into practice by me? - whether and how far I have done this before? - what can I do today concerning this matter? Then let them pray that they put into execution the things they have proposed to themselves.

[1] *Praxis*, n. 122; cf. n. 217 sq., where the practice of mental prayer is explained; St. François de Sales, *Introd. à la Vie dévote*, 2nd part, ch. 1-8; Faber, *Growth in Holiness*, ch. 15.

2. Let them frequently have the presence of God before their eyes, according to that saying:[1] "Walk before me, and be perfect"; and let them offer their acts to God not only in the morning, but several times in the day, and recite pious ejaculatory prayers; for thus they will not only flee sin, but also daily progress in the practice of virtues.

[1] *Gen.* XVII, 1.

3. In examining their conscience, let them recall not only in a general way their principal delicts, but let them seriously examine themselves concerning one vice or one virtue in species, so that they may see not only whether they have offended, but whether and how far they have progressed: for they will progress more promptly and safely if they apply all their strength to cultivating one virtue or extirpating one vice for some notable time.

As to frequency of Communion, read the rules which are handed down in *Syn. Theol. Dogm., De Eucharist.*, n. 150-152, and the decree of Pius X.

553. (d) Particular means are diverse according to the diverse degrees which pious persons have attained, and their character, condition, and supernatural inclinations. For although the principal virtues ought to be cultivated by all, those especially are to be inculcated which are opposed to the predominant vice, or better correspond to the duties of one's state or to the motions of grace. Certain ones nevertheless seem more necessary: in the first degree, mortification of curiosity, vanity, and sensual love; in the second, the practice of prudence, justice, fortitude, humility, meekness, and sincerity; in the third, the spirit of faith, filial trust in God, and fervent love of God. Concerning these, see the Treatise on Virtues, in which all these things are described more fully.

554. (C) On the Temptations of the Devout. The devout are attacked by special temptations, for overcoming which more efficaciously they need the counsel of a prudent confessor.

(a) Beginners, after they have experienced tender devotion, are gradually deprived of spiritual delights, because God wishes to nourish them with more solid food: from this anxieties and dejection of soul are born. Therefore the confessor will teach them that true virtue and true progress consist in spiritual combat, not in delights; that the business of perfection is completed not in one day, but by a slow step, after the manner of plants which grow in a way scarcely sensible; that God looks upon the heart, and rewards efforts rather than apparent progress; that in the work of salvation invincible constancy profits more than efforts made with interruption[2], etc.

[2] "But he who shall persevere unto the end, he shall be saved" (*Matt.*, X, 22).

(b) Those progressing, after some time wearied by spiritual combat, often look back[1], and wish to stop where they are; from this it happens that they gradually decline; namely, spiritual exercises are omitted or performed negligently; esteem of perfection decreases, and love of the world and of pleasures increases; hence venial sins are committed deliberately and frequently, and when grave temptation urges, they easily slip into mortal sin. - These should be taught that those who do not progress in the way of God, by that very fact go back; that tepidity is often more dangerous than mortal sin: "Would that you were cold or hot! But because you are tepid, ... I will begin to vomit you out of my mouth"[2]; that loss of time and grace are very grave evils and are punished by severe penalties: "For the earth often drinking in the rain coming upon it ... but bringing forth thorns and briars, is reprobate, and very near to a curse; whose end is to be burned"[3]; that those who are heaped with more abundant graces are bound to greater perfection, and therefore that those are not to be imitated who, helped by lesser graces, lead a common life quietly. Let them be induced, if it can be done, to make the sacred exercises in retreat; then let them resume the neglected exercises of devotion and perform them fervently, especially meditation and examination of conscience; and let them direct all their efforts, for a long time, to cultivating one virtue. By these and other similar means they will return to better things.[4]

[1] "No man putting his hand to the plough, and looking back, is fit for the kingdom of God" (*Luc.*, IX, 62).

[2] *Apoc.* III, 15-16.

[3] *Hebr.*, VI, 7-8.

[4] You will find means for avoiding or correcting tepidity in *Pratique progressive de la Confession*, and in the other works cited above.

(c) Even those more advanced, or the perfect, can fall into the snare of the devil; for sometimes they indulge pride, vain glory, and presumption; from this it happens that they rashly cast themselves into certain occasions of sinning, and are deceived by various illusions: anger is judged zeal, pertinacity is held for constancy, prodigality for liberality, self-love for divine love, sensual and impure love for charity. Hence they can also slip into grave sins. - The consideration of their own fragility, frequent remembrance of sins, and the intimate persuasion that no good is to be attributed to us[5] will profit these persons. To avoid illusions, let them do nothing extraordinary without consulting the confessor; as to the practice of virtues, let them take his counsel. If they have fallen into mortal sin, let the confessor receive them kindly, without any sign of admiration or indignation; yet let them seize this occasion for humbling themselves under the powerful hand of God, acknowledging their

unworthiness, impotence, and perfidy, so that thereafter they may serve God with greater humility and fervor, and compensate the injury by doubled homage.

[5] "But what do you have that you have not received? And if you have received, why do you glory as if you had not received?" *I Cor.*, IV, 7.

555. (D) On the Desolations of the Devout. Sometimes even the devout are afflicted with various desolations, temptations against faith, confidence, or chastity, by which they are affected with great sorrow and can become despondent.

(a) Let them keep before their mind that there is no safer and shorter way to perfection than patience in tribulations: the greater things we suffer for God, the more perfectly are we detached from creatures and the more intimately united to God; therefore in no desolation let them despond in soul, but let them hand themselves wholly over into the hands of divine mercy, saying with Christ[1]: "My Father, if it is possible, let this chalice pass from me; nevertheless not as I will, but as Thou"; for the chalice accepted patiently passes more quickly.

[1] *Matth.*, XXVI, 39.

(b) With the help of divine light, let inquiry be made from what cause this spiritual desolation arises. If from voluntary defect, let sorrow be sincerely had for the fault, pardon be humbly sought, and the former fervor be renewed. If from weariness of body or natural disposition, let strength be restored to the body by honest recreation and bodily exercise, and, if there is need, let a physician be approached who may prescribe proper remedies. If from God, who wishes to render the soul purer, let it be gladly accepted as a means of more intimate union with the Crucified: "With Christ I am fastened to the cross."[2]

[2] *Galat.*, II, 19.

(c) In time of desolation let no exercise of devotion be omitted or performed negligently: for then exercises of this kind are more pleasing to God and more meritorious.

(d) Let the state of the soul be candidly opened to the confessor, who can suggest more useful counsels.

556. (F) On the Extraordinary Graces of the Devout. Sometimes also God illumines the devout by a special light or vision, or consoles them with extraordinary consolations. But since in this matter illusions and hallucinations easily occur, let the confessor examine all these things diligently, not indeed with an unbelieving mind, but with a sober one, so that he may discern whether they proceed from the Spirit of God, or from a fervid imagination or the devil.[3]

[3] On discernment of spirits, cf. *De Imitatione Christi*, lib. III, c. 54; St. Ignatius, *Exercitia Spirit.*, Rules for discerning the movements of the soul; Bona, *De Discretione spirituum*; Poulain, *Des Grâces d'oraison*.

(a) The good Spirit does not inspire things which are repugnant to revealed truth or to doctrine received in the Church; therefore novelties must carefully be rejected.

(b) The good Spirit moves to self-denial, obedience, humility, contempt of the world, flight from honors, etc.; things contrary to these virtues proceed from nature or from the evil spirit.

(c) The Spirit of God is discreet; hence generally He moves only to ordinary things and those accommodated to one's own strength; if sometimes He inspires extraordinary things, at the same time He infuses a sense of obedience and humility: therefore those are deceived who pant after extraordinary things, if they make much of themselves and despise others, if they glory in the grace of devotion, or if, when despised, they are cast down in soul.

(d) A divine motion is good from every part, in the beginning, in progress, and in the end; the illusion of the demon, although it may seem to begin rightly, shortly ends in something depraved, either by drawing back from a better good, or by insinuating something evil, or by disturbing the soul.

(e) Nevertheless, a temptation of the devil or a natural movement of the soul, for example, of pride, can afterward be joined to a divine motion. Therefore one must beware lest that which in the beginning was divine afterward become diabolical through some fault.

(f) Since obedience is the best trial of virtue, let the confessor sometimes command something contrary to the proper judgment of the penitent; if he obeys constantly and humbly, it is a good sign; but otherwise, if he is unwilling to obey.

See the rest in the cited authors.

2° On the Manner of Acting with Regard to the Dying

We shall consider two things: when they can be absolved; how they are to be helped to undergo death in a Christian manner.

557. Which Dying Persons Can Be Absolved? - The chief difficulty is not as to confession, since these are excused from material integrity, but as to contrition, which is an entirely essential disposition, and must be manifested in a sensible way, according to most theologians: now this manifestation seems to be lacking in those who are destitute of the senses.

558. Principle: In the article of death, absolution can be granted, at least under condition, as often as it is even slightly probable that it will profit the dying. It is certain.

For by force of the principle "the sacraments are for men," in a case of extreme necessity it is lawful to expose the sacrament to danger of nullity, provided there is some probability that it will be valid and useful for the recipient. Nor is great probability required, but slight probability suffices, since it is better that the sacrament be null or defective than that souls be damned forever. Yet mere possibility does not suffice, since in practical matters probability, not possibility, is considered.

559. Corollaries. (a) If the dying person asked for the sacrament before witnesses before he was deprived of the senses, he certainly ought to be absolved, although here and now he is destitute of the senses; for, by asking for absolution, he manifested that he was contrite, and that act of contrition can persevere virtually. According to the more common opinion, he ought to be absolved without condition in this case, because the Ritual says simply "he is to be absolved"; yet one who adds the condition "if you are capable" is not to be blamed, since some doubt can remain concerning the validity of the sacrament.

(b) Catholics who manifested a probable sign of contrition before they were destitute of the senses can and ought to be absolved conditionally; for absolution will probably profit them.

Such are Catholics who lived in a Christian manner, although they gave no sign of contrition explicitly; for one who lives in a Christian manner is deservedly presumed to wish to die in a Christian manner and therefore to receive absolution. Moreover, although they are destitute of the senses, it is probable that they elicited an act of contrition before they lost the use of the senses; or it is not improbable that they lost the use of the senses, indeed, but not the use of reason, so that internally they can elicit an act of contrition, which sighs, movements of the eyes or lips, or other things of this kind make sufficiently sensible; otherwise, it is probable that contrition suffices, even if it is not manifested exteriorly. Yet it is expedient that the priest, before he imparts absolution, recite an act of contrition in a loud voice; for there are dying persons who are able to hear, although not to speak: in which case they too are helped in this way to elicit an act of contrition.

560. (c) Catholics destitute of the senses can also be absolved conditionally, who, although they did not live in a Christian manner, had kept the faith; for many of them implicitly wish to die in a Christian manner, and therefore to receive absolution in the article of death. Such are those among whom signs of Catholicity are found, for example, medals, a rosary, a scapular, or who can probably be judged Catholics, as living in a region in which there are many Catholics. Thus very probably.

(d) Indeed, probably those can be absolved who lost the use of reason in the very act of sin, for example, in drunkenness, in theft, in a duel, provided it can be inferred from their life that they were probably contrite. This indeed can occur; for in that very instant in which they were about to lose the use of reason, they could have changed their mind and detested their sin, especially since God does not deny His grace to one placed in extreme necessity. - But because many contradict this, the priest in this case is not bound to give absolution.

(e) But if the dying person, immediately before he lost the use of reason, positively repelled the sacraments, he cannot be absolved even conditionally, unless such a manner of acting can be judged revoked by some sign of contrition: for in this case every probability of conversion is lacking.

561. (f) Schismatics who are in good faith, and believe in the efficacy of absolution, can be absolved conditionally in the article of death, scandal being removed; because it is probable that they desire the sacrament. The same can be said of heretics who likewise are in good faith, and at the same time believe in the power of absolution, such as Ritualists and some Lutherans and Anglicans.[1]

[1] This can be inferred from the recent decree of the Holy Office, July 20, 1898 (*Acta S. Sedis*, XXXI, 253-254); for when it had been asked "whether material schismatics, who are in good faith, can sometimes be absolved," the response was: "Since scandal cannot be avoided, in the negative, except in the article of death; and then scandal having been efficaciously removed." In the same sense can be understood c. 731 of the Code, forbidding the sacraments of the Church to be administered to heretics or schismatics, unless they have first been reconciled to the Church.

(g) As to heretics who reject the sacrament of Penance, the matter is much more uncertain. Many, with St. Alphonsus (n. 483), think that they cannot be absolved unless they have expressly asked for absolution, because they are not judged to desire that which they abhor.

Certain theologians, however, with Lacroix (n. 1866), hold that they can be absolved conditionally if they are in good faith, especially if they were inclined toward the Catholic faith, because, for example, they had Catholic relatives or connections or friends, or were instructed or served by Catholic nuns; for since they are in good faith, in a general and implicit way they desire to do or receive all those things which are necessary for salvation.

Indeed, according to Lehmkuhl (n. 515) and others, a dying Protestant, but one still enjoying the senses, can be absolved conditionally, if he cannot prudently be admonished about entering the Catholic Church, provided he declares himself a sinner, and, having conceived sorrow for sins, consents to be helped by the ministry of the priest in attaining eternal beatitude: for this consent is as it were an implicit desire of receiving absolution. But then let the priest take care that, for the sake of greater security, the dying person elicit acts of faith, hope, and charity, and also an act of perfect contrition, insofar as this can be done.

562. Notes. (a) If a probable doubt exists concerning the value of the baptism of non-Catholics, they must secretly be baptized under condition before they are absolved.

(b) Those who are certainly dead cannot indeed be absolved and anointed, even under condition; but from recent experiments it is established that life remains in the body for some time, even when someone has seemed to give forth the last breath, because life withdraws from the body only successively. Hence certain persons who were apparently dead, after three hours, were brought back to life by rhythmic traction of the tongue. Wherefore those who by such a process give certain signs at least of sensitive life can be absolved and anointed, the things to be posited having been posited; indeed, under the condition "if you are living," those who, although they seem to be dead according to ordinary signs, are prudently thought by experts to survive.[1]

[1] Cf. Ferrand, *Le moment de la mort*, ap. *Congrès scient. des Cathol.*, 1891, Sciences mathém. et nat., p. 197; *Études Franciscaines*, janvier 1900; *Ami du Clergé*, t. XXIII, 1901, p. 593.

On the Manner of Helping the Dying

563. Preliminary Remarks. (a) There is no work of charity more acceptable to God than to help the sick and dying to die holily, since the eternal salvation of souls depends on the manner in which these overcome the last difficulties and temptations; hence one of the chief duties of the confessor is to have care of the sick. "Wherefore as soon as he shall have known," says the Ritual, "that any one of the faithful committed to his care is sick, he shall not wait until he is called to him: but of his own accord let him approach him, and this not only once, but more often, insofar as there shall be need; and let him exhort his parishioners to warn him when someone in his parish happens to be sick, especially if the illness shall be more grave."

[2] *Rituale Rom., De visitatione et cura infirmorum, Modus juvandi morientes*; Polanco, *Methodus juvandi moribundos*, Dillingen, 1578; St. Alphonsus, *Praxis*, n. 227-291; *H. A.*, Appendix II; Reuter, n. 209-227; Lehmk., n. 516-522; Marc, n. 1854; Aertnys, *Theol. Pastor.*, n. 187-203; Gaume, *Manuel*, n. 371-401; Ciolli, t. I, n. 83-85; Alberti, *Theol. Pastoralis*, Part. I; Dubois, *Pratique du zele*, 2nd Part, ch. 12; Card. Gibbons, *The Ambassador of Christ*, ch. 30; Scavini, t. IV, Append. VII, *De Cura infirmorum*; Frassinetti, *Manuale pratico del Paroco novello* (in English: *Parish Priest's Practical Manual*), p. II, c. 2, Append.

(b) "But let him approach the sick person," the Ritual continues, "so prepared that he may have at hand arguments apt for persuading; and especially examples of the Saints, which have very great force, by which he may console, stir up, and refresh him in the Lord." - But since the confessor of himself is unequal to so great a matter, let him trust in divine help, and pray for the sick whom he visits. Moreover, that he may be better able to help the sick, let him explore their character, morals, and condition, insofar as this can be done. Then let him premeditate the manner of acting with each sick person, revolving in his mind those things which are to be said and done.

(c) If the family of the sick person is not likely easily to admit the priest, by indirect means at least, for example, by the intervention of friends, care must be taken that he be called as a friend; if he has tried this in vain, let the priest himself with all prudence and courtesy ask that, at least for the sake of politeness, he be permitted to visit the sick person; if he knows that his ministry is desired by the sick person, let him urge more insistently, and conduct the cause of the sick person in the best way he can, even personally. - If he is not permitted to approach the sick person without witnesses, and these are unwilling to withdraw, an entire confession is not to be demanded, but only a general accusation or one of a lighter fault; this having been posited, let the sick person be excited to contrition and absolved.

(d) Having entered the room of the sick person, let him show charity and commiseration, by asking about the illness, the pains, and other things of this kind, and by consoling him and exhorting him to patience, especially by the example of the suffering Christ.

564. On the Confession Itself. (a) If danger of death is not pressing, let him not speak immediately about confession, especially when the sick person fears to make it; but let him first strive to conciliate his soul to himself, by setting forth divine mercy and the love of Christ toward sinners. But on the second or third visit, let him propose the usefulness of confession, showing at the same time that it is not difficult nor requires much time; afterward let him exhort the sick person to make it without delay, especially if delirium is foreseen to be about to supervene shortly. If the sick person asks for some delay, so that he may prepare himself, it can be granted, unless danger stands in the way; but one must beware lest it be deferred too long. If he cannot be brought to confess, one must not wholly despair, but as long as he lives, various and efficacious exhortations of priests and other pious persons are to be used, and also both private and public prayers for obtaining divine grace for the salvation of the wretched one lying ill.

(b) Let him exhort the sick person now prepared for confession to perfect sincerity, and kindly ask him whether he has doubts or anxieties concerning past confessions, since this is the best opportunity for correcting all defects.

(c) In questioning, let him beware lest he bring annoyance to the sick person by too many or indiscreet questions: it is better to devote effort to exciting sorrow for sins than to procuring material integrity. Once the confession has been heard, let him excite confidence, by recalling to memory the mercy of Christ toward the greatest sinners, the Samaritan woman, Magdalene, the thief on the cross, etc.; - immediately before absolution, let him ask whether the sick person has anything which disturbs his soul, and let the motives of contrition be briefly proposed.

565. (d) If any restitution or reconciliation must be made, or scandal repaired, efficacious means should immediately be employed for accomplishing this, for example, by writing without delay a note in which it is declared that such a sum of money is owed to such a person, or by leaving through a will to a person above every exception money sufficient for extinguishing the debts. Often scandal is sufficiently repaired by public reception of the sacraments; nevertheless, sometimes retraction is required, as is explained in its place in the various Treatises.

(e) When certain danger of death is present, which the confessor will be able to recognize either by himself or by secretly questioning the physician[1], let him exhort the sick person to dispose of his affairs opportunely: for this is expedient for the peace of the family and the relief of his own conscience. In this, however, let the priest beware to avoid every suspicion of gain.

[1] Let him be questioned secretly, because many physicians are accustomed to deceive the sick, and, unless they are questioned secretly, they do not tell the truth. Read the signs of mortal sickness in Capellmann, *Medicina Pastoralis*, 11th ed., 1896, p. 174-181; in the same place you will find useful things concerning the care of the sick, p. 215 sq. Cf. *Amer. Eccles. Review*, April 1900, p. 388; Feb. 1901, p. 145; Oct. 1901, p. 280-292; etc.

566. On the Temptations of the Dying. (a) Since the sick are accustomed to be attacked by various temptations, the confessor must fortify them against these. First, proximate occasions of sinning should be removed, such as dangerous images, or persons who are accomplices in sins; on the contrary, before them let pious images of the Crucified or of the Blessed Virgin Mary be hung, by which they may be helped to think about God and eternity.

(b) If they experience temptations against faith, let them not discourse about them, but let them divert the mind elsewhere and frequently say: "I believe whatever God has revealed, whatever the Church teaches. - I believe, Lord, but help my unbelief." - If against hope, let words or examples of Scripture be recalled to memory, by which it is established that God is prone to forgive, and does not wish the death of the sinner, but that he be converted and live; that Christ said: "I came not to call the just, but sinners"; that the publican was justified as soon as he said: "Be merciful to me a sinner"; that paradise was promised to the thief hanging on the cross, etc. - If against patience, let Christ be placed before their eyes, who, although innocent, for us sinners patiently suffered so many and such great things in mind and body; that that which torments is momentary and light, that which delights is eternal; that pains cannot be avoided: wherefore if they are borne impatiently, they are increased and remain fruitless; if patiently, for God's sake, their bitterness is softened, the punishments of Purgatory are lessened, and new merits are acquired.[2] - If against charity, insofar as they pursue a determinate person with hatred, let them think that he who does not forgive cannot hope for pardon from God[1]; that Christ, hanging on the cross, prayed for those crucifying Him, and died for us at the time when we were enemies. And so concerning the rest.

[2] For consoling the sick these or similar books will be very profitable: Perreyve, *La Journée des Malades*; Ozanam, *Le Livre des Malades*; Caussade, *Abandon à la divine Providence*.

[1] "Forgive, and you shall be forgiven" (Luke VI, 37). - Hence the priest can address them thus: "Do you not say, daily reciting the *Our Father*: And forgive us our debts, as we also forgive our debtors? Do you not wish your sins to be forgiven by the heavenly Father?"

567. On the affections to be suggested. In visiting the sick, let the confessor suggest to them, but in few words, and at intervals, acts of faith, hope, charity, contrition, conformity to the will of

God, desire for paradise, acceptance of death, etc. Let him offer them an image of the Crucified to be kissed, and exhort them often to invoke, by mouth or at least in heart, the Most Holy Names of Jesus, Mary, and Joseph. Yet let him beware lest by longer prayers and exhortations he bring annoyance to them. - He himself, with those assisting, should recite a few prayers for them; should bless them, and several times impart absolution anew[2], especially before he departs.

[2] "According to the prescription and mind of the Roman Ritual, let the pastor of souls be diligent in visiting the sick and those in agony, even after they have received the last sacraments ... and, after there has been elicited from them, if they can, a new act of confession and contrition, let him anew, repeatedly, give absolution." (*Conc. Plen. Balt. II*, n. 116.)

He will likewise help them to gain indulgences, especially the plenary indulgence in the article of death, according to those things which we shall set forth where we treat of Indulgences. But he will recall to memory that, for gaining these, the interior dispositions of hatred of sin and love of God are more profitable than the recitation of many prayers.

568. On helping those in agony. (a) "As the sickness grows heavier," says the Ritual, "the parish priest shall visit the sick person more frequently, and shall not cease diligently to help him unto salvation; and he shall admonish that, when danger is imminent, he be called at once, so that he may be present to the dying person in time." By these words is inculcated the obligation of helping those in agony by prayers, exhortations, and especially by repeated absolution, lest perhaps they have internally committed some mortal sin and die in it. The gravity of this obligation depends on the condition of the dying; if they have lived in a Christian manner and are surrounded by pious persons, the presence of the confessor is indeed useful, but not necessary; but if they have led a vicious life and remain exposed to grave temptations, or, a fortiori, if up to this time they have not received the last sacraments, the parish priest is bound under grave obligation to attempt all things, while breath remains, for procuring their salvation. But if he is legitimately impeded, let him entrust this office to another priest. Let him also exhort pious persons who live in the neighborhood to visit the dying and to help them to die in a Christian manner.

569. (b) When the time of expiring is at hand, the priest, or, if he is lacking, a pious person, should devoutly recite the commendation of the soul, as it is contained in the Ritual or in prayer books. Short aspirations should be suggested to the one in agony: "Jesus, receive my spirit. - Into Thy hands, O Lord, I commend my spirit. - Holy Mary, my mother, help me in the hour of death. - St. Joseph, succor me, etc."

(c) As soon as death is established, let the *Subvenite* be recited for the departed, and let other prayers be poured forth. Before he departs, let the priest console the relatives, and admonish them that prayers will profit the departed more than tears, that we all shall die shortly, and that the best preparation for death is a Christian life.

§ III. On Abuses to Be Avoided in the Administration of This Sacrament

There are especially two: the absolution of an accomplice and solicitation to shameful things.

I. On the Absolution of an Accomplice

570. Lest confessors be able to abuse their authority for sinning more freely with penitents, Benedict XIV prohibited, under penalty of excommunication, that they sacramentally hear and absolve an accomplice in a shameful sin licitly and validly, outside the case of extreme necessity:

[1] Benedict XIV, Bull *Sacram. Poenitentiae*, June 1, 1741; *Apostolici muneris*, February 8, 1745; *Inter praeteritos*, December 3, 1749; Pius IX, Bull *Apostolicae Sedis*, October 11, 1869; St. Alphonsus, n. 553-556; Lehmk., n. 935-938; Marc, n. 1780-1784; Haine, q. 92; Genicot, n. 351-354; Noldin, n. 377-380; D'Annibale, *In Constit. Apost. Sedis*, Prati, 1894, n. 83-87; Bucceroni, *Comment. de Constit. Bened. Sacram. Poenitentiae*, Rome, 1890; Berardi, *De Sollicitatione et Absolutione complicis*, Faenza, 1897; Rota, *Enchiridion confessarii et judicis ecclesiastici*, Turin, 1884, n. 122-163; S. Many, *De Absol. complicis*, ap. *Canoniste*, June, July 1895.

"To individual priests, secular as well as regular ... we interdict and prohibit that any of them, outside the case of extreme necessity, namely in the article of death itself, and then with any other priest lacking who could perform the office of confessor, should 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 for absolving any person whatsoever from a fault of this kind therefore being removed from him by the law itself, so indeed that the absolution, if he imparts any, is entirely null and void."

The Code at once confirms and explains this prohibition (c. 884): "The absolution of an accomplice in a shameful sin is invalid, except in danger of death; and even in danger of death, outside the case of necessity, it is illicit on the part of the confessor." Moreover, from can. 2367, "one absolving or pretending to absolve an accomplice in a shameful sin incurs by the fact itself an excommunication reserved in a most special manner to the Apostolic See."

For these documents to be rightly understood, it must be explained 1° what complicity in a shameful sin is; 2° what penalties are incurred by those who absolve an accomplice.

1° On Complicity in a Shameful Sin

571. That the matter may be better declared, it must be known 1° what here is understood by *shameful sin*, and 2° by *accomplice* in this sin.

(A) The shameful sin of which there is question, considering the cited documents and the decrees of the Congregations, is any sin whatsoever against the sixth precept of the Decalogue, which is external, - grave not only as internal, but also insofar as external, - and certainly committed.

572. (a) Therefore any sins whatsoever against other precepts of the Decalogue are excluded, and also internal sins of lust, because the Church punishes only external acts.

(b) But there are included not only consummated sins of lust, but also those which are not consummated, provided they are grave, such as touches, embraces, kisses, looks, conversations; for Benedict XIV speaks in a general manner of a shameful sin against the sixth, without any restriction. Certain authors formerly had thought that shameful speech was not included; but the Holy Office declared, May 28, 1873, that under the name of shameful sin are comprehended also those sins "which consist in mere conversations and looks, which import complicity."[1]

[1] Ap. Bucceroni, op. cit., n. 68.

Yet it is required that the sin be grave, because the Church does not punish slight delicts by censure; and indeed grave both internally and externally, as was said concerning a reserved sin (n. 431), because here there is question of a certain reservation or limitation of jurisdiction. Hence an external act lightly shameful does not fall under this law, even if it proceeds from a gravely libidinous affection; the same must be said of an act materially grave, but formally light because of inadvertence or imperfect consent.

It is also required that the sin be certainly grave; hence the penalty is not incurred if there is a doubt either of fact, for example, concerning advertence, consent, or the objective gravity of the sin; or of law, for example, if it is controverted whether such a species of sin falls under this law.

But it is not required that the sin have been committed by the priest after the priesthood had already been received; for the law is wholly general, and includes also those acts which were committed by the confessor while he was still a layman, as is established from the decree of the Sacred Penitentiary, January 22, 1879, where it is declared[1]: "that a confessor cannot absolve an accomplice with whom before the priesthood, in boyhood, he acted shamefully, unless he is morally certain that the same person has already been directly and validly absolved by another confessor from the sin of complicity."

[1] Ap. Lehmk., n. 935, note 1. - Ball. P., n. 649 and Genicot, n. 352, indeed contradict; but their authority, however great it may be, cannot destroy the force of this decree.

573. (B) What an accomplice in a shameful sin is must now be declared. Now complicity in this matter imports the consent of two persons in the same shameful, grave, and external sin, whether each cooperates, as in mutual embraces, conversations, etc.; or only one acts, provided the other consents externally and at the same time internally: moreover consent is sufficiently present if this latter in no way resists.

(a) Hence there does not fall under the law an act which is mortal on one side, but only venial on the other; nor an act externally light although internally grave on both sides, because of the libidinous affection of both; nor an act, however grave, to which the other does not consent, indeed to which he has not given external consent, although internally he assents. Hence if someone has sinned with one resisting, or sleeping, or fully drunk, or destitute of the use of reason, there is not complicity.

(b) Complicity must be certain; hence if it is doubted whether either party sinned mortally, the act does not fall under the law. But complicity can be certain, even if that which had been promised is not fulfilled; for example, if two agree concerning copula to be had, although in fact copula is not had; or if a man induces a priest to sin with his own wife, and the priest furnishes assent, although afterwards he does not commit the sin; for in these or similar cases complicity consists in the evil purpose expressed by both in words or signs.

(c) But the accomplice can be either a man or a woman, either pubescent or prepubescent, provided he or she is capable of mortal sin; for Benedict XIV in no way distinguishes.

2° On the Penalties Passed Against Complicity in a Shameful Sin

574. Complicity of this kind is struck by a twofold penalty: 1° absolution given to the accomplice is not only illicit, but also invalid, except in the case of necessity; 2° the priest absolving the

accomplice incurs by the fact itself an excommunication reserved in a special manner to the Supreme Pontiff.

On the Illicitness and Invalidity of the Absolution of an Accomplice

According to Benedict XIV (above, n. 570), any priest whatsoever, secular or regular, is strictly prohibited to receive the sacramental confession of a person who is an accomplice, and at the same time is deprived of jurisdiction for absolving him or her validly, outside the case of extreme necessity.

575. (A) General rule, outside the case of necessity. (a) The confessor cannot directly absolve his own accomplice validly from the sin itself of complicity; this is certain from the very text of the law. Therefore in this matter the common error of the faithful is of no profit, nor a fortiori the good faith of the penitent, because here there is not question of a multitude, which the Church may wish to favor, but of two accomplices, whom she deservedly wishes to punish. Hence if the penitent is absolved from the sin of complicity by the accomplice, he is bound to repeat his confession before another priest. - Nor can the priest absolve his own accomplice from the sin of complicity by force of any Jubilee whatsoever or of any privilege whatsoever, whether granted to himself or to the penitent: for this is expressly declared by Benedict XIV.[1]

[1] Bull *Sacram. Poenit.*, § 5.

576. (b) According to the more probable opinion, the priest can validly absolve his own accomplice from other sins, that is, from all those which are distinguished from the sin itself of complicity; for, according to the cited Bull (n. 567), the priest is deprived of jurisdiction for absolving from a fault of this kind, but not from others. Yet it is not licit to receive the sacramental confession of an accomplice, even as to other sins, if there is question of sins which are accused in a confession where the sin of complicity is deliberately kept silent. This is confirmed from a response of the Sacred Penitentiary[2], May 16, 1877: "Whether he incurs censures ... who indeed absolved an accomplice ... who did not declare the sin of complicity in confession?" ... The response was: "The privation of jurisdiction for absolving an accomplice in a shameful sin, and the attached excommunication, insofar as the confessor shall have absolved him, is in order to the shameful sin in which the same confessor was an accomplice."

[2] Ap. *Canoniste*, 1895, p. 334-335.

577. Corollaries. (a) If the penitent has already been directly and validly absolved from the sin of complicity by another confessor, the priest who is an accomplice can validly absolve him from other sins.[3] This was formerly disputed, but the matter was made certain from a decree of the Holy Office, May 29, 1867, where it is declared that "it is free to the confessor to absolve the person who is 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 the person, although already absolved from the sin of complicity." - It is said "directly absolved"; for if the sin of complicity has been remitted only indirectly, because, for example, it had been inculpably omitted, the priest who is the accomplice cannot remit it, since as to this same sin he lacks jurisdiction.

[3] Apud Bucceroni, *Comment. in Bull. Apostol. Sedis*, n. 37.

Probably also, according to some, if the sin of complicity, already directly absolved, is again accused with others, the priest who is the accomplice is not prohibited from absolving from it; for the reservation of this sin has been taken away by the previous absolution.

But in both cases, on account of the honor of the sacrament and the security of the confessor and of the penitent, it is altogether expedient that the priest not hear the confession of an accomplice where there are other priests.

(b) If the priest in good faith absolves an accomplice not only from other sins, but also from the sin of complicity not yet directly absolved - for example, because he does not recognize his own accomplice, or because the penitent inculpably omits the sin of complicity - probably the absolution is valid, in this sense, that other sins are directly remitted and the sin of complicity indirectly; the reason is that the Supreme Pontiff prohibits and renders void only the direct absolution of this sin granted by him who has known himself to absolve from the sin of complicity. - Yet a sin thus indirectly remitted must be accused before another confessor, that it may be directly absolved.

But if the penitent in bad faith keeps back the sin of complicity, and accuses other sins, no sin is remitted, because of the defect of formal integrity, and therefore the confession must be repeated in its entirety.

578. (B) Exceptions. (a) In the case of extreme necessity, i.e., in the article of death, the priest always validly absolves the accomplice; and licitly, if any priest whatsoever is lacking who morally can receive the confession of the dying person.

The article of death is understood of grave danger of death, as above, n. 399.

He acts illicitly and incurs excommunication who even then absolves an accomplice when another priest is present, whether approved or not. - Yet except the case if the other priest is unwilling to hear the confession, or if the person who is the accomplice altogether refuses to confess sins to him[1]; or if the other priest cannot be called or approach without grave infamy or scandal; for then this other priest cannot morally hear the confession. - Except also, more probably, if the other priest is notoriously suspended, excommunicated, or interdicted, because a priest of this kind could not be called to hear the confession of the dying person without infamy of the priest who is the accomplice, or scandal.[2]

[1] Thus the Code, c. 2367: "even in the article of death, if another priest, although not approved for confessions, can receive the confession of the dying person without any grave infamy and scandal about to arise, except the case in which the dying person refuses to confess to another."

[2] Thus Rota, n. 156; Many, ap. *Canoniste*, p. 340; Lehmk., n. 937.

579. (b) In the case of graver necessity - when, for example, the ecclesiastical and divine precept of confession is urgent, and the accomplice in no way has, nor for a long time can have, the supply of another confessor, as sometimes occurs in mission places - more probably the priest can validly and licitly absolve the accomplice, directly indeed from ordinary sins and indirectly from the sin of complicity, provided there is present on neither side any grave danger of relapse.[1] - For when divine law and ecclesiastical law concur, the former must prevail; but in

this case the divine precept of confession is urgent, and it cannot be fulfilled except by approaching the priest who is the accomplice; therefore it must be preferred to the ecclesiastical law prohibiting absolution of an accomplice. - Yet it is said provided there is not present a grave danger of relapse: for if it were present, natural law, which is preferred to a positive divine precept, prohibits that the confession be instituted.

[1] Rota, n. 148; Baller. P., n. 648; Many, l. c., p. 335-337. - Indeed, some say that the priest licitly and validly absolves the accomplice even directly, when there is grave danger that this person during the whole time of his or her life will find no other priest who may absolve him or her directly from the sin of complicity: because this case almost falls back into danger of death. Thus Bucceroni, op. cit., n. 67; D'Annibale, *Summula*, III, n. 324, note 38; Ball. P., n. 655.

(c) Some also say that the absolution of an accomplice is valid whenever the absolving confessor is excused from excommunication because of one of the causes soon to be explained; for the nullity of absolution is a certain penalty imposed against the penitent; and if the confessor is exempted from penalty, it is equitable that the penitent likewise be exempted.[2]

[2] Thus D'Annibale, n. 87; Scavini, n. 485; Pennacchi, *Comment. in Bull. Apost. Sedis*, t. I, p. 312.

On the Excommunication Passed Against Those Absolving an Accomplice

580. Those absolving an accomplice in a shameful sin incur by the fact itself a major excommunication reserved in a most special manner to the Supreme Pontiff, as is established from can. 2367 of the Code.

For incurring this excommunication certain conditions are required: (A) That the confessor directly absolve or pretend to absolve from the sin of complicity. Hence (a) the hearing of the confession does not suffice, but absolution or the simulation of absolution is required. Nor does absolution from ordinary sins suffice, but direct absolution from the sin of complicity is required, as is clear from what has been said above.

(b) Yet the simulation of direct absolution suffices, by which the confessor so acts externally that he seems to grant absolution, for example, if he utters the words of absolution without the intention of absolving, or pronounces the form while omitting an essential word, or recites a prayer over the penitent, so that the latter thinks himself to be absolved. This indeed was formerly denied by many, notwithstanding contrary decisions of the Sacred Penitentiary; but the controversy was ended by an authentic decree of the Holy Office, approved by the Supreme Pontiff, December 10, 1883: "All commentators on the Constitution *Apostolicae Sedis* teach that that confessor is not subject to excommunication who pretends to absolve an accomplice in a shameful sin, but in reality does not absolve. Yet the Sacred Penitentiary declared the contrary, March 1, 1878. Can the petitioner permit that in his Seminary the aforesaid opinion of the Commentators, opposed to the response of the Sacred Penitentiary, be taught? - Indeed the Eminent Fathers responded: In the negative, communication having been made with the Most Holy."[1] - This is confirmed from can. 2367 of the Code already cited.

[1] Ap. *Canoniste*, l. c., p. 404.

581. (B) That the confessor have recognized the accomplice and knowingly and willingly absolved; otherwise the absolution of an accomplice will not be formal. Indeed invincible ignorance

excuses from this excommunication, or vincible ignorance which is not crass and supine. Hence, - (a) if one in no way recognizes the accomplice, he does not sin by absolving, nor does he incur the censure. (b) Likewise, if the confessor, when he sinned, was in no way known by the accomplice (for example, because he was dressed in secular garb), he is not bound to betray himself to the penitent by declaring that he cannot absolve him; and therefore, more probably, he does not incur excommunication by absolving. But if previously both knew each other mutually as accomplices, it is not necessary that they recognize each other mutually in the sacred tribunal, but it suffices that the confessor notice that the penitent is his accomplice.

(c) Nor does a priest absolving an accomplice incur excommunication, when the accomplice did not declare the sin of complicity in confession, unless directly or indirectly he induced the penitent not to manifest such a sin: directly indeed, by expressly suggesting that such a sin must be kept silent in confession; indirectly, by persuading that such an act is not a sin, or is not so grave that he or she should be troubled about it. For the Sacred Penitentiary declared, February 19, 1896, that "the excommunication ... is not escaped by confessors absolving or pretending to absolve that accomplice who indeed does not confess the sin of complicity, from which he has not yet been absolved, but conducts himself thus for this reason, that the confessor induced the penitent to this, whether directly or indirectly."[2] The same is established by the Code, c. 2367, § 2.

[2] *Acta S. Sedis*, XXVIII, p. 444-445.

(d) But if the confessor doubts whether the penitent is an accomplice or not, he must prudently question him, so that he may be able to uncover the matter; but if the doubt perseveres, he can absolve, without incurring the censure, from what has been said, n. 573. - But if he does nothing to resolve the doubt, he does not escape excommunication, because his ignorance is crass and supine; moreover, this does not excuse from censure in this case, as the Holy Office declared[3], January 13, 1892.

[3] *Acta S. Sedis*, XXIV, 625: "Whether those absolving an accomplice in a shameful matter with crass and supine ignorance incur this excommunication or not? - In the case, they incur it."

582. (C) When a priest absolves an accomplice in the article of death, he does not incur excommunication, unless there is present another priest who, without grave infamy and scandal, morally could receive the confession of the dying person, as was said above, n. 578.

Concerning absolution from this censure, reserved in a special, indeed in a most special, manner to the Supreme Pontiff, see what we said above, n. 446-447. - When a priest has absolved his accomplice three times, the Sacred Penitentiary is accustomed to command him to lay aside the office of confessor; but since this is often morally impossible in regions where there are few priests, petition must be made that this clause not be inserted or that dispensation from it be granted.

II. On Solicitation to Shameful Things

583. Lest confessors abuse the sacred tribunal with impunity for soliciting penitents to shameful things, Benedict XIV, adhering to the footsteps of Pius IV and Gregory XV, commanded that the crime of solicitation perpetrated by a confessor must be denounced, and indeed under penalty of denied absolution. The Code renewed this law, can. 904, 2363, 2368, striking with

excommunication those who neglect to denounce within a month the confessors by whom they have been solicited.

[1] Cf. Pius IV, Letter *Cum sicut nuper*, April 15, 1561; Gregory XV, Bull *Universi*, April 30, 1622; Benedict XIV, Bull *Sacram. Poenitentiae*, June 1, 1741; Instruction of the Holy Office, February 20, 1867, ap. *Collectanea*, n. 948; Pius IX, Bull *Apost. Sedis*, October 11, 1869; Giraldi, *Expositio Juris Pontificii*, Rome, 1830, t. II, p. 630-645; St. Alphonsus, n. 675-705; D'Annibale, op. cit., n. 179-183; Rota, op. cit., n. 164-402; Bucceroni, op. cit.; Berardi, *De Sollicitatione*; Lehmk., n. 975-978; Haine, q. 93-96; Baller. P., n. 1085-1155; Genicot, n. 394-400; Noldin, n. 381-389; S. Many, ap. *Canoniste*, Sept., Dec. 1895.

Namely, Benedict XIV commands Ordinaries to proceed "against all and each priests, secular as well as regular ... who shall have attempted to solicit or provoke any penitent, of whatever person that one may be, either in the act of sacramental confession, or before, or immediately after confession, or on the occasion, or under the pretext of confession, or even outside the occasion of confession, in the confessional, or in another place destined or chosen for hearing confessions, with the simulation of hearing confession there, to dishonorable and shameful things, whether by words, or by signs, or by nods, or by touch, or by writing then or afterwards to be read, or who with them by rash daring shall have had illicit and dishonorable conversations or dealings ... Moreover let all and each priests appointed for hearing confessions remember that they are held and bound diligently to admonish their penitents whom they have known to have been solicited by others, as above ... concerning the obligation of denouncing to the Inquisitors, or to the aforesaid Ordinaries of places, the person who has committed the solicitation, even if the priest is one who lacks jurisdiction for validly imparting absolution, or the solicitation between confessor and penitent was mutual, whether the penitent consented to the solicitation, or in no way furnished consent, or a long time after the solicitation itself has already elapsed, or the solicitation was performed by the confessor not for himself, but for another person."

For understanding this, four things are to be explained: 1° the conditions required for constituting the sin of solicitation; 2° the obligation of denouncing those who solicit; 3° the manner of making the denunciation; 4° the penalties against those who solicit.

1° On the Conditions Required for the Sin of Solicitation

584. The sin of solicitation, considering the laws and decrees set forth above, can be defined: a provocation to shameful things, made by a priest as confessor, with some relation to confession.[1] Therefore three conditions are required:

[1] It is therefore distinguished from the sin of complicity, which can be committed without any relation to confession, even before someone has been advanced to the priesthood.

(A) That there be a provocation to shameful things, that is, some action, either dishonorable in itself, or indifferent in itself but externally manifesting a shameful affection, by which the confessor attempts to induce the penitent to some sin against chastity; or, in other words, it is scandal given to the penitent in the matter of lust. Moreover this provocation can be made either by deeds, or, according to Benedict XIV's own words, "whether by words, or by signs, or by nods, or by touch, or by writing." Hence, -

585. (a) Solicitation to any other sin whatsoever, even a graver one, for example, homicide, does not fall under the law.

(b) The crime of solicitation must be gravely culpable, or induce to grave acts against chastity, whether they are grave in themselves, or from a libidinous affection externally manifested. For a venial sin cannot be punished by such grave penalties. Moreover certain acts light in themselves, for example, to kiss a woman, must easily be judged mortal if they occur in the act of confession, because of irreverence and scandal. Some have thought that even light acts are comprehended under the law, because of this response of the Holy Office, February 11, 1661: "Whether a confessor, by soliciting because of smallness of matter, must be denounced?" - Resp.: "Since in venereal matters there is no smallness of matter, and, if there were, in the present matter there is none, they judged that he must be denounced and that the contrary opinion is not probable."[2] But in this response there is question of venereal acts, in which there is no smallness of matter, at least when they are committed in relation with confession, but not of acts lightly dishonorable which are not properly venereal.

[2] Ap. Giraldi, op. cit., p. 632.

Hence, if a confessor praises a woman for her beauty in confession, or declares that he loves her from his whole heart, judgment must be made from the circumstances: if it is externally established that these things are said from shameful love in order to induce her further into sin, there is certainly solicitation; otherwise, if it is done from levity or imprudence. - The same must be said of gifts or little presents given in the sacred tribunal, or of an invitation to visit the confessor; from the circumstances it must be judged whether a depraved intention is present or not.

(c) It must be certain, all things being diligently inspected; therefore if there is doubt either in law or in fact, denunciation is not to be made, since in doubt odious things are to be restricted.

(d) But it is not required that the solicitation be efficacious, or that the person solicited consent; for in the Bulls it is said that he who has attempted to solicit or provoke must be denounced. Yet the solicitation must be complete as solicitation, i.e., truly furnish scandal; hence those preparatory words do not suffice which are sometimes uttered so that it may be seen whether the person can be tempted with some hope.

(e) It matters little whether the person solicited is a man or a woman, pubescent or prepubescent; whether the solicitation is to sin with the confessor, or alone, or with a third person; whether the confessor immediately solicits the penitent to sin, or, through the mediation of the penitent, induces another person to a sin of lust. In all these cases there is truly solicitation to shameful things.

586. (B) That the solicitation be made by a priest as confessor. Hence, -

(a) If the one soliciting is not a priest, but either a cleric, or a layman, or an interpreter employed in confession, there is not the obligation of denouncing. Yet the Holy Office can proceed against anyone, even a non-priest, who would presume to receive confessions, and would solicit on this occasion. Under the name of priest comes any presbyter whatsoever, secular or regular, whether approved or not. But it is not certainly established that bishops are comprehended under this law, because, since we are in an odious matter, special mention seems necessary for them to fall under the law. Yet if any

should be guilty of this crime (which may God avert!), natural law, if not canonical law, demands that they be denounced to Superiors, lest they become the cause of spiritual ruin.

The penitent, even a priest, who solicits the confessor to shameful things is not to be denounced: for he cannot be regarded as a priest confessor.

(b) If the solicitation is mutual between confessor and penitent, the priest is to be denounced. Moreover it is held to be mutual when the confessor, first solicited by the penitent, himself, having obtained this occasion, afterwards solicits the penitent; or when, solicited by the penitent to one species of shameful thing, he solicits to another.

(c) But if the confessor only consents to the penitent soliciting, without himself soliciting in any way, it is disputed whether he is to be denounced. The more benign opinion, which St. Alphonsus defends (n. 681), is truly probable; and therefore the obligation of denouncing is not to be urged in the case.

(d) If solicitation is made by a priest, not as confessor, but in the administration of another sacrament, there is no place for denouncing.

587. (C) That the solicitation be made with some relation to confession, that is, according to the words related above (n. 583):

(a) Either in the act of sacramental confession, or from the time when confession is begun or the *Confiteor* is recited until the last words of absolution. Moreover it must be noted that not only he is to be denounced who immediately solicits to shameful things, but also he who solicits mediately, namely by doing or saying something which in itself is indifferent, but afterwards from the circumstances is determined to something shameful. Thus if a priest, in the act of confession, says to a woman: "wait for me at home," and afterwards solicits her at home, these words, indifferent in themselves, are, from the circumstances, as it were the beginning of solicitation and therefore already the solicitation itself. Yet the matter can be doubtful if the priest does not solicit immediately at home, but only after another honest business has been transacted: then all the circumstances must be diligently weighed, so that from them it can be presumed what the prevailing intention of the confessor was;[1] and if doubt remains, the obligation of denouncing is not to be urged.

[1] Concerning this matter S. Many discusses wisely, ap. *Canoniste*, p. 519-521.

588. (b) Or before, or immediately after confession. These words must be understood strictly, so that no external action or conversation intervenes between the confession and the solicitation. Therefore the confessor is to be denounced who solicits a penitent already kneeling, or asking to confess, and afterwards hears his confession; or immediately after absolution has been given. This holds even if the solicitation is only mediate, for example, if immediately after confession he leads the penitent into the sacristy or into his own house, and there immediately solicits him; or if he gives a paper to be read afterwards, in which he solicits.

But if between the confession and the solicitation some other action intervenes, for example, speech concerning indifferent matters, or some business, or the hearing of another penitent's confession, there is not the obligation of denouncing, at least by force of this clause.

589. (c) Or on the occasion or under the pretext of confession. 1) On the occasion of confession heard, when the confessor, thus knowing the inclinations, temptations, or sins of the penitent, thence solicits him, provided there are had certain external indications that the solicitation arises from the hearing itself of confession;[2] - furthermore on the occasion of confession asked for, namely when the penitent here and now asks to confess and the confessor immediately solicits, deferring the confession to another time, even if afterwards the confession does not occur; but if someone asks to confess not immediately, but on another day or at another hour, and the confessor solicits him, this clause is not verified.

[2] When solicitation arises not from the heard confession, but on the occasion of sacramental knowledge insofar as the confessor, from things heard in confession, takes an opportunity of visiting and soliciting the penitent, grave authors think that solicitation properly so called is not verified. Cf. Lehmk., n. 976; D'Annibale, *Summula*, n. 367, note 11, where nevertheless he concedes that the practice of the Congregations is different.

2. Under pretext of confession, when the confessor, intending to solicit the penitent, uses confession as a veil for covering a depraved end, for example, he invites someone to confess so that he may more easily induce him to shameful things; or he approaches the house of a sick person, and, after certain words concerning confession in order to remove those standing by, solicits the sick person.

590. (d) Or, even outside the occasion of confession, in the confessional, or in another place destined or chosen for hearing confessions, with the simulation of hearing confession there. Now a place destined for hearing confessions is either the sacristy or the place where, according to diocesan Statutes, confessions are customarily heard; a chosen place is any place whatsoever, from the request of the penitent or of the confessor, here and now serving for hearing confession, for example, the room of the sick person. The simulation of confession takes place whenever the confessor and the penitent, by mutual agreement, in one of the three designated places, so conduct themselves externally that those standing by understand confession to be heard. Therefore the confessor is to be denounced who in one of these places solicits the penitent, simulating confession. - But if someone, sitting in the confessional, were to solicit a person standing or sitting before him, he does not fall under the law, because confession is not simulated.[1]

[1] Thus from a decree of the Holy Office, 1661, ad 15, ap. Giraldi, op. cit., p. 633.

2° On the Obligation of Denouncing Those Who Solicit

591. (A) On the obligation itself. By natural law those who certainly know of solicitation are bound under grave obligation, from charity, to denounce the one soliciting, lest he cause the ruin of many souls. Benedict XIV confirmed this natural obligation by a positive precept for solicited penitents (above, n. 583), and the Code, which strikes with a major excommunication *latae sententiae* reserved to no one the faithful person "who knowingly shall have omitted to denounce within a month him by whom he was solicited" (can. 2368, § 2).

From this it is clear that only solicited penitents incur this excommunication; others who certainly know the fact of solicitation are indeed bound to denounce under grave obligation, as the Holy Office

declared,[1] but not under penalty of excommunication.

[1] Instruction of the year 1867, § 3, where it is said: "Denunciations of this kind can be omitted by no one without mortal fault."

Moreover, for solicited penitents to incur excommunication, it is required (a) that the obligation of denouncing be certain; (b) that the omission of denunciation be culpable, i.e., with knowledge of the obligation and of the censure, and at the same time without legitimate excuse; (c) that the time useful for denunciation have elapsed, i.e., one month from the time at which the solicited person knew his or her obligation and the censure attached to it.

Hence absolution cannot be given to this penitent unless he has made the denunciation or at least has seriously promised to make it. But if someone has incurred this excommunication, and afterwards has denounced the one soliciting, he can be absolved by a simple confessor, since the excommunication is reserved to no one.

592. (B) Who are bound to denounce? By ecclesiastical law, solicited penitents are bound to denunciation; by natural law, all who otherwise, from persons worthy of faith, certainly know that this crime has been committed, even prepubescents;[2] unless, however, they have known it under an entrusted secret; for the natural right of an entrusted secret is prior, and demands that this secret be faithfully preserved.

[2] Yet prepubescents probably cannot be compelled to this before they have attained puberty; and if they denounce before that time, their testimony does not furnish juridical proof, but only an indication for inquiring further. Cf. Rota, n. 388-389.

(a) Nor is it required that the crime can be juridically proved, but it suffices that it be morally certain; likewise it must be denounced, even if hidden, or already committed a long time ago.

(b) This is true even if the confessor has already been amended, except probably the case in which the amendment has been so conspicuous and enduring that no fear of relapse can be had, especially if he has already entered a Religious Order.

(c) He must be denounced even if he has already been convicted and punished, if he offends again; indeed if he has not been fully convicted and punished, although he does not offend again; yet probably the obligation ceases if he has been fully convicted and punished and has not offended again, since the end of the law has already been obtained.

(d) But he who is already dead is by no means to be denounced, because the whole end of the law has already ceased, namely both the amendment and the punishment of the guilty person. The same can probably be said if the offender is already broken in strength and about to die, so that he is likely never to hear confessions in the future.

But the soliciting confessor himself is not bound to denunciation, because no one is bound to betray himself; hence neither is he bound to admonish the solicited person concerning the burden of denunciation. - Nor probably are the blood-relatives and relatives by marriage of the soliciting priest bound, at least in the first degrees, because they are considered one moral person with him, and graver evils can follow from such a denunciation.

593. (C) What cause excuses from denunciation? - Principle: Since here there is question of a positive precept of the Church, although a very grave one, a very grave inconvenience, even private, excuses from its execution; unless, however, public scandal or common damage is at the same time introduced: for then by natural law denunciation must be made, unless there is present a very grave inconvenience which is also public.

594. Conclusions. (a) A grave danger of life, reputation, or fortune, about to arise from denunciation, excuses, provided it is prudently estimated and not fictitious; extrinsic to the denunciation, and not intrinsic to it, such as the fear of incurring the indignation of the one soliciting[1], or shame in manifesting the solicitation, or other things of this kind, which do not excuse; nor avoidable in any way: for if it can be avoided, means for removing it must be employed and the denunciation made.

[1] Otherwise denunciation can and must be made in such a way that the one denouncing is not known by the one soliciting; this is often possible; for Superiors cannot proceed against the offender except after two or three accusations, so that the one soliciting often cannot know by whom he was denounced.

Hence he would be excused who could not denounce the one soliciting without betraying himself as guilty. Yet this rarely happens; for the solicited penitent can keep back his own consent, nor is he questioned about it; hence, even if intercourse intervened, or the solicitation was mutual, the penitent is not bound to manifest this, but can say: such a confessor conducted himself badly with me, or spoke badly in the matter of chastity, and I can declare nothing further.

(b) Moral impotence of personally approaching the competent judge likewise excuses, for as long as it lasts; for denunciation, as being judicial, must be made personally and by the living voice, under penalty of nullity, and therefore those who cannot appear before the judge are dispensed from it. But they are bound to employ means which render it possible, namely to manifest the matter to the Bishop, by letter or through a procurator, so that he may be able to provide, for example, by delegating an ecclesiastical man before whom the solicited person can make the denunciation.

(c) A danger of publicity and scandal prudently estimated also excuses; yet this occurs very rarely, since the denunciation must be made and remain most secret.

(d) Sometimes also to a penitent wholly unwilling to denounce there is granted a dispensation from the burden of denunciation, either total (which rarely happens, at least the first time), or partial, namely from certain juridical solemnities.

3° On the Manner of Receiving and Making the Denunciation

595. (A) On the manner in which the confessor must conduct himself. (a) The confessor to whom a case of solicitation is manifested must weigh whether the person denouncing is entirely worthy of faith; for sometimes women, from hatred or envy, or because their solicitations have been repelled, etc., falsely denounce innocent priests. Therefore let him seriously admonish them concerning the atrociousness of the crime of false denunciation and concerning the most grave penalty inflicted on this sin, namely that it is reserved to the Supreme Pontiff.

(b) Let him diligently consider whether, all things being inspected, the obligation of denouncing is certain; if he cannot immediately judge the matter, let him admonish the penitent to return to him on

another day.

(c) If the obligation of denouncing is certainly established, the confessor is regularly bound to admonish the penitent concerning this obligation, although the latter may be in good faith; for the Holy Office says, in the Instruction of the year 1867, n. 3: "Concerning this matter penitents must be admonished, nor does their good faith excuse from admonishing and instructing them." The reason is that the public good, which generally demands this denunciation, must prevail over the private good. Yet if it is certainly foreseen that the admonition will in no way be profitable, but will be harmful, the confessor can defer the admonition, awaiting a more opportune time, so that he may provide at the same time for the private good of the penitent and the good of the Church. If there is no hope ever of obtaining the denunciation, he may have recourse to Superiors for a dispensation.

(d) If the penitent, admonished concerning the obligation of denouncing, is unwilling to make it, let the confessor inquire whether there is an excusing cause; if there is some legitimate cause, let the obligation not be urged until the cause has ceased; but if there is no reasonable cause, in the best manner in which it can be done let him persuade the penitent to denounce, or at least to promise to denounce at an opportune time, by explaining how it can be done without any injury to himself or herself; if he cannot obtain even this, let him have recourse to ecclesiastical Superiors for a dispensation, and let him not absolve before the dispensation has been obtained, unless, however, in the article of death, in which absolution can be given whenever good faith can probably be presumed.

596. (B) On the manner of making the denunciation. (a) The denunciation must be made either to the Inquisitors, where they still exist, or to the Ordinary. By this name here the Bishop is to be understood[1], and, when he has died, the capitular Vicar (in the United States, the Administrator), but not the Vicar General, unless he has a special mandate for this. The Ordinary to whom the denunciation must be made is the Ordinary of the denounced priest, or of the place where the delict was perpetrated; or, according to some, the Ordinary of the solicited penitent, who should transmit the denunciation to the Bishop of the offending priest.

[1] The Bishop is the competent judge in this matter, even as to exempt Regulars. In mission places, the Vicar Apostolic can receive the denunciation, from the decree of the Holy Office, June 20, 1883, ap. *Collectanea*, n. 949.

(b) Since denunciation is an act truly judicial, regularly the solicited person, or another who certainly knows the crime, must personally present himself before the Ordinary or his delegate, in the presence of an ecclesiastical man who acts the part of notary; and, after an oath has been furnished, by the living voice, not in writing, make the denunciation, expressing the name of the soliciting priest, or, if this is unknown, his office, duty, age, and other special signs by which he can be recognized. Moreover the one denouncing must manifest his own name and subscribe; but if he does not know how to write, let him put the sign of the cross. Finally let him emit an oath concerning religiously preserving secrecy about all things which have been transacted.[2]

[2] The norm to be followed in this examination is described in the Instruction of the Holy Office, July 20, 1890, ap. *Acta S. Sedis*, XXV, p. 451-454.

(c) But since often the judicial order cannot be observed, the Bishop can concede that the denunciation be made before a priest (for example, the parish priest) delegated, without a notary; or even before a confessor specially deputed for this office (which nevertheless is not done without inconvenience).

(d) But before the Bishop proceeds against the one denounced, according to the recent Instruction of the Holy Office, August 6, 1897[3], he must explore whether the women or men denouncing are of good name, and are not led to accuse either by enmity or by some other human affection: "Therefore the Ordinary, as often as he shall have received some denunciation concerning the unspeakable crime of solicitation, shall proceed immediately to the diligences[4]. To this end, either by himself or through a priest specially delegated by him, he shall call (separately, of course, and with the circumspection which is due) two witnesses, as far as this can be done, from the ecclesiastical body, but in any case above every exception, who know well both the one denounced and all and each of the denouncers, and them, under the sacredness of an oath concerning the truth to be spoken and concerning the secrecy of the Holy Office to be preserved[5], he shall judicially interrogate, referring the testimony in writing, according to the following formula; moreover, an authentic copy of each testimony and at the same time of the respective denunciation he shall directly and by a safe way transmit as soon as possible to this Supreme Congregation ... But if only two witnesses cannot be found who know at the same time the one denounced and all and each of the denouncers, more must be called. Namely, in this case as many witnesses as above must be called as will be necessary so that a double testimony may be had concerning the one denounced and each denouncer."

[3] Ap. *Acta S. Sedis*, XXX, p. 249-251; in the same place one may find the formula to be used in the interrogation of witnesses.

[4] They call *diligentiae* the judicial investigation concerning the one denounced and the denouncers described below.

[5] Concerning that secrecy of the Holy Office, *Canoniste Contemp.*, July-August 1898, p. 433-453, discusses very well.

Thence it follows that the Bishop cannot judicially proceed against the one denounced before he has transmitted the aforesaid documents to the Holy Office and has received a response from it.

4° On the Penalties Against Those Who Solicit

597. (A) The penalties against those who solicit are *ferendae sententiae*, and therefore they are incurred only after the sentence of a judge. There are three established by law: (a) perpetual incapacity for celebrating Mass; (b) perpetual suspension from hearing confessions; (c) privation of benefice. (B) But before the judicial sentence is passed, generally three denunciations must precede, according to the practice which the Holy Office follows. One or another denunciation is indeed a sufficient motive that the denounced person be observed, but not that he be called into judgment, unless the reputation of the confessor is bad and the one denouncing is above every exception.

(C) But if the offender has spontaneously appeared before the Bishop, has sincerely confessed the delict, and has asked pardon, he must be dismissed after abjuration has been made (for those who solicit are suspected of heresy), and after a salutary penance has been imposed, with the counsel or precept added that he abstain from receiving the confessions of the solicited person.

(D) Since the sin of solicitation is not reserved, at least by common law, the soliciting priest, otherwise rightly disposed, can be absolved by any confessor whatsoever; but he must be admonished not to receive the confessions of the solicited person, at least where there is a supply of confessors, so that in this way the danger of relapse may be avoided.

598. Corollary: On the penalty against those falsely accusing a confessor of solicitation.

The Code, can. 894, has reserved to the Supreme Pontiff, by reason of itself, the crime of those who judicially denounce an innocent priest as guilty of solicitation. Moreover can. 2363 decrees these things: "If anyone, by himself or through others, shall falsely have denounced a confessor before Superiors concerning the crime of solicitation, by the fact itself he incurs an excommunication reserved in a special manner to the Apostolic See, from which in no case can he be absolved, unless he shall have formally retracted the false denunciation; and shall have repaired, according to his powers, the damages, if any have followed from it; a grave and long-lasting penance moreover having been imposed."

(A) For the reservation to be incurred by those falsely denouncing, three things are required: (a) that they denounce a priest as guilty of solicitation properly so called, according to the things explained above; (b) that this denunciation be false, so that the confessor is free from this delict, although perhaps guilty of other delicts; (c) that the denunciation be juridical, i.e., made before a competent judge, in the manner explained above; hence a denunciation before persons who are not competent judges does not suffice, nor an anonymous denunciation, which is of no weight, nor even, more probably, a simple letter, even signed, which does not have judicial force. - Those who denounce falsely, even if not judicially, sin gravely, and are bound to repair the damage unjustly brought upon the confessor.

(B) Those procuring this to be done, such as those ordering, mandating, giving counsel, asking, promising, threatening, in one word all those who positively and efficaciously concur in the false denunciation, do not incur the reservation of the sin by reason of itself, since can. 894 is silent concerning these, but they incur the reserved censure as if themselves falsely denouncing, from the application of can. 2231.

As to absolution from this sin reserved to the Pope, the principles set forth above concerning papal cases, n. 446-447, must be applied.

Appendix: On Indulgences

On Indulgences

Since Indulgences are one of the means by which satisfaction can be made for the punishment owed to sins, it will not be useless to discuss them briefly:

[1] St. Thomas, *Suppl.*, q. 25-27; F. Mayron, *De Indulgentiis*; Suarez, disp. XLIX sq.; Lugo, disp. XXVII; E. Amort, *De Origine, progressu, valore ac fructu Indulgentiarum*, 1735; St. Alphonsus, n. 531-538; Baller. P., t. V, *De Suffragiis et Indulgentiis*; Lehmk., n. 524-564; Konings, n. 1777-1801; Genicot, n. 401-415; Noldin, n. 300-326; Melata, *De Indulgentiis*, Rome, 1892; Bouvier, *Traité dogmatique et pratique des Indulg.*, 10th ed., Paris, 1855; Schneider, *Die Ablässe, ihr Wesen und Gebrauch*, Paderb., 1884; Maurel, S.J., *Le Chrétien éclairé sur la nature et l'usage des Indulg.*; Beringer, S.J., *Die Ablässe, ihr Wesen und Gebrauch*, rendered into French by E. Abt and A. Feyerstein, *Les Indulgences*, Paris, 1890; Lepicier, *Indulgences*, London, 1895, rendered into French: *Les Indulgences, leur origine, leur nature, leur développement*, Paris, 1903; *Decreta authentica S. Cong. Indulg.*, 1883; *Raccolta di Orazioni...*, Rome, 1898.

1° concerning Indulgences considered in general;

2° concerning the Indulgence of the Jubilee;

3° concerning certain Indulgences in particular.

Art. I. On Indulgences in General

Division.

1° On their notion and existence;

2° On the authority granting Indulgences;

3° On the subject of Indulgences;

4° On the suspension, translation, and cessation of Indulgences.

§ I. On the Notion and Existence of Indulgences — I. On the Notion and Species

599. 1° Definition. Indulgence (from *indu-licentia*)[2] has the same sound as mildness, condonation; as it is used here, it is usually defined: the remission of temporal punishment, owed to sin, valid before God, made through the application of the treasury of the Church, by a legitimate Superior, outside the sacrament.

[2] Cf. M. Bréal, *Diction. étymolog. latin*, Paris, 1885, p. 134.

It is declared: (a) remission of temporal punishment, but not of guilt, whether past or future, whether mortal or venial, as Protestants falsely assert; since, although in some old formulas there occur words by which an indulgence is granted from guilt and from punishment, these nevertheless were inserted not by the Church but by some questors, against the will of the Roman Pontiffs, who reproved an abuse of this kind;[1] hence deservedly Cardinal Cusanus in the provincial Synod of Magdeburg said: "The Apostolic See has never been accustomed to give indulgences under the words from punishment and guilt." Nor is it an obstacle that in some Apostolic Letters indulgences granted

are said to be unto the remission of sins: for these words are understood by all concerning the remission of the punishment owed to sins; nor is anyone ever freed from punishment unless he has first been absolved from guilt.[2]

[1] Cf. *Clementin.*, bk. V, tit. 9, c. 2.

[2] A few older theologians, such as Paludanus, had said that venial guilt can probably be remitted through indulgences; but this singular opinion is commonly rejected; for from what was said, n. 197, venial guilt is remitted through contrition.

(b) Valid before God; namely the remission of punishment has force not only in the external forum, before the Church, but also in the internal forum, before God; otherwise, as St. Thomas says,[3] the Church would harm sinners more than help them, because, by absolving them from imposed penances, she would condemn them to graver punishments, namely those of purgatory.

[3] *Supplem.*, q. 25, a. 1.

(c) Through the application of the treasury of the Church; for, in remitting punishment, the Church nevertheless offers to God a payment, or some compensation, drawn from her own treasury: for there is a spiritual treasury, formed from the superabundant satisfactions of Christ and of the Saints, whose supreme dispenser is the Pontiff, and from which, for a just cause, the debts of the faithful can be paid; therefore he who grants an indulgence does not simply relax temporal punishment, but furnishes to the penitent something from which he may pay, by applying to him the superabundant satisfactions of Christ.

(d) By a legitimate Superior ...; hence not any man whatsoever can grant indulgences, but only those to whom the care of the treasury of the Church has been committed, namely the Pontiff or a general Council for the universal Church, Cardinals in the church of their title, and Bishops for their own diocese; yet it is said outside the sacrament, so that in this way an indulgence may be distinguished from sacramental satisfaction.

600. 2° Species. Indulgences are divided: (a) by reason of effect, into plenary and partial: by the former the whole punishment which remains to be expiated is remitted, by the latter some part of the same punishment. Hence indulgences of forty, or one hundred days, seven years, etc., are granted; this must be understood not in the sense that so many days or years of Purgatory are remitted, but in the sense that so much of the punishment owed is condoned as would have been remitted by forty or one hundred days of canonical penance, such as flourished in the first centuries of the Church. Hence the measure of the remission of the punishment itself remains unknown to us, and depends much on the fervor with which the conditions necessary for gaining Indulgences are fulfilled. - Sometimes an indulgence of six or seven years and as many quarantines is granted; the name quarantine signifies so many Lenten fasts, so that the sense is that there is granted a remission of punishment which corresponds not only to six or seven years of canonical penance, but also to as many Lenten fasts added over and above.

601. (b) By reason of subject, they are divided into indulgences for the living and indulgences for the departed, or those which are applicable to the souls of Purgatory.[1] Indulgences are granted to the living by way of juridical absolution, which nevertheless at the same time includes

payment of the debt from the treasury of the Church; for these truly are subject to the jurisdiction of the Church; but to the departed by way of suffrage, or of payment of debt: for since these are not subject to the jurisdiction of the Church, ecclesiastical Superiors cannot directly apply an indulgence to them, but can only offer to God the satisfactions of Christ and of the saints and ask Him that, according to His mercy, He accept them as the payment of the price owed for the sins of the departed. Therefore the departed do not gain indulgences, properly speaking; but the living are permitted by the Church to apply to the departed certain indulgences which they themselves gain; however, in what measure they are in fact applied to the souls of Purgatory is unknown, and depends on the will of God alone.

[1] "All indulgences granted by the Roman Pontiff are applicable to souls detained in purgatory, unless the contrary is established" (*Code*, c. 930).

But the living cannot apply indulgences to other living persons, since the Supreme Pontiff, on whose will the matter depends, has not up to this time granted this faculty; and this indeed is consonant with reason: for if indulgences could be applied to the living, not a few would become more sluggish, thinking that others would make satisfaction for them.

602. (c) By reason of mode, indulgences are personal, real, or local: personal, when they are immediately granted to persons or communities; real, which are immediately attached to some thing, for example, to a rosary, or prayer beads, a medal, an image of the Crucifix, etc.; local, which are immediately attached to a pious place, or to some thing which is placed in a determinate place.

603. Here it is useful to explain what must be understood by those formulas which are sometimes found in grants of indulgences. *Toties quoties* signifies, from a special grant, that the faithful can gain the indulgence as many times as they repeat the pious works to which it is attached. Now there are many partial indulgences of this kind; but generally plenary indulgences can be acquired only once in the day, with a few exceptions, for example, the indulgence which is called of the Portiuncula, which those visiting, on the day of August 2, the Basilica of St. Mary of the Angels, or other churches to which the same privilege has been granted, gain. - A perpetual daily plenary indulgence, which is granted to those visiting some church, must not be understood in such a way that it can be acquired daily, but only once in the year, on any day of the year, to be chosen by the judgment of each one, unless nevertheless it is expressly said in the grant that it is acquired daily.

II. On the Existence of the Power of Granting Indulgences

604. Errors. That there is in the Church the power of granting indulgences was denied: (a) by the Waldenses, the Wiclefites, and also Peter of Osma, who taught that the Pontiff cannot bestow indulgences, nor liberate from purgatory;[1] (b) by Protestants: for Luther indeed at first seemed to censure the abuses of the questors of indulgences, but soon attacked indulgences themselves as useless and pernicious, and pious frauds invented for obtaining money. Modern Protestants assert the same, indeed many do not blush to affirm that indulgences are nothing other than a license to sin purchased by money paid.[2]

[1] Cf. Denzing., n. 615.

[2] This calumny is refuted no less pleasantly than eloquently by J. H. Newman, *The Present Position of Catholics in England*, London, 1889, p. 108 sq. Today, however, most Protestants soften these false accusations, saying that abuses of this kind flourished not in our times, but only in past centuries; nevertheless they attack indulgences as pernicious in their effects; thus Littledale, *Plain Reasons*, p. 102; Lea, op. cit., vol. III, p. 569 sq.

605. Thesis: The Church enjoys the power of granting indulgences, whose use is especially salutary for the Christian people. It is of faith from Trent:[1] "Since the power of conferring indulgences has been granted by Christ to the Church, and she has used power of this kind, divinely handed down to herself, even in the most ancient times: the Sacrosanct Synod teaches and commands that the use of indulgences, especially salutary for the Christian people and approved by the authority of Sacred Councils, is to be retained in the Church, and condemns with anathema those who either assert that they are useless, or deny that there is in the Church the power of granting them."

[1] Decree concerning Indulgences, ap. Denzing., n. 862.

606. 1° The power of granting indulgences flows, by way of corollary, from three dogmas, namely, from the superabundance of the satisfactions of Christ, from the power of the keys, and from the communion of saints.

(A) That the satisfactions of Christ, as being of infinite value, were superabundant, we have already proved in the Treatise on the Incarnate Word, n. 192. Moreover, according to the common doctrine which the Supreme Pontiffs have confirmed, some among the Saints performed more satisfactory works than were necessary for making satisfaction for their own sins: thus the Blessed Virgin, who never, not even venially, sinned, and otherwise suffered many things patiently; so also many virgins, who lived an angelic rather than a human life; martyrs, who willingly embraced such bitter torments; and many others, who, free from every mortal sin, unceasingly crucified their members. From all these satisfactory works, performed in union with Christ, there arose as it were an immense treasury of satisfactions.[2]

[2] Code, c. 911.

Clement VI, in the year 1343, thus explains this doctrine; for concerning Christ he says:[3] "For not by corruptible gold and silver, but by the precious blood of Himself, the unspotted and immaculate Lamb, He redeemed us; and He, innocent, immolated on the altar of the cross, is known to have poured forth not a small drop of blood, which nevertheless because of the union with the Word would have sufficed for the redemption of the whole human race, but copiously, as a certain stream ... How great a treasury, therefore, from this, lest the mercy of so great an effusion be rendered superfluous, empty, or excessive, He acquired for the Church militant, the pious Father willing to treasure up for His sons, so that thus there may be an infinite treasury for men, and those who have used it have become participants of God's friendship." Afterwards, concerning the saints, he adds: "To the heap of this treasury indeed the merits of the Blessed Mother of God and of all the elect, from the first just man even to the last, are known to provide aid; concerning its consumption or diminution there is in no way to be feared, both because of the infinite merits of Christ, as has been said, and because, the more persons are drawn to justice from its application, the more the heap of their merits

increases." Hence therefore it is clear that the treasury of satisfactions which can be applied to Christians is inexhaustible.

[3] *Extrav. Unigenitus, Extrav. commun.*, l. V, t. 9, c. 2, p. 1304, ed. Friedberg.

607. (B) From another side, the power of the keys, whose existence we proved, n. 20 sq., in its amplitude includes the faculty of remitting not only guilt, but also the punishment annexed to sin, namely by applying to penitents certain satisfactions of Christ or of the saints, drawn from the aforesaid treasury. This is inferred from the texts cited above.[1] Namely Christ said to Peter, the prince of the Apostles: "Whatsoever thou shalt bind upon earth shall be bound also in heaven, and whatsoever thou shalt loose upon earth shall be loosed also in heaven"; for in the former part of this text, to Peter and the Apostles is conferred the power of binding the faithful by any spiritual bond whatsoever, by retaining sins and imposing canonical penalties; therefore in the latter part, whatsoever thou shalt loose, there is likewise given the power not only of absolving sins, but also of relaxing canonical penalties with prudence; for there is a parallelism between each part. This is confirmed from other words of Christ: "Whose sins you shall forgive, they are forgiven them" ...; for there is conferred there a most ample power of remitting sins, without any restriction; moreover sin involves three things, the debt of guilt, the debt of eternal punishment, the debt of temporal punishment; therefore the power conferred on the Church embraces these three things. Now the two former are taken away through the sacrament of Penance; the third can be taken away outside the sacrament, namely by condoning punishment through indulgences.

[1] Matt., XVI, 19; John, XX, 23.

608. (C) But the reason why the satisfactions of Christ and of the saints can be applied to penitents is drawn from the communion of saints. For all the faithful are so intimately joined under one head, Christ, that they form one body, and therefore all the good works of the just are as it were proper to each one, and can yield to their utility: "For as the body is one and has many members, and all the members of the body, though they are many, nevertheless are one body, so also is Christ ... And if one member suffers anything, all the members suffer with it; or if one member glories, all the members rejoice together."[1] Now, if the matter is so, the satisfactions of Christ and of the Saints, overflowing into others who are debtors to divine justice, can be derived to them, the authority of God which has been committed to the Church acceding; for, as St. Thomas says,[2] "those things which are common to some multitude are distributed to individuals of the multitude according to the judgment of him who presides over the multitude; hence, just as someone would obtain remission of punishment if another had made satisfaction for him, so also if the satisfaction of another is distributed to him by one who has power."

[1] I Cor., XII, 12-26.

[2] *Supplem.*, q. 25, a. 1.

The matter is illustrated by a comparison. In a well-ordered Republic, the President has the power sometimes of softening the severity of laws and penalties, when the common good demands this, or when amendment of the guilty person has been manifested by certain signs; but the Church is a well-

ordered society, indeed nobler and more perfect than other societies, since she promotes the supernatural good of souls; therefore it was fitting that the rulers of the Church should enjoy the power, for a just cause, of condoning something of spiritual debts; and this is done by taking away or diminishing punishments through indulgences.

609. 2° The thesis is proved historically.[3] The historical progress of indulgences is intimately connected with the evolution of penitential discipline; and in it three stages can be distinguished.

[3] Cf. A. Boudinhon, *Sur l'histoire des indulgences*, in *Rev. de l'Institut cathol. de Paris*, May 1902, p. 238-257.

(A) In the first epoch, which extends up to the seventh century, the granting of indulgences appears under the form of mitigation of public penance. That this penance was laborious and long-lasting has already been shown above, n. 151. But sometimes something of canonical penance, imposed by the authority of the Church, was remitted. (a) This was done especially in view of the intercession of martyrs. Tertullian is a witness of this matter; while he was still Catholic, he wrote these things:[1] "Which peace, not having it in the Church, some have been accustomed to entreat from the martyrs in prison; and therefore you also ought on this account to have, foster, and guard it in yourselves, so that perhaps you may be able to furnish it also to others." This practice afterwards, having fallen into the error of the Montanists, he reproved;[2] but even this very thing demonstrates that this practice existed and had been approved by the Roman Pontiffs. St. Cyprian likewise testifies to this, by declaring that those "who have received letters from the martyrs can be helped by their prerogative before God."[3] Besides, the matter is so evidently established that it is denied by no one today. Now the relaxation of canonical penance was nothing other than the relaxation of the punishment owed to sin, since penance was ordered to the remission of this punishment.

[1] Tertull., *Ad martyr.*, c. 1; P. L., t. I, p. 621.

[2] *De pudic.*, c. 22; P. L., t. II, 1026.

[3] St. Cyprian, ep. 18, t. II, p. 523, ed. Vind.; cf. ep. 21, 33, 36, and *De lapsis*.

(b) The same kindness was shown to those who by a laudable and fervent life redeemed their sins; thus the Council of Ancyra (314) decreed (can. 5): "We have determined that Bishops, the manner of conduct having been examined, have the power either of using clemency, or of adding more time. But before all things let both the preceding life and that which has followed be examined, and thus let clemency be imparted to them." Likewise Nicaea I (can. 12): "As many as, by fear and tears and penance, or by good works, demonstrate their conversion by the things themselves, not by simulation, these, after fulfilling the defined time of hearing, then at length may communicate with the faithful in prayer. Afterwards, however, it will be lawful for the Bishop to think something more humane concerning these."

(c) Punishments also were relaxed for the dying, so that they might be able more quickly to enter heaven; if they recovered, they were bound to pay certain penalties, but not all. Moreover in all these cases, the Church, by relaxing canonical penance, certainly did not wish to hand penitents over to graver punishments of purgatory, and therefore was using the power of condoning part of the satisfaction owed to sin.

610. (B) In the second period, from the seventh to the eleventh century, indulgence appears under the form of commutation of canonical penance into other works which were judged equivalent. For then a certain special penance was inflicted for each sin, as was noted above, n. 116. Now works of this kind were sometimes commuted into certain pious works, especially prayers, flagellations, and alms. Thus, according to St. Peter Damian, St. Dominic Loricatus, on each day of Lent, by subjecting himself to blows of rods, and by completing three psalters, was considered to do penance of one hundred years.[1] In the same age, to those who visited the basilicas of the Apostles at Rome, part of canonical penance was condoned. For Nicholas I says concerning a certain homicide: "Certain things [of penance] we have moderated, because he devoutly hastened to ask the suffrages of the prince of the Apostles, our nourisher."[2] Likewise, in the ninth century, Sergius II granted to those visiting the church of Saints Sylvester and Martin, on the feasts of several saints, an indulgence of three years and three quarantines: this is established from a marble tablet, placed in this church, which Baronius describes, at the year 847. Again, in the Vallicellian sacramentary, drawn up in the same century, mention is made of an indulgence of certain days and years. In the eleventh century, Leo IX condoned to those who had assembled for the consecration of the metropolitan church of Besançon the third part of their penance. - In these or similar cases, a certain part of canonical penance was commuted into pious pilgrimages or other works of this kind.

[1] Ap. Migne, P. L., t. CXLIV, p. 1015.

[2] Apud Ivo, P. L., t. CLXI, p. 700. - Some hold that certain indulgences were granted by Gregory the Great to those who visited the stations (the principal churches) of Rome. This is related by St. Thomas (*in IV*, dist. 20, q. 1, a. 3, sol. 2) and William of Auxerre (*Summa*, l. IV, tr. 6, c. 6); yet Morinus denies this (op. cit., l. X, c. 20, n. 10), because nothing concerning this matter appears in the letters or sermons of St. Gregory. Whatever the case may be, this practice is very ancient; for Boniface VIII commemorates it (year 1300), in the Bull of the Jubilee: "The faithful relation of the ancients has it that to those approaching the honorable basilica of the prince of the Apostles of the City, great remissions and indulgences of sins were granted." (*Extravag. commun.*, l. V, t. 9, c. 1, p. 1303, ed. Friedberg.)

611. (C) In the third age, from the eleventh century, indulgences properly so called are now granted, or the total or partial remission of punishment owed to sin, yet after certain works determined by a legitimate superior have been posited. This was done especially for promoting expeditions into the Holy Land: thus Urban II, in the Council of Clermont, in the year 1095, decreed (can. 2): "Whoever shall have set out for the sake of devotion alone, not for the attainment of honor or money, to liberate the Church of God at Jerusalem, that journey shall be reputed to him for all penance." An indulgence of this kind was also granted to those who fought against heretics, especially the Albigenses. Afterwards, in the thirteenth century, Lateran IV (1215) decreed that indulgences not be extended too much, and thus abuses be prevented. - But the matter became more universal from the institution of the Jubilee. At the beginning of the fourteenth century, the jubilee was instituted or confirmed by Boniface VIII, who granted a plenary indulgence and other spiritual favors for the year 1300 and for each following hundredth year; afterwards Clement VI decreed that the jubilee be celebrated every fiftieth year, beginning from 1350; finally Paul II wished that it have place every twenty-fifth year, beginning from the year 1475. Afterwards the Pontiffs began to grant extraordinary jubilees, or an indulgence after the manner of a jubilee, for grave causes. Soon they became accustomed to bestow plenary or partial indulgences for promoting pious works, namely the erection of churches or hospitals.

On this occasion certain abuses crept in, from the fact that questors, or preachers of indulgences, in order to obtain more abundant alms, amplified beyond measure the force and efficacy of indulgences. But Trent eradicated this abuse by abolishing questors.

From all these things it is gathered how greatly Protestants are deceived who, with Chemnitz, say that Catholics "cannot bring forward either any testimonies of the Fathers, or any examples of the ancient Church, that such doctrine or use of such indulgences ever existed at any time in the old Church up to the years after Christ's birth 1200."

612. (D) Difficulties are solved. (a) The granting of indulgences frees man from the debt of making satisfaction, and therefore mutilates the sacrament of Penance, which involves some satisfaction; therefore it must be rejected.

Resp.: I deny the supposition, for indulgences prudently granted do not exempt the penitent from sacramental or extra-sacramental satisfaction, but are granted to those sincerely contrite so that they may have that from which they may satisfy more promptly and efficaciously. For no one can gain indulgences unless he performs certain prescribed works and sincerely repents.

(b) The adversaries insist: Facility in satisfying for all sins through some prayers or works generates spiritual sloth, since there is no proportion between the prescribed works and the punishment remitted.

Resp. I deny the subsumed proposition: for external works which are prescribed, although they are light in themselves, suppose interior dispositions of contrition and firm purpose, which exclude sloth; for, as Cajetan says (*De suscipient. indul.*, q. 1), indulgences are not profitable to those neglecting to satisfy by themselves, because they are unworthy of indulgence, but to those whose will is so prepared for satisfying that the work is not delayed unless impeded. Thus, for example, he does not gain a plenary indulgence unless he is free from every affection toward venial sins. But when these things have been posited, the facility of the work enjoined is rather a certain kind of allurement, by which penitents are drawn to procure perfect interior dispositions: and thus there are promoted contrition of heart, zeal for prayer, frequentation of the sacraments, and the practice of works of mercy.

613. (c) They insist again: the granting of indulgences tends to diminish the time of purgation in this or the other life; but this is against the order intended by God.[1]

[1] Littledale's argument returns to this (op. cit., p. 109): "God loves these souls, and detains them in Purgatory, not that they may pay punishments, but that they may be purified. We confidently admit that God punishes them with the greatest mercy, kindness, and efficacy. Hence their untimely departure from Purgatory brings them no advantage, unless nevertheless it is admitted that the Roman Church is wiser and kinder than God Himself, and that she snatches the victims from the divine hands, so to speak!"

Resp. I deny the minor: for to God, who loves penitent souls, nothing is more acceptable than to diminish this time of purgation; on the one hand indeed, as a wise Legislator, He established that no one would enter the kingdom of heaven except after the payment of the punishment owed to sin; but on the other hand, as a merciful Father, He wishes to spare penitents; therefore if someone satisfies for others, he performs a work pleasing to God, namely by helping Him to reconcile the rights of justice and mercy.

(d) The granting of indulgences has furnished occasion for innumerable abuses; for the Roman Pontiffs, without any reason, did not blush to bestow indulgences of one hundred, one thousand, and more years, indeed to sell them for money, thus committing the most shameful crime of simony. Resp. We do not deny that some abuses crept into the granting and preaching of indulgences; but those abuses were neither universal nor frequent, and were several times reproved by the Roman Pontiffs and Councils; thus in the eleventh century, Gregory VII, to the Bishop of Lincoln asking an indulgence of delicts, agreed, yet under this condition, that by adhering to good works he should bewail the excesses committed;[2] in the twelfth century, Gregory VIII declared to the faithful of Benevento that it was safer that they do penance than that they obtain even a remission of the third part of penance; in the thirteenth century, Lateran IV reproved the laxity of certain Bishops in granting indulgences; and Trent (sess. XXV concerning Indulgences) established that the office of holy indulgences be dispensed holily and incorruptly to all the faithful, and proscribed all abuses which through ignorance or superstition had crept into various dioceses. Now a thing good and useful in itself must not be eradicated because of some inconveniences which arise from it, but the inconveniences themselves are to be prevented, insofar as it can be done; and this indeed the Church has done when opportunity was given.

[2] Cf. Baronius, *Annales ecclesiast.*, at the year 1703, n. 71; Drouin, l. cit., § 4, where these and other facts are related.

But what is added concerning the selling of indulgences rests on a false supposition. Money which sometimes was given, or even now sometimes is given, for example on the occasion of a jubilee, for gaining an indulgence, is not and never was the price of the indulgence; for it was alms prescribed as a pious work, and to be turned to good uses, for defeating the Turks who were disturbing the peace of Europe, for the erection and endowment of churches, hospitals, and other institutes of this kind. From another side, only a few indulgences are granted under this condition; for most require only merely spiritual works.[1]

[1] Some Protestants go farther, and assert as certain that absolution from sins is sold for money; in proof of this they exhibit the taxes of the Chancery, which must be paid when absolution from censures is sought. But here they confuse two things plainly distinct: absolution from sins in the internal forum, which can never be procured by money; and absolution from censures in the external forum, for which sometimes alms are demanded, either so that expenses for the dispatching of letters of absolution may be paid, or as a charitable compensation for scandals given: in which case money thus collected is to be expended for pious uses. J. H. Newman refutes this splendidly (op. cit., p. 112-113).

614. Corollaries. (a) Indulgences can be applied to the faithful departed detained in purgatory by way of suffrage, that is, not by way of absolution, but by way of satisfaction and payment of debt, insofar as the satisfactions of Christ and of the Saints, stored up in the treasury of the Church, are offered to God in compensation for the punishment to be expiated by the departed. "For there is no reason," says St. Thomas,[2] "why the Church can transfer the common merits, on which indulgences rest, to the living and not to the dead." For Christ satisfied for all, and His satisfactions can be applied both to the living and to the departed by him who enjoys legitimate authority. In reality, the Roman Pontiffs, already at least from the ninth century, granted indulgences of this kind; thus John VIII (878) and John IX (900).[1] Hence Pius VI condemned as false, rash, and offensive to pious ears the proposition of the Synod of Pistoia asserting "that still more lamentable is this: that this chimerical application [of indulgences] has been willed to be transferred to the departed." (Denzing., n. 1405.)

[2] *Suppl.*, q. 71, a. 10.

[1] Cf. Mabillon, preface in century VI Bened., n. 108.

Yet power of this kind is so exercised that these indulgences are directly applied to the living by way of juridical absolution, and only indirectly to the dead, by way of payment of debt. For, as St. Thomas says (l. cit.), directly and principally he receives the indulgence who does that for which the indulgence is given; hence, since the dead cannot do anything of those things which are prescribed, indulgences cannot directly have force for them. Therefore the granting of an indulgence for the departed comes to this: that, by force of the authority of the Church, the living faithful person, who performs the pious work to which it is attached, can apply to the departed the remission of punishment which, by gaining the indulgence, he acquires.

615. (b) Indulgences have force not only before the Church, for taking away canonical penalties, but also before God for remitting temporal punishments owed to sins. This is certain from the condemnation of the contrary opinion which the Synod of Pistoia had defended.[2] For, as St. Thomas rightly observes,[3] the opinion of the adversaries is expressly against the privilege given to Peter, to whom it was said that what he remitted on earth would be remitted in heaven. Hence the remission which is made as to the forum of the Church also has force as to the forum of God. Moreover the Church granting indulgences of this kind would harm rather than help, since in purgatory punishments would have to be endured which she would remit on earth.

[2] Ap. Denzinger, n. 1403.

[3] *Suppl.*, q. 25, a. 1.

§ II. On the Authority Granting Indulgences

616. 1° Principle. For granting indulgences there is required the power of jurisdiction in the internal forum, with authority over the treasury of the Church, and a reasonable cause. It is said:

(a) The power of jurisdiction, because here there is question of a judicial act, but not of the conferral of a sacrament; (b) in the internal forum, because temporal punishment is remitted not only before the Church, but also before God; (c) with authority over the treasury of the Church, because an indulgence is not only absolution, but also payment of some debt, by the help of satisfactions which are contained in the treasury of the Church; (d) and with reasonable cause, and indeed for validity, as all confess; for ecclesiastical Superiors are only administrators of the treasury of the Church, and therefore cannot distribute it unless a just cause accedes, and without prejudice to the right which God has of exacting some punishment from sinners. But because nothing is required of a steward except that he act according to the rules of prudence, that cause will be sufficient which shall seem to Superiors just and proportionate.

A just cause can be to promote the recitation of certain prayers or the fulfillment of pious works, by granting indulgences, so that prayers may be poured forth or works performed more frequently and fervently; or some public utility, or gratitude toward those who have labored for the good of the Church; in one word, whatever can promote the good of souls or the extension of the Church.

617. 2° Corollary. Indulgences can be granted by:

(A) The Supreme Pontiff, who has supreme authority over the treasury of the Church, and can grant indulgences to the faithful of the whole Catholic world, plenary and partial, for the living and for the departed. Moreover all indulgences granted by the Roman Pontiff, unless another thing is established, are applicable to those living in Purgatory (can. 930). Likewise he can bestow them in whatever way seems good to him, by an oracle of the living voice[1] or in writing, immediately or mediately through the organ of some Congregation. Faculties which once, concerning this matter, were granted to the Sacred Congregation of Indulgences, today pertain to the Sacred Penitentiary.[1]

[1] "Those who have obtained from the Supreme Pontiff grants of indulgences for all the faithful are bound, under penalty of nullity of the grace obtained, to deliver authentic copies of the same grants to the Sacred Penitentiary." (*Code*, c. 920.)

[1] With the right of the Holy Office saved "of seeing those things which regard dogmatic doctrine concerning indulgences or concerning new prayers and devotions." *Code*, c. 258, § 2.

"Besides the Roman Pontiff, to whom the dispensation of the whole spiritual treasury of the Church has been committed by Christ the Lord, only those can by ordinary power bestow indulgences to whom this has been expressly conceded by law."[2]

[2] *Code*, c. 912.

618. (B) Ecclesiastical Superiors inferior to the Pope cannot grant indulgences applicable to the departed;[3] - nor add other indulgences to crosses, medals, etc., blessed by the Pope or by another delegate, or to acts or to a sodality[4] to which indulgences have already been attached, unless new conditions are imposed; - nor divide the same act of piety into parts, and grant to each part all the indulgences which they can bestow; - nor commit to others the faculty of granting indulgences, unless this has been expressly granted to them by the Apostolic See.[5] Moreover they must observe the norms which the Roman Pontiff himself follows in granting indulgences. These things having been posited:

[3] *Code*, c. 913, n. 2.

[4] *Code*, c. 913, n. 3.

[5] *Code*, c. 913, n. 1.

(a) Residential Bishops, from possession having been taken, have the right of granting indulgences of fifty days in the places of their jurisdiction.[6] When a church or altar is consecrated, the consecrating Bishop, although he lacks jurisdiction in the territory, grants an indulgence of one year to those visiting the church or altar on the day itself of consecration, but on the anniversary day fifty days, if he is a Bishop; one hundred, if an Archbishop; two hundred, if a Cardinal of the Holy Roman Church.[7]

[6] *Code*, c. 349, § 2, n. 2.

[7] *Code*, c. 1166.

Archbishops in their own diocese and in their own province can grant an indulgence of one hundred days.[8]

[8] *Code*, c. 274, n. 1.

(b) Cardinals "enjoy the faculty of granting indulgences of two hundred days, to be gained even *toties quoties*, in places or institutes and for persons of their jurisdiction or protection; likewise in other places, but only by those present, to be gained each time[9]."

[9] *Code*, c. 239, § 1, n. 24.

§ III. On the Subject of Indulgences

We shall speak: 1° concerning those to whom indulgences can be granted, 2° concerning the conditions for gaining indulgences.

619. 1° Indulgences cannot be granted except to those who are: (a) baptized, because the power of the Church is not exercised over those who are outside; (b) not excommunicated,[1] since all separated from her by that very fact are deprived of the goods which pertain to the communion of Saints; (c) subjects of the one granting, even outside the territory, since an indulgence is an act of jurisdiction, and by law it has been established that pilgrims can gain local indulgences; the same must be said of Regulars, even exempt, who in favorable matters are not excluded from episcopal jurisdiction;[2] (d) capable of sinning, since the punishment owed to sin cannot be remitted when no sin has been committed; therefore children before the use of reason and those perpetually insane are incapable.

[1] *Code*, c. 925, § 1.

[2] *Code*, c. 927.

620. 2° Conditions necessary for gaining indulgences:

(A) The state of grace,[3] at that moment of time at which the indulgence is to be gained, namely generally at that instant at which the last prescribed work is performed: for temporal punishment cannot be remitted while guilt and eternal punishment have not yet been remitted.

[3] *Code*, c. 925, § 1.

This indeed is certain as to indulgences for the living; but it is disputed as to indulgences for the departed, and when the Sacred Congregation of Indulgences was questioned concerning this matter, it responded:[4] "Let him consult approved authors." Now Suarez[5] holds that the state of grace is not required; for one gaining an indulgence for the departed obtains this effect not for himself, but for another: for this the execution of the prescribed work suffices; but Lugo with others more probably affirms,[6] because the departed person does not acquire an indulgence except insofar as some living person gains it and applies it to the departed; moreover the living person cannot gain the same unless he is in the state of grace. - Yet an exception can be admitted for the indulgence of a privileged altar, which is applied to the departed by the priest, not as a private person, but insofar as he represents the Church.

[4] *Decret. authent.*, n. 341, February 22, 1847.

[5] Suarez, disp. LIII, sect. 4, n. 5-6.

[6] Lugo, disp. XXVII, n. 75.

Moreover, if there is question of a plenary indulgence to be gained totally, detestation of all venial sins is required, since the punishment owed even to venial sin cannot be remitted unless first the

fault itself is forgiven. Yet if the plenary indulgence is not obtained totally, because of affection toward some venial sins, it can be acquired partially, insofar as the punishment of those sins concerning which contrition is had is remitted.[1]

[1] *Code*, can. 926.

621. (B) The intention of gaining indulgences, not indeed a special one, by which someone intends specifically to gain this or that indulgence; but a general one, by which someone wishes to acquire all the indulgences which he can, even if he does not know whether they are attached to such or such a work. Nor is an actual intention required, but a virtual intention suffices, indeed more probably a habitual one, namely one which has once been elicited and not retracted. Yet an interpretative intention, which in reality does not exist, does not suffice, whatever a few may have said to the contrary;[2] for books concerning Indulgences published with special approval of the Holy See require a true intention.[3] - Indeed it is an excellent counsel to renew daily the intention of gaining all and each indulgence which can be acquired in the course of the day, so that the works to which indulgences are attached may be performed more promptly and more fervently.

[2] Baller. P., n. 27.

[3] Cf. *Raccolta*, Introduction, p. VII-VIII.

622. (C) The fulfillment of the prescribed works; for this is the condition under which indulgences are granted, so that, the condition not being fulfilled, the effect is not obtained. Hence here neither ignorance, nor impotence, nor good faith excuses:[4] for there is question of a benefit to be obtained, to which there is no right; therefore no injury is done if, the condition lacking, the indulgence is not granted.

[4] *Raccolta*, p. VIII.

Yet if only a very small part of the enjoined work is omitted, for example, one *Pater* and *Ave* in the recitation of the rosary, the indulgence is acquired, because in a moral matter a little is reputed as nothing. - Moreover, with the consent of the Confessor acceding, certain other works can be substituted for the prescribed works, when these cannot morally be fulfilled.[5]

[5] *Code*, can. 935.

623. The prescribed works must be performed according to the manner and circumstances determined by the Superior.

(a) As to the manner, the works must be fulfilled personally, i.e., by the very person who intends to gain the indulgence, except alms, which can be given through another, provided that one gives from his own goods; - by a morally good act, because God evidently cannot be placated by a sinful act; therefore an act intended solely toward an evil end would not profit; but if to a work good in itself there were mixed some venial sin, suppose that of vainglory, the indulgence could nevertheless be obtained; - by a work not otherwise strictly obligatory, unless the contrary intention of the one granting is established; for regularly we cannot by one action satisfy two obligations, each of which demands individual actions; thus those who are bound to the canonical hours cannot through them

satisfy the prayers prescribed for gaining a plenary indulgence;[1] but Paschal communion suffices for satisfying the precept of annual communion and for gaining the indulgence of the papal blessing;[2] likewise, from a recent decree, June 14, 1901, a penitent, fulfilling prayers and other works imposed by the confessor for penance, enriched with indulgences, can at the same time both satisfy the penance and gain the indulgences.[3]

[1] Thus the Sacred Congregation of Indulgences, May 29, 1841, *Decret. authent.*, n. 291, ad 2.

[2] *Decreta authent.*, n. 288, March 19, 1841; and n. 327, May 10, 1844.

[3] Ap. *Acta S. Sedis*, XXXIV, p. 125-126. Cf. *Code*, c. 932.

If from various titles various indulgences have been attached to some thing or work, regularly not all the indulgences can be acquired unless the enjoined works are renewed; thus if to one crown both Apostolic indulgences and indulgences of the Rosary have been applied, both cannot be obtained unless the rosary is recited twice.[4]

[4] *Code*, c. 933.

(b) As to the circumstances, the works must be performed in the place and time predefined, in the manner to be explained below. Here we shall set forth only the manner of computing time, according to the decisions of the Sacred Congregation of Indulgences. - Commonly indulgences are affixed to the natural day; now the natural day is computed from midnight to midnight; hence, unless another thing is expressly said, we can gain indulgences affixed to such a day from midnight.[5] - But sometimes an indulgence can be acquired, as often happens on feasts, during the whole ecclesiastical day, i.e., from first vespers, namely from the time at which vespers are commonly accustomed to be publicly recited[6] (the middle hour between noon and sunset) until sunset of the following day, i.e., the evening twilight which often endures one hour after sunset.

[5] *Decreta authent.*, n. 434, January 18, 1878.

[6] *Raccolta*, p. XVII; hence the opinion holding that the ecclesiastical day begins at the second afternoon hour does not seem sufficiently safe. Cf. Melata, op. cit., p. 54.

624. (D) Among the various prescribed works, the principal ones are confession, communion, visitation of a church, certain prayers, concerning which we shall note a few things.

(a) Confession, when it is required, must be performed even by those who are in the state of grace; it must be sacramental, or in order to absolution, although it is not necessary to receive absolution. - If several indulgences to be gained on the same day require confession, one confession suffices for acquiring them all. Indeed, "the faithful of Christ who are accustomed, unless they are legitimately impeded, at least twice in the month to approach the sacrament of penance, or to receive holy communion in the state of grace and with a right and pious mind daily, although once or twice through the week they abstain from the same, can obtain all indulgences, even without actual confession which otherwise would be necessary for gaining them, except indulgences either of the ordinary and extraordinary jubilee or after the manner of a jubilee."[1]

[1] *Code*, c. 931, § 3.

Moreover, "for gaining any indulgences whatsoever, a confession perhaps required can be made within the eight days which immediately precede the day to which the indulgence has been affixed,"

or "even within the entire following octave."[2]

[2] *Code*, c. 931, § 1.

(b) Communion can be received on the vigil of that day to which the indulgence is annexed or "even within the entire following octave."[3]

[3] Ibid.

(c) Visitation of a church is prescribed for certain indulgences. If the visitation of some determinate church is enjoined, for example, the parish church, this indeed must be visited, unless a legitimate commutation has been made; otherwise, the visitation can be made in any church or public oratory whatsoever, and indeed "from noon of the preceding day, until the midnight which closes the appointed day."[4]

[4] *Code*, c. 923.

Moreover, by force of a privilege granted by Pius X, on January 14, 1909, the faithful of either sex, who, for the pursuit of perfection or for the sake of instruction or education or even of health, live a common life in houses lacking a church or public chapel, established with the consent of the Ordinaries, and also all persons dwelling there for ministering to them,[5] whenever the visitation of some non-determined church or of some indeterminate public oratory is prescribed, can visit the chapel of their own house, in which by law they can satisfy the obligation of hearing Mass.

[5] Thus the Code, c. 929. Cf. Holy Office, June 24, 1909. *A. A. S.*, I, 210.

(d) Prayers to be recited are generally prescribed for plenary indulgences and sometimes for partial ones. Mental prayer does not suffice, but at least certain vocal prayers are required. These indeed are not determined, but are permitted to the judgment of anyone; the shortest prayer does not suffice, but five *Pater* and *Ave*, or something equivalent, are required.

"If a particular prayer has been assigned, indulgences can be acquired in whatever language the prayer is recited, provided that the fidelity of the version is established from the declaration either of the Sacred Penitentiary or of one of the Ordinaries of the place where the language into which the prayer is translated is common; but indulgences entirely cease because of any addition, subtraction, or interpolation. For the acquisition of indulgences it is enough to recite the prayer alternately with a companion or to follow it with the mind while it is recited by another."[1]

[1] *Code*, c. 934.

(e) "Confessors can commute into other works the pious works enjoined for gaining indulgences for those who, detained by a legitimate impediment, cannot perform the same."[2] "Indulgences annexed to feasts or sacred supplications or novendial, septenary, or triduan prayers, which are performed before or after the feast or even while its octave lasts, are understood to be transferred to that day to which feasts of this kind are legitimately transferred, if the transferred feast has an office with Mass without solemnity and external celebration and the transfer is made in perpetuity, or if the solemnity and external celebration is transferred either for a time or in perpetuity."[3]

[2] *Code*, c. 935.

[3] *Code*, c. 922.

(E) Indulgence or blessing in the article of death: 1) "The parish priest or another priest who assists the sick has the faculty of granting them the apostolic blessing with plenary indulgence in the article of death, according to the form handed down by approved liturgical books; let him not omit to impart this blessing."[4]

[4] *Code*, c. 468, § 2.

2. This indulgence is altogether distinguished from the plenary indulgence which all can gain in the article of death, without any blessing, who hold some object to which Apostolic indulgences are attached, or who are members of a Confraternity to which such a privilege has been granted.

3. From the concession of Pope Pius X, March 9, 1904, any Christian can gain for himself a plenary indulgence for the instant of his death, provided that he recites the prescribed formula, by which he receives death with all its distresses with an even and willing soul, and fulfills the other conditions (confession, communion).

N. B. The deaf-mute and the mute can gain indulgences for which vocal prayer is desired: if public prayers are enjoined, by devoutly joining themselves to the praying people and praying mentally; if visitation of a church is privately prescribed, by praying there mentally; if prayers are to be recited privately, by performing the pious works which the confessor, in place of prayers, shall enjoin,[5] or by pouring forth the enjoined prayers by signs, or mentally, or by reading them without any pronunciation.[6] (Cf. Can. 936.)

[5] *Decret. authent.*, n. 355, March 15, 1852.

[6] Sacred Congregation of Indulgences, July 18, 1902.

§ IV. On the Suspension, Translation, and Cessation of Indulgences

628. 1° On Suspension. Indulgences can be suspended in a twofold manner: (a) from the very nature of the matter, when one of the essential conditions required for gaining them ceases for a time, for example, when the stations of the Way of the Cross are removed so that they may again be placed in the same place; (b) extrinsically, or from the will of the one granting, an example of which is had in the time of Jubilee, when almost all other indulgences are suspended, from the things to be said below.

629. 2° On Translation. It can occur in two ways, as to place and time.

(a) As to place, a local indulgence is transferred when the competent Superior orders it no longer to be gained in the place to which it had been attached, but in another determinate place; this is done especially when the community which held the former place migrates to another.

(b) As to time, when an indulgence granted for some time is transferred to another; this especially has place in indulgences granted for some feast. Now an indulgence annexed to some feast is transferred whenever the external solemnity is transferred, although the office and Mass are not transferred;[1] but if there is question of feasts which are accustomed to be performed without solemnity, when the feast is transferred in perpetuity, the indulgence is transferred;[2] but when the feast is transferred by accident, the indulgence remains affixed to the day. - Yet such an indulgence

cannot be acquired twice; for example, if someone at Rome has gained the indulgence annexed to the feast of the Immaculate Conception, he cannot acquire the same at Paris if he is in that city at the time when the transferred solemnity is celebrated.

[1] *Decret. authent.*, n. 360, August 9, 1852.

[2] *Decret. authent.*, n. 435, January 12, 1878.

630. 3° On Cessation. Indulgences can cease:

(a) Through the death of the one granting, if this has been expressed in the grant itself either explicitly, or implicitly, for example, if the clause *at my good pleasure* or another similar one has been added, but not *at the good pleasure of the See*, because the See does not die.

(b) Through the revocation of the competent Superior sufficiently promulgated.

(c) Through the death of the person, or the legitimate extinction of the College, to which they had been granted; but if some College has been illegitimately suppressed, and afterwards revives, the indulgences likewise revive.

(d) Through the destruction of the place or things to which the indulgences were attached, if it is total physically and morally; but not if the thing in common estimation, although physically renewed, remains morally the same. Hence they are not lost if the thing is renewed even totally by successive repairs, indeed if an altar is destroyed, yet in such a way that a new one is built in the same place and under the same title.[3]

[3] *Decret. authent.*, n. 317, April 24, 1843.

N. B. Through the transfer of ownership of a movable thing, for example, a rosary, to which an indulgence is attached, the indulgence now no longer ceases; for the decree of Alexander VII forbidding that transfer has been abrogated by the Sacred Penitentiary (February 18, 1921).

Art. II. On the Indulgence of the Jubilee

631. At the beginning of the fourteenth century, the Jubilee was instituted or confirmed by Boniface VIII, who granted a plenary indulgence and other spiritual favors for the year 1300, and for each following hundredth year; afterwards Clement VI decreed that the Jubilee should be celebrated in each fiftieth year, beginning from 1350; finally Paul II willed that it should have place in each twenty-fifth year, beginning from 1475.

[1] Besides the works already cited on Indulgences in general, cf. Navarrus, *Comment. de Jubilaeo*, Rome, 1575; Viva, *de Jubilaeo*, Padua, 1709; Theodoricus a S. Spir., *Tract. historico-theologicus de Jubilaeo*, Rome, 1750; Loiseaux, *Traité Canonique et pratique du Jubilé*, Paris, 1859; P. Bastien, O.S.B., *Tr. de Jubilaeo*, Brussels, 1901; H. Thurston, S.J., *The Holy Year of Jubilee*, St. Louis, 1900.

Division:

On the notion and species of the Jubilee;

On the works to be executed for gaining the Jubilee;

On the faculties granted during the time of the Jubilee;

On the suspension of graces during the time of the Jubilee.

I. On the Notion and Species of the Jubilee

632. 1° Notion. The Jubilee is nothing other than a plenary indulgence, heaped up with various privileges by the Roman Pontiff. Therefore it differs from a plenary indulgence only accidentally, namely by reason of the solemnity and the privileges which are annexed to it.

633. 2° Species. The Jubilee is twofold, ordinary and extraordinary.

(a) The former, which is also called the major Jubilee, or simply the Jubilee, is that which recurs in each twenty-fifth year. Generally it is first celebrated at Rome through an entire year, which is called the holy year; then in the following year it is extended to the whole world for a shorter time, commonly for six months. At Rome it begins from the first Vespers of the Nativity of the Lord, which precede the 25th, 50th, 75th, and 100th year of each century, and it is concluded at the second Vespers of the Nativity of the following year.

(b) The latter, or extraordinary Jubilee, which is also called minor, is that which the Roman Pontiff, according to his judgment, grants for some time, on account of a grave cause. Thus commonly each new Pontiff grants a Jubilee after his exaltation, and besides, in the greater necessities or solemnities of the Church. This Jubilee is customarily celebrated at the same time at Rome and throughout the whole world.

(c) Besides each of these Jubilees, which is universal, as granted to all the faithful, there is sometimes given a particular Jubilee, which is granted to some province or place; such is the Jubilee granted to the Aniciensis church whenever the feast of the Annunciation falls on the day of Parasceve.

(d) Sometimes also plenary indulgences are given in the form or after the manner of a Jubilee, for giving greater honor to some place and for more greatly exciting the piety of the faithful; these indeed do not differ from ordinary indulgences except by reason of solemnity.

Here it must be noted that the rules to be observed in a Jubilee, whether ordinary or extraordinary, were handed down by Benedict XIV,[1] and that they are to be observed even today in all things in which a special Bull published for each Jubilee does not stand against them.[2]

[1] Bull *Peregrinantes*, May 5, 1749, by which the Jubilee is proclaimed; Bull *Cum nos super*, May 17, 1749, where indulgences and faculties are suspended; Bull *Convocatis*, November 25, 1749, by which faculties are granted to the Penitentiaries of the City; Bull *Inter praeteritas*, December 3, 1749, concerning questions and controversies about the works enjoined; Bull *Paterna caritas*, December 17, 1749, by which provision is made for Nuns, Oblates, etc.; Bull *Benedictus Deus*, December 25, 1750, by which the Jubilee is extended to the whole world; Bull *Celebrationem*, January 1, 1751, concerning the extension of the Jubilee.

[2] *Decret. authent.*, n. 353, March 15, 1852.

II. On the Works to Be Executed for Gaining the Jubilee

634. For gaining the Jubilee various works are prescribed, namely for the ordinary Jubilee: confession and communion, and also visitations of churches; for the extraordinary Jubilee: in addition, fasting and alms. - In executing these, no order is required, provided that the last

work is performed in the state of grace. But the general rule is that works already owed from some other source do not suffice.[3]

[3] Bull *Inter praeteritos*, n. 53.

Nor is it necessary that all be completed in the same week, even for an extraordinary Jubilee;[4] nor in one and the same place, so that confession can be made in one place and communion in another, provided that the special rules established by the Bishop of that place are observed.[5]

[4] Sacred Penitentiary, March 16, 1865, in *Acta S. Sedis*, I, p. 176.

[5] Sacred Penitentiary, January 15, 1886.

635. 1° On confession and communion. (a) Apart from a special concession, one cannot satisfy the paschal precept and gain the Jubilee by one confession and communion.[6] Yet, with respect to confession, one can first confess in order to gain the Jubilee; and if afterwards, within the year, he has admitted no mortal sin, he will not be bound to confess, since the law of annual confession obliges only those who are conscious of grave sin (n. 245). Nor is absolution required, if one is in the state of grace, unless it is expressly said in the Bull, as in the year 1851, "having confessed their sins and having expiated them by sacramental absolution."

[6] Sacred Penitentiary, January 25, 1875, in *Acta S. Sedis*, VIII, pp. 266-267; cf. p. 361.

(b) Confession and communion must be made during the time of the Jubilee, but not on the vigil, unless from first Vespers, when it is already customarily begun at Rome.

(c) He who, after confession has been performed, falls into mortal sin before he has completed the last work, must repeat confession, so that by sacramental absolution he may recover grace;[1] nor is it sufficient for him to elicit perfect contrition.

[1] Bull *Inter praeteritos*, n. 79.

636. 2° On the visitation of churches. Which churches are to be visited, and how often, the Supreme Pontiff designates in the City, and the Bishop of each diocese outside the City.

(A) Thus for the year 1900, Leo XIII prescribed[2] that the four basilicas of Blessed Peter and Paul, St. John Lateran, and St. Mary Major should be visited at least once in the day for twenty continuous or interposed days, whether natural or ecclesiastical, by inhabitants residing at Rome; for at least ten days by pilgrims. But if those residing in the City, or on the journey itself, are prevented by illness or by another legitimate cause from making certain or all visitations, they can nevertheless gain the Jubilee by performing other works enjoined by confessors.

[2] Bull *Properante*, in *Act. S. Sedis*, XXXI, p. 644 sq.

(B) Outside the City, (a) Bishops determine, according to the Bull of the Pontiff, how many churches and how often they are to be visited. In places where there is one church, they can grant that all the prescribed visitations be made in this church; this power was given to them in the year 1852 in a general manner,[3] so that they enjoy it even if the Bull of the Jubilee is silent concerning this matter. They can also designate a public oratory, if Mass is habitually celebrated in it.[4]

[3] *Decret. authent.*, n. 353, March 15, 1852.

[4] Sacred Penitentiary, January 15, 1886, in *Act. S. Sedis*, XVIII, p. 334.

(b) If the same church must be visited several times, this can be done on the same day or on distinct days, unless in the Bull of the Jubilee it is defined otherwise. But visitations made in the same church must be so distinguished from each other that each time it is necessary to go out from the church in order that a new visitation can be made.

(c) Regulars cannot gain the Jubilee by performing the prescribed visitations in their own church, unless they have obtained a special privilege from the Roman Pontiff.[5] But if they are legitimately impeded from visiting the churches designated by the Ordinary, each one can obtain commutation from his own confessor.

[5] Sacred Penitentiary, 1875, in *Act. S. Sedis*, VIII, p. 554.

(d) Often also the number of visitations is diminished by instituting processions, with the license of the Bishop, from a special privilege granted by the Holy See. In which case the faithful who, because of the narrowness of the church or oratory, remain outside the doors and pray with the others, form one body morally, and therefore satisfy the visitation for gaining the Jubilee, provided, however, that all who can be contained in the church enter it. Likewise, if because of a legitimate reason processions are made with vestments not choral, without a cross, with psalmody in a low voice, or even without any chant, this is valid.[1]

[1] Sacred Penitentiary, in *Act. S. Sedis*, VIII, p. 554; vol. XXXIV, p. 638; vol. XXXV, p. 43.

637. 3° On fasting. (a) In extraordinary Jubilees a fast of three days is usually prescribed; this imports abstinence from meat; indeed also from eggs and lacticinia, if it is prescribed for the time of Lent. Sometimes, outside Lent, the same strict fast (i.e., abstinence not only from meat, but from eggs and lacticinia) is imposed, namely whenever in the Bull it is said, "using fasting foods[2]."

[2] Since in certain regions it is very difficult to observe such a fast, Bishops can approach the Holy See, so that this mandate may be softened.

(b) That fast must be distinct from the fast already established by the Church, unless otherwise is declared in the Bull explicitly or implicitly.

(c) Often the three fasts are enjoined to be performed in the same week, on Wednesday, Friday, and Saturday; but if no day is assigned, they can be made at any time whatsoever, outside days of fasting by precept.

(d) A fast of this kind must be observed even by those who otherwise are excused from the law of fast; but if they are not able to fast, the confessor can commute this work into another.[3]

[3] *Decret. authent.*, n. 425, July 10, 1869, ad 8.

638. 4° On alms. (a) If it is prescribed "according to the judgment or devotion of each one," any donation will be sufficient, provided that it is not so small that it is reputed as nothing; but if it is prescribed "according to the means of each one," it is necessary that there be some proportion between the alms and the fortune of the person; whence an obol will indeed suffice for a poor person, but not for a rich person; indeed the poor can obtain from the confessor a commutation of the alms into another work.

(b) Alms can be made through another, for example, through a superior, if there is question of the members of some community, or through the father of a family, if there is question of a wife or children, or through a rich person in the name of a poor person; provided, however, that the alms is bestowed with their knowledge.

III. On the Faculties Granted During the Time of the Jubilee

To the faithful of Christ who wish to gain the indulgence of the Jubilee, special privileges are granted: 1° with respect to the choice of confessor; 2° with respect to the faculties given to confessors.[4]

[4] These privileges are enumerated in the Bull of Benedict XIV which begins *Celebrationem*, January 1, 1751, and in the Bull proper to each Jubilee, for example, for the last Jubilee, in the Bull of Leo XIII which begins *Temporis quidem sacri*; which *Ami du Clergé*, XXIII, 1901, 145-152, clearly explained.

1° On the Faculty of Choosing a Confessor

639. (A) Nuns properly so called, making solemn vows, and their novices, can choose for themselves, for gaining the Jubilee, a confessor from among those who, for nuns, for any monastery whatsoever, have been approved as ordinary or extraordinary confessors. But nuns of simple vows can choose for themselves a confessor simply approved.

(B) All other faithful of either sex, both lay and ecclesiastical, even Regulars of any Order whatsoever, can for the same effect choose for themselves as confessor any priest whatsoever, whether Secular or Regular, even of a different Order, approved by the Ordinary of the place for hearing the confessions of seculars. But if Regulars wish to choose a confessor of their own Order, he alone must be one of those approved by the Regular Prelate.

2° On the Special Privileges Which Confessors Enjoy

640. Special faculties are granted to these confessors, but only for the confession of the Jubilee.

(A) The faculty of absolving from all sins and censures, whether reserved to Bishops or to the Roman Pontiff, provided, however, that a salutary penance and other things to be enjoined by law are enjoined. - Yet certain cases reserved in the Constitution *Sacram. Poenitentiae* are excepted: (a) the absolution of one's own accomplice; (b) the absolution of one absolving an accomplice, if this crime has been committed three times or more throughout life;[1] (c) the absolution of those who have been excommunicated, suspended, or interdicted by the Roman Pontiff or by another Prelate by name, or have been publicly denounced as bound by censure,[2] unless they have made satisfaction within the time of the Jubilee.

[1] This was expressly declared by the Sacred Penitentiary, January 11, 1900, in *Acta S. Sedis*, XXXII, 508.

[2] Thus Sacred Penitentiary, June 5, 1901, in *Acta S. Sedis*, XXXIV, p. 187. - Formerly a false and juridical accusation of solicitation was also excepted; but in the recent Jubilee of 1900 this restriction was not preserved.

It is said, "and other things to be enjoined by law," namely by imposing those conditions which are prescribed by law; for example, heretics who have publicly taught heresy are not absolved unless the heresy has been abjured and scandal repaired; those who have unjustly acquired ecclesiastical goods are not absolved unless these have been restored, or a settlement has been made or at least sincerely promised.

641. (B) The faculty of commuting vows, even sworn vows and those reserved to the Supreme Pontiff, not excepting the vow of not seeking commutation. The following are excepted: (a) vows of perpetual chastity or of entering Religion properly so called; (b) obligatory vows which have been accepted by a third party, unless he renounces his right; (c) penal vows, which are emitted for removing the danger of sin, unless the commutation is made into another work which restrains from committing sin no less than the matter of the prior vow.

For commuting vows no other reason is required than the Jubilee itself; but the commutation cannot be made into a notably lesser work.

(C) The faculty of dispensing from irregularity contracted only on account of violation of censures, provided that it is occult, and has not been brought, nor can easily be brought, to the ecclesiastical forum; but not from other irregularities.

(D) The faculty of dispensing, for the forum of conscience only, concerning certain impediments of marriage: namely the occult diriment impediment of illicit affinity of the first and second degree, provided that canonical causes are present, if there is question of contracting marriage; the impediment of spiritual relationship, and likewise the occult impediment of crime, with neither party, however, plotting. - Likewise the faculty of restoring the right of seeking the debt in the case of incestuous affinity supervening upon marriage; or of dispensing with those who are bound by a simple vow of chastity, admonishing them, however, that they will sin against the vow if they offend outside the use of marriage, and that they remain bound by the same vow if they survive their own spouse.

(E) The faculty of commuting the works prescribed for the Jubilee into other works of nearly the same value, provided that a just cause is present, i.e., physical or moral inability. Generally confession and communion cannot be commuted into other works; nevertheless for children who have not yet been admitted to sacred communion, another work can be prescribed in place of communion; and the same is probably said of those who, on account of chronic illness, are not able to receive communion.

3° On the Use of These Faculties

642. (a) Confessors cannot use these faculties outside the act of sacramental confession; and only toward those who confess with the sincere mind of gaining the Jubilee, yet in such a way that absolution from censures, commutations of vows, and dispensations remain in their force, even if it happens that he who had already obtained them, having changed his plan, does not fulfill the remaining works. But by a sacrilegious confession censures and reservations are not removed, since the disposition necessary for gaining the Jubilee is lacking.

(b) They can use these privileges only once with respect to the same penitent, although the indulgence of the Jubilee can be acquired several times when he has already fulfilled all the works of the Jubilee;[1] an exception is given for commutation of works, which can be made as often as someone gains the indulgence.[2] - Yet it is not necessary that all the faculties be applied in the same confession and by the same confessor. Thus he who, in the confession of the Jubilee, has forgotten to confess a reserved sin or to ask for commutation of vows, can afterwards obtain absolution or commutation from any confessor. Likewise he who, the first time in which he gained the Jubilee, did not need these

faculties, but afterwards fell into a reserved censure or needed some dispensation, can, in a second acquisition of the Jubilee, when it is permitted, obtain absolution or dispensation.

[1] Moreover, the confessor can use these faculties several times toward the same penitent who has not yet fulfilled all the works enjoined, from the response of the Sacred Penitentiary, January 25, 1901, and June 5, 1901.

[2] Thus Sacred Penitentiary, July 2, 1881. But in the Jubilee of 1900 the contrary was declared by the Sacred Penitentiary, February 20, 1900, in *Acta S. Sedis*, XXXII, 637; afterwards, however, May 10, 1900, it was said that the penitent can nevertheless gain the Jubilee several times, by repeating the works enjoined in the first commutation.

IV. On the Suspension of Graces During the Time of the Jubilee

643. This suspension obtains only during the holy year, when the Jubilee is celebrated at Rome, but not in the following year when it is extended to the whole world; nor does it affect the City of Rome itself, but the other parts of the Catholic world. In truth, certain privileges are suspended elsewhere for this reason: that the faithful may be drawn to the City and may there gain the Jubilee.[3]

[3] Cf. Benedict XIV, Bull *Cum nos nuper*; Leo XIII, Bull *Quod Pontificum*, in *Acta S. Sedis*, XXXII, pp. 257-259.

1° All indulgences, both plenary and partial, granted by the Roman Pontiff - but not by an inferior Prelate - are suspended, with the following exceptions:

(a) indulgences for the dead; indeed all other indulgences which at other times can be acquired only by the living, in the holy year are applicable to the dead and can be acquired for them;[1]

[1] *Acta S. Sedis*, XXXII, p. 320.

(b) the indulgence in the article of death;

(c) indulgences for the angelic salutation (i.e., the *Angelus Domini*) at the ringing of the bell;

(d) the indulgence of ten years and as many quarantines for visitation of the Most Blessed Sacrament exposed for forty hours;

(e) indulgences granted to those who accompany the Most Blessed Sacrament when it is carried to the sick, or who send a candle or torch to be carried by others on that occasion;

(f) the indulgence of the Portiuncula to be gained at Assisi; outside Assisi it can be acquired only for the dead.

644. 2° Faculties granted by the Holy See, but not by Bishops, are suspended, namely:

(a) the faculty of absolving from cases and censures reserved to the Pope; (b) the faculty of commuting vows; (c) the faculty of dispensing concerning irregularities and impediments (under which name certain authors understand matrimonial impediments, though others contradict them). - But, for the Jubilee of 1900, the Sacred Penitentiary declared, December 21, 1899, that the suspension of faculties "does not extend to those penitents who at the time of confession, in the judgment of the Ordinary or of the confessor, cannot here and now approach the City without grave inconvenience"[2]; now such is the case of most of the faithful. Besides, it declared, December 26, 1899, that this suspension does not extend to faculties granted to Ordinaries for the external forum, and consequently not to the faculty of dispensing concerning impediments of marriage in the external

forum. And rightly; for otherwise Bishops, while the holy year is turning, would not be able to provide for the necessities of the faithful, and the concession of the Jubilee would be rather unto ruin than unto edification.

[2] *Acta S. Sedis*, XXXII, p. 335.

645. But the following are not suspended, but remain ratified and firm:

(a) the faculties of dispensing in fast and abstinence, of blessing rosaries, medals, crosses, and of annexing papal indulgences to them; the faculty of giving the papal blessing; and others not enumerated above; (b) faculties granted to Bishops by Trent (*cap. Liceat*) with respect to occult cases, or by common law, or by the Apostolic See for certain persons and cases;[3] (c) faculties bestowed by the Apostolic See upon Prelates over Regulars subject to them; (d) finally, faculties granted to missionaries by the Sacred Penitentiary or the Sacred Congregation de Propaganda Fide, to be exercised in the places of Missions and on their occasion; now this can certainly be understood of missionaries who labor in regions of infidels or heretics (and consequently in the United States of America); but it is doubted whether it can also be understood of missionaries who preach in Catholic regions.

[3] *Acta S. Sedis*, XXXII, p. 507.

Art. III. On Indulgences in Particular

Since it is impossible here to enumerate all indulgences, we shall hand down rules for distinguishing true indulgences from apocryphal ones, and we shall briefly set forth certain ones from among the principal indulgences, referring the reader for the rest to approved authors.

I. On Rules for Distinguishing True Indulgences from Apocryphal Ones

646. Rules of this kind, drawn up by the Sacred Congregation of Indulgences, August 3, 1899, and approved by Leo XIII, August 10, 1899, have the force of a general law.

[1] Cf. *Acta S. Sedis*, XXXII, pp. 241-249; *Ami du Clergé*, XXII, 1900, pp. 292-298.

"Rule I. All indulgences are authentic which are contained in the most recent Collection edited by the Sacred Congregation of Indulgences.[2]

[2] This Collection is *Raccolta di Orazioni e pie Opere... Roma*, 1898, at the beginning of which it is read: "Moreover Leo XIII, Pope, by his apostolic authority approved this Collection of this kind... and therefore it must be retained by all as the genuine and authentic Collection of Indulgences hitherto granted for all the faithful of Christ and for certain groups of them designated there."

Rule II. General indulgences which are not displayed in the aforesaid Collection, or which are reported as granted, will then only be held as authentic when the autograph document of their concession has been recognized by the Sacred Congregation of Indulgences, to which, under penalty of nullity, it must be exhibited before they are published.

Rule III. Indulgences granted to religious Orders and Congregations, Archconfraternities, Confraternities, Archsodalities, Sodalities, Pious Unions, Pious Societies, certain more celebrated Churches, Pious Places, and Objects of devotion, which are contained in Summaries recognized and

approved by the Sacred Congregation of Indulgences, and printed by its authority or permission, are to be held authentic.[3]

[3] The principal work, in which these authentic summaries are contained, was edited by J. Schneider, S.J., under this title: *Rescripta authentica S. Cong. Indulg. ... necnon Summaria Indulgentiarum*, Ratisbon, 1885; it was recognized as authentic by the Sacred Congregation on December 16, 1882, so that all indulgences enumerated there are genuine.

Rule IV. Indulgences, whether general or particular, are not to be held as authentic when they are contained in books, in booklets, in summaries, in sheets, in little papers, or even in images, printed without the approval of the competent authority; this approval must be granted after diligent recognition and expressed distinctly.[1]

[1] The competent authority in this matter is the Apostolic See itself, except, however, the following cases, in which the approval of the Ordinary of the place suffices: (a) in the concession of a particular indulgence, or in a Summary of indulgences which is to be taken from one Rescript only; (b) in a Summary already published by authority of the Sacred Congregation, except, however, the catalogue of Apostolic indulgences and the integral version of the Collection *Raccolta*; (c) in the Summaries of those Confraternities which, by concession of the Holy See, are erected by Religious Institutes or aggregated by Archconfraternities; for these the approval of the Bishop of that place where these Institutes or Archconfraternities have their principal seat suffices (*Decret. authent.*, n. 388). - The approval must be expressed distinctly, i.e., with the name of the one approving, and also the place and time of the approval.

Rule V. Apocryphal, or now altogether revoked, are all indulgences of a thousand or of several thousands of years, at whatever time they may be said to have been granted.[2]

[2] Already by the decree of May 26, 1898, all those indulgences, if any were ever granted, had been revoked. In *Acta S. Sedis*, XXXI, 127.

Rule VI. Plenary indulgences which are asserted to have been granted to those reciting only a few words are to be held suspect, except indulgences in the article of death.

Rule VII. Indulgences are to be rejected as apocryphal which are circulated in booklets, sheets, or little papers, printed or manuscript, in which, from slight or even superstitious causes and uncertain revelations, or under illusory conditions, indulgences and graces exceeding usage and measure are promised.[3]

[3] The reason is because the Holy See is not accustomed to grant indulgences except from pious and reasonable causes; if therefore ridiculous or superstitious things are found in booklets or sheets in which indulgences are enumerated, these must be held as apocryphal. The Sacred Congregation of Indulgences had already reproved some of those little sheets on May 26, 1898, in *Acta S. Sedis*, XXXI, pp. 727-744; for others already condemned by previous decrees see *Ami du Clergé*, XXII, pp. 296-297.

Rule VIII. Sheets and booklets are to be rejected as counterfeit in which liberation of one or of several souls from Purgatory is promised to the faithful reciting one or another prayer; and the indulgences which are customarily added to the said promise are to be held as apocryphal.[4]

[4] In past centuries some Pontiffs had used that formula in granting indulgences, so that by these words they might signify that a plenary indulgence applicable to the dead was given; but today this mode of speaking is no longer employed, lest the faithful be deceived; for, as we said above (n. 559), no one knows in what measure indulgences are applied to the dead.

Rule IX. Indulgences of a more recent asserted concession are to be held apocryphal, or at least gravely suspect, if they are extended to an unusual number of years or days."[1]

[1] The Church is accustomed to grant partial indulgences according to certain fixed formulas, for example, of 50, 100, 200, or 300 days, or of one year, or of 3, 5, 7 years and as many quarantines; if therefore formulas entirely foreign to the customary ones are found, for example, indulgences of 1080 days, they must be rejected as apocryphal.

Therefore let Bishops and pastors take care lest the faithful, especially the pious, be deceived in this matter and fall into superstition, neglecting the duties of their state in the hope of gaining extraordinary privileges which in reality were never granted.

II. On the Indulgence or Blessing in the Article of Death

647. 1° Nature. Under this name comes a plenary indulgence which the Roman Pontiff imparts to the dying, either by himself or through a delegate; it is also called the Papal Blessing, because it is granted under the form of a blessing, in the name of the Supreme Pontiff. It is altogether distinguished from the plenary indulgence which all those can gain in the article of death, without any blessing, who hold some object to which Apostolic indulgences are annexed, or are members of a Confraternity to which such a privilege has been granted. - Here we treat only of that indulgence which is annexed to the Papal Blessing in the article of death.

This can be acquired in the true, not in the presumed, article of death;[2] now the true article of death is that which death really follows, while the presumed article is verified when the sick person, in the judgment of skilled persons, is believed shortly to die. Although, however, the indulgence is not acquired except in the true article of death, it can be granted to the faithful constituted in grave danger of death,[3] namely to those to whom Viaticum can be given; but the indulgence remains suspended until they are in the true article of death, since it has been granted by the Roman Pontiffs for this end: that provision may be made for the faithful at precisely that moment at which they are about to appear before the Supreme Judge.

[2] *Decret. authent.*, n. 9, April 23, 1675.

[3] Sacred Congregation of Indulgences, December 18, 1885, in *Acta S. Sedis*, XVIII, p. 414.

Hence it must not be repeated in the same infirmity, however long-lasting, since this would be altogether useless; but only if the sick person has recovered and afterwards falls into a new danger of death.[4] Nor is it permitted to repeat it even if the sick person received it in the state of mortal sin, or, after having received it, has relapsed into venial or mortal sin;[1] nevertheless the sick person will gain it if he dies in the state of grace; nor is it permitted to give it several times under several titles.[2]

[4] *Decret. authent.*, n. 263, September 24, 1838.

[1] *Decret. authent.*, n. 257, June 20, 1836, ad 7.

[2] *Decret. authent.*, n. 362, March 12, 1855. - These various decrees you will find in Beringer, op. cit., vol. I, pp. 518-519.

648. 2° Conditions for acquiring it. (A) On the part of the one granting. From the Code, c. 468, § 2, "the parish priest or another priest who assists the sick has the faculty of granting them the Apostolic blessing with plenary indulgence in the article of death, according to the form handed down by approved liturgical books, which blessing let him not omit to impart." Thus henceforth there will be no need of an Indult or of delegation for imparting this blessing.

649. (B) On the part of the sick person: (a) that he not be excommunicated or manifestly impenitent; yet it can be granted to those who even culpably have not received the sacraments, if they suddenly fall into danger of death; in one word, to all those, even destitute of their senses, to whom sacramental absolution can be given; also to children who have been able to sin; probably also to those who are in danger of death from another cause than illness, for example, those condemned to death.

(b) That, if he can, he has received the sacraments of Penance and Eucharist; if he cannot, the state of grace suffices while he breathes his last breath.

(c) That he offers himself prepared to accept whatever shall have pleased God, and to undergo death itself patiently in satisfaction for the punishments which he himself has merited by sinning; so explicitly in the Bull *Pia Mater*.

(d) That he invoke, at least in his heart, the Most Holy Name of Jesus, when he is composed of mind; and elicit an act of sorrow and charity.

650. 3° Rite for imparting this blessing.[3] (a) The priest, clothed in surplice and violet stole, upon entering the room of the sick person, says: *Peace be to this house*, etc.; then he sprinkles the sick person, the room, and those standing around with blessed water, saying *Thou shalt sprinkle me*, etc., without the Psalm *Miserere*. - If the blessing is given immediately after Viaticum and Extreme Unction, very probably the words *Peace be to this house* can be omitted, because they have already been said at the beginning; nevertheless more securely they are prefaced, since they are contained in the formula prescribed by Benedict XIV. But it is certain that the *Confiteor* must be repeated before the application of the indulgence, unless death is imminent.[1]

[3] Cf. *Rit. Rom.*, Tit. V, c. 6, Rite of the Apostolic Blessing; *Excerpta ex Rit. Rom.*, Baltimore, 1884, pp. 248-251, where, however, not all conditions necessary for obtaining this indulgence are declared; therefore the Roman Ritual itself should be approached, tit. V, c. 6.

[1] *Decret. authent.*, n. 286, February 5, 1841, ad 5 and 6.

The practice of giving the blessing to several dying persons at the same time can be tolerated, by reciting the prior admonitions and prayers in the plural, but by pronouncing the formula of the blessing itself, "Our Lord Jesus Christ" down to the words "Spiritus S. Amen," singularly over each one.[2]

[2] Sacred Congregation of Indulgences, June 10, 1886.

(b) If the sick person wishes to confess, let the priest hear him and absolve him; if he does not ask for confession, let him excite him to an act of contrition; let him admonish him concerning the efficacy of this blessing, and exhort him to be prepared willingly to accept whatever shall have pleased God, and patiently to undergo death itself in satisfaction for the punishments which he has merited by sinning. Yet he must propose this prudently and gently, lest he incur the indignation of relatives and friends; wherefore, if difficulties are foreseen, let this exhortation be made privately, for example, in the confession itself.

(c) Then let him console the sick person with pious words, and raise him into hope, whereby he may more abundantly obtain remission of punishments. Finally let him pronounce the words described in

the Ritual: "Our help... Most merciful God... Our Lord... Through the most sacred... May He bless thee..."

(d) But if the sick person is so near to death that there is not time for reciting all the prayers, it is enough to say: "I grant to you plenary indulgence and remission of all sins in the name of the Father, and of the Son, and of the Holy Spirit. Amen."[3]

[3] Beringer, I, p. 515.

From the concession of Pope Pius X, March 9, 1904, any Christian, the required conditions having been fulfilled, can gain for himself a plenary indulgence for the instant of his death, provided that he emits an act by which he receives death with all its distresses with an even and willing soul. (*Ami du Clergé*, vol. XXVI, 1904, p. 631.)

III. On the Indulgence of a Privileged Altar

651. 1° Notion and species. (A) By this name is understood a plenary indulgence to be applied to the dead alone; which, "if the mind of the one granting and the use of the keys of power are considered, immediately frees the soul from all the punishments of Purgatory; but if the effect of the application is considered, it is to be understood as an indulgence whose measure corresponds to the good pleasure and acceptance of divine mercy."[1]

[1] Sacred Congregation of Indulgences, *Decret. authent.*, n. 283, July 28, 1840. Cf. *Codex*, c. 916.

(B) A privileged altar is local, personal, or mixed: local is annexed to a determinate altar, so that all celebrating on it can enjoy this privilege; personal is granted to the priest himself celebrating at any altar whatsoever; mixed is annexed to a determinate altar, yet so that only determinate priests can use this privilege, for example, only those who are members of such a Confraternity. On November 2, all altars enjoy this privilege, for all celebrating.

A privileged altar after the manner of the altar of St. Gregory, or a Gregorian after the manner[2], is now no longer granted.

[2] Holy Office, December 12, 1912, *A. A. S.*, V, 33.

652. 2° Conditions for gaining the indulgence. (A) General: (a) A "Requiem" Mass is not required even when the Rubrics permit it.[3]

[3] Holy Office, February 20, 1913.

(b) The indulgence must be applied to him for whom the Mass is celebrated, because, although of itself it is not repugnant that the Mass be applied to one and the indulgence to another, in fact the Roman Pontiff wills that it aid only the soul for whom the Mass is offered.[4]

[4] Even virtual intention is required neither in the Priest nor in the one offering the stipend for gaining this indulgence. (Sacred Congregation of the Holy Office, June 17, 1915.)

(c) If the Mass is applied to several, the privilege of the Altar can be attributed to only one of them. Thus, for example, on the day of the Commemoration of All the Faithful Departed, on which all altars are privileged, the priest can celebrate Mass for one or several deceased persons, but can apply the indulgence to only one of them.

(B) Special: (a) for the privilege of a local Altar: the altar must be fixed, but for this it suffices "that in the middle of a stable and immovable altar, although not consecrated, a consecrated stone, even movable, be placed"[5]; nevertheless the privilege is granted to the altar, not to the stone, so that the latter can be changed. - The church or public oratory in which the altar exists must be at least blessed. - In older concessions the privilege was limited to days on which the Mass of the dead could be said; but this restriction has been removed.

[5] Sacred Congregation of Indulgences, March 26, 1867.

(b) For the privilege of a personal Altar: he who has obtained it is not bound to exhibit it to the Ordinary, unless otherwise is declared in the concession itself. - He who uses this privilege satisfies the burden undertaken of celebrating at a privileged altar.

N. B. "Bishops, Abbots or Prelates *nullius*, Vicars and Prefects Apostolic, and major Superiors of exempt clerical religion, can designate and declare one perpetual daily privileged altar, provided another is not had, in their cathedral, abbatial, collegiate, conventual, parochial, quasi-parochial churches..."[1]

[1] *Codex*, c. 916.

IV. On the Indulgences of the Way of the Cross

653. 1° Notion. The Way of the Cross is a pious exercise by which the Passion of the Lord is proposed to be contemplated in various stations which are passed through, in the manner in which pilgrims visit the stations of the Way of the Cross in Jerusalem. The indulgences acquired by this exercise are the same as one would gain by visiting the Jerusalem stations; these indeed are many, both plenary and partial; but, to avoid abuses, it has been prohibited that they be enumerated in pulpits or written in the little shrines. All are applicable to the souls of Purgatory. - From the documents it is not established that indulgences annexed to this exercise can be acquired as often as it is repeated.[3]

[2] Cf. *Instructio de Stationibus S. Viae Crucis erigendis visitandisque*, Quaracchi, 1888; Putzer, *Comment. in Fac. Apostol.*, nn. 205-210.

[3] Lehmkuhl, II, p. 408. Cf. Resp. Sacred Congregation of Indulgences, September 10, 1882.

654. 2° Conditions for gaining the indulgences. Some are required for the canonical erection of the stations, others for the manner of performing this exercise.

(A) For canonical erection there are required: (a) authority in the one erecting; this resides as ordinary and supreme in the Roman Pontiff; as ordinary and subordinate in the Superiors of the Franciscan Order; as delegated in those who are deputed by the Roman Pontiff or by the Order of St. Francis.[4] The delegation must be had in writing, under penalty of nullity, and, before its use, must be exhibited to the Ordinary, if the erection is made in a place not exempt from his jurisdiction.

[4] In the United States of America, Bishops have the faculty of erecting stations of the Way of the Cross in places of their diocese in which Franciscans are not present, and of delegating this power to priests exercising the sacred ministry.

(b) The consent of the Ordinary of the place in which the Way of the Cross is to be erected, given in writing for any erection, under penalty of nullity; likewise the written consent of the pastor or of the Superiors of the place in which the Way of the Cross is to be erected, if it is erected outside the bounds of the convents of St. Francis.[1]

[1] *Decret. authent.*, nn. 175, August 3, 1748, and 445, June 21, 1879.

(c) A suitable place, that is, decent and not liable to irreverence; under this name come churches, public and private oratories, domestic rooms which are not destined for profane uses, cemeteries, even open-air places, provided that the little shrines erected for the individual stations are protected by railings, lest animals freely enter there, etc. - Crosses can be affixed not only to walls, but also to benches, provided that these are immovable and sufficiently upright.[2]

[2] Sacred Congregation of Indulgences, September 14, 1904; in *Acta*, vol. XXXVII, p. 395.

(d) The blessing of the crosses. Fourteen crosses are required, which are wooden and visible to those standing by, without the image of the Crucified; they ought not to be covered with iron crosses,[3] but they can be gilded, silvered, or adorned with various colors. Images, or painted tablets, which represent the Passion of Christ are indeed useful for fostering devotion, but are not necessary; they can be separated from the crosses.

[3] *Decret. authent.*, n. 442, November 23, 1878.

The crosses are blessed, according to the formula contained in the Appendix to the Roman Ritual, by a priest enjoying the proper faculties, and morally present in the place of erection. But the affixing of the crosses can be done by any other person, yet in such a way that there is some distance between one station and another, and the way is not completed in only a few steps.[4]

[4] *Decret. authent.*, n. 194, August 28, 1752; n. 311, August 22, 1842.

(e) After the erection, an instrument must be drawn up, signed by the one erecting, in which are described the petition and concession of the erection, and also the consent of the Superiors, in one word, all essentials which have been performed; let two copies be made, of which one is to be kept in the archives of the concessionary, the other in the episcopal Curia, for perpetual memory of the matter.

(f) A new erection is not required on account of an accidental change in the crosses, for example, if, removed for a time, they are restored to the same place, or are better arranged in the same church, or if, the old church having been destroyed, a new one is built under the same title and in nearly the same place; or if new crosses are substituted for old ones, yet in a lesser part; or if they are renewed, their substance being preserved.[5] - It is otherwise if the crosses were essentially destroyed or changed in the greater or half part.[6] For a new erection in the same place the consent of those whom it concerns can be presumed.

[5] *Decret. authent.*, nn. 323; 258; 264; 270; 375.

[6] *Decret. authent.*, n. 311, August 22, 1842; n. 223, December 16, 1760, ad 1.

655. (B) On the manner in which the exercise of the Way of the Cross must be performed. (a) The individual stations must be visited, by moving locally from one to another, insofar as the multitude of people and the narrowness of the place permit, even in a public exercise, if

disturbance is not feared.[1] But if in a public exercise this local movement is morally impossible, it suffices that the priest with two clerics or cantors go around, and, stopping at each station, recite there the customary prayers, the others responding in their place.[2] One priest could also recite the prayers in the pulpit, provided that another visits the stations. Nevertheless it is advised that the faithful rise at the individual stations and genuflect with the priest.

[1] *Decret. authent.*, n. 100, April 3, 1731.

[2] *Decret. authent.*, n. 210, August 6, 1757. In religious communities of brothers and sisters, in place of a priest with two clerics, only one from the brothers or one from the sisters can go around and stop at each station and recite the customary prayers, Sacred Congregation of Indulgences, February 27, 1901, and May 7, 1902. (*Acta*, vol. XXXV, pp. 254-255.)

(b) All the stations must be visited in one continuous course, without notable interruption; nevertheless a rather long interruption through a religious action, for example, to hear Mass or to perform confession, does not hinder the gaining of the indulgences;[3] otherwise it must be said of a profane action.

[3] *Decret. authent.*, n. 223, December 16, 1760, ad 4.

(c) At each station it is necessary to meditate, however briefly, on that part of the Passion which corresponds to each station, or at least on any phase of the Passion, but not on the Passion in general. No vocal prayers are required; nevertheless the pious practice is counseled of eliciting at the individual stations a brief act of contrition and reciting a *Pater* and *Ave*.

656. 3° On Crucifixes of the Way of the Cross. By this name are understood crosses with the image of the divine Redeemer, to which are applied the indulgences of the Way of the Cross to be gained. This privilege, at the request of the Franciscans, was kindly granted by Clement XIV, so that the sick or others impeded might be able to gain the indulgences of the Way of the Cross. To enjoy this privilege, it is required:

(a) That on the cross there be an image of the Redeemer, raised in relief, and from solid material, and that this be blessed by one of the Franciscans of the stricter observance, or by another regularly delegated by the Superiors of the Order.

(b) That there be infirmity, or another legitimate impediment to performing the exercise of the Way of the Cross, for example, excessive distance from the church, or difficulty of approaching the church.

(c) That there be recited, with contrite heart, in one continuous course, while holding the blessed Crucifix in the hand, twenty *Pater*, *Ave*, and *Gloria*, namely fourteen for the stations, five in honor of the Wounds of Christ, and one according to the intention of the Roman Pontiff. From the decree of December 14, 1917, meditation on the Lord's Passion is also required, or at least pious remembrance of the same. - If several perform this exercise in common, it is enough that the Crucifix be held by any one of the community, with whom the others devoutly join themselves. - If anyone, on account of grave infirmity, is unequal to reciting these prayers, he can gain the indulgences by reciting once an act of contrition, or the invocation: "We beseech Thee, therefore, help Thy servants whom Thou hast redeemed with precious blood"; provided that at least in mind he follows the recitation, made by another standing by, of three *Pater*, *Ave*, and *Gloria*.

Recently, August 16, 1901, sodalities of the living Way of the Cross were instituted, enjoying the same privilege.[1]

[1] Cf. *Acta*, vol. XXXIV, pp. 121-123; *Ami du Clergé*, vol. XXIII, p. 1072.

V. On the Chaplet or Rosary of the Blessed Virgin Mary

657. 1° Notion and species. The Rosary is a certain formula of praying which consists of fifteen decades of Angelic Salutations, with the Lord's Prayer interposed at the beginning, and the *Gloria Patri* at the end of each decade. The third part of the Rosary, consisting of five decades, is called a chaplet.

[2] Melata, pp. 145-158; Beringer, I, pp. 360-385.

There are several species of chaplets, of which the principal are the Rosary of St. Dominic, the Chaplet of St. Bridget, and the Chaplet blessed by the Crucigers.

(A) The Rosary of St. Dominic,[3] so called because St. Dominic had the principal parts in its institution and propagation, must be blessed by Religious of the Order of Preachers, or by those who are delegated by the Holy See or by the General of the said Order, with the special formula being employed which is found in the Appendix to the Roman Ritual. - (a) It must consist of five, ten, or fifteen decades, but not six decades; while praying it must be held and turned in the hand; but when it is recited in common, it suffices that one person hold and turn the chaplet in the hand, provided that the others, cares which impede attention having been removed, devoutly unite themselves with him in the recitation of the Rosary.

[3] André Pradel, O.P., *Manuel du T. S. Rosaire*, Mazères (Ariège); Chéry, O.P., *Histoire générale du Rosaire*, 1869, Paris; Leikes, O.P., *Rosa aurea de sacratissimo B. M. V. Rosario...*, Dülmen, 1886.

(b) Formerly at least five decades had to be recited morally in one continuous course. Today, however, by force of the decree of the Sacred Congregation of Indulgences, July 8, 1908, the individual decades of the Rosary can be recited separately, yet within the space of one and the same day, without the indulgences being lost.[4]

[4] *Canoniste*, vol. 32, 1909, p. 109.

(c) The recitation of the Rosary must be accompanied by meditation on the mysteries of the life, Passion, and Resurrection of Jesus Christ; nevertheless the more unlearned and those less suited to meditation are excused from it.

(d) The principal indulgences annexed to this Rosary are these: an indulgence of one hundred days for any *Pater* and *Ave*, provided that at least the third part of the Rosary is recited; an indulgence of five years and as many quarantines, as often as they recite the third part of the Rosary; for recitation made in common: an indulgence of ten years and as many quarantines to be gained once in the day; a plenary indulgence once in the year for those reciting at least the third part of the Rosary on individual days.

To those reciting the third part of the Rosary on the feast day of the Most Holy Rosary and on individual days through the octave, a plenary indulgence has been granted by Leo XIII; likewise a plenary indulgence, if after the Octave of the Most Holy Rosary they recite the third part of the Rosary at least ten times within the month of October.

To the confreres of the Sodality of the Most Holy Rosary many other indulgences are granted, for example, an indulgence of five years and as many quarantines as often as, while reciting the Rosary, they devoutly pronounce the name of Jesus in the angelic salutation; an indulgence of ten years and as many quarantines, if they recite the Rosary three times in the week, for each time; a plenary indulgence on the feast of the Annunciation if, having confessed and been refreshed by communion, they recite the Rosary; and many other plenary indulgences for those who visit the chapel or church of the confraternity on certain days.[1]

[1] You will find all these things in the new Summary of indulgences of the Most Holy Rosary, edited by order of Leo XIII, August 30, 1899, and recognized as authentic, in *Acta S. Sedis*, XXXII, pp. 226-241.

658. (B) The Chaplet of St. Bridget,[2] so called from its institutress, (a) consists of six decades, each of which contains 1 *Pater*, 10 *Ave*, 1 *Credo*, and 1 *Pater* at the end, with 3 other *Ave*. It must be blessed by the Order of the Most Holy Savior Lateran, or by those who are delegated by the Abbot General of this Order or by the Holy See. A special form of blessing is not required.

[2] *Facultas benedicendi coronas cum applicatione indulgent. S. Brigittae*, Rome, 1878; Beringer, I, pp. 360-366; *Raccolta*, p. 206.

(b) Often the faculty is granted by the Holy See of applying the indulgences of St. Bridget to Rosaries of five, ten, or fifteen decades; then it is not necessary to add 1 *Pater* and 3 *Ave* at the end, but the *Credo* must be said at the end of each decade; and five decades suffice. - In neither case is meditation on the mysteries required.

(c) The principal indulgences are: an indulgence of 100 days for any *Pater*, *Ave*, or *Credo*, provided that six or five decades are recited; a plenary indulgence in the article of death for those who have been accustomed to recite this chaplet once in the week.[3]

[3] You will find the authentic Summary of all indulgences granted to the chaplets of St. Bridget in *Rescripta authent.*, pp. 352-356.

659. (C) Chaplets blessed by the Crucigers (the faculty of blessing them cannot be delegated to others) have annexed an indulgence of five hundred days as often as a *Pater* or *Ave* is recited with them, without its being necessary to recite the whole Rosary, or that some meditation be required.[1]

[1] Thus Sacred Congregation of Indulgences, March 15, 1884, in *Acta S. Sedis*, XVI, 404; cf. Beringer, I, pp. 366-369.

660. 2° General rules for all chaplets. (a) Several indulgences can be annexed to one and the same chaplet, for example, the indulgences of the Rosary and of St. Bridget; and, for gaining each one, the recitation of the prayers need not be repeated, but the indulgences can be accumulated, from the concession of June 12, 1907.

[3] The rules handed down here are applied to crucifixes or other blessed objects.

(b) Chaplets enriched with indulgences must be handed over altogether gratis; otherwise the indulgences are lost; yet this penalty does not affect those who buy chaplets, committing to the seller himself the care of obtaining the blessing, and who pay the price and the expenses of transmission at the time when those things, already blessed, are handed over.[2] Likewise the indulgences are not lost

when Rosaries already blessed pass by donation from one person to another or to a third, etc., nor if they are lent to another. (*Codex*, can. 924, § 2.)

[2] Thus Sacred Congregation of Indulgences, July 10, 1896, in *Acta S. Sedis*, XXIX, 320.

VI. On Scapulars

661. 1° Notion and species. The small Scapular, concerning which we speak here, is a certain badge, consisting of two little cloths joined together by cords, which is worn after the likeness of scapulars which are proper to certain Orders. In their origin they were nothing other than scapulars proper to Religious reduced to a small form, for the greater convenience of the faithful;[5] yet with the passage of time certain ones were introduced which are nothing other than a certain sign of devotion toward Christ, the Blessed Virgin, or the Saints.

[4] Ulrich, *Trésor spirituel ou Indulgences attachées aux scapulaires et autres objets de piété*, Paris; Melata, pp. 103-109; Beringer, I, pp. 390-414.

[5] *Decret. authent.*, August 18, 1868.

They are referred to a threefold class: (a) certain ones are so the badges of some Confraternity that, unless they are imposed at the time of enrollment and afterwards worn, indulgences cannot be acquired; thus, for example, the scapular of the Blessed Virgin Mary of Mount Carmel; (b) others are so the badges of a Confraternity that it is free to wear them or not for gaining indulgences; thus the scapular of the pious Union of the Immaculate Conception, erected at Rome in the church of Araceli; (c) still others, finally, which are not badges of any Confraternity, but must be imposed and worn for gaining the indulgences annexed to them, as, for example, the blue scapular of the Immaculate Conception.

The principal scapulars are: the scapular of Mount Carmel; the blue scapular of the Immaculate Conception; the red scapular of the Passion of Our Lord Jesus Christ; the scapular of the Most Holy Trinity.

662. 2° General rules. (A) With respect to the scapular itself: (a) It must be made exclusively of wool, and indeed of simple woven fabric, but not embroidered; nevertheless it is permitted that woven scapulars have ornaments, even embroidered, from another material, provided that the prescribed color prevails.[1] (b) The color of the wool is various for the various scapulars: tawny or black for the scapular of the Blessed Virgin Mary of Mount Carmel;[2] blue for the scapular of the Immaculate Conception; red for the Scapular of the Passion; white for the scapular of the Most Holy Trinity; black for the scapular of the Blessed Virgin Mary of the Seven Sorrows, etc. Yet this is not necessary for the cords, except for the scapular of the Passion, whose cords must be woolen and red. (c) The form of the little cloth should be oblong or square, not round or oval.

[1] *Decret. authent.*, n. 423, August 18, 1868.

[2] *Decret. authent.*, n. 278, February 12, 1840.

(B) With respect to blessing and imposition: (a) It must be blessed by a priest having the faculty either from the Holy See or from the Superior of the Order to which the faculty of blessing has been granted; it must be imposed by the same priest who blesses it;[3] when a multitude is present, and

there are not scapulars in sufficient number, one and the same scapular, once blessed, can validly be imposed successively upon several, with only the formula of reception repeated, yet in such a way that the first scapular which the enrolled person will thereafter put on has been blessed.[4] But when another is substituted for a scapular previously received, it is not necessary that it be blessed; this today is true even of the scapular of the Most Holy Trinity,[5] which formerly was excepted from the general rule. (b) Several scapulars can be imposed at the same time by those who have received this faculty; but an exception is given with respect to the scapular of the Blessed Virgin Mary of Mount Carmel, which is to be blessed and imposed in the first place and separately from the others.[6] (c) It must be blessed and imposed with the prescribed formula observed, at least in its substantial parts. (d) When several are to be clothed with the habit, all scapulars can be blessed with one formula in the plural; then they can be imposed successively and without interruption upon all who are present, saying: "Receive, brothers or sisters, etc."; finally all together are received into the confraternity, by using the plural number, "I receive you into the Confraternity," etc.[1]

[3] *Decret. authent.*, n. 430, June 16, 1872.

[4] *Decret. authent.*, n. 421, August 1868.

[5] Sacred Congregation of Indulgences, August 24, 1895, in *Acta S. Sedis*, XXVIII, 256.

[6] Sacred Congregation of Indulgences, April 27, 1887, in *Acta S. Sedis*, XIX, p. 554.

[1] Sacred Congregation of Indulgences, April 18, 1891, in *Acta S. Sedis*, XXIV, p. 567.

663. (C) On the part of the one receiving: (a) He must be present, so that he himself may receive the scapular from the hand of the priest. (b) He who has the faculty of imposing the scapular generally, but not restricted to some community, can impose it upon himself.[2] (c) It is validly imposed upon little children not yet having attained the use of reason; but these cannot enjoy the indulgences except after the use of reason has been attained.[3] (d) He who receives the scapular must be enrolled in the Confraternity, if there is question of a scapular which is the badge of some Confraternity; this today is true also of the scapular of the Blessed Virgin Mary of Mount Carmel.[4]

[2] *Decret. authent.*, n. 280, March 7, 1840.

[3] *Decret. authent.*, n. 410, August 29, 1864.

[4] *Decret. authent.*, n. 421, August 18, 1869; Sacred Congregation of Indulgences, April 27, 1887, in *Acta S. Sedis*, XIX, p. 556.

(D) On the part of wearing it: (a) For gaining the indulgences, it is required that the scapular always be worn hanging from the neck, not crosswise, but in such a way that one part covers the breast, the other the shoulders;[5] yet if it is taken off for a brief time, for example, to wash oneself, the indulgences persevere; if for a long time, they are suspended until it is put on again; in which case a new imposition of the sacred habit is not required.[6] (b) It is not necessary that the scapular be worn immediately upon the body, but it can be retained over the clothes.[7] (c) If several scapulars are worn at the same time, it is enough that the various little cloths, placed one over another, be suspended by only two cords (which, however, must be woolen and red in color, if among them is the scapular of the Passion); but it is expressly prohibited that the little cloths make up only one scapular.[8]

[5] *Decret. authent.*, n. 277, February 12, 1840.

[6] *Decret. authent.*, n. 379, May 27, 1857.

[7] *Decret. authent.*, n. 367, March 12, 1855, ad 2.

[8] *Decret. authent.*, n. 423, August 18, 1868; Sacred Congregation of Indulgences, April 27, 1887, in *Acta S. Sedis*, XIX, 557.

Today, in place of scapulars approved by the Holy See (except, however, those which are proper to Third Orders), it is permitted to wear decently a single medal, blessed by a priest possessing the due faculty, and so to gain the spiritual favors annexed to the scapulars, not excepting the Sabbatine privilege. The obverse of this medal must bear the image of Our Lord Jesus Christ showing His most sacred heart, the reverse the image of the Blessed Virgin Mary. But the medal must be blessed with as many distinct blessings as there are regularly imposed scapulars for which it is substituted; each blessing, however, can be imparted with one sign of the cross.[9]

[9] Holy Office, December 16, 1910, *A. A. S.*, III, 22.

664. Summaries of indulgences granted to the various scapulars you will find in Schneider, *Rescripta authentica*, pp. 473, 468, 285, 571, 476, 483, 647, and other approved authors.

Among the privileges granted to the scapular of the Blessed Virgin Mary of Mount Carmel, that one stands forth which is called the Sabbatine, approved and confirmed by various Pontiffs, and recognized by the Holy Office, January 20, 1613, in these words:[1] "The Carmelite Fathers are permitted to preach that the Christian people can piously believe concerning the help of the souls of the brothers and confreres of the Sodality of the Blessed Virgin of Mount Carmel, namely that the Most Blessed Virgin, by her continual intercessions, pious suffrages and merits, and special protection, after their passing, especially on the day of Saturday, which day has been dedicated by the Church to the same Most Blessed Virgin, will help the souls of the brothers and confreres dying in charity, who in life have worn the habit and have cultivated chastity according to their state, and have recited the Little Office; or, if they do not know how to recite, have observed the fasts of the Church and have abstained from meats on Wednesday and Saturday[2] (unless the feast of the Nativity of the Lord should fall on those days)."[3]

[1] In Schneider, *Rescr. authent.*, p. 475.

[2] Yet for a just cause the confessor, having a special faculty, can commute abstinence into another pious work.

[3] From the decree of the Holy Office, December 16, 1910, to those wearing the medal all spiritual favors annexed to the Scapulars are granted, "not excepting the Sabbatine privilege."

VII. On the Heroic Act of Charity

665. 1° Notion. This act consists in this: that a member of the faithful of Christ, whether by employing some formula, or only in mind, offers to God, for the souls of Purgatory, all satisfactory works which he himself will perform through life, and all suffrages which can come to him after death. - Laudably this oblation is made through the hands of the Blessed Virgin, so that satisfactions and indulgences may be distributed to the dead according as it shall please her; but this is not an integral and necessary part of the heroic act.[5]

[4] *Atto eroico di carità*, Rome, 1853; *Raccolta*, pp. 530-531; Melata, pp. 110-114; Beringer, I, q. 320-324.

[5] Sacred Congregation of Indulgences, December 19, 1885, in *Acta S. Sedis*, XVIII, pp. 337-339.

By an oblation of this kind, merits are not ceded, which are altogether personal; nor even impetrations, which can be offered for us and for others, even after an act of this kind has been elicited; but only satisfactions and indulgences. With respect to Mass, nothing else is ceded than the special fruit proper to the priest; consequently the priest who has elicited this act is not prohibited from offering the sacrifice of the Mass for those who have offered the alms. - Such an act, although sometimes designated under the name of a vow, does not oblige under sin and can be revoked.

666. 2° Privileges granted to the heroic act.[1] (a) Priests enjoy the indult of a personal privileged altar on individual days; (b) the faithful can gain a plenary indulgence applicable only to the dead as often as they receive sacred communion, or on Monday hear Mass in suffrage for the dead, provided that they have visited some church, and there prayed according to the mind of the Supreme Pontiff; (c) all and individual indulgences which priests or faithful gain are applicable to the dead.

[1] *Rescripta authent.*, n. 392.

But the principal value of this act is the great increase of charity, and also the acquisition of many merits, since the cession of indulgences and satisfactions made to the dead is especially meritorious. And indeed the least increase of merit must be esteemed more than liberation from the greatest punishment of Purgatory: for this punishment will shortly end, while an increase of merit makes us more blessed through all eternity. - Nor indeed is it to be feared that, on account of this, those eliciting the heroic act will remain for a long time in Purgatory: for those who daily exercise charity toward the dead can, by right and deservedly, trust in divine mercy: "Give, and it shall be given to you: good measure and pressed down, and shaken together and running over, shall they give into your bosom. For with the same measure with which you have measured, it shall be measured back to you."[2]

[2] Luke VI, 38.

Thanks, therefore, to Christ, who by His precious blood not only washes away our sins, but has also kindly bestowed the means of expiating the punishments due to sin!

On Marriage (Volume I)

On Marriage: Preliminary Notes

On Marriage — Preliminary Notes

The sacrament of Matrimony, like the sacrament of Order, contributes greatly to the good not only of the individual but also of society. For as by Order the ministers of God are propagated, who rule spiritual society, so by Matrimony the union of man and woman is sanctified, from which are begotten citizens who form each society, civil and ecclesiastical. How important it is to discuss this sacrament all those know who are persuaded that the happiness and prosperity not only of individuals, but also of families and societies, depends altogether on the procreation and good education of children.

667. 1° The various names of marriage. Matrimony (*matris munium*) is so called because the mother regularly expends greater labor than the father in receiving and educating offspring, since the infant is known to have been for the mother "burdensome before birth, painful in birth, laborious after birth."[1] It is also called *conjugium* (*cum*, *jungere*), because it is, as it were, a common yoke, to which those who contract marriage spontaneously submit themselves; *connubium*, or *nuptiae* (from *nubendo*, that is, veiling), because in antiquity brides, when they were handed over to men, covered the head with a veil for the sake of modesty;[2] *consortium* (*cum*, *sors*), by which is signified the very close society of bodies and souls by which man and woman are joined together.

[1] Gregory IX, *Decretal.*, l. III, tit. 33, c. 2.

[2] Gen., XXIV, 65.

668. 2° Marriage as contract and sacrament. Matrimony can be considered as a natural contract and as a sacrament.

Matrimony as contract can be defined: a legitimate agreement between a man and a woman, conferring upon them a mutual, exclusive, and perpetual right both to acts of themselves apt for the generation of offspring, and to the fellowship of common life.

It is said: (a) a legitimate agreement... that is, entered into according to the laws, whether natural or positive, by which marriage is governed; and this is entered into between a man and a woman, who otherwise are by law capable of a contract of this kind.

(b) A mutual and perpetual right to acts... By these words the primary end of marriage is declared, namely the procreation of offspring and consequently education. But for the essence of marriage it is not required that children actually be begotten, since sterile persons lawfully marry; nor even the use of marriage, since the Blessed Virgin and St. Joseph were joined in lawful marriage, although they never used matrimonial rights; but a right suffices to those acts which of themselves are apt for the generation of offspring, although by accident generation sometimes does not follow, or the spouses do not use their right. Moreover that right is mutual, as is clear, and perpetual, so that thus vague and fornicatory mingling of the sexes is excluded.

(c) To the fellowship of common life: here is signified the secondary end of marriage, mutual help which arises from the love and society of each, according to that word of Scripture:[1] "It is not good for man to be alone; let us make him a helper like himself." - Wherefore spouses ought to be not only one flesh, so that they may generate offspring, but also one heart and one soul, so that they may bring help and solace to each other.

[1] Gen., II, 18.

Matrimony as sacrament is nothing other than the contract itself raised to the dignity of a sacrament, and is customarily defined: a sacrament of the New Law, by which, through the consent of the contracting parties legitimately furnished, grace is conferred upon spouses for rightly fulfilling the duties of marriage. The definition will be clearer from the things to be said below.

669. 3° On other divisions of marriage. Matrimony can be considered under a multiple respect:

1° By reason of validity, it is distinguished into valid and invalid: (a) the former, which is also called true, is that which in reality has been contracted, without any diriment impediment; (b) the latter, which is also called null, is that which, on account of some defect or impediment, was not truly contracted; it is called attempted, insofar as one or the other party with knowledge of the impediment has dared to enter it; putative, when by the spouses themselves, or at least by one or the other, it is considered valid, although on account of a hidden impediment it is invalid.

2° By reason of dignity, it is legitimate or ratified: (a) legitimate, when it has been entered into according to the laws of natural and positive law, so that it is valid as a contract, although it does not attain to the dignity of a sacrament;[1] such is marriage lawfully contracted between infidels or the non-baptized; (b) ratified, that is received, when it is validly entered into between the faithful, so that it has the nature of a sacrament.[2]

[1] Formerly even the marriages of the faithful were called legitimate, when all the solemnities of law had been observed; but today the sense set forth above has prevailed. Cf. Benedict XIV, *De Synodo*, lib. VIII, c. 12, n. 5.

[2] Sometimes, however, but in an improper sense, even clandestine and consequently invalid marriages of the faithful are called ratified. Cf. Gasparri, n. 235.

3° By reason of effect, it is called ratified or consummated: ratified, when it has been celebrated, but not yet completed by carnal copula; consummated, when it has been completed by carnal copula of itself apt for generation, whether conception really follows, or not.

4° By reason of duration, marriage is an act or a state: the former is the passing agreement itself by which a right over bodies is mutually handed over in order to generation (*matrimonium in fieri*); the latter is the permanent state resulting from this passing act (*matrimonium in facto esse*).

670. 4° Division. There will be four chapters: in the first, we shall treat of the contract itself of marriage; in the second, of the sacrament; in the third, of the impediments which sometimes stand in the way of the celebration of each; in the fourth, of dispensations which are customarily granted from these impediments. The two former chapters will be especially dogmatic, and in them we shall chiefly set forth natural and divine law concerning marriage. In the two others, we shall explain practical questions, namely moral and canonical ones, chiefly

pertaining to positive law. Yet even in the former part, when occasion is given, we shall examine certain practical conclusions, lest we be compelled to treat twice of the same matter.

This division will be better understood from the following schema.

On marriage as contract

Its nature:

- It consists in a stable contract.
- The essence of the contract consists in consent.

Its properties:

- unity.
- indissolubility.

On marriage as sacrament

On the sacrament itself:

- Existence.
- Nature.
- Effects.
- The power of making laws concerning marriage.

On the celebration of marriage:

- On the preliminaries to the celebration.
- On the rite of celebration.

On the impediments of marriage

- Prohibiting.
- Diriment.

On dispensations

- On dispensations themselves.
- On the revalidation of marriage.

Appendix: On civil law with respect to marriage.

Chapter I: On Marriage as Contract

On Marriage as Contract

671. Errors to be refuted. Today errors concerning the matrimonial contract are multiplying. (a) Many, especially evolutionists and materialists, holding that man descends from a brute animal, contend that promiscuity prevailed among the first men, as among the other living things, so that men were mingled indiscriminately with women and women with men, as occasion presented itself; and that to this promiscuity succeeded polygamy and polyandry, and only after long ages did monogamy prevail.[1] (b) Yet many moderns, even among evolutionists, admit that monogamy is more perfect than the other matrimonial contracts, and therefore is to be retained, provided, however, that divorce be easily admitted, and that it be permitted to spouses thus separated to seek new nuptials.[2] (c) Yet not a few, especially among socialists, favor free union: according to them, the chief end of union between man and woman is mutual pleasure; therefore for this union mutual love is required and suffices: those who mutually love each other, by that very fact, have the right to cohabit together; when love ceases, the union must be broken off. But the offspring born from free union will be nourished and educated by the care of the civil State, without the intervention of the parents.[3]

[1] Lubbock, *The origin of civilization*; Morgan, *Systems of consanguinity, affinity and of the human family*; Mac Lennan, *Studies in ancient history comprising a reprint of Primitive marriage*, London and New York, 1886; Giraud-Teulon, *Les origines du Mariage et de la famille*, Geneva and Paris, 1884.

[2] Thus, among others, Naquet, Dumas, Paul and Victor Margueritte, and others enumerated below where divorce is treated.

[3] A. Bebel, *La femme dans le passé, le présent et l'avenir* (translated from German by H. Ravé), 1891; B. Malon, *Le socialisme intégral*, Paris, 1892, vol. I, ch. 7; G. Renard, *Le régime socialiste*, 1898, p. 59; Ch. Albert, *L'amour libre*, Paris, 1900; and others whom Turgeon enumerates, *Le Féminisme français*, Paris, 1902, vol. II, pp. 259-288.

Against these errors we shall set forth Catholic doctrine: 1° concerning the nature; 2° concerning the properties of the matrimonial contract.

Art. I. On the Nature of the Matrimonial Contract

To weigh the nature of this contract, we shall show two things: 1° that marriage consists in a stable contract; 2° that the essence of this contract is to be placed in consent.

§ I. On the Stability of the Matrimonial Contract

672. Thesis: By natural and divine law, marriage ought not to consist in a free and revocable union, but in a stable union apt for constituting a family. It is certain against socialists and other patrons of free union.[1]

[1] Cf. Card. Billot, *De Sacramentis*, vol. II, th. 33.

Since our thesis is attacked by those who reject the authority of revelation, we shall first use historical and philosophical arguments, by which the way will be prepared for an exposition of

Catholic doctrine.

673. 1° Historical arguments. The adversaries contend that the union of the sexes in antiquity was free and promiscuous[2], and therefore that the modern manner of contracting marriage, as introduced only by customs and by civil law, can and ought to be abolished.

[2] Their arguments are enumerated and refuted by G. Fonsegrive, *Mariage et Union libre*, Paris, 1904.

They argue: (A) from the laws of evolution: they suppose that man descends from a brute animal, and thence infer that the first men were not alien to the morals of brute animals, among which promiscuous union prevails, not stable union; (B) from the present state of uncultivated tribes, which, they say, retain the morals of primitive men; for among them, they say, there prevails promiscuity of the sexes, or traces of the same remain, such as: matriarchy, or the state in which the mother enjoys principal authority in the family; the practice of drawing the genealogy of children not from fathers, but from mothers; polygamy and polyandry, or the union of several women at the same time with one man or conversely; (C) from certain ancient facts, which seem to be traces of primitive promiscuity, as were sacred prostitution, which flourished in certain temples, and also the right of the first night or the practice of handing over one's own wife to guests.

674. But we reply that many of the things alleged are not universal facts, but exceptions, and from them it is not inferred that promiscuity of the sexes or free union once prevailed; but on the contrary it is historically established that already from the first times the union of man and woman was ordered to constituting a stable family.

(A) Evolution, to which the adversaries appeal, is not a fact, but a hypothesis which the most distinguished transformists admit to be by no means proved, especially if there is question of the origin of man, as was said in the Treatise on God the Creator, nn. 838-839. But among those who think that man descends from a brute animal, the most learned say that the first men were not given over to promiscuity, and prove this from the very laws of evolution. For, according to Darwin,[1] the apes from which many evolutionists assert that man arose do not indulge in promiscuity, but some are monogamous, others indeed polygamous. For among them, as among men, the greatest jealousy concerning females prevails, and the males fight with the greatest zeal against others in order that they may exclusively possess the females which they have joined to themselves. Therefore if promiscuity of the sexes had prevailed among the first men, these would have been inferior to the apes themselves, and there would not be ascent and progress, but rather regression: which indeed openly contradicts the laws of evolution.

[1] Darwin, *Descent of man*, P. II, ch. 19; in French, *La Descendance de l'homme*, Paris, 1893, vol. II, p. 392. Cf. Letourneau, *Evolution du mariage et de la famille*, Paris, 1888, ch. 3; Westermarck, *Origine du mariage dans l'espèce humaine*, Paris, Guillaumin, 1895, chs. 5-6; G. Fonsegrive, *Mariage et Union libre*, Paris, 1904, pp. 19-29.

675. (B) But from the morals of uncultivated peoples it is not only not established that the first men were given over to promiscuity or free union, but it is inferred that among them a stable contract of marriage prevailed. For if the testimonies of those are weighed who lived for a long time, and not for only a few months, among them, these things are worthy of note: (a) promiscuity does not exist among uncultivated tribes except very rarely, and indeed especially where most corrupt men from Europe have brought in corruption of morals; almost

everywhere the family is held as the foundation of society and the protection of the tribe; wherefore, even where divorce and polygamy are permitted, the matrimonial contract is entered into as of itself stable; (b) likewise exogamy, or the practice of seeking a wife outside the family and tribe[1], the custom of acquiring a wife or of assigning a dowry to her, show the will of constituting a stable family; (c) by strict laws provision is made for the chastity of girls and wives[2]: in many regions they inhabit the most remote rooms of the house, lest they be seen by strangers; elsewhere their faces are disfigured by mutilations lest they please other men; generally girls remain separated from men until nuptials; those who are seduced before marriage, and their corrupters, are punished with severe penalties; and adulteries are altogether reproved and strictly punished; all of which things indeed are very alien from promiscuity and free union.

[1] Cf. Msgr. A. Le Roy, *La Religion des primitifs*, Paris, 1911, pp. 106-109.

[2] Fonsegrive, op. cit., pp. 21-29.

676. (C) The same is established from the history of ancient peoples. (a) The most ancient code of laws, enacted about the year 2200 before Christ by Hammourabi, king of Babylon, not only excludes promiscuity, but also supposes that monogamy already prevails. The matrimonial contract must be entered into publicly; a man cannot take a concubine unless his wife is infirm or sterile: then he goes to the maidservant whom the wife substitutes for herself; if the maidservant likewise is sterile, he can take another wife. Divorce indeed is permitted, at the nod of the man: but if he dismisses his wife without sufficient reason, he must restore her dowry to her, indeed sometimes furnish her some compensation. Adultery, incest, and rape are strictly prohibited under grave penalties.[3]

[3] *Mémoires publiés sous la direction de M. de Morgan*, vol. IV, *Textes élamites-sémitiques*, 2nd series, by P. Scheil, Paris, Leroux, 1902, pp. 145-150.

677. (b) Among the Egyptians, although polygamy and divorce were permitted under some restrictions, generally the custom prevailed of taking one wife only, as Herodotus relates[4]; moreover free union was by no means recognized, but adultery was strictly prohibited by civil law. - (c) Among the Indians, fifteen centuries before Christ, one lawful wife was taken, who could never be dismissed, yet several concubines were permitted. But promiscuity was by no means admitted; for adultery was held as one of the three greater sins. Afterwards, however, license was given to men of dismissing a wife if she was sterile or had borne only daughters, or suffered from defects which the man could not tolerate.[1] (d) In the Chinese empire, according to the law of Confucius, only one lawful wife must be taken; divorce indeed is permitted to the man, but only for a grave cause determined by law. (e) Among the Greeks and Romans, notwithstanding divorce, monogamy prevails, and adultery even of the man is considered as something indecorous and shameful; illegitimate children are not members of the family, nor can they have a part in domestic worship. Yet concubinage under certain conditions is permitted by law.[2] How honorable marriage was held among the Romans is established from the manner in which it is defined among the old jurists:[3] "the fellowship of all life, an undivided custom of life, a sharing of divine and human law."

[4] J. G. Wilkinson, *A popular account of the ancient Egyptians*, London, 1854, vol. II, p. 224; Maspero, *Histoire ancienne des peuples d'Orient*, 4° ed., Paris, 1897, vol. II, pp. 502-503.

[1] La Mazelière, *Essai sur l'évolution de la civilisation indienne*, Paris, Plon, 1902, vol. I, Introd.; vol. II, pp. 15, 306, etc.

[2] F. de Coulanges, *La Cité antique*, l. II, chs. 2-3; Denis, *Histoire des théories morales dans l'antiquité*, Paris, 1856, vol. I, pp. 69-73. - At Sparta, according to the laws of Lycurgus, the same woman could be possessed by several brothers; cf. Fonsegrive, op. cit., p. 36.

[3] Modestin., *Digest.*, XXII, 2.

From these testimonies and very many others which could be brought forward, it is clearly established that among ancient peoples promiscuity of the sexes did not prevail, nor free union, but that union of man and woman which is apt for constituting a family.

678. The facts alleged by the adversaries do not necessarily suppose promiscuity. (a) They say indeed that matriarchy was in use among many tribes, and that genealogies of children were drawn not from men, but from women. - A fact of this kind was not universal, but prevailed only among certain tribes; it is rather easily explained from the fact that, among those peoples, the man was absent for a long time for the sake of hunting, fishing, or making war; wherefore children, whose father was sometimes uncertain, and who moreover cohabited with the mother longer than with the father, were accustomed to receive the maternal name. But from this it by no means follows that promiscuity or free union was in common use.

(b) Sacred prostitution, which flourished in certain temples, and also the right of the first night or the practice of handing over one's own wife to guests, and other things of this kind, are abuses which arise from innate lust and a false conception of hospitality, but they cannot be called traces of ancient promiscuity.

But the few facts of polyandry or promiscuity which are alleged among certain tribes have themselves by way of exception, and do not weaken the general rule of stable marriage[1]: polyandry was had where women were fewer in number than men; promiscuity, where it existed, is rather easily explained from a certain corruption of morals, without its being necessary to suppose that the first men were addicted to this vice.

[1] This is testified by Westermarck, otherwise an evolutionist, op. cit., ch. 6, pp. 128-129: "It is naturally not impossible that, among some peoples, the relations of the sexes have approached promiscuity. But there is not an atom of proof that promiscuity has ever been a general phase of the social history of humanity. The hypothesis of promiscuity, instead of belonging, as Giraud-Teulon thinks, to the class of hypotheses which science may permit itself, has no real foundation, no scientific character."

679. 2° Philosophical arguments. From the very ends of marriage it is logically inferred that marriage demands some stability.

(A) The primary end of marriage is the procreation and education of offspring: for to this end the diversity of the sexes and conjugal society were instituted, that the human race might be propagated, as nature itself indicates; moreover, offspring having been conceived, by the law of nature the duty rests upon the spouses of rightly educating children, by providing them not only with food, but also with intellectual and moral nourishment, which the young could procure for themselves by their own powers only with difficulty and after a long time. But for each of these a stable union of parents is

required[2], and a promiscuous or even free union does not suffice. For: (a) with respect to the generation of offspring, experience establishes that women who are mingled with several men rarely conceive; but free union, rescindable at will, given the mutability of the human will, often induces some promiscuity and voluntary sterility: for then pleasure rather than offspring is sought. (b) The right education of offspring requires still greater stability: 1) physical education: for in the last months of pregnancy, at the time of birth and lactation, the woman needs the cooperation of the man for providing for her own necessities and those of the offspring; 2) intellectual and moral education, for which the child needs not only the gentle love of his mother, but also the severe authority and prudence of his father.

[2] This St. Thomas lucidly sets forth, *Contra Gentiles*, lib. III, c. 122, where he shows, from a comparison between brute animals and man, that marriage among men ought to be stable. For he observes that animals remain together as long as is necessary for the education and instruction of the offspring, as is clear in certain birds, whose chicks cannot seek food for themselves immediately after they are born. "But it is manifest," he says, "that in the human species, the female would by no means suffice for the education of the offspring, since the necessity of human life requires many things which cannot be prepared by one alone... Again it must be considered that, in the human species, offspring does not need only nourishment as to the body, as among animals, but also instruction as to the soul; for other animals naturally have their prudences by which they can provide for themselves; but man lives by reason, which must come to prudence through the experience of a long time: whence it is necessary that children be instructed by parents as though already experienced; nor are those just born capable of this instruction, but after a long time, and especially when they shall have arrived at the years of discretion. For this instruction also a long time is required; and then also, on account of the impulses of the passions, by which the estimation of prudence is corrupted, they need not only instruction, but also repression. But for this the woman alone does not suffice, but in this the work of the man is more required, in whom there is both more perfect reason for instructing and stronger power for chastising. Therefore in the human species it is necessary to devote oneself to the advancement of offspring not for a short time, as among birds, but through a great space of life."

680. The Socialists indeed object that the duty of educating little children rests upon the State, which will gather all infants and hand them over to nurses to be educated.

Resp. Nature itself clearly shows that the work of physical and moral education is primarily to be performed by the parents themselves, insofar as this can be done. In truth, nature gave breasts to the mother for nursing children, strength to the father for seeking food and other necessities of life; to each parent, love at once tender and generous, by force of which they willingly hand over not only their own things, but even themselves and their own life for the welfare of the offspring. The same can be said of moral education: for there is implanted in parents a certain natural instinct and love, by force of which they are able to look into the mind of their children and detect their inclinations and direct them to the good; moreover, by a certain native inclination, children more willingly obey the commands and counsels of their own parents than of strangers. Therefore the duty of educating children rests primarily upon parents, and naturally flows from the very act of generation, and therefore supposes a union of itself stable.

681. (B) The secondary end of marriage is the mutual help of the spouses and the remedy of concupiscence. (a) By a certain natural instinct man and woman desire to be joined to each other by a special bond of love, "so that, one being helped by the aid of the other, he may more easily bear the inconveniences of life and sustain the weakness of old age."[1] The reason is because man and woman complete each other not only in order to the generation of offspring,

but also with respect to mutual assistance and solace: the endowments of one are, as it were, the complement of the qualities of the other; therefore man by a certain natural instinct seeks the society of woman, who herself is delighted by the society of man. But they cannot provide this mutual help to each other unless by a contract of itself stable they are able to constitute a family and perceive the lawful joys of the family.

[1] *Catech. Rom.*, On the sacrament of matrimony, n. 12.

682. (b) Another secondary end of marriage is to soothe and restrain concupiscence. In the state of fallen nature, concupiscence often burns forth, and only with difficulty is it contained within the limits which both the health of the body and the honesty of morals demand. Now stable marriage checks and restrains concupiscence within the limits of honesty. On the one hand, through the lawful use of marriage the ardor of concupiscence is soothed; and on the other, copula is had only with the person into whose body a lawful power has been handed over, to whom fidelity is owed in marriage, and indeed in that manner which is apt for procreating offspring. - But if free union revocable at will is admitted, concupiscence, far from being tempered, is increased not a little by the hope of entering new unions and experiencing new pleasures, with the greatest detriment to body and soul.[2]

[2] In this matter there is a great difference between man and brute animal: animals, led by instinct, mate only at certain times; but man experiences libido at every time, and only by the exercise of right reason and will can he check the abuse of venereal delight.

Therefore, having inspected the ends of marriage, whether primary or secondary, it is clear that conjugal union ought not to be promiscuous or free, but to enjoy that stability which is required for constituting a family.

683. 3° It is confirmed by theological arguments. (a) For God, after the first man had been created, seeing that it was not good for man to remain alone, made for him a help like himself. Therefore He took one of the ribs of sleeping Adam, and built it into a woman and brought her to Adam. He said: "This now is bone of my bones, and flesh of my flesh; she shall be called woman, because she was taken from man. Wherefore a man shall leave his father and mother, and shall cleave to his wife; and they shall be two in one flesh."[1] For there especially five things are declared: 1) the formation of the woman made by God, that she might become the companion of the first man and a help like him; 2) the intimate union which ought to exist between man and woman both for the generation of offspring and for the fellowship of life; 3) yet a certain dependence of the woman upon the man, because she was taken from the man; 4) the unity of the matrimonial bond: for they shall be two in one flesh; 5) the stability of the same: a man shall leave his father and mother and shall cleave to his wife. Deservedly, therefore, Leo XIII says:[2] "That union of man and woman, in order that it might respond more aptly to the most wise counsels of God, even from that time bore before itself two chief properties, and these especially noble, as though deeply impressed and inscribed, namely unity and perpetuity."

[1] Gen., II, 18-24.

[2] Encycl. *Arcanum*.

(b) We indeed admit that this excellent form of marriage was adulterated among the Jews themselves, chiefly through polygamy and divorce. Nevertheless vague and free unions were strictly prohibited; thus girls who, at the time of the nuptials, were found to have lost their virginity were punished with death, as were those who committed adultery.[3] For the union of spouses, even when several wives were permitted, was ordered primarily to procreating children and constituting a family, as is established from the whole history of the Israelite people, among whom stable families were held as the safest protection of the nation.

[3] Deut., XXII, 20-22.

(c) But Christ recalled Christian marriage to its ancient unity and indissolubility; for, having been asked whether it was permitted to put away one's wife, He responded that this was not permitted, because God from the beginning said: "For this cause a man shall leave father and mother and shall cleave to his wife, and they shall be two in one flesh. Therefore now they are not two, but one flesh. What therefore God has joined together, let not man separate."[4] This also St. Paul teaches, asserting that the woman who, while her husband lives, has been with another man is an adulteress[1], declaring the unity of marriage thus:[2] "Let each one have his own wife, and let each woman have her own husband." Now the unity and indissolubility of the matrimonial contract altogether exclude vague and free unions.

[4] Matt., XIX, 4-6.

[1] Rom., VII, 3.

[2] I Cor. VII, 2. - This is proved more fully below, nn. 709, 716 sq.

(d) The Church not only retained this doctrine of the Master, but also strove with all its powers to bring it into practice, unceasingly teaching that nuptials are to be entered into not for the sake of lust, but for procreating and educating children in a Christian manner, and also for mutual help and solace. This, among others, St. Augustine declares, writing of wives:[3] "For they were married for this purpose: that that concupiscence, reduced to a lawful bond, might not float about deformed and dissolved, having from itself the unrestrainable weakness of the flesh, but from nuptials the indissoluble society of fidelity; from itself the progress of immoderate intercourse, but from nuptials the measure of chaste procreation." - But how strenuously the Church fought against the lust of kings and peoples for protecting the sanctity and perpetuity of the matrimonial bond, we shall set forth below, n. 720.

[3] *De bono conjugali*, cap. 5, *P. L.*, XL, 377.

684. Corollaries. (a) Fornication and free and temporary union are opposed to the natural and at the same time divine law, since they are not only prohibited by divine law, but are also opposed to the essential ends of marriage, as is established from what has been said, n. 679.

(b) Marriage is impossible between persons who are not apt for generating, such as eunuchs, since the primary end cannot be attained.

(c) A marriage in which the primary end of marriage itself, that is, the end of the work, were positively excluded by the contracting parties would be illicit, indeed null; but the intention of the contracting parties (the end of the one acting) can be that of not pursuing the execution of such an end, provided that the right to that end is not excluded, or the right to the body (can. 1081, § 2).

(d) It is licit and valid, although less perfect, to contract marriage with this explicit end alone, not however exclusive, that poverty be removed, help and solace be found, passions be quieted, lawful delight be had, provided that the primary end is not excluded, in the sense already stated.

§ II. On the Essence of the Matrimonial Contract

685. Preliminary notes. From what has already been said it is permitted to infer that the essence of marriage, as contract, consists in mutual consent, by which a man and a woman, otherwise capable of marriage, hand over to each other in the present[2] a stable right over the body of the other for generating offspring, and for the fellowship of common life. Consequently the matrimonial contract does not consist directly in use or copula, but in the consent by which the right to copula is handed over. For, as St. Thomas rightly observes, "one does not receive power over that which is freely another's except through his consent. But, through matrimony, each spouse receives power over the body of the other... since previously each had free power of his own body. Therefore consent makes marriage."

[1] St. Thomas, *Supplem.*, q. 45-48; Sanchez, lib. II-V; Salmantic., cap. 6-7; Billuart, diss. III, a. 1-5; St. Alphonsus, nn. 885-896; Carrière, nn. 455-505; Gasparri, nn. 770-870; Rosset, vol. I, nn. 88-237; Pesch, nn. 731-752; Billot, th. 34-35; Ball. P., nn. 262-305 (3rd ed.); Wernz, S.J., *Jus Decretal.*, vol. IV, *Jus Matrimoniale*, Rome, 1904, nn. 45-47 and nn. 291-306.

[2] It is said *in the present*, because consent concerning the future indeed suffices for betrothals, but not for marriage.

686. Certain ancient authors taught that copula is necessary for constituting perfect marriage: "It must be known," says Gratian,[3] "that marriage is begun in betrothal, perfected in commingling. Whence between bridegroom and bride there is marriage, but begun; between those joined by copula there is ratified marriage." A few commentators of Gratian proceeded further, teaching that copula is required for the essence of marriage. Freisen renewed this opinion, writing that the matrimonial contract is nothing other than a promise of future copula, and therefore does not differ from betrothals; but marriage properly so called is made through copula had with marital affection.[4] - It is indeed true that marriage simply ratified is not so perfectly indissoluble as consummated marriage, as will be said below; yet it is true marriage and properly so called, as the common and certain opinion holds. (a) For the Fathers often teach this, when they write that Mary and Joseph were truly spouses, although they never used marriage: thus, for example, Origen, St. Basil, St. Ambrose, St. Jerome, St. Augustine;[1] hence Benedict XIV says: "Those who affirm that the marriage of the Blessed Virgin with St. Joseph consisted only in betrothals, think rashly and falsely. Therefore it must be held as certain that the marriage contracted between them was true and ratified."[2] (b) Pontiffs and Councils teach the same expressly, when they establish that marriage is perfected by the free consent of the contracting parties. Thus Nicholas I:[3] "Let the consent alone of those concerning whose unions there is question suffice according to the laws. If this consent alone perhaps has been lacking in nuptials, the rest, even celebrated with intercourse itself, is frustrated, John Chrysostom, the great Doctor, bearing witness, who says: intercourse does not make marriage, but will." To the point is Trent:[4] "There is no doubt that clandestine marriages made by the free consent of the contracting parties are ratified and true marriages." Afterwards it declares that ratified

marriage, not consummated, is dissolved by solemn profession of religion; now a contract is not dissolved unless it already exists.

[3] *Dictum* in Caus. 27, q. 2, c. 34; cf. c. 45. - There the word *ratified* from the context seems to signify a marriage which cannot be dissolved in any way.

[4] *Archiv für kathol. Kirchenrecht*, LIV, 1885, p. 361 sq. - Yet he later retracted this error in the same periodical, LXVII, 1892, p. 381 sq.

[1] Origen, homil. VI on Luke, *P. G.*, vol. XIII, p. 1814 sq.; St. Basil, *De sancta Christi generatione*, nn. 3-5, *P. G.*, vol. XXXI, pp. 1463-1467; St. Ambrose, *De instit. virg.*, c. 6, n. 42, *P. L.*, vol. XVI, p. 316; St. Jerome, *Contra Helvid.*, n. 4, *P. L.*, vol. XXIII, p. 185; St. Augustine, *De nuptiis et concup.*, l. I, n. 12, *P. L.*, vol. XLIV, p. 420.

[2] *De Synodo dioeces.*, l. XIII, c. 32, n. 13.

[3] In Mansi, *Concilia*, vol. XV, p. 403.

[4] Trent, Sess. XXIV, *de Reformat. matrim.*, c. 1.

It remains, therefore, that we accurately declare the qualities of matrimonial consent; therefore we shall speak: 1° on the endowments of this consent in general; 2° on conditioned consent in particular.

I. On the Endowments of Matrimonial Consent

687. Since marriage is a certain contract, the consent furnished in it follows the general laws of contract. But because it is a contract *sui generis*, in which a right over the very persons of the contracting parties is handed over, certain special things must be noted concerning it. We shall declare this by setting forth in what sense matrimonial consent ought to be internal, free, mutual, and externally manifested.

688. 1° Internal, that is: (a) truly elicited by the will, (b) with a true intention, at least implicit, of handing over a right over one's own body and of receiving a right over the body of the other in order to the generation of offspring. This indeed is clear from the very nature of marriage; for this consists essentially in the right to acts of themselves apt for generating offspring; and moreover such a right cannot be handed over without the true consent of each party. Hence a union between man and woman entered into on account of other ends, for example, only for mutual help and solace, without the intention of granting the aforesaid right, is not truly marriage. Yet implicit consent suffices, such as, for example, is given by those who intend to do what others about to marry do, provided that they exclude nothing of those things which are required for the essence of marriage. What error vitiates consent will be declared below, nn. 934-936.

689. Corollaries: (A) He who simulates consent, while indeed seriously and duly pronouncing the words, but internally dissenting or jesting, contracts invalidly. Hence he cannot licitly use marriage; but the other party, who furnished true consent, is not bound to believe the simulator saying that he did not consent, but can ask for the debt.

(B) In the external forum, consent seriously given externally is presumed to be true and internal, unless the contrary is proved by certain arguments. (*Codex*, c. 1086.)

This proof is altogether difficult; for the affirmation even sworn of the simulator, or even of each spouse, does not suffice; but besides, two things are required: (a) the cause or motive of simulation must be explained, for example, it must be proved that consent was extorted by fear or fraud, or that the simulator willed nothing other than to obtain money or seduce the girl; (b) the simulation itself must be demonstrated from various circumstances preceding, accompanying, or following the marriage, which are such that they render the fiction morally certain; this can be done, for example, either by letters, or by words pronounced before witnesses, clearly manifesting this intention.[1]

[1] You have examples in Gasparri, nn. 801 and 804; *Acta S. Sedis*, vol. XVIII, p. 14; vol. XXII, p. 529.

690. (C) He who consents only fictitiously, or simulates consent, sins mortally, unless he is excused by a most grave reason.

For, even if it is admitted with many theologians that in this case sacrilege properly so called is not committed[2], nevertheless one certainly sins against truth, by deceiving the other party and the witnesses; against justice, by inflicting grave damage on the other party, who will remain unmarried if the fraud cannot be proved, or will contract other nuptials only with difficulty if the fraud is detected; against chastity, if the consummation of this fictitious marriage is intended.

[2] For simulation of a sacrament it is required that some essential part be posited, while the other is omitted or mutilated; but he who simulates consent posits neither the matter nor the form of the sacrament, since each consists in consent itself; therefore he does not properly simulate the sacrament, nor under this head is he guilty of sacrilege. Cf. St. Alphonsus, n. 62.

Yet he is excused from sin who simulates consent on account of a grave and urgent reason, for example, because of grave fear, or to avoid scandal, if a diriment impediment is detected a little before the celebration of marriage, from which dispensation here and now cannot be obtained, and moreover to defer the ceremony is morally impossible.

691. (D) Grave injury brought about by deception of this kind must be repaired from justice, when the deceiver is the unjust, efficacious, and culpable cause of the damage which the innocent party suffers.

(a) Often the damage cannot be repaired except by furnishing true consent and thus revalidating the marriage; for since it is difficult and sometimes impossible to prove the fiction in the external forum, the innocent party is prohibited from passing to other nuptials, and a continued injury is done to him or her unless the marriage is revalidated.

(b) Yet the deceiver is not bound to marry the deceived party whenever this is morally impossible, for example, because one or the other party has already entered another valid marriage, or if unhappy outcomes are feared because the deceiver is of much higher condition; - or when the damage brought about can be compensated in another way and the injured party admits this compensation; - or if the deceiver himself was induced to contract by grave fear; - or if by his manner of acting he gave manifest signs of fictitious consent.

692. 2° Free, that is, with advertence on the part of the intellect and consent on the part of the will, such as is required for mortal sin. For the matrimonial contract induces grave obligations, and

indeed for the whole course of life; moreover no one is judged to undertake obligations of this kind unless he fully consents. Hence consent given in hypnotic sleep would not be valid.

This freedom is taken away by insanity, error, force, and fear, concerning which there is treatment where impediments are discussed.

693. 3° Mutual, or given and accepted by each party; for here there is question of a bilateral contract, by which mutual rights are handed over and accepted, and mutual obligations are undertaken; but these two suppose the consent of each party, since no one can hand over rights and undertake obligations unless he wills.

Therefore it is required that the consent of one be intimated to the other and accepted by him or her; but it is disputed whether it is necessary that the very acceptance of consent be intimated to the other. The matter is controverted as for all contracts (see Treatise on Contracts, n. 624). Many and grave authors[1] required the intimation of consent. But the matter now has little importance in practice, since marriage cannot be contracted by letter, but the contracting parties must be present themselves in person or through a procurator (*Codex*, c. 1088).

[1] Lugo, Sanchez, D'Annibale, Gasparri.

Nor is it required that the consent of each party be given at the same instant; but that moral union suffices which exists whenever consent given by one still endures at the time when the other furnishes his or her consent. But how long consent once elicited perseveres, whether namely for a year, or for three years, or longer, cannot be determined absolutely, but depends on the various circumstances, and must be left to the judgment of prudent persons.

694. 4° Externally manifested: for this is required by the nature of a contract, which among men is not valid unless it is expressed externally; and also by the nature of a sacrament, which consists in a sensible sign.

By natural and divine law any signs clearly manifesting consent suffice; by ecclesiastical law words regularly must be employed whenever this can be done, but not under penalty of nullity;[2] indeed, according to St. Alphonsus (n. 888), words are required only under venial fault, and shame or another reasonable cause excuses from this. Nevertheless the parish priest should require that those about to marry express their consent by words, if they can, and indeed clearly, so that thus he may meet many doubts and quibbles.

[2] *Codex*, c. 1088, § 2.

695. Therefore validly, and, a just cause being present, licitly, consent is expressed by various signs which suffice in other contracts; namely:

(A) By words which, according to received signification, express matrimonial consent in the present, for example, *I receive thee as wife, as my own; as husband, as my own; I contract marriage with thee*, etc. - It is said "in the present," because consent concerning the future signifies betrothals only. Yet sometimes words which, as they sound, seem to be concerning the future sufficiently designate consent in the present from the circumstances, for example, *from now on, henceforth I shall have thee as wife*. If the words

are ambiguous, the sense in the internal forum depends on the intention of the one speaking; in the external forum it must be determined from the circumstances.

(B) By signs or acts, for example, if the woman nods by inclining the head to the parish priest or man questioning her; or if, while the man expresses consent, the woman of her own accord extends her right hand so that the man may put on the ring; likewise if the spouses, after the celebration of marriage, freely approach the sacristy with the witnesses so that there they may be inscribed by the parish priest in the book of marriages. But it is not permitted to spouses to use equivalent signs if they can speak.

696. (C) By letter marriage was contracted validly before the promulgation of the Code; but, from the Code, c. 1088, this cannot be done, since the contracting parties must be present in person or through a procurator. This indeed was wisely established so that frauds may more easily be guarded against.

697. (D) Through a procurator or through an interpreter marriage can be contracted, provided that "a just cause is present, and it is in no way permitted to doubt the authenticity of the mandate or the fidelity of the interpreter, the license of the Ordinary having been had, if time allows."[1]

[1] *Codex*, c. 1091.

For marriage to be entered validly through a procurator, ") there is required a special mandate to contract with a certain person, signed by the mandating party and either by the parish priest or Ordinary of the place in which the mandate is made, or by a priest delegated by either of them, or by at least two witnesses; 2) if the mandating party does not know how to write, this is to be noted in the mandate itself and another witness is to be added who himself also signs the writing; otherwise the mandate is invalid; 3) if, before the procurator has contracted in the name of the mandating party, the latter has revoked the mandate or fallen into insanity, the marriage is invalid, although either the procurator or the other contracting party were ignorant of these things; 4) for the marriage to be valid, the procurator must perform his office himself in person."[2] Besides, the procurator must not exceed the limits of the mandate, and, where solemn form is required, he is bound to exhibit the mandate to the parish priest and witnesses, and to contract before them in the name of the mandating party.[3]

[2] *Codex*, c. 1089.

[3] *Codex*, c. 1091.

II. On Conditioned Consent

698. 1° On its liceity. Since marriage is a contract, nothing of itself prohibits that it can be entered into under a condition, provided that the condition is not repugnant to the substance of marriage. Yet regularly nuptials of this kind are not to be permitted, both because the Roman Ritual, handing down the form of marriage, describes no other than the absolute form; and because very great inconveniences are customarily born from added conditions, since from this certain marriages become doubtful, and moreover the contracting parties are exposed to the danger of living more freely before the condition has been fulfilled. Yet they can be permitted

for a most grave cause and with the consent of the Bishop acceding; indeed, if there is question of revalidating a doubtfully contracted marriage, a condition must be added.

[4] From the Code, c. 1092, "a condition once added and not revoked: 1° if it is concerning a future necessary event, or impossible, or shameful, but not against the substance of marriage, is held as not added; 2° if concerning a future event against the substance of marriage, it renders it invalid; 3° if concerning a future licit event, it suspends the validity of marriage; 4° if concerning the past or concerning the present, the marriage will be valid or not, according as that which is under the condition exists or not."

699. 2° On its validity. Here a multiple distinction is needed.

(A) If the condition is concerning the past or concerning the present, whether it is honorable or not, (a) the marriage is valid immediately, if the condition is verified; and immediately invalid, if it is not fulfilled; for example, *I contract with thee if my father is dead*, or *if thou hast truly killed my enemy*, or *if thou art a virgin*, etc. In these or similar cases consent is, as it were, bound to the condition, and consequently the conditioned contract immediately passes into an absolute one if at that instant the condition itself has been fulfilled. Moreover, since this is concerning the past or concerning the present, it is not to be feared that the apposition of the condition, even one less honorable, is an incitement to crime.

(b) But as long as it is unknown whether the condition has been fulfilled or not, it is not permitted to use marriage, on account of the danger of fornication.

(c) In the external forum, if the condition has not been explicitly brought into the pact in the very act of marriage, it is difficult to prove its existence;[1] and for the marriage to be declared null under this head, three things must be clearly demonstrated: that a true condition *without which not* was added, - that the same was not revoked before the celebration of marriage, - and that it was not fulfilled.

[1] Gasparri illustrates this by various examples, n. 869.

700. (B) If the condition is concerning the future, likewise a distinction must be made:

(a) If it is concerning a future honorable and possible event (for example, I marry thee if my father consents), the marriage remains in suspense until the condition shall have been verified; but when the condition has been fulfilled, the marriage becomes valid, provided that the consent previously given perseveres. In this case the marriage is valid without any renewal of consent, according to the common opinion, safe in practice, which the Roman Congregations follow in their decisions;[1] for marriage, even if it has been raised to the dignity of a sacrament, has the nature of a contract, and therefore is perfected when the condition arrives, just as other conditioned contracts.

[1] Cf. Fagnanus, *Commentar.*, cap. 5, *De Conditionibus*...; Gasparri, n. 850.

Yet according to all it is better, when the condition has been fulfilled, to renew consent. Indeed this is necessary if the marriage was contracted under this condition: "If the Pope shall have dispensed from such a diriment impediment"; for those who contract in this way are incapable of marriage before the dispensation is obtained, and their consent is null; whence new consent, once the dispensation has been obtained, must be expressed.[2]

[2] Lugo, *De Sacramentis in genere*, disp. VIII, n. 98.

701. (b) If the condition is concerning a future impossible or dishonorable event, yet not against the substance of marriage (for example, if you receive a golden mountain as dowry, if you kill your brother), the marriage is valid, and the condition is held as not added. For it is presumed that the contracting parties seriously wished to contract, and did not bind consent to such a condition. - Yet this is only a presumption of law, which admits proof to the contrary in the internal forum; whence if the contracting party bound consent to this condition, the marriage is null if the condition is not fulfilled, but valid when the condition has been fulfilled. But in the external forum, according to can. 1092, 1°, proof to the contrary does not seem ever to be admitted by the judge, lest jesting or a depraved intention prevail against marriage.

702. (c) If the condition is concerning a future event against the substance of marriage, and is brought into the pact by the two contracting parties, or consent is expressly bound to it by either one, the marriage is invalid. For then true matrimonial consent is lacking, since at least one of the essential properties of marriage is excluded.

But if a condition of this kind is posited by only one, the other contradicting, or at least manifesting dissent by silence, the marriage is presumed valid, because the former is judged to have withdrawn from the condition and to have contracted absolutely. Yet that presumption yields to the truth, if it is certainly proved that the former bound consent to this condition.

Likewise, if the condition is merely concomitant, so that consent is not bound to it, the marriage is judged valid. For in the conflict of two intentions opposed to each other, that one is efficacious which prevails in the mind of the contracting parties; but in the present case there is a twofold opposed intention, namely the intention of marrying and at the same time of doing something contrary to the essence of marriage; moreover the intention of marrying, from things commonly occurring, prevails in the mind of the spouses; therefore it is truly efficacious and marriage is contracted. Yet this is a presumption which yields to the truth, when this is certainly established from elsewhere.

Let us declare the matter by examples. 1) If a condition is added against the good of offspring, for example, "provided that we avoid the generation of offspring until we become richer, - provided that after one or another child we exclude offspring"; the intention of the spouses must be explored: if they intend to exclude the right to the legitimate use of marriage, the contract is invalid, because they do not grant a perpetual right over their own body in order to generation, which nevertheless is essential to the essence of marriage; but if, as generally happens, the intention of handing over that right prevails, with a secondary intention of abusing marriage, the contract is valid.

2. Likewise, where the law of divorce is in force, if those about to marry contract under the condition of dissolving the matrimonial bond in the case of adultery or disagreements,[1] so that they would not wish to marry unless divorce were permitted to them, the marriage is invalid; for they do not consent to a perpetual bond, which is of the essence of marriage. But if they are so disposed that they would wish to marry even if divorce were prohibited, the contract is valid.[1]

[1] Thus the Congregation of the Holy Office declared, May 20, 1754, that a marriage entered before a Calvinist minister was invalid, because he is accustomed to use a formula contrary to the perpetuity of marriage, in Gasparri, n. 854. See also Instruction of the Holy Office to the Bishop of S. Alberti, December 9, 1874, in *Collect. P. F.*, n. 1301.

[1] Thus the Sacred Congregation of the Council, January 31, 1891, declared valid a marriage in which the bridegroom had wished to contract only a soluble bond, but nevertheless truly to marry. Cf. *Acta S. Sedis*, vol. XXIII, pp. 711-736.

3. The same must be said of conditions against the unity of marriage, for example, provided that I may take another, - provided that for money you prostitute yourself. - In individual cases an investigation must be made to detect whether or not consent was bound to this condition, and this cannot be supplied by a general presumption. But to detect the intention of the contracting parties, not only must the words by which consent was expressed be considered, but also the facts and circumstances from which the sense of the words can be known.[2]

[2] Thus Congregation of the Holy Office, 1877, to the Bishop of Nesqually, in *Collect. P. F.*, n. 1302.

But when doubt remains, one must stand for the validity of the marriage, until the Holy See has decreed otherwise. If the spouses wish to renew consent, this is altogether to be advised.

703. (d) If an honorable condition is added of abstaining perpetually from the use of marriage, for example, for preserving chastity, it is controverted whether the marriage is valid or not. Not a few affirm that it is, because a right over one's own body can be conferred and at the same time the exercise of the right can be excluded, on account of a good motive:[3] for then there is a radical right, although bound, and this suffices for the essence of marriage. In this way it is easily explained how there was true marriage between the Blessed Virgin and St. Joseph, although they had vowed virginity. But others deny it;[4] for a right is the power of using; now if a power of this kind is prohibited, no right is conferred. Moreover the marriage of the Blessed Virgin with St. Joseph was valid: for no condition was added, but the Blessed Virgin was made divinely more certain that St. Joseph had proposed to himself to preserve virginity, and therefore by contracting nuptials absolutely, she in no way committed herself to the danger of violating the vow.

[3] Palmieri, *De Matrim.*, p. 17; Ball. P., nn. 225-233; Lehmkuhl, II, n. 690; Gasparri, n. 858.

[4] St. Thomas, 4, dist. 30, q. 2, a. 1, quaestiunc. 3, sol. 2; Benedict XIV, *De Synodo*, l. XIII, c. 22, n. 10. D'Annibale, III, 443, note 4.

704. Corollary. From these principles the question can be solved whether a marriage contracted by one who falsely thinks himself bound by a diriment impediment is valid. Certain authors deny it, because one cannot seriously will that which is impossible; moreover, he who is certain that he is laboring under an impediment of this kind, by that very fact knows marriage to be impossible. But others affirm it, because in this case the contracting parties consent insofar as they can; but in fact marriage is possible, since in reality there is no impediment; therefore they furnish true consent; and this must be held from the Code, c. 1085.

According to the principles set forth above, attention must be paid to the intention of the contracting parties: if they think themselves to be so bound by an impediment that they seek nothing other than concubinage, the marriage is not valid; but if they intend to contract insofar as they can, the marriage is valid.

Art. II. On the Properties of Marriage

"The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain a peculiar firmness by reason of the sacrament" (*Codex*, c. 1013, § 2.)

§ I. On the Unity of Marriage

705. Preliminary notes. The unity of marriage consists in the conjugal union of one man with one woman. To this are opposed polyandry and simple polygamy. The former is the conjunction of one wife with several men; the latter is the conjunction of one man with several wives.

We premise a few things concerning polyandry, which exists very rarely. Simultaneous polyandry, or the conjugal union of one wife with several men at the same time, according to all, is repugnant at least to the secondary natural law. For although, strictly speaking, it does not render absolutely impossible the procreation and education of offspring, nevertheless it is opposed to the principal ends of marriage: (a) to the procreation of offspring, for the fecundity of the woman, although it is not altogether destroyed by carnal commerce with several men, is nevertheless greatly diminished; (b) to the education of offspring, because it renders the father uncertain, and consequently renders uncertain his obligation of educating the children; (c) to the natural subjection by which the woman ought to be subject to the man; for no one can perfectly serve several masters at the same time.[1]

[1] St. Thomas, *Supplement*, q. 65, a. 1, ad 8.

Nevertheless a certain polyandry has flourished and still flourishes among certain tribes, especially where women are fewer than men. Sometimes the matter stood thus: when a woman had married the firstborn, his younger brothers approached her successively, according to certain defined rules and customs; and sometimes two or three men married the same wife and dwelt together in the same house. But facts of this kind occur rarely, and among the husbands generally one is principal, who presides over the whole household. Yet even among those tribes monogamy generally prevails.[1]

[1] Westermarck learnedly discusses the extension and causes of polyandry, *op. cit.*, ch. 20-22, pp. 425-485.

I. On Simultaneous Polygamy

706. Polygyny, before Christ, flourished among most peoples, although not all men were polygamous. Today also among unbelievers it prevails, especially among the richer, who can support several women. But among Christian nations monogamy is acknowledged as the foundation of the family. - Yet Luther taught that simultaneous polygamy, even under the New Law, was licit, and, with P. Melanchthon and M. Bucer agreeing, kindly granted Philip, Landgrave of Hesse, that while his lawful wife was still living he might marry another, Margaret de Saal. The Anabaptists defended the same error, and in our century the Mormons,[3] who very recently nevertheless declared that they had taken leave of polygamy, so that thus they might submit themselves to the laws of the State. But on the opposite side Calvin contended that simultaneous polygamy, even under the Old Testament, was illicit, and therefore that the ancient Patriarchs, who had several wives at the same time, were guilty of adultery. To refute this calumny, some theologians said that polygamy is not opposed to the natural law, nor before the evangelical law was it prohibited by divine law. What we think the following proposition will declare.

[2] St. Thomas, *Supplement*, q. 65, aa. 1-2; Bellarmine, c. 10-11; Drouin, l. IX, q. III, c. 1; Billuart, diss. V, a. 1; Perrone, l. III, c. 1, aa. 2-4; Carriere, p. II, sect. 2, c. 1; de Augustinis, a. 7; Palmieri, th. 13 sq.; Billot, th. 40; Watkins, *Holy Matrim.*, ch. IX, p. 591 sq.

[3] Concerning the Mormons, who call themselves "The Church of Jesus Christ of Latter-Day Saints," see *Book of Doctrine and Covenant* (1880), *Book of Mormon* (1881); *Encyclop. Britan. with American Supplement*; H. Lyon, *A Study of the Sects*, p. 187 sq.

707. Thesis: Simultaneous polygamy, contrary to the primitive institution, but permitted to the Patriarchs after the flood, was prohibited by Christ, and is opposed to the secondary precepts of the law of nature.

(A) Simultaneous polygamy is contrary to the primitive institution of marriage. Thus more commonly. For (a) when God created man, He made one man and one woman;[1] now, as Chrysostom[2] rightly observes, if the Lord had willed that one man be joined to several wives, when He made one man, He would have made many women. But afterwards Adam, seeing Eve, exclaimed: "Wherefore a man shall leave his father and his mother, and shall cleave to his wife; and they shall be two in one flesh"; there, however, as Innocent III says,[3] "he did not say three or more, but two; nor did he say he shall cleave to wives, but to his wife"; which indeed exclude polygamy. (b) Hence, before the flood, Lamech alone is said to have had two wives, and on that account he is severely reproved by the Fathers; thus Nicholas I writes:[4] "but the crime of adultery, which Lamech first of all perpetrated in two wives, stood as abolished only by the blood of Christ"... (c) On this account Innocent III (*loc. cit.*) says: "Nor was it ever permitted to anyone to have several wives at the same time, except to him to whom it was granted by divine revelation"; and these words indeed manifestly suppose that polygamy was prohibited by the primitive law.

[1] *Gen.*, II, 7, 22.

[2] *Hom.* 62, al. 63, *in Matt.*, n. 1, P. G., t. LVIII, p. 597.

[3] *Decretal.*, l. IV, t. 19, Cap. *Gaudemus, de Divort.*

[4] *Ad Consulta Bulgar.*, n. 51, in Harduin, *Act. Concil.*, t. V, p. 37.

708. (B) Yet polygamy after the flood was permitted to the Patriarchs and to the Jews under the Mosaic law, indeed very probably also to the Gentiles. (a) For the Patriarchs, who enjoyed the friendship of God, such as Abraham, Jacob, and others, had several wives, nor are they reproved on that account, but rather they are exhibited as men outstanding in piety. (b) The Mosaic law likewise supposes plurality of wives to be licit, since it establishes that the sons born from either wife are to be equated.[5] In reality Elkanah,[6] David,[7] Joash,[8] and other men had several wives; and while David is gravely chastised on account of adultery with Bathsheba, the wife of Uriah, he is never reproved on account of the other wives whom he had married.

[5] *Deut.*, XXI, 15.

[6] *I Reg.*, I, 2.

[7] *II Reg.*, II, 2.

[8] *II Parap.*, XXIV, 3 sq.

Nor let it be said that some of these wives are called concubines and therefore were not legitimate; for in Scripture sometimes legitimate wives are called concubines, and conversely; thus Hagar and Keturah are now called wives, now concubines.[1] Indeed among the ancients two kinds of wives were distinguished: some were married not only for the procreation of offspring, but also for the society of all goods and the governance of the house, and these were called mothers of families; but others only for the generation of offspring, and these were called secondary wives or concubines. (c) But the chief reason why polygamy was permitted after the flood was the multiplication of offspring to be educated for the worship of God. For, as St. Thomas says (*loc. cit.*, a. 2): "The more principal end must always be observed more than the secondary. Hence, since the good of offspring is the principal end of marriage, where the multiplication of offspring was necessary, the impediment which could occur in the secondary ends had to be neglected for a time."

[1] *Gen.*, XVI, XXV.

It is commonly handed down by theologians that the dispensation from the primitive law concerning the unity of marriage was given only after the flood; nevertheless nothing certain can be defined concerning this matter. Nor was it necessary that the dispensation be expressed in writing; for the law concerning unity of wife, as St. Thomas observes (*loc. cit.*), had not been handed down by word or letters, but impressed on the heart; and therefore the dispensation could take place through internal inspiration, which indeed was principally made to the holy fathers, and from their example derived to others. From this also it can be gathered, with Bellarmine and others against Sanchez, that the same dispensation was given to the Gentiles; for since it was granted in the time of the patriarchs, there is no reason why it should have been limited to the Jews alone, especially because it was more difficult for pagans than for Israelites to preserve the perfect unity of marriage. Hence Esther was joined to Ahasuerus, who already had a wife, and she is not reproved on that account; likewise Abimelech, who had a wife, wished to marry Sarah, and was not blamed except because he had taken the wife of another.

709. (C) Simultaneous polygamy was prohibited by divine law under the New Law. This is of faith from Trent:[2] "If anyone shall say 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."

[2] Trent, sess. XXIV, can. 2.

(a) For Christ recalled marriage to its first institution; for when asked whether it was lawful to put away a wife, He answered that it was not lawful, and added this reason: "Have you not read that He who made man from the beginning made them male and female? And He said: For this cause a man shall leave father and mother and shall cleave to his wife, and they shall be two in one flesh: therefore now they are not two, but one flesh."[1] But the primitive institution of marriage excluded polygamy, from what has already been said, and from the words of Christ Himself: "they shall be two in one flesh." It is confirmed by other words of the Lord: "Whoever shall put away his wife, and marry another, commits adultery";[2] for he who puts away his wife and marries another commits adultery for this reason, that the former does not cease to be his wife; but when she has not been put away, a fortiori she remains his wife; therefore he who marries another truly commits adultery. Hence St. Paul, as often as he speaks of marriage, supposes it to be of one man with one wife, and says: "The woman, while her husband lives, shall be called an adulteress, if she be with another man";[3]

moreover, from the same Apostle,[4] the rights of the spouses are equal: "The woman has not power over her own body, but the husband: and likewise also the husband has not power over his own body, but the woman"; therefore neither can the man, while his wife is living, marry another.

[1] *Matt.*, XIX, 3 sq.

[2] *Luke*, XVI, 18; *Matt.*, XIX, 9.

[3] *Rom.*, VII, 3.

[4] *I Cor.*, VII, 2 sq.

(b) The same is proved by the unanimous testimony of the Fathers and the constant practice of the Church. Thus St. Augustine[5] writes that in the Church it has been commanded "that it is not lawful even to leave a sterile spouse, so that another fruitful one may be married. But if anyone shall do this... by the law of the Gospel he is guilty of adultery." Hence the Roman Pontiffs have always stood forth as strenuous defenders of the unity of marriage, even against the lust of Princes; thus, in the ninth century, Nicholas I openly reproved King Lothair, the husband of two wives at the same time, and deposed the Bishops who in the Council of Metz had dissolved the bond of the first marriage.[6]

[5] *De Nuptiis*, l. I, c. 10, n. 11, P. L., t. XLIV, 420.

[6] J. Roy, *Saint Nicolas I*, Paris, Lecoffre, ch. 3.

Nevertheless two facts are alleged to the contrary. The first is that of Socrates, who reports[7] that the Emperor Valentinian had two wives at the same time, and established that the same should be permitted to anyone who wished. But testimony of this kind is commonly rejected by learned men, both because some things in this narration are false, and because Ammianus Marcellinus, although sufficiently hostile to Valentinian, praises him because[1] "with every cultivation of modesty he was chaste at home and abroad." Besides, a fact of this kind, even if true, would prove nothing against the unanimous tradition of all centuries. The second is the response of Gregory II,[2] declaring that it is lawful for a man to marry another wife, because this one, on account of bodily infirmity, was not able to render the debt. But likewise there is doubt concerning the genuineness of this response, which was diligently sought in the Roman archives and nevertheless not found; but if it were authentic, perhaps it could be understood of an impotence which makes marriage invalid. Moreover the Roman correctors noted concerning this decree: "That decree of Gregory is found to be wholly opposed to the sacred canons, indeed to evangelical and apostolic doctrine"; therefore nothing can be gathered from it against the constant doctrine and practice of the Church.

[7] *Histor.*, l. IV, c. 31.

[1] Lib. XXX, circa finem.

[2] *Epist.* 13 *ad S. Bonif.*, in Labbe, t. VI, col. 1448. Here is the text as it is alleged: "For as to what thou hast proposed, that if a woman, overtaken by infirmity, should not wish to render the debt to her husband, what should her spouse do? It would be good if he so remained, so that he might be free for abstinence. But because this belongs to the great, he who cannot contain himself, let him rather marry: yet let him not withdraw the assistance of support from her whom infirmity hinders." Cf. Kuth, *S. Boniface*, Paris, Lecoffre, p. 55.

710. (D) Simultaneous polygamy is opposed not to the primary natural law, but to the secondary. Thus commonly. For the matter stands so if polygamy, although saving the primary end of marriage, harms the secondary ends; but polygamy (a) neither totally removes nor in any way

impedes the first end of marriage, since one man suffices for fecundating several wives and for educating the children born therefrom; (b) however, the secondary ends it does not indeed totally remove, but it greatly impedes them: for peace can not easily exist in a family where several wives are joined to one man, since one man cannot suffice for satisfying several wives according to their wish; namely, each one will endeavor to draw the man's affection to herself, and if the man does not pursue all with equal love (which can scarcely happen), thence quarrels will arise, inimical to peace, as is clear from the history of the Patriarchs. Likewise it is to be feared lest the husband, intent especially on the children of the wife preferred, neglect the rest. Finally the third end of marriage, namely the remedy of concupiscence, will not rarely be frustrated, since one man cannot satisfy several wives at the same time. Therefore plurality of wives is opposed not to the primary, but to the secondary natural law.

II. On Successive Polygamy

711. Successive polygamy, or second and further nuptials as illicit by divine law, were once condemned by the Montanists, to whom Tertullian adhered (*De Monogamia*), and also by the Novatians. Some Fathers, especially Greek ones, spoke too harshly concerning second and especially third and further nuptials. Indeed, among the Greeks, already from the tenth century, by ecclesiastical law, fourth nuptials are held as invalid.[2]

[1] St. Thomas, *Supplement*, q. 63; Drouin, l. IX, q. III, c. 2; Billuart, diss. V, a. 1, § 3; Carriere, n. 203 sq.; Perrone, l. III, sect. 1, c. 2; de Augustinis, *loc. cit.*; Palmieri, th. 12.

[2] "The Orientals also disapprove successive polygamy... For second nuptials indeed there is in the Euchologia a prescribed rite, which nevertheless they disapprove after the forty-fifth year of age; third nuptials were subjected to ecclesiastical censure, but fourth were condemned as brutal... According to present practice, help is given by dispensation of the bishop, when it is sought." (Papp-Szilagyi, *Enchiridion juris eccles. orient.*, p. 414.)

712. Thesis: Successive polygamy, although less approved by the Church, is licit by divine law, nor was it ever universally prohibited in the Latin Church. It is certain.

(A) Scripture. St. Paul expressly affirms that repeated nuptials, the prior spouse being dead, are licit: "A woman, if her husband shall have died, is freed from the law of the husband, so that she is not an adulteress if she shall be with another man";[3] "But I say to the unmarried and to widows: it is good if they so remain, even as I. But if they do not contain themselves, let them marry; for it is better to marry than to burn."[4] Indeed elsewhere[5] he exhorts younger widows to marry again: "Therefore I will that the younger marry, bear children, be mothers of families, give no occasion to the adversary for the sake of evil speaking." From these it is clear that, according to the mind of the Apostle, it is indeed better to remain in the state of virginity or widowhood; yet nevertheless nuptials are licit for virgins and widows, indeed sometimes expedient for restraining concupiscence.

[3] *Rom.*, VII, 3.

[4] *I Cor.*, VII, 8.

[5] *I Tim.*, V, 14.

713. (B) Tradition. (a) Explaining the aforesaid text of the Apostle, St. Augustine writes:[6] "Concerning third and fourth and still further nuptials men are accustomed to raise a question.

Hence, that I may answer briefly, I dare condemn no nuptials... For who am I, that I should think something must be defined which I do not see that the Apostle defined? For he says: A woman is bound as long as her husband lives. He did not say first, or second, or third, or fourth; but, he says, a woman is bound as long as her husband lives: but if her husband shall have died, she is freed; let her marry whom she will, only in the Lord. But she shall be more blessed if she so remains.[1] What can be added to or taken from this sentence, so far as this matter is concerned, I do not know." We indeed acknowledge that some Fathers, especially Greek ones, disapproved third or further nuptials, indeed said that they were worse than fornication. In speaking thus they principally condemned the affection of those who, not content with first or second nuptials, wished to enter a third or fourth marriage, not from the intention of receiving offspring, but for the sake of satisfying lust.[2] Yet they never said that these spouses were to be separated, but they receive them to communion after penance has been performed.

[6] *De bono viduit.*, c. 12, P. L., t. XL, p. 439.

[1] *I Cor.*, VII, 39-40.

[2] As to the principal texts of the Fathers which seem to condemn repeated nuptials, cf. Drouin and Perrone, *loc. cit.*

(b) Eugene IV[3] states the doctrine of the Church concerning this matter thus: "We declare that not only second nuptials, but third and fourth and further ones, if some impediment does not stand in the way, can be contracted licitly. Yet we say that those are more commendable if, abstaining further from marriages, they remain in chastity."

[3] *Decret. pro Jacobitis.*

(C) Theological reason. With the nature of things alone inspected, nothing prohibits that repeated nuptials be licit; for on the one hand the first bond, when one of the spouses is dead, has been dissolved; and on the other a new matrimonial consent can be furnished between parties otherwise capable; indeed, sometimes nature itself counsels that, whether for the procreation of offspring or for avoiding incontinence, a new covenant be entered.

§ II. On the Indissolubility of Marriage

714. The other property of marriage is indissolubility, by force of which the bond entered between the spouses cannot be dissolved except by the death of either spouse. To this indissolubility divorce is opposed, which is usually distinguished as threefold: divorce as to the bond, or full divorce, by which the matrimonial union is so dissolved that new nuptials can be entered; divorce as to the bed, or separation from bed, where, while the conjugal bond remains, the spouses are immune from rendering the conjugal debt; divorce as to habitation, by which the spouses are freed from the obligation of cohabiting together. Here we treat especially of divorce properly so called, or as to the bond, yet adding a few things concerning separation as to bed and habitation.

Therefore we shall speak: 1° of the indissolubility of the matrimonial bond from divine law; 2° of the same indissolubility from natural law; 3° of the cases in which the bond can be dissolved even under

the evangelical law; 4° of the manner of acting with regard to civil divorce; 5° of separation as to bed and habitation.

I. On the Indissolubility of Marriage from Divine Law

715. Among Christians it is commonly acknowledged that marriage was indissoluble from the beginning, but that in the time of the Mosaic law it could be dissolved under certain conditions, and that it was recalled by Christ to its primitive indissolubility. Nevertheless the schismatic Greeks and Protestants teach that marriage, even as to the bond, can be dissolved by adultery, or even, according to many, on account of the obstinate desertion of either spouse.[2]

[1] St. Thomas, *Supplement*, q. 67; Sanchez, l. X, disp. 1; Drouin, l. IX, q. IV, c. 1; Bellarmine, c. 16; Billuart, diss. V, a. 2, historical digression; Carriere, n. 228 sq.; Perrone, l. III, sect. 2, cc. 1-4; de Augustinis, a. 8; Palmieri, th. 17-22; T. Wolsey, *Divorce and Divorce Legislation*, 1882, c. 1; J. Cauviere, *Le Lien conjugal et le Divorce*, Paris, 1890; *Congres scient. internat.* 1894, Sc. jurid., p. 133 sq.

[2] As to the doctrine of the Greeks on this matter, see Jos. Selinger, *Divorce a vinculo in the schismatical churches*, in *Amer. Eccles. Review*, April 1892, p. 264 sq. But the doctrine of the Protestants is exhibited thus by the Westminster Confession of Faith (cap. XXIV, 5-6): "But if adultery is committed after marriage, it will be lawful for the innocent party to seek and obtain divorce by law; and indeed after the divorce has been made to be joined in marriage to another, just as if that person who was violating the fidelity of marriage were dead... Nevertheless, outside adultery and desertion so obstinate that by no remedy can help be given to it, either by the Church or by the civil Magistrate, there can be no sufficient cause for dissolving the bond of marriage." (In Schaff, *Creeds*, vol. III, p. 656.)

716. First Thesis: Marriage, from the primitive institution of God, was indissoluble; but under the Mosaic law it could be dissolved through a bill of repudiation, even in the forum of conscience, under certain definite conditions. Thus commonly.

(A) The first part is proved. (a) For when the Pharisees asked whether it was lawful for a man to put away his wife for any cause whatever, Christ answers that God Himself is the author of marriage, and that it is not lawful for man to dissolve this union: "What therefore God has joined, let not man separate." But when they objected that a bill of repudiation had been permitted by Moses, the Lord adds: "Because Moses, for the hardness of your heart, permitted you to put away your wives: but from the beginning it was not so."[1] These words indeed manifestly suppose that from the beginning marriage was not so instituted that license was given to the man of repudiating his wife. (b) This is confirmed by Trent:[2] "The first parent of the human race, by the impulse of the divine Spirit, pronounced the perpetual and indissoluble bond of marriage, when he said: This now is bone of my bones, and flesh of my flesh"...

[1] *Matt.*, XIX, 3 sq.

[2] Trent, sess. XXIV.

717. (B) The latter part is clear; for it is read in Deuteronomy:[3] "If a man takes a wife, and has her, and she does not find favor before his eyes on account of some uncleanness, he shall write a bill of repudiation, and shall give it into her hand, and shall send her out of his house. And when, having gone out, she has married another husband, and he also hates her and gives her a bill of repudiation, and sends her out of his house, or certainly has died, the prior husband

will not be able to receive her again as wife"... Now by these words either the faculty of divorce as to the bond is granted, or it is supposed already granted; for the dismissed wife is exhibited as marrying another man, and moreover priests are prohibited from marrying a repudiated woman;[4] from which it is gathered that this was permitted to others.

[3] *Deut.*, XXIV, 1 sq.

[4] *Levit.*, XXI, 7.

(a) But it is disputed among the Fathers and theologians whether a concession of this kind was valid not only in the external forum, but also in the internal forum.[5] The opinion affirming that this was a true permission valid in the forum of conscience seems to us more probable; for he who marries a dismissed wife is called husband, and he himself can give a bill of repudiation, which right belonged only to a legitimate husband; besides, the prior husband is prohibited from receiving the dismissed wife again; but if the bond had not truly been dissolved, why that prohibition? Moreover, if a permission of this kind had not been valid in conscience, the law would have furnished occasion for many adulteries; the condition of women would have been most unjust, since, after receiving a bill of repudiation, they would have had to observe continence perpetually; finally, all the Jews embraced this interpretation, and although two schools, Shammai and Hillel, disputed concerning the causes on account of which divorce could be granted,[1] yet in this they agreed, that sometimes it was lawful.

[5] St. Bonaventure, Soto, Estius, Sylvius, Card. Billot think that divorce was only civilly tolerated, and therefore immune from civil penalty but not from sin; nevertheless this opinion seems less probable.

[1] According to Hillel, the sufficient cause was any thing displeasing to the husband, as if the wife had prepared the foods negligently; but, according to the school of Shammai, a certain immodesty on the part of the wife was required.

(b) Only under certain definite conditions was the faculty of divorce granted; first, it belonged not to the wife, but only to the man; indeed it was not permitted to the man when, before marriage, he had had carnal commerce with the wife, or had unjustly accused her of not being a virgin.[2] Besides, the man could not dismiss his wife for any cause whatever, but only on account of some uncleanness (*'ervat dabar*), a word which designated something base and dishonorable. Nor was he permitted to dismiss her without a written bill of repudiation, by which not only was provision made for the state of the wife, but divorce became more difficult. Finally, when the woman thus repudiated had entered a new marriage, she could not again be received as wife by the prior husband; by which it happened that the man acted more cautiously. By these various formalities the sacred legislator sufficiently showed that divorces are something less perfect, and he confined them within certain limits. But the reason why God gave such a faculty is indicated by the words of Christ, "for the hardness of heart," or, as St. Thomas explains (a. 3), "on account of restraining a greater evil, namely wife-murder, to which the Jews were prone on account of the corruption of the irascible power."

[2] *Deut.*, XXII, 19, 29.

718. Second Thesis: The marriage of the faithful, ratified and consummated, cannot, under the evangelical law, be dissolved as to the bond, even on account of adultery. It is certain and proximate to faith against the Greeks and Protestants from Trent:[1] "If anyone shall say that the Church errs when she has taught and teaches, according to evangelical and apostolic doctrine, that the bond of marriage cannot be dissolved on account of the adultery of either spouse; and that both, or even the innocent one, who gave no cause for the adultery, cannot contract

another marriage while the other spouse is living; and that he commits adultery who, having dismissed an adulterous woman, marries another, and she who, having dismissed an adulterer, marries another, let him be anathema." The canon is directly directed against the Protestants, who were accusing the Catholic Church of error concerning this matter; therefore it is of faith that the Church does not err when she teaches that, on account of adultery, the matrimonial bond cannot be dissolved; only indirectly is it against the Greeks, because the Council did not wish to condemn their opinion as heretical,[2] and on that account employed such a formula as places the doctrine of the Church in safety, without this being proposed as of faith; for it is one thing to define that the Church does not err when she teaches, another to say that what she teaches is of faith: for the Church can teach truths which are certain, although they are not of faith.

[1] Trent, sess. XXIV, can. 7.

[2] According to Pallavicini (*Hist. Concil. Trid.*, l. XXII, c. 4, n. 27), the canon had first been composed so that it also struck the Greeks with an anathema; but, at the request of the Venetian orators, it was reformed as it now stands, lest a new obstacle be placed before the union of the Greeks.

In the proposition we said the marriage of the faithful, ratified and consummated, because if there is question of the marriage of unbelievers, or of the marriage of the faithful ratified only and not consummated, exceptions can be present, as will be declared below.

719. (A) Scripture. (a) In three places Christ openly declares that adultery is committed by him who marries a dismissed wife: "But I say to you: that everyone who puts away his wife, except for the cause of fornication, makes her commit adultery: and he who marries her who has been put away commits adultery";[3] "Everyone who puts away his wife, and marries another, commits adultery: and he who marries her who has been put away by a man, commits adultery."[4] But if marriage could be dissolved as to the bond, adultery would by no means be committed by him who married a dismissed wife.

[3] *Matt.*, V, 32.

[4] *Luke*, XVI, 18; cf. *Mark*, X, 11-12.

(b) The same is clearly drawn from the words of the Apostle:[1] "But to those who are joined in marriage I command, not I, but the Lord, that the wife not depart from the husband; but if she has departed, let her remain unmarried, or be reconciled to her husband. And let not the husband put away the wife." Now these words are entirely general and manifestly suppose that a dismissed wife, for whatever cause, cannot marry again.

[1] *I Cor.*, VII, 10.

(c) Indeed the words of the Lord are objected: "Whoever shall put away his wife, except on account of fornication, and shall marry another, commits adultery: and he who shall marry her who has been put away, commits adultery";[2] from which both the Greeks and Protestants gather that in the case of fornication, or adultery, the matrimonial bond can be dissolved. We indeed acknowledge that a text of this kind, if taken by itself, apart from the context and parallel places, is obscure and can be understood in either sense; but, with the context and parallel places inspected, it cannot be understood of divorce as to the bond, but of dismissal alone without dissolution of the bond. This is

clear from the context. For the Pharisees were asking Christ concerning dismissal alone; for since they were disputing among themselves whether it was lawful to put away a wife for any cause, or only for adultery, Christ answers that the wife can be dismissed (perpetually) only on account of fornication; and because He wished to abolish divorce from the bond, He adds that it is not lawful, even in this case, to marry a dismissed wife under pain of adultery. In other words, the words "except on account of fornication" constitute an incidental proposition, which is referred to the preceding words "shall put away his wife," but not to the following words "and shall marry another," so that the sense is: whoever shall put away his wife (which indeed is not lawful except on account of fornication), and shall marry another, commits adultery. Therefore fornication, or adultery, is indeed a sufficient reason why the wife may be dismissed, that is, why separation from table and bed may be made, but not why a new covenant may be entered.[3]

[2] *Matt.*, XIX, 9; cf. Fillion, *Evang. selon S. Matthieu*, in this place.

[3] This can be illustrated by an analogy. Let some law be supposed to be conceived thus: "Whoever shall strike his son, except on account of a grave crime, and shall kill him, will be punished"; surely the incidental proposition in this case affects only the prior part of the sentence, not the latter; nor will it be lawful to conclude that the father can, on account of grave crimes, kill his son. Cf. Rene de Kerallain, *Revue gen. du droit*, 1884, p. 481.

In reality, a little before He had said: "what God has joined, let not man separate," and had declared that the bill of repudiation was no longer granted under the New Law, by these words sufficiently showing that the matrimonial bond is dissolved in no case. - There are added the parallel places already cited, in which without any restriction it is asserted that he who puts away his wife and marries another commits adultery, and again that he who marries a dismissed wife commits adultery. Now it is an unshaken principle that obscure places must be understood through other clearer ones.[1] Finally every doubt, if any remained, is removed by Catholic tradition.

[1] Some Protestants have understood this, for example, E. J. Phelps, *Forum*, December 1889, p. 359.

720. (B) Tradition. Three times can be distinguished in the history of this dogma. (a) It is certain that the Fathers, in the first three centuries, with unanimous mouth teach that Christian marriage is indissoluble, even in the case of adultery. It will suffice to report a few testimonies.[2] Hermas indeed has these things concerning the manner of acting toward an adulterous woman:[3] "What therefore, I said, lord, should the husband do if the wife remains in this lust? Let him dismiss her, he says, and let the man remain by himself; but if, after his wife has been dismissed, he marries another, he himself commits adultery." In the same sense wrote St. Justin,[4] Athenagoras,[5] Clement of Alexandria,[6] and many others. - But although the Fathers agreed concerning this matter, certain rulers of the Church, according to Origen's testimony, sometimes tolerated divorce permitted by civil law, in order to avoid worse evils. He censures them, saying: "Against the law of Scripture, certain rulers of the Church permitted a woman to marry while her husband was living, acting against that which is written: The woman is bound by the law for as long as her husband lives." Yet he excuses them in some way, without approving their manner of acting: "Nevertheless they did not permit this altogether without reason; for it is likely that, against the law established and written from the beginning, they permitted these things, to avoid worse evils, accommodating themselves to the judgment of another."[1] Thus the way was being prepared, in the Greek Church, for the abuses of a later age.

[2] See the matter thoroughly discussed in Perrone, l. III, c. 3; Roskovany, *op. cit.*, *De Indissolubilit. matrimonii*, c. IV, Doctrine of the Church, § 101 sq. Cf. A. Esmein, *Le Mariage en Droit Canonique*, Paris, 1891; Watkins, *op. cit.*, p. 198 sq.

[3] *Pastor*, Mandat. 4, n. 6, p. 475, ed. Funk.

[4] *Apol.* I, n. 15; *Apol.* II, n. 2, P. G., t. VI, p. 350.

[5] *Leg. pro christ.*, n. 32.

[6] *Stromat.*, l. II, c. 23, P. G., t. VIII, p. 1095.

[1] Origen, homil. 14 *in Matt.*, n. 23, P. G., t. XIII, p. 1246.

(b) From the fourth century to the decree of Gratian (1115), a distinction must be made between the Eastern Church and the Western Church. In the East, some writers, too easily assenting to civil laws which permitted divorce on account of adultery, a long absence of the husband, and other causes, first timidly, but afterwards more boldly, taught that divorce was to be tolerated, while the bishops at first dissembled and afterwards even approved, especially after the schism had been consummated.[2] The Holy See more than once disapproved these abuses; and in the Council of Florence, where there was question of union with the Roman Church, Eugene IV, in the decree to the Armenians, again declared the doctrine concerning the firmness of marriage: "Although, on account of the cause of fornication, it is lawful to make separation from bed, nevertheless it is not lawful to contract another marriage, since the bond of a legitimately contracted marriage is perpetual." The Greeks, for the time, gave assent to this declaration, and when there was question of union they did not mention this among the causes of dissension; but a little afterwards they returned to their practice. Today also some Orientals who have embraced the Catholic faith, although speculatively they admit our doctrine, in practice tolerate divorce on account of adultery.

[2] Cf. Perrone, *op. cit.*, t. III, pp. 359-376; Watkins, *op. cit.*, pp. 346-362.

But in the Latin Church, which strongly resisted the emperors, especially in matters of faith and morals, the firmness of the matrimonial bond was happily preserved. For although civil law permitted divorce, the Fathers refused to admit its force and authority, agreeing with St. Jerome, who wrote:[3] "The laws of the Caesars are one thing, those of Christ another; Papinian commands one thing, our Paul another... Among us, what is not lawful for women is equally not lawful for men, and the same servitude is judged by an equal condition." This especially obtained in Italy, where the Roman Pontiffs watched over the indissolubility of marriage so carefully that even Protestants acknowledge that the Church in no way wavered concerning this matter.[4] Thus Innocent I, in the year 405, wrote to Exsuperius, Bishop of Toulouse:[1] "Your charity has also asked concerning those who, with repudiation intervening, were joined to another in marriage. It is manifest that these are adulterers on both sides. But those who, while the wife is living, although the marriage seems to have been dissociated, hastened to another union, cannot but be seen as adulterers." This letter was often alleged by the Roman Pontiffs as the norm to be followed. But in Gaul, Ireland, and England, there were a few particular councils which, favoring more than was right the authority of kings and of civil laws, admitted some causes of divorce, such as incestuous adultery, incurable leprosy, and the entrance of one spouse into religion.[2] But the other provincial councils rejected every cause of divorce and constantly defended the firmness of the bond against the dissolute morals of the people and the vexations of princes, so that the few exceptions alleged above rather confirm the general rule.

[3] Ep. 77 *ad Oceanum*, n. 3, P. L., t. XXII, p. 691.

[4] Thus Watkins, *op. cit.*, p. 380, who nevertheless adds that a single Pontiff, Gregory II, admitted a single exception in a particular case; concerning this case, which pertains to bigamy rather than to divorce, we have already spoken above, n. 709; it suffices to add here that elsewhere, in the *Instruction concerning marriages* (year 722), the same Gregory openly sets forth his mind concerning the perfect indissolubility of marriage, as may be seen in Mansi, t. XII, p. 259.

[1] In Migne, P. L., t. XX, p. 500.

[2] Thus the Synod of Verberie (753) and the Council of Compiegne (756), held under King Pepin, in Harduin, t. III, pp. 1990 sq., 2005 sq.; the second Synod of St. Patrick, in Mansi, t. VI, p. 526, which, although it cannot be ascribed to St. Patrick, nevertheless is very ancient; *Paenitentiale Theodori*, in Haddan and Stubbs, *Councils*, vol. III, p. 188. - Some theologians, such as Perrone, have attempted to understand the aforesaid canons in a Catholic sense, but in vain, as will be clear to anyone attentively reading them. To bring forward one example, canon 9 of the Council of Verberie has itself thus: "If anyone, compelled by inevitable necessity, shall have fled into another duchy or province, or shall have followed his lord, to whom he cannot lie in faith, and his wife, though she is able and can do so, out of love of her relatives or of her goods, refuses to follow him, she shall remain always unmarried for all the time, as long as her husband, whom she did not follow, lives. For that husband of hers, who, compelled by necessity, fled into another place, if he hopes never to return to his own country, if he cannot abstain, can receive another wife with penance." Nor is it astonishing that a few particular councils erred, since only the universal Church, speaking through an ecumenical Council or through the Roman Pontiff, is infallible. Cf. Perrone, *op. cit.*, pp. 323-359; Watkins, *op. cit.*, pp. 362-437.

(c) Finally, from the time of Gratian, no variations can be found in the Latin Church, even in particular Councils. For the authority of the Decree was accepted everywhere; now concerning the indissolubility of marriage it has these things: "The bond of marriage cannot be dissolved by fornication. By no reason is a marriage dissolved which is proved once to have been entered. He commits adultery who presumes to marry her who has been dismissed by a man." Nor indeed can the unconquered firmness of the Church be praised too much: she has always been intent on protecting the perpetuity of marriages, openly reproving civil laws concerning divorce, striking with anathema the Protestant heresy concerning repudiations, resisting most powerful princes when they menacingly demanded that divorces made by them be approved by the Church.

"In this matter all posterity will admire the proofs of an unconquered soul put forth by Nicholas I against Lothair; by Urban II 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, that most holy and most strong Pontiff, against Napoleon I, exulting in favorable circumstances and in the greatness of empire." (Leo XIII, *Arcanum*.)

II. On the Indissolubility of Marriage from Natural Law

721. 1° State of the question. Most pagan philosophers judged that marriage is dissoluble by natural law, and divorces flourished more or less among most nations.[2] Nevertheless, even among certain barbarians, the matrimonial union was perpetual. Among the Greeks and Romans, as long as morals flourished, there were only a few divorces; at Rome especially a certain ignominious mark was branded on this practice in the common estimation, and Spurius Carvilius, who is reported as the first of the Romans to have dismissed his wife on account of sterility so that he might marry another, did not lack reproach. But in the time of the Emperors divorces were multiplied. The Christian religion took care to abolish divorces, as we have already proved. But Protestants again opened the way to divorces by teaching that they are licit in some cases; and very many Rationalists taught that the dissolution of the matrimonial bond is not only licit, but also useful and laudable in many cases, among whom were: Diderot in

France, Werkmeister and Braun in Germany, Bentham in England, Ferrari in Italy, and others; hence Politicians in various States established laws by which divorces were permitted on account of various causes.[1] Therefore it is expedient that we set forth what right reason teaches concerning the indissolubility of marriage.

[1] St. Thomas, *Supplement*, q. 67, aa. 1-2; *C. Gent.*, l. III, c. 123; Bellarmine, c. 16; de Rastignac, *Accord de la revelation et de la raison contre le divorce*, 1790; Barruel, *Lettres sur le divorce*, 1789; de Bonald, *Du Divorce considere au XIXe s.*, 1801; *Hume's Essays*, XIX; Carriere, n. 213 sq.; Perrone, l. III, sect. II, c. 1, a. 1; Palmieri, th. 16, 23; Woolsey, *Divorce and Divorce Legislation*, 1882, c. VI; Monsabre, *Careme* 1887, 86-87th Conferences, English *Confer. on Marriage*, II-III; Fonsegrive, *Mariage et union libre*, p. 90 sq.

[2] On this see Westermarck, *op. cit.*, ch. 23, pp. 486-502.

[1] That the number of divorces increases where the civil law favors divorce is clear from experience:

Thus, in the Federated States of America, according to the official census recently published (1908), divorces were multiplied three times faster than the number of citizens (cf. Howard, *Is the freer granting of divorce an evil?* in *American Journal of Sociology*, May 1909; *The Catholic Encyclopaedia*, Appleton, New York, t. V, pp. 66-69).

Year	Divorces Recorded
1867	9,937
1877	15,687
1887	27,919
1897	44,699
1906	72,062

In France:

Year	Divorces
1896	7,051
1901	7,741
1906	10,573
1910	12,975
1911	13,058

In Germany likewise the divorces which in the year 1881 were counted as 3,942 were already 6,582 in the year 1891, and in the year 1899 many more, namely 9,333, etc.

R. Lemaire, *Le Mariage civil*, pp. 197-198, shows that the same progress has prevailed in other regions. In the same place, p. 205, it is proved that there are fewer divorces among spouses who have lived longer together than among those who have cohabited only for a few months or years.

Therefore let Catholic deputies strive with all their strength to abolish civil laws favoring divorce, or to prevent them from being established in regions where they are not in force.

722. Now it is certain that divorce permitted simply to the judgment of the spouses, from any motive whatever, is repugnant to the natural law, since the education of offspring requires a certain stable society of the spouses. But if the question is of divorce granted by public authority on account of grave reasons, some theologians, such as Sanchez and Swartz,[1] deny that it is prohibited by natural law alone; others, on the contrary, such as Scotus, Alphonsus

Tostatus, and St. Ligori,[2] affirm it; finally others with Perrone distinguish, and establish that the indissolubility of marriage does not pertain to the primary natural law, but flows from secondary law. This last opinion indeed seems to us to be embraced. For (a) on the one hand, the primary end of marriage, namely the procreation and education of offspring, even if the conjugal bond is sometimes dissolved, can strictly speaking be obtained; indeed in some cases, for example, when the wife is sterile or suffers from a perpetual disease which prohibits the use of marriage, that primary end is better obtained through divorce; (b) on the other hand, there are so many evil consequences flowing from divorce, especially with regard to offspring, that it is deservedly called contrary to the secondary natural law, as will now be declared.

[1] Sanchez, l. II, disp. XIII; Bellarmine, c. IV, n. 2; Swartz, *Instit. juris publici*, part. II, tit. I, n. 3 sq.

[2] St. Alphonsus, *Theol. moralis*, l. VI, n. 956, with the authors there alleged.

723. 2° Thesis: The indissolubility of marriage, especially of consummated marriage, rests on the secondary natural law, and therefore divorce, on account of the evil consequences which it introduces, must be altogether rejected.

For that is opposed to the secondary natural law which, although it does not destroy the primary end of marriage, nevertheless prevents this from being obtained integrally, and besides is repugnant to the nature of marriage, greatly harms the secondary ends, and introduces evil consequences for society. But such is the case with divorce.

724. (A) For although it does not absolutely stand in the way of the primary end, as was said in n. 722, nevertheless it prevents this from being obtained integrally. For the primary end is the good education of offspring: for marriage was instituted principally for this, that offspring not only be generated, but rightly educated, and thus the good of the whole of society and humanity be promoted. Wherefore, although in certain cases the spouses would be unhappy by living together, the good education of offspring, which regards the common good,[1] must be preferred to their private happiness. These things being posited, it is easily proved that divorce generally harms the good education of offspring. For the child needs the help of both parents, not only at the time when he is born, but for many years (above, n. 684); in the beginning indeed he is nourished by the mother, but the father must at the same time supply to the mother the necessities of life; as the children grow, not only the sweet love and provident care of the mother are desired for their education, but also the severe authority and outstanding prudence of the father. Now for this there is required a stable, indeed, from things commonly occurring, perpetual union of the spouses; for before the education of all the children has been perfected, which often must be extended even beyond the twentieth year, the parents, now advanced in age, generally will no longer be fit for a new marriage. Besides, if they enter a new covenant, the children will adhere either to the father or to the mother: if the former, they will lack the tender love of the mother, and will suffer many things from the envy of the stepmother, who, intent upon her own offspring, will neglect them or even afflict them in various ways; if the latter, they will be deprived of the enjoyment of paternal love at the time when they will have greater need of his care, and perhaps they will suffer many things on the part of the second husband, who fears lest his own children be neglected; therefore in either

hypothesis their education will be imperfect. - Besides, offspring, in order to be rightly educated, needs not only a family, but its own family, since paternal love cannot be delegated.

[1] Fonsegrive, *op. cit.*, pp. 283-294 and 310-319.

725. (B) Divorce likewise prevents the nature and equality of the contract from being integrally preserved: (a) For marriage by its own nature demands perpetuity: for both spouses by copulation become one flesh, and by generating children are bound by a new and most close bond, namely by the offspring generated, which is common to each parent and from which neither can be separated without losing something of himself or herself: therefore if, while the other spouse is living, new nuptials are entered, what nature had so closely joined is divided. (b) Moreover the equality of the contract requires that, when divorce occurs, one of the spouses not be in a worse condition than the other; but this is morally impossible; for the man has lost nothing or little of his dignity, and can easily enter a new covenant, while the woman, who was married for very many years, and brought forth and nourished children, after she is dismissed by the man generally falls from her dignity, has lost beauty and fecundity, and can scarcely hope that she can contract a new marriage. "If therefore," says St. Thomas,[1] "someone, taking a woman in the time of youth, when both beauty and fecundity are present to her, could dismiss her after she has become advanced in age, he would inflict harm on the woman against natural equity."

[1] *Cont. Gent.*, lib. III, cap. 123.

726. (C) Divorce harms the secondary ends, namely the true happiness of the spouses: (a) It favors unequal marriages and those hastily entered; for, if it is lawful to break the matrimonial bond after some time, many will enter the matrimonial state with a light heart, without diligent and mature consideration,[2] while marriages will be established with greater care and only after the matter has been diligently weighed, if it is known that perpetual happiness or unhappiness depends on the choice of a spouse. Now nothing harms the union of spouses more than those marriages in which the spouses, unequal in mind, dispositions, and condition, are joined together under the impulse of blind love, or rather passion.

[2] "Many of the common people contract nuptials, probably considering this with themselves: if they do not obtain happiness in this union, it will be in their power to dissolve it and try fortune again. And in truth it was reported to me by a certain minister that conversations of this kind had been held by some youths of his parish." Woolsey, a Protestant, *op. cit.*, p. 277.

(b) It restricts mutual love; for the happiness of spouses consists chiefly in this, that they be intimately united by perpetual love, and be one heart and one soul, just as they are one flesh; hence, with nature as guide, they promise to each other eternal love, and in that love they find the alleviation of miseries and happiness; for where one loves, one does not labor, or if one labors, the labor itself is loved. But that intimate conjunction of souls can scarcely subsist with the faculty of divorce; for true love wishes to be perpetual, and as soon as we suspect that a friend will probably be unfaithful, we already cease to love him singularly. Who therefore will intimately adhere to a spouse from whom he expects to be separated after some years, and perhaps after some months? Will not suspicions of this kind destroy or retard this perfect friendship? Therefore rightly it can be said with

St. Thomas (*loc. cit.*): "The greater friendship is, the more firm and lasting it ought to be. But between man and woman there seems to be the greatest friendship; for they are united not only in the act of carnal copulation, which also among beasts makes a certain pleasant society, but also for the fellowship of the whole domestic life; whence, as a sign of this, a man because of his wife also leaves father and mother... Therefore it is fitting that marriage be altogether indissoluble."[1]

[1] Nor let it be said that it is not lawful for a man to bind himself by perpetual vows, since he is by nature inconstant and changeable; for, as Paul Janet rightly says (*La Famille*, p. 300): "If love is bound by the bond of duty, so that it is held to promise perpetual fidelity, this is not opposed to the nature of love, indeed it is favored. So much does the nature of love demand perpetuity, that no lover would dare to ask anything without promising perpetuity. To strengthen fidelity by oath forever, and to feign the same even when he speaks with fiction, are the first acts of love; if these are lacking, he would waste his effort. - They object the rights of the heart and the perpetuity of vows. We freely acknowledge the rights of love for binding the union of spouses, by no means for dissolving it. Let us oppose fidelity to liberty; and thus the heart has claimed for itself a nobler dignity and more splendid glory than if it were lawful to adhere to another as it pleased, and continually change the object of love... I confess, however, that only on account of grave arguments is the heart to be bound by an indissoluble bond. But these two seem irrefutable to me: the dignity of the wife and the good of the children."

(c) It increases slight disagreements, on account of the hope of finding happiness in another marriage. Indeed it is of the greatest interest to domestic society that spouses forgive many things to each other, patiently bear one another's defects, and indeed anticipate one another by mutual services. But if marriage is indissoluble, spouses fear lest through disagreements the yoke which they cannot shake off become most grave and intolerable; they more patiently forgive one another's defects, and, as the poet says, whatever it is wrong to correct becomes lighter by patience; but on the contrary the hope of divorce provokes dissensions, quarrels, and adulteries; for he who thinks of finding a new and better spouse will soon be seized by a foreign love, and in order that he may break apart the marriage burdensome to himself, he will indulge insults, reproaches, blows, and adulteries, so that, experience bearing witness, divorce is the occasion and cause of the greatest crimes.[2] Nor let it be said that adultery is so base and wicked that at least on account of that crime the bond of marriage ought to be dissolved; for, if the matter is so, adulteries will not rarely be committed for the purpose of obtaining divorce, as jurists know by experience;[1] therefore it is expedient for the public good that spouses either cohabit peacefully, or be separated as to bed and habitation, without hope of entering new nuptials.

[2] "How many futile quarrels, how many wearinesses do those endowed only with common prudence wear away by easy forgetfulness, led especially by this reason, that life must necessarily be carried on together by them perpetually! Those very small dissensions would have yielded to the greatest envy, brought to the highest degree by the hope of easy divorce. Therefore we must weigh that nothing is fuller of danger than to join two so intimately, as man and wife are joined to each other, unless we render this union perfect and indissoluble. The least probability of separation would become a most abundant source of dissensions and suspicions; the wife, less secure about her state, will daily turn over in her mind the plan of separation, and the husband, consulting only himself and relying on greater power, would bring the union into greater danger." (*Hume*, Essay XIX.)

[1] "It is known to all that the desire of freeing oneself from that state which has become burdensome has led several men and some women to that manner of life which produces divorce, or at least persuades them that, if it should happen, it will not be unwelcome to the spouses. Chancellor Kent rightly noted from several judgments issued concerning divorce that a man had sometimes committed adultery for the sake of obtaining divorce. Among other nations the history of marriage warns us that corrupt morals are increased to the degree that more causes of divorce are furnished, which not only do not prohibit divorce, but rather prepare the way for it." (E. Phelps, *Forum*, December 1889, p. 363 sq.; cf. Woolsey, *op. cit.*, p. 261 sq.)

727. (D) Divorce introduces evil consequences for society: (a) it disturbs the peace of families; for by marriages families are united with each other, lawsuits and enmities are extinguished, bonds of concord among the various members of society are formed; but on the contrary, from divorce divisions arise, hatreds and acts of vengeance flourish between two or several families for many years, and if they are multiplied, the peace of society itself is disturbed.

(b) It corrupts morals; for the faculty of divorce gradually turns marriage into concubinage: for given the inconstancy of man, the conjugal bond can be broken not once, but three times, four times, or even more often, all the more because inconstancy increases by repeated acts; and history shows that this has already happened: for Seneca speaks of those wives who "reckon their years not by the number of consuls, but of husbands";[2] and Juvenal says:[3] "Thus eight husbands are made through five autumns: a matter worthy of the title of a sepulcher." The same is the case in our days among tribes or nations where divorce flourishes.[1] Now what are marriages that will last for only two or three years, except concubinage covered with a cloak? Nor does it help to say that by divorce disagreements and separations are diminished: for it is clear from undoubted facts that these have increased where divorces have been permitted, and that they grow stronger daily. Besides, a law of this kind furnishes occasion for many crimes, but especially for adultery, which is committed or permitted by some for this purpose, that the conjugal bond may more easily be dissolved before tribunals. Now who is there who does not see that by all these things morals are gradually corrupted?

[2] *De Beneficiis*, l. III, c. 16.

[3] *Sat.*, VI, v. 229.

[1] To the point Westermarck, *op. cit.*, p. 488: "At Cairo, according to Mr. Lane, there are only few people who have not divorced once, if they have been married for some time; and many men, in Egypt, have married twenty, thirty women or more; while there are women, not far advanced in age, who have been wives successively of twelve men or even more."

Leo XIII clearly sets forth all these things thus (*Encycl. Arcanum*): "But indeed it hardly needs to be said how much material of evil divorces contain in themselves. For on account of them marital 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 given for dissolving domestic societies; seeds of disagreements are scattered among families; the dignity of women is lessened and depressed, and they come into danger lest, after they have served the lust of men, they be held as abandoned. And since nothing is so powerful for destroying families and breaking the strength of kingdoms as the corruption of morals, it is easily perceived that divorces are exceedingly hostile to the prosperity of families and states; for they are born from the depraved morals of peoples, and, with experience as witness, they open the entrance and gate to more vicious customs of private and public life. And it will be clear that these evils are much graver if it is considered that there will be no restraints so great that they can keep the faculty of divorces, once granted, within certain or previously foreseen limits. Truly great is the force of examples, greater that of passions: by these incentives it must happen that the desire for divorces, creeping more widely every day, invades the souls of very many, like a disease spread by contagion, or like a mass of waters overflowing after the barriers have been overcome."

728. The adversaries object that not a few spouses lead a miserable life unless they are separated from each other, and that often separation does not suffice, but the faculty of entering new

nuptials is required, so that not only the perpetual unhappiness of the spouses, but also adulteries and scandals may thus be avoided.

Resp. (a) The norm of morals is not the happiness of private persons, but the dictate of right reason, which, from what has already been said, demands the perpetuity of the bond, especially for the good education of offspring, which is one of the primary ends of marriage (n. 724), and for avoiding innumerable evils for the family and society (n. 727). Therefore, although certain private persons must suffer many and difficult things from the indissolubility of the contract, nevertheless the law is not therefore to be changed, because the moral good must be preferred to the temporal good, and the public good to the private good. (b) But adulteries and scandals which are said to arise from the perpetuity of the bond have become not rarer but more frequent in France and other regions from the time when divorces were permitted by law, as experience shows;[1] nor is it astonishing, since the hope of passing to new nuptials is accustomed not to extinguish concupiscence, but rather to inflame it.

[1] Which Fonsegrive proves, *op. cit.*, p. 203.

Therefore prudence demands that other remedies be applied, namely either Christian patience or temporary withdrawal: for time heals many wounds, and often long patience lessens or wholly removes dissensions of souls, especially if it is helped by the virtue of religion: "which brings it about that vices, if there are any in the persons, such as difference of morals and dispositions, the weight of maternal cares, the laborious solicitude of the education of children, the labors that accompany life, adverse events, are borne not only moderately, but even willingly" (*Encycl. Arcanum*).

III. On the Cases in Which Marriage Can Be Dissolved

From what has been said, the marriage of the faithful, ratified and consummated, can be dissolved by no human authority; but a marriage contracted by unbelievers, since it is not a sacrament, does not have the same firmness; likewise the marriage of the faithful, ratified indeed, but not consummated, can be dissolved in two ways: by religious profession and by dispensation of the Supreme Pontiff. Concerning these we must now briefly discuss.

1° On the Dissolution of a Marriage Contracted in Infidelity, or On the Pauline Privilege

729. Thesis: The marriage of unbelievers, even consummated, can be dissolved as to the bond, if, when one has been converted to the faith, the other is unwilling to cohabit peacefully, or without injury to the Creator or spiritual harm to the faithful party. It is certain from the declaration of Innocent III:[1] "For if one of the unbelieving spouses is converted to the Catholic faith, while the other is willing to cohabit with him either in no way, or not without blasphemy of the divine name, or so as to draw him into mortal sin, the one who is left will pass, if he wishes, to second vows: and in this case we understand what the Apostle says: if the unbeliever departs, let him depart..." - A privilege of this kind is called the privilege of faith, because it was granted in favor of the faith; it is also called Pauline, as promulgated by St. Paul.

[2] St. Thomas, *Supplement*, q. 69, a. 5; Sanchez, l. VIII, disp. 74; Drouin, l. IX, q. IV, c. 1, § 3, dic. 2; Billuart, Diss. V, a. 2, § 2; Benedict XIV, *De Synodo*, l. VI, c. 4, n. 3; J. Leplat, *Collectio variarum dissertationum casum Apostoli illustrantium*; St. Alphonsus, n. 957; Carriere, n. 256 sq.; Perrone, l. II, sect. 1, c. 7, a. 2; Palmieri, th. 26-27; Ballerini P., n. 429-473; De Angelis, lib. IV, tit. 19, nn. 6-11; Gasparri, nn. 1083-1110; Putzer, nn. 127-132; Wernz, nn. 701-705.

[1] *Decretal.*, l. IV, tit. 19, c. 7.

730. (A) Scripture. For Paul, after promulgating the general law of the indissolubility of marriage, adds these things: "For to the rest I speak, not the Lord.[2] If any brother has an unbelieving wife, and she consents to dwell with him, let him not put her away... But if the unbeliever departs, let him depart: for a brother or sister is not subject to servitude in such cases"[3]... Now by these words the Apostle grants the faculty of dissolving the matrimonial bond for the cases expressed in the thesis; for (a) here Paul grants to the converted faithful party a special privilege, and indeed for determinate circumstances; but if there were question only of separation from bed and table, and not of dissolution of the bond, a special privilege would not be given, since separation is the common remedy in a similar case; besides, no declaration was needed that the faithful spouse be freed from cohabitation, since by hypothesis it is impossible; therefore there is question of dissolution of the bond; (b) it is added that the faithful party is no longer subject to servitude; now servitude of this kind, the departure of the unbelieving party having already been carried out, can be nothing other than the matrimonial bond itself, which in reality the Apostle below (27) calls a bond; this is confirmed from the fact that speech of this kind is directed to the newly converted, among whom the dissolution of marriage, but not simple separation, flourished, and who therefore by the word "let him depart" naturally understood the dissolution of the bond; (c) finally the force of the argument grows if one notices the antithesis which Paul establishes between marriages of the faithful, concerning which he says (11) that if the man departs, the woman must remain unmarried, and the marriages of unbelievers, concerning which he writes: "but if the unbeliever departs, let him depart"; for by this opposition he sufficiently shows that in the last case there is question of a true dissolution of the bond.[1] We acknowledge, however, that the argument is not apodictic unless the practice and authority of the Church accede.

[2] More probably these words are referred not to the following sentence, but to the preceding one, where the Apostle had spoken of widows and virgins; and the sense is that those things which he wrote concerning preserving virginity are not a precept, but a counsel. Cf. Corluy, *Spicilegium*, vol. II, p. 489.

[3] *I Cor.*, VII, 12-15.

[1] The Apostle speaks directly only of the case in which the unbeliever does not wish to dwell with the converted spouse; but the two latter cases are included in the first: for he departs morally who does not wish to cohabit except with injury to the Creator, or by drawing the faithful spouse into sin.

731. (B) From the authority and practice of the Church: (a) Most of the Fathers indeed were silent concerning this, because there was no opportunity for them to write concerning this matter; nevertheless some, such as Ambrose, Chrysostom, Theophylact, and others, spoke in such a way that they seem to have held the doctrine set forth above.[2] (b) Innocent III (1160-1216) openly declared the matter, and from his time this practice became common in all the churches established among recently converted nations. Now a practice of this kind is connected with the dogma of the indissolubility of marriage, and with good morals; it was approved many times by the Roman Pontiffs, who handed down rules to be observed by Missionaries in that case; therefore it is an unconquered argument of truth, since the Church cannot err in a matter of such moment.

[2] See their testimonies in Carriere, n. 258, note 1.

732. Controversy. Theologians further ask by what law the marriage of unbelievers is dissolved in the aforesaid case.

(A) Some indeed, such as Navarrus, Sanchez, and Palmieri,[3] have thought that this is done by the authority of the Supreme Pontiff: for if, they say, the Roman Pontiff can dissolve a ratified marriage, which is a sacrament, he can also *a fortiori* dissolve the consummated marriage of unbelievers, which has less firmness. Besides, the Roman Pontiffs have asserted this power for themselves, namely Pius V (*Romani Pontificis*) and Gregory XIII (*Saepe contingit*); for the latter granted to the Ordinaries of certain places the faculty of dispensing so that any faithful person, "even while the unbelieving spouse survives and his or her consent has in no way been required, nor the response awaited, may be licitly able to contract marriages with any faithful person, otherwise however rightly, and afterwards, these having been consummated by carnal copula, to remain in them as long as they live."

[3] Navarrus, consil. 3, lib. III, n. 12 sq., tit. *de Conversione infidelium*; Sanchez, lib. II, disp. XVII; Palmieri, th. 26.

733. (B) Nevertheless the more common opinion, with Benedict XIV,[1] holds that the consummated marriage of unbelievers is dissolved by divine law, as it is set forth by St. Paul. For, they say, at least that principle is very doubtful, namely that a marriage consummated between unbelievers is less firm than a ratified marriage between the faithful: for although it is not a sacrament, nevertheless it is a true matrimonial contract; moreover every contract of this kind was recalled by Christ to its former indissolubility. Nor can the contrary be argued from the Letters of Pius V and Gregory XIII, which are explained in two ways: (a) according to some, they are understood not of the power of dissolving marriage outside the Pauline case, but only of a dispensation from making the interpellation; for in the Brief of Pius V it is read: "especially because it would be most difficult to find the first spouse"; but in the Letters of Gregory XIII: "Provided it is established, even summarily and extrajudicially, that the absent spouse cannot be legitimately warned, or that the husband did not signify his will within the time fixed beforehand for that warning." All these things surely show that there is question there of dispensation from interpellation, and that the aforesaid Pontiffs granted this not outside the Pauline privilege, but as interpreters of divine law. (b) But according to others, the Pauline privilege is indeed founded on divine law, but the dispensation granted by the two Pontiffs mentioned differs altogether from the Pauline privilege; for Gregory XIII granted the faculty of dissolving marriages contracted in infidelity, even in the case where the absent spouse had been regenerated by baptism:[2] "Which marriages indeed, even if it should afterwards become known that the prior unbelieving spouses, being justly impeded, could not declare their will, and had been converted to the faith even at the time of the second marriage transacted, nevertheless must never be rescinded." Now the Pauline privilege certainly is not extended to this case. Therefore it must be said that the Pontiff granted this special dispensation, not by virtue of the Pauline privilege, but by force of the ministerial power by which he can dissolve the ancient marriages of neophytes not yet consummated after the conversion of one spouse; which power is similar to that by which a ratified and non-consummated marriage is dissolved below, n. 742; since the marriage of which there is question had indeed been consummated in infidelity, but not from the time when it had been ratified by the conversion of both spouses.

[1] Benedict XIV, *De Synodo*, l. VI, c. IV, n. 3; lib. XIII, c. 21; cf. de Angelis, *op. cit.*, l. IV, tit. 19, p. 327 sq.

[2] This especially occurred at the time when slaves were being carried from Africa to America; for many of them had already contracted marriage and had been violently separated from the spouse. When they were converted to the faith, interpellation was impossible, since where the other spouse was was wholly unknown; sometimes it also happened that the other spouse, left in Africa, was converted to the true faith. In this case, there was no place for the Pauline privilege. Now the Supreme Pontiff permitted that slaves of this kind contract a new marriage, and therefore by his authority he dissolved the prior marriage. Cf. Gury-Ballerini, note to n. 759, p. 736, q. 4; Billot, th. 44.

734. Practical corollaries. (A) The conjugal bond is not dissolved at that instant when one of the spouses is converted to the faith or is baptized; for, as Innocent III says (*loc. cit.*), "through the sacrament of Baptism marriages are not dissolved, but crimes are remitted"; only then is it dissolved when the converted spouse, the other refusing to cohabit peacefully, has entered a new marriage. For Innocent III (*loc. cit.*) openly supposes this: "but if that woman, having been converted, follows the man converted to the faith (the wife, namely, who had previously refused to cohabit), before he, on account of the aforesaid causes, marries a lawful wife, he will be compelled to receive her"; therefore the prior bond remains until a new covenant is contracted. It is also clear from the decision of the Sacred Congregation of the Council, 1680 and 1726, which Benedict XIV, *loc. cit.*, n. 4, reports and approves. The reason is that the privilege is in favor only of the converted person, lest he be compelled to remain celibate: it is enough therefore that the prior bond be dissolved at the instant when the new one is formed.

Hence if the unbelieving spouse has contracted marriage before the new nuptials of the faithful party, this is null. But as soon as the Catholic party has entered marriage, the other spouse, whether he or she remains in infidelity or is converted, can enter another marriage.[1]

[1] Sacred Office, July 11, 1886, to the Apostolic Vicar of Natal, in Gasparri, n. 1086; *Acta*, XXII, 747. - We say the Catholic party, so that we may separate certain things from uncertain. Nevertheless, more probably, we think the Pauline privilege is extended not only to those who embrace the Catholic faith, but also to those who embrace a heretical or schismatic sect, provided that they are validly baptized. Thus Palmieri, th. 27; Konings, II, p. 394, where he asserts that this was acknowledged by the Holy See in a particular case.

735. (B) From what was said in the thesis, for a threefold cause the converted spouse can pass to other nuptials: (a) if the unbeliever refuses to dwell with him or her; (b) if he or she wishes to dwell, but not without injury to the Creator, for example by retaining concubines, blaspheming, or educating the children in pagan fashion; (c) if he or she wishes to draw the faithful party to mortal sin against faith or morals: for in these cases he or she does not wish to cohabit peacefully. But the convert can use this privilege not only immediately after baptism but also after several years, if the unbeliever who had previously consented to cohabit peacefully, having changed counsel, no longer wishes to do this.[1]

[1] Thus the Holy Office, August 5, 1759, in *Collect. P. F.*, n. 1312.

But if the unbelieving party departs on account of adultery committed by the faithful party after baptism, there is no place for the Pauline privilege, unless the unbeliever himself or herself was guilty of adultery after the baptism of the converted party; for the privilege was granted in favor of faith, not in favor of crime.[2]

[2] Thus the Holy Office, August 1, 1759; January 17, 1797, in De Angelis, *loc. cit.*, n. 7, where he clearly explains this matter.

736. (C) The converted party cannot, without dispensation, enter new nuptials except with another Catholic party: if he or she contracts with an unbeliever, the marriage is invalid on account of disparity of cult; if with a heretical or schismatic party, the marriage is indeed valid, but illicit on account of the impediment of mixed religion.

(D) If a faithful person, after a dispensation has been obtained, has entered marriage with an unbeliever, he or she cannot use the Pauline privilege, because he or she spontaneously exposed himself or herself to such danger, and therefore cannot complain. Likewise if either spouse falls into heresy or apostasy, the faithful spouse cannot fly to second nuptials, as is expressly declared by Innocent III (*loc. cit.*), because a marriage contracted and consummated by the faithful can be dissolved by no human authority.

737. On interpellation specifically. (A) That it may be known whether the unbeliever wishes to be converted, or at least to cohabit peacefully, a certain interpellation is required, at least as often as it can be done, so that the new marriage can be contracted not only licitly, but also validly. Thus commonly, against a few.[3] The reason is that the faithful person, before marrying again, must be more certain concerning the contumacy of the unbeliever; but regularly he or she cannot be more certain of this except through interpellation.

[3] Ballerini P. (n. 438 sq.) thinks that this interpellation is required for liceity, but not for validity of the new marriage. But the Roman Congregations in particular cases declared invalid a marriage contracted without interpellation, in Gasparri, n. 1090. Hence, according to the Instruction of the Sacred Congregation de Propaganda Fide (at the end of the Third Plenary Council of Baltimore, p. 278), the Ordinary must suspend judgment and remit the case with all its circumstances to the Holy See.

This interpellation must be made after baptism has been received, and regularly two things must be asked of the unbeliever: (a) whether he or she wishes to be converted to the faith; (b) whether he or she at least wishes to cohabit peacefully with the faithful party.

738. (B) If the interpellation is morally impossible, or even very difficult, the Supreme Pontiff is accustomed to dispense from it. He likewise dispenses from the second part of the interpellation, "whether he or she wishes to cohabit peacefully," when it is feared that there is danger of perversion; this is especially verified if the unbeliever is a Jew, because the danger in this case is judged much graver.[1]

[1] The Fourth Council of Toledo prohibited that a spouse converted from Judaism cohabit with the partner remaining in Jewish perfidy, on account of the danger of perversion and the absence of any hope of the conversion of the unbeliever; today the practice is that this cohabitation is permitted in unbelieving regions, but not in Christian ones. Cf. Gasparri, n. 1088.

Moreover that power of dispensing from interpellation is granted: (a) when grave necessity is pressing, in which there is not time to have recourse to the Holy See, to all Bishops and Apostolic Vicars; (b) outside this case, by force of a special indult, to certain Bishops, as has been granted, for example, in Canada: nevertheless this privilege is limited to the regions to which it was given.

But before one is dispensed from interpellation, its impossibility must be established, by using all means to discover the place where the unbeliever dwells, for example by affixing an edict to the doors of the church, or by sending a notice to public newspapers; besides, an instrument is to be kept in the archives, from which it is established that the absent spouse could not be interpellated.

When a dispensation from interpellation has been granted, if the faithful party has not contracted a new marriage for a year after the dispensation was obtained, a new dispensation is required if afterwards he or she wishes to contract marriage; or the interpellation must be made, if it has already become possible. - But when a negative response has been given to an interpellation made, new nuptials can be contracted at any time, even after several years.

739. (C) Interpellation can be made in two ways: judicially and extrajudicially. (a) If the former, it must be made by the Ordinary, who calls the unbeliever and asks him or her whether he or she wishes to be converted, or at least to cohabit peacefully; the response is reported in the acts and kept in the archive. If the unbeliever asks for delay for deliberating, it must be granted, adding nevertheless that, after the fixed time has elapsed, a negative response is presumed. But if the unbeliever does not appear, a person is delegated to interpellate him or her wherever he or she can be found.

These things being posited, if the unbeliever responds negatively to both questions, the faithful person can immediately pass to other vows, although from charity it is better to propose a second interpellation. If he or she responds affirmatively to both, the marriage stands. If he or she does not wish to be converted, but consents to cohabit peacefully, the faithful person can indeed be separated from the unbeliever as to bed and table, but not as to the bond. If, however, in the judgment of the Bishop, from cohabitation a danger of perversion or of grave sin would threaten the faithful person, a dispensation from the second interpellation can be sought from the Holy See, so that, after a negative response to the first question, the faithful person can contract new nuptials. - If the unbeliever were to say that he or she wished to be converted, but was unwilling to cohabit peacefully, this response is not serious, but must be held as negative.

(b) It is commonly held that an extrajudicial interpellation, made by the converted spouse himself or herself, suffices for validity; indeed also for liceity, if the judicial form cannot be observed. But for it to be valid in the external forum, it is required that the baptized party, by himself or herself, or through a mandatary, before two trustworthy witnesses, question the unbeliever, and that the latter respond seriously before the same; this having been done, the ecclesiastical judge, after hearing the witnesses, will be able to render a sentence, by force of which the baptized person can enter a new marriage. But if this cannot be done, it suffices that the unbeliever clearly manifest his or her will by a letter written before three witnesses and directed to the faithful party.

740. (D) If a converted unbeliever has several wives, he must retain the first legitimate wife, if she wishes to be converted, unless however a special dispensation is obtained from the Holy See.

In reality, in the Federated States of America, Bishops have the faculty of dispensing with unbelievers having several wives, whether simultaneously (as among the Mormons), or successively (on account of civil divorce), so that, after conversion and baptism, they may retain that wife who pleases them more, if she also is baptized, provided that the first wife, having been duly interpellated, has refused

to be converted; in this case therefore they have the faculty of dispensing from the second part of the interpellation, "whether she wishes to cohabit peacefully." - Nevertheless prudence requires that, before a new marriage is entered, the faithful party obtain a full civil divorce, if the prior nuptials are valid before civil law, lest the faithful party be held as guilty of bigamy.

N. B. If offspring has been born from the prior marriage, it is indeed to be handed over to the faithful party, if it is of minor age, so that it may be educated in the Catholic religion; but if it has already attained the years of majority, it must be left to its own judgment.

741. Disputed question. It is further asked whether the marriage of unbelievers, already consummated, can be dissolved by dispensation of the Supreme Pontiff or in some other way, apart from the Pauline case, if one spouse is converted.

Now all admit that the Supreme Pontiff cannot dispense if both spouses are baptized and afterwards consummate the marriage; but it is controverted whether a marriage which was not consummated after baptism can be dissolved. (a) The former opinion affirms that such a marriage can be dissolved, both through religious profession emitted by the baptized spouse, in the manner to be explained below, and through dispensation of the Supreme Pontiff. For Paul III permitted that those who before conversion had several wives, and did not remember which one they first received, once converted, should take one of them whom they wished.[1] St. Pius V granted to a polygamous man that, after receiving baptism, he could marry one of the other wives, who likewise was converted, if the first was not known and it was most difficult to find her.[2] Besides, Gregory XIII permitted the converted spouse to enter other nuptials when it is impossible to interpellate the unbelieving party; and he declared these nuptials to be valid "even if it should afterwards become known that the prior unbelieving spouses, being justly impeded, could not declare their will, and had been converted to the faith even at the time of the second marriage contracted."[3] Now this is not the Pauline case, but is a true dispensation from a legitimate marriage not consummated after baptism, especially because the Supreme Pontiff seems expressly to affirm this in the same place: "For this reason We, considering that marriages of this kind contracted among unbelievers are not to be judged so ratified that, when necessity counsels, they cannot be dissolved." - In reality, if the Supreme Pontiff can dissolve a ratified marriage, which is a Sacrament, as will be said below, he can also *a fortiori* dissolve a marriage consummated in infidelity, but not ratified, which has less firmness.[4] - There is added that, according to the Code, can. 1125: "those things which regard marriage in the constitutions of Paul III, St. Pius V, Gregory XIII... and which were written for particular places, are extended also to other regions in the same circumstances," and indeed by the law itself, as seems from can. 1121, establishing that in these cases there is no place for interpellations.

[1] Constit. *Altitudo*, June 1, 1537.

[2] Constit. August 2, 1571.

[3] Constit. January 25, 1585, in *Collect.*, n. 1307.

[4] Thus Sanchez, St. Alphonsus, D'Annibale, Ballerini, Palmieri, and also twelve theologians of the Society of Jesus who in the year 1589 presented to the Holy See a disputation concerning this matter, which you will find in Zitelli, *De dispensat. matrimon.*, pp. 183-197.

(b) The latter opinion denies this[5] and explains the acts of Paul III, St. Pius V, and Gregory XIII as authentic declarations of the Pauline privilege, insofar as the word *departs* can be understood of moral

departure, which is verified whenever the other spouse cannot be found.

[5] Thus Pontius, Benedict XIV, De Angelis, etc.

Hence in practice recourse should be had to the Holy See, which alone can solve cases of this kind.

2° On the Dissolution of Ratified Marriage of the Faithful

742. Principle: The marriage of the faithful, ratified and not consummated, is dissolved by the solemn profession of either spouse in an approved religion, or by a dispensation granted by the Supreme Pontiff for a grave cause.

[6] St. Thomas, *Supplement*, q. 61; Sanchez, l. II, disp. 18-23; Drouin, q. IV, c. 3, § 1; Billuart, diss. V, a. 2, § 4; Carriere, n. 302 sq.; Perrone, l. III, sect. 2, cap. 6, a.; Palmieri, th. 25; de Augustinis, th. 10; De Angelis, *loc. cit.*, n. 12; Gasparri, nn. 1081-1092; Lehmkuhl, nn. 703-704; Ballerini P., nn. 476-488, ed. 3; Wernz, *op. cit.*, nn. 690-700.

(A) The first part has been defined by Trent:[1] "If anyone shall say that a ratified marriage, not consummated, is not dissolved by the solemn profession of religion of either spouse, let him be anathema." It is further proved (a) from the express declarations of Alexander III (1180), and of Innocent III (1210), who writes:[2] "We, however, not wishing to decline from the footsteps of our predecessors, who, when consulted, responded that before marriage is consummated by carnal copula, it is lawful for either spouse, the other being left without being consulted, to pass to religion, so that from then on the other can legitimately be joined to another"; from which it is clear that this doctrine was received before the twelfth century, since the Supreme Pontiff appeals to his predecessors. (b) From the Code, can. 1119: "A non-consummated marriage between baptized persons, or between a baptized party and a non-baptized party, is dissolved both by the law itself through solemn religious profession, and through dispensation granted by the Apostolic See for a just cause, both parties asking or either one, even if the other is unwilling."

[1] Trent, sess. XXIV, can. 6.

[2] *Decretal.*, lib. III, tit. 32, cap. 14.

It must be noted, however, that a ratified marriage is dissolved only at the time when solemn profession is emitted, not when someone enters religion or emits simple vows; hence the spouse remaining in the world contracts new nuptials neither licitly nor validly before the profession of the other. Moreover, it is not dissolved by a simple vow of chastity, nor by the reception of sacred order, or vows emitted in a Congregation not approved by the Holy See; but only by solemn profession, namely that which has been recognized as such by the Church; therefore not by simple profession, nor by simple vows emitted in the Society of Jesus. It is further required that the profession be made freely, after a probation of at least three years, and after canonical age has been attained, that is, after the twenty-first year has been completed; but since, from can. 542, a spouse is invalidly admitted to the novitiate during marriage, and, from can. 572, a profession is invalid if the novitiate was not valid, scarcely today can there be place for this case.

Formerly two months were granted to spouses for deliberating concerning entrance into religion. The Code did not renew this privilege, perhaps because, with solemn profession delayed until at least the fourth year after the beginning of the novitiate, the other spouse would be compelled longer to preserve continence. Thus A. Blat, *Comment.*, lib. II, p. 11, cap. 2, p. 522; Noldin, n. 497; Marc-

Gestermann, n. 1980, note 1. This can be confirmed from can. 1111: "From the very beginning of marriage each spouse has an equal right and duty, as regards the acts proper to conjugal life."

743. (B) The latter part, although previously denied by some, today has become certain by the practice of the Church; for it is clear that, already from the time of Martin V (1417), the power of dissolving ratified marriages for grave reasons was exercised by many Pontiffs,[1] and is exercised even in our days, as is clear from the *Acts of the Holy See*, where each year some dispensations of this kind granted from ratified marriage are read. Now it is unlawful to say that the Roman Pontiffs usurped this power, especially since by so acting they would have inflicted injury on the sacrament and permitted adulteries. Therefore one must conclude with Benedict XIV:[2] "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 marriage, since today the affirmative opinion is common among theologians and canonists, and has been received in practice, as is notorious." - See also can. 1119, reported above.

[1] Cf. St. Antoninus, in *Sum. theol.*, p. III, t. I; Navarrus, *Enchir.*, c. 22; Perrone, vol. III, p. 471, ed. 1861.

[2] *Quaest. Canon.*, 479.

For the exercise of this power, two things are required: juridic proof of the non-consummation of the marriage, concerning which we shall speak in the Supplement; and a legitimate cause, such as the probable nullity of the marriage, the moral impossibility for the spouses of cohabiting together, fear of future scandal and adultery on the part of at least one of the spouses, a civil marriage already contracted by one party with a third person, etc.

744. Controversy. It is disputed among theologians by what law a ratified marriage is dissolved by religious profession, namely whether by natural, divine, or ecclesiastical law.

(a) Some, with Bellarmine, have thought that this is done by divine natural law; for by natural law it is licit to pass from a less perfect state to a more perfect one, if this can be done without harm to another; but the state of religion is more perfect than the state of marriage, and no harm is otherwise inflicted on offspring, which does not exist, or on either spouse, since each is in an equal condition; therefore. Yet this opinion is commonly rejected; for it is false that it is licit from the law of nature to enter a more perfect state when an obligation already undertaken is opposed to this state; for although the Episcopate is a state more perfect than marriage, it is not lawful to receive it when the spouse is unwilling, nor is ratified marriage dissolved by its reception.

(b) Others, after Suarez, hold that this is done by ecclesiastical law; for the Church can, for a grave cause, dissolve a ratified marriage, as is clear from the things proved; now she has used this power with regard to religious profession; she herself has determined the solemnities of religious profession, and she herself has established that marriage is dissolved by solemn vows but not by simple vows. Yet this opinion is not well reconciled with the Tridentine canon cited above; for if it is of faith that marriage is dissolved by religious profession, this truth had to be revealed by Christ, and therefore the dissolution takes place by divine law, not simply ecclesiastical law.[1]

[1] Nor does it help to say that the Tridentine canon is disciplinary, not dogmatic; for the truth proposed by the Council is not that the Church has the power of dissolving ratified marriage, but that marriage is really dissolved by religious profession: which truth indeed is of itself dogmatic, and must always be true; now if such a privilege had been granted

by ecclesiastical law, it could be removed by the same authority, and what is declared in the canon would now become false. Cf. Palmieri, *loc. cit*.

(c) Hence there is a third opinion asserting, with Benedict XIV,[2] that the dissolution is made by divine law, insofar as Christ placed an exception to the law of indissolubility in favor of the religious state, just as we saw one placed for the marriage of unbelievers. For thus it is understood how Trent could define the matter as of faith, how likewise the Pontiffs who first spoke of this privilege supposed a practice already plainly established, and no protests then arose. The adversaries indeed object that the solemnity of religious profession was instituted by the Church herself; but the difficulty vanishes if it is admitted that marriage in this case is dissolved by law partly divine, partly ecclesiastical. The matter can be conceived thus: Christ determined only in common that marriage can be dissolved by the religious state, leaving to the Church the power of determining in species the conditions which constitute the religious state, and therefore dissolve ratified marriage; for thus it is understood how, with the Church so establishing, solemn vows, but not simple ones, produce this effect.

[2] Benedict XIV, *quaest. can. et moral.*, q. 546.

745. (d) Finally, a fourth opinion holds that marriage is dissolved by implicit divine law, or by that ministerial power by which the Church dispenses from a vow, an oath, and other impediments, on account of grave necessity. Namely, in the most ample power of the keys conferred by Christ is comprehended a ministerial or instrumental faculty of dispensing from certain obligations induced by divine law, when the spiritual utility of souls requires it. Now the obligation which results from the bond of ratified and non-consummated marriage, although it arises from divine law, is not so perfect that it cannot be dissolved in any way when a grave cause intervenes. This opinion is sufficiently probable, and sufficiently explains why marriage of this kind can be dissolved not only by religious profession, but also by dispensation of the Pontiff, although nothing concerning this matter is found explicitly in Scripture or primitive Tradition.[1]

[1] For a fuller exposition of this opinion, see Billot, th. 44-45.

746. It is indeed objected that by these exceptions the indissolubility of marriage is destroyed; but undeservedly; for here there is question only of ratified marriage, and therefore the evils which follow from divorce on the part of the spouses and of offspring are not verified here; besides, the dissolution is made not by private authority, but by the Roman Pontiff after a long inquiry, if there is question of a particular case, and only for grave causes; but if there is question of the case of solemn profession, the few inconveniences which perhaps follow from this are compensated by the more excellent good of religious life, nor otherwise is it to be feared that there will be many who renounce pleasures in order to embrace the austerities of religion. Therefore by these few exceptions the indissolubility of marriage is not endangered.[2]

[2] Pisani, *L'Eglise et le divorce*, in the periodical *Le Correspondant*, t. 217, October 10, 1904, pp. 20-46.

IV. On the Manner of Acting with Regard to Civil Divorce

747. Since in many regions civil law permits divorce with the faculty of flying to new nuptials, it remains to speak of the manner of acting with respect to a law of this kind.

(A) The law itself, when it intends to dissolve the natural matrimonial bond, is intrinsically evil: (a) because it involves a twofold dogmatic error, both against the exclusive competence of the Church over the matrimonial bond, and against the indissolubility of ratified and consummated marriage; (b) and it introduces evil consequences for individuals, families, and society by favoring divorces,[3] as is clear from what has been said, n. 723. Therefore those who cooperate in establishing a law of this kind sin gravely.

[3] According to Mulhall, *Dictionary of Statistics*, p. 217, this is the proportion between marriages and divorces in various regions, through the years 1877-1886: for 10,000 marriages there were counted in Switzerland 468 divorces; in Denmark, 406; in the Federated States of America, 344; in Germany, 152; in France, 127; in Scotland, 29; in England, 19. Now, the laws of these regions being inspected, it is easily clear that divorces are more numerous to the degree that divorce laws are looser both as to the causes on account of which it is granted, and as to the manner of proceeding.

748. (B) But it is further asked whether it is lawful to cooperate in the execution of the law, namely whether a judge can pronounce a sentence of divorce without sin, whether the spouses may petition for it, and whether a procurator and advocate may patronize it.[1] That we may separate certain things from uncertain, these things are granted by all:

[1] Before the month of April 1886, the question was being treated also in France with regard to the syndic (*maire*), because the judge did not properly pronounce a sentence of divorce, but only declared that there was place for divorce, and afterwards the syndic pronounced the divorce; but now from the year 1886, the judge himself pronounces the sentence, and the syndic only orders the same to be transcribed by the actuary (*greffier*) in the acts of civil status; now to transcribe a sentence, even one intrinsically unjust, is very remote cooperation, which is permitted for a reasonable cause. Cf. Gasparri, n. 1234.

(a) A civil judge can accept a matrimonial case and recall it for examination, provided that he pronounces sentence against divorce, and otherwise there are most grave reasons for this manner of acting, for example lest he be held to yield his office.

For the Holy Office declared this, June 25, 1885: "The most grave circumstances of things, times, and places being attended to, it can be tolerated that those who hold magistracies and advocates conduct matrimonial cases in France, without being held to yield their office, provided that they openly profess Catholic doctrine concerning marriage and concerning matrimonial causes as belonging only to ecclesiastical judges, and provided that they are so disposed in mind both concerning the value and nullity of marriage and concerning separation of bodies, concerning which causes they are compelled to judge, that they never pronounce a sentence, nor defend one to be pronounced, nor provoke or incite to one, repugnant to divine or ecclesiastical law; and in doubtful or more difficult cases let each one approach his Ordinary, direct himself by his judgment, and insofar as there is need, have recourse through his mediation to the Apostolic Penitentiary. - The Most Holy Father ratified this decree."[2]

[2] In Gasparri, n. 1163; Ballerini P., n. 825; in the same place another similar decree of the Holy Office, December 19, 1860, to the Bishop of Southwark in England, is to be read, concerning causes of semi-full divorce, or of separation as to bed and habitation.

749. (b) Spouses who contracted invalidly, or whose marriage was dissolved by the authority of the Supreme Pontiff, can licitly have recourse to the civil tribunal so that they may obtain divorce (although generally it is expedient that they, after a dispensation has been obtained, if it can be granted, renew consent); for then what is sought is not the dissolution of the matrimonial

bond, which does not exist, but only the relaxation of the civil effects which are attached to the contract which the State holds as valid.

This is clear from the response of the Holy Office to the Bishop of New Orleans,[1] September 9, 1824, where it is declared that in this case the contracting parties are to be induced so that, the canonical defect having been healed, as often as possible they enter a valid marriage; but if each or either one wishes to pass to new vows, liberty of having recourse to the civil tribunal is not to be denied, so that the civil faculty of entering other nuptials may be restored to him or her: "This would not be to approve the custom of civil repudiation, provided that the petitioner is rightly instructed that this is not done for this purpose, that the matrimonial bond be dissolved, since he or she is now detained by no bond, but only that he or she may free himself or herself and the parish priest from legal penalties and civil vexations... But the missionaries ought not to involve themselves in these things to be done before the Government. Let the one who asks to marry conduct his or her own business." In which case the judge, procurator, and advocate concurring in this judgment act licitly.

[1] In Kenrick, n. 111.

750. (c) Moreover it is certain that those spouses who are united by a valid marriage sin gravely when they petition for civil divorce with the intention of flying to new nuptials: for these wish to violate the divine law of indissolubility and to perpetrate adultery.

751. 2° Disputed question. But if one prescinds from the intention of entering a new marriage, and nothing is sought except the dissolution of the civil marriage and of the obligations annexed to it, it is greatly controverted among theologians whether the spouses can seek it, and whether the judge can pronounce the sentence of divorce.

We shall first treat this latter question, reporting the arguments of each opinion.

(A) The former opinion, which Bucceroni, Baudier, Rosset, Aertnys (*loc. cit.*), and others defend, holds that the sentence of divorce pronounced by a judge is intrinsically evil, and therefore can never be permitted. It is proved:[2]

[2] We take these arguments as to their substance from the work of Bucceroni, *loc. cit.*

(a) By reason. 1) If there is any law which contains something against natural and divine law, surely it is the law of divorce as to the very bond of marriage. But "if the writing of a law contains something against natural right, it is unjust, nor does it have the force of obliging... and therefore one must not judge according to it";[3] otherwise one would judge according to injustice and against natural and divine law, which certainly is intrinsically illicit. Nor indeed is it less intrinsically illicit in this matter of marriage than in any other matter of temporal good and property to pronounce a sentence against natural and divine law.

[3] St. Thomas, 2. 2., q. 60, a. 5, ad 1.

2. The law of divorce itself is intrinsically illicit and unjust. Therefore still more intrinsically illicit and unjust is the sentence of divorce. Surely the law is of itself as it were speculative-practical. Insofar as it is considered speculatively, the enunciation of an illicit and unjust law is not illicit, but false and absurd; but insofar as practically, then indeed it is illicit and evil. Now it is the

sentence of the judge which in fact constitutes it practical, or practico-practical: "The sentence of a judge is as it were a certain particular law in some particular fact."[1] - Nor let it be said that the judge does nothing other than declare the law in a particular case, and that otherwise it is not intrinsically evil to declare that which an unjust law contains. This reason has no force at all; for the judge declares the law authentically and authoritatively, defining or determining what is just in a particular case; but it is intrinsically evil to declare authoritatively and juridically, and indeed altogether practically, that what is unjust in itself is just. - Nor let it be said that the cooperation of the judge is only material, and therefore must be permitted for a grave reason. For this cooperation is truly formal, because, as far as it goes, it wholly tends to the granting of the faculty, on the part of the law, of flying to other nuptials, which is evil in itself; it is cooperation efficacious by its own nature, because the aforesaid faculty of marrying in the particular case is the effect only of the sentence of the judge.

[1] St. Thomas, 2. 2., q. 67, a. 1.

Nor does it help to assert that the sentence of divorce touches only the civil contract and the civil effects connected with it, but not the sacramental contract. For the mind of the Legislators is to touch the bond itself and to dissolve the marriage, with the power civilly made of flying to other nuptials: which is intrinsically evil. Now, if the law of divorce is intrinsically evil, the sentence of divorce is also intrinsically illicit, since the judge authoritatively interprets the law by applying it to the particular case.

752. (b) By the authority of the Roman Congregations. For when a doubt arose concerning the interpretation of the decree of June 25, 1885 (above, n. 748), it was asked of the Holy Office: ") Whether the interpretation diffused through France and even given in print is right, according to which a judge satisfies the aforesaid condition who, although some marriage is valid before the Church, abstracts from that marriage with a true and constant mind, and, applying the civil law, pronounces that there is place for divorce, provided that in mind he intends to break only the civil effects and only the civil contract, and that the terms of the pronounced sentence regard these alone? In other terms, whether a sentence so pronounced can be said not to be repugnant to divine or ecclesiastical law?

2. After the judge has pronounced that there is place for divorce, whether the Syndic (*le maire* in French), himself also intending only the civil effects and only the civil contract, as is set forth above, can pronounce divorce, although the marriage is valid before the Church?

3. Once divorce has been pronounced, whether the same Syndic can civilly join with another a spouse attempting to pass to other nuptials, although the prior marriage is valid before the Church and the other party is living?"

Now on May 27, 1886, the Holy Office responded: "To the first, second, and third doubt, Negatively."[1]

[1] In *Acta S. Sedis*, XXII, pp. 635-636; Gasparri, n. 1242.

Moreover this doubt was proposed to the Sacred Penitentiary: "A woman, separated from her husband as to bed by force of a sentence, would wish to undertake a certain public office (*un bureau de tabac*) for sustaining life; but the Government does not permit this unless she seeks divorce. She

herself would wish to seek it, but, in her intention, always with the bond preserved." - The Sacred Penitentiary, January 5, 1887, replied:[2] "Nothing else is to be counseled to the penitent woman in the case except that she abstain under grave obligation from seeking divorce."

[2] In Gasparri, n. 1244.

In the same way the Sacred Penitentiary responded, January 14, 1891, in relation to a woman who wished to obtain civil divorce so that in pecuniary matters she might avoid the greatest damages;[3] and on June 3, 1891, in relation to another wife who, already separated from her husband, intended to seek divorce so that, the civil effects of marriage having been removed, she might undertake the tutelage of her niece and thus free her from most grave dangers.[4]

[3] In *Ami du Clerge*, XIV, 1892, p. 359.

[4] In *Ami du Clerge*, XIV, 1892, p. 350.

Now from all these decisions it is deservedly inferred that a sentence of divorce, even by prescinding from new nuptials to be entered, is intrinsically evil, since it is not permitted to seek or pronounce it when there is no intention of marrying again.

753. (B) The latter opinion, which Kenrick, Ballerini, Palmieri, Lehmkuhl, Konings, Sabetti, Allegre, Genicot, De Becker (*loc. cit.*), and others follow, thinks that civil divorce can be sought and pronounced, provided that the spouses and judge declare that they regard only the civil effects and only the civil contract, and otherwise a grave cause is present to compensate the damages that will arise therefrom. They prove this:

(a) By reason. That one may rightly judge concerning the legitimacy of civil divorce, it must be kept in mind that it is nothing other than the dissolution of civil marriage, not of religious marriage. Indeed civil law can do nothing about the sacrament of marriage and therefore nothing about the matrimonial bond between Christians, but only about certain civil effects flowing from the contract; therefore civil marriage, where it exists, begets only a certain legal bond as to these civil effects; and therefore civil divorce destroys only the civil effects created by the law, so that, after the sentence, the matter stands in the same way as if no civil marriage had been contracted. But the dissolution of merely civil effects is an act indifferent in itself, not intrinsically evil.

But from the other side, since from civil divorce certain evils follow from the fact that the religious marriage, which subsists, lacks the protection of civil law, a grave reason is required that such a divorce be sought or pronounced, for example lest the judge be compelled to abandon his office, or lest the innocent spouse leave offspring to be educated by an impious spouse.

754. From this the arguments proposed by the former opinion can be solved. Indeed the law of civil divorce is not intrinsically evil of itself, because of itself it does not touch the matrimonial bond, but only dissolves those civil effects which it had created; therefore the judge, when he pronounces a sentence of divorce, declares only that the matrimonial contract no longer enjoys the protection of the law; and this surely is not intrinsically evil. - In reality the law of civil divorce is not in itself worse than the law itself of civil marriage, since divorce is only the civil dissolution of marriage. But the Church permits, indeed in certain circumstances counsels, the act of civil marriage; therefore the law of divorce is not in itself intrinsically evil.

It is indeed objected that the law is evil from the intention of the legislator, who also wishes to touch the matrimonial bond; - but the intention of the legislator, even if it were such, does not fall under the law; and if the judge altogether prescinds from that intention and regards only the civil effects and the civil contract, he does not cooperate in the sin of the legislator.

It is likewise objected that the worst effects follow from civil divorce, especially adulterous unions. - But these effects do not follow *per se* from the sentence of divorce itself, but only *per accidens*, since they must be attributed to the malice itself of the spouses; for when the judge pronounces civil divorce, he does not declare that it is lawful for the spouses to enter new nuptials, but only that they are not punished by civil law as adulterous.

755. (b) By authority; for the Roman Congregations, although they have given no speculative solution of this difficulty, have permitted judges in certain circumstances to pronounce a sentence of divorce.

1. First, the response of May 27, 1886 (above, n. 752), is not universal, nor does it settle the question; for the Apostolic Nuncio of Belgium, September 14, 1886, declared to the Government: "The Eminent Cardinal Secretary of State signified to me, by order of His Holiness, that the Congregation of the Holy Office declared that the decree of the day May 27 does not regard Belgium, and therefore nothing has been changed in this region as to those things which pertain to the matter of divorce."[1] Now in Belgium there is the same law as to divorce as in France, and Catholic judges pronounce sentences according to the law, without their manner of acting being reproved by the Holy See.

[1] In Ballerini P., n. 528; cf. Gasparri, n. 1243.

2. In France, Bishop N. set forth that a Catholic magistrate had been named president of the civil tribunal, but was prepared to yield his office if he could not in conscience pronounce a sentence of civil divorce, because in practice it is not always possible either to deter the plaintiff party from the petition, or to reject the petition against the clear disposition of the law; and, after premising two doctrinal questions concerning divorce, he asked: "Whether he can accept the burden and dignity of president of the civil tribunal, since he has clearly perceived that from this he will be constituted in the stricter necessity of more often pronouncing a sentence of divorce." - The Holy Office, July 26, 1887, replied: "The judge of whom there is question is to be strongly encouraged by Your Excellency to persevere in the office, standing by the restrictions already given by the Holy See, and with the cautions applied which are advised by the virtue of prudence."
3. Likewise the Bishop of Lucon had asked whether the syndic could pronounce civil divorce in a particular case in which otherwise he would be stripped of his magistracy, provided that 1° "he openly profess Catholic doctrine concerning marriage and concerning matrimonial causes as belonging only to ecclesiastical judges; 2° in the very sentence, and speaking as a magistrate, he publicly declare that he wishes to break only the civil effects and only the civil contract, while otherwise the bond of marriage remains altogether firm before God and conscience." The Sacred Penitentiary, September 23, responded: "that the same (Bishop) in this particular case, if, after all its circumstances have been inspected, he shall have judged it expedient in the Lord,

can tolerate that the syndic petitioner proceed to the act concerning which in the petition, with the declarations proposed by him, yet so that in place of the words *that he wishes to break only the civil contract*, he put: *that he can regard only the civil contract*."[1]

[1] In Gasparri, n. 1246. - The formula *to wish to break the civil contract* did not please the Sacred Congregation, perhaps lest dissolution of the bond itself seem to be signified, as Ballerini P. notes, n. 825.

Now if in certain circumstances the sentence of civil divorce is permitted, this cannot be called intrinsically evil; for what is intrinsically evil is never permitted. - Nor let it be said that the Congregation uses the word *can tolerate*, so that from this it may be inferred that the matter is illicit in itself; for, as Palmieri rightly says,[2] "the faithful were asking for a decision, so that they might consult their conscience before God, and the Sacred Congregation intended to consult it. Therefore the tolerance which the Sacred Congregation counsels to Bishops in certain circumstances excludes the malice of the act."

[2] Ballerini P., n. 531.

756. 3° Practical conclusions. It is not ours to compose the dispute which the Roman Congregations did not wish to decide; but from the arguments and decisions adduced above, certain conclusions can be inferred.

(A) Preliminary notes. (a) Where the law of divorce has flourished for a long time, good faith much more easily exists in those who concur in the sentence of divorce; and otherwise the law is much more difficult to resist than where it has recently been promulgated. Hence the responses of the Congregations were stricter for France than for Belgium, because in this region the law of divorce is more ancient.

(b) In a particular case, attention must be paid to the various circumstances and to the various inconveniences which are foreseen as following from the granting or denial of divorce: for cooperation is more easily permitted or tolerated when motives of spiritual and public good require it than where only motives of temporal and private order are present. Hence also for France there were diverse responses for diverse circumstances, and the Sacred Penitentiary more than once said that "it had in mind to provide for the particular case according to its circumstances and exigencies."[1]

[1] Thus, for example, June 4, 1890, in Gasparri, n. 1247.

757. (B) On the spouses. (a) Where the civil law does not admit separation as to bed and habitation, but only divorce (as in many American States), the spouse who has the right to separation can, with the consent of ecclesiastical authority, seek divorce, signifying that he or she understands semi-full divorce, provided that a grave reason is present to compensate the evils that will arise therefrom. - Perhaps the same can be said when simple separation, as understood by the law, would not suffice for the intended effect, for example when full divorce is necessary so that provision may safely be made for the Catholic education of the offspring,[2] or for excluding adulterine children from the inheritance which is proper to legitimate children.[3]

[2] Cf. *Conferences ecclesiastiques de Paris*, 1895, p. 119.

[3] This can be inferred from the response of the Sacred Penitentiary, July 30, 1892; since to the question whether a husband can seek divorce from an adulterous wife when no other means is available for obtaining repudiation of paternity concerning adulterine children and their exclusion from the part of legitimate offspring, the response was: let the petitioner consult approved authors.

(b) But where separation flourishes together with divorce, and suffices for obtaining the intended effect, it is not lawful for the spouses to seek absolute divorce, since a sufficient cause for doing this is lacking.[4]

[4] The Third Council of Baltimore, n. 224, declares that "those are guilty of most grave fault who ask that marriage be dissolved by the civil magistrate," and establishes the penalty of excommunication reserved to the Ordinary, "to be incurred by the fact itself by those who, after they have obtained civil divorce, have dared to attempt marriage."

758. (C) The advocate and procurator, since they represent the spouses themselves, can patronize the cause of divorce as often as it is lawful for the spouses to seek divorce. Therefore when the client seeks dissolution of the prior bond for this reason, that he or she intends to enter new nuptials, they cannot furnish their work for the sake of capturing profit.

759. (D) On judges. (a) They are held to apply every means so that they may be able to abstain from pronouncing a sentence of divorce, for example by persuading the parties to be reconciled or to seek separation only; or by abstaining from pronouncing any sentence, for example by remitting the case to another day and transferring it to another judge.

(b) But if they cannot abstain from pronouncing a sentence of divorce without losing their office, it can be tolerated that they pronounce the sentence, provided that they declare that they regard only the civil effects. For it is not certainly established that this is intrinsically evil, and otherwise a most grave reason of public order is present, since otherwise Catholics could not act the parts of judge, with great harm to the Republic.

(c) The same must be said of the syndic or other magistrates who, after the sentence of the judge, must proclaim divorce; indeed a lesser reason seems to suffice, since their cooperation is less.

760. But if spouses, after obtaining a sentence of civil divorce, attempt to enter other nuptials while the prior bond remains, it is commonly held that it is illicit for magistrates to sanction this adulterous union by the authority of civil law: for thus the rights of legitimate marriage are publicly attributed to adultery. - Some nevertheless say that the assistance of the syndic in this case is not intrinsically evil; for he is present at this marriage only as an official witness, and therefore his cooperation is not very proximate; indeed he cannot furnish this cooperation without a most grave reason, because by the law of charity he is prohibited from concurring in the evil of his neighbor; but if a most grave reason presses, for example danger of losing his office, in order to avoid scandal, let him cautiously warn the parties that this is a merely civil ceremony, which has no force at all before the Church.[1]

[1] Thus Santi (*in libr.* IV, tit. 3, nn. 55-58), who for many years was canonist of the Sacred Penitentiary; Gasparri, n. 1231; Genicot, n. 562.

761. (E) On the consequences of divorce with regard to inheritance.[2] (a) When legitimate children have been born from a prior valid marriage, and adulterine ones from a later invalid marriage,

practically the illegitimate children can accept the part of the inheritance devolved to them, whether by testament or by the civil law of succession. For parents do not sin against justice by leaving some part of their goods to illegitimate offspring, since they are by no means held to hand over the whole inheritance to legitimate offspring; therefore *a fortiori* the illegitimate do not sin against justice by accepting the portion left to them. The same must be said if the parents die without a testament; for since they knew that a part of the goods would pass to the adulterine children, and did not prevent this by a contrary disposition, they consented to it at least implicitly.

[2] Cf. Lehmkuhl, Appendix to vol. II, pp. 804-805; Genicot, n. 562.

(b) Likewise, if the parents leave only adulterine children, these can with safe conscience accept the inheritance, nor are they held to yield it to other blood relatives: for here the same reason holds.

(c) But if the parents have disposed of their goods by testament, can the adulterine children impugn it as invalid, whether because the legal portion was not left to them, or on account of another cause? - If the defect is such that it renders the last will of the parents doubtful, they can indeed impugn the testament and follow the sentence of the judge. But if the will of the parents is certainly established, it is not lawful to impugn the testament; for they are deservedly judged to have wished to repair their fault by leaving their goods to legitimate heirs; and otherwise the unjust civil law of divorce can confer no right on adulterine children; hence these would sin not only against piety, but also against justice by impugning the testament in this case. - Yet where divorce has already flourished for a long time, adulterine children can easily be in good faith, and sometimes it is expedient not to instruct them, lest graver evils arise therefrom.

V. On Separation as to Bed and Habitation

762. Having set forth these things concerning divorce as to the bond, it remains to speak of separation as to bed and habitation. That the matter may be better understood, we shall declare four things: 1° the obligation of conjugal cohabitation; 2° the legitimacy of separation for a grave cause; 3° the chief causes of separation; 4° the manner to be observed in separation.

[1] St. Thomas, *Supplement*, q. 62; Sanchez, lib. X, disp. 3-18; St. Alphonsus, nn. 960-977; Carriere, nn. 330-357; Rosset, nn. 3622-3693 and nn. 3850-4062; Ballerini P., nn. 489-518; Wernz, nn. 707-714.

1° On the Obligation of Conjugal Cohabitation

763. Principle: Regularly spouses are held to dwell in the same house, and to use the same table and the same bed. It is certain.

(A) For this is deduced from Scripture,[1] as understood by the Fathers: "A man shall leave his father and his mother, and shall cleave to his wife, and they shall be two in one flesh"; for the word *shall cleave* signifies an intimate and constant union, and from the context it is gathered that this is closer than that which exists between parents and children; but the words "and they shall be two in one flesh" rather clearly designate communion of bed.

[1] *Gen.*, II, 24.

(B) The same is clear from the very ends of marriage: for this is required by (a) the conjugal debt, which cannot easily be rendered without regular cohabitation of the spouses; (b) the good education of offspring, which demands the cooperation of each spouse; for for good education there is desired both the tender love and provident care of the mother, and the severe authority and consummate prudence of the father; (c) the fellowship of common life: for they ought mutually to help and console each other; for the man is stronger and more prudent than the woman, who therefore needs the counsels and direction of the man; conversely, the woman is more suited to domestic matters, and therefore the man needs her work;[2] but they cannot furnish this unless they live together.

[2] St. Thomas, *Comment. in Ethic.*, lib. VIII, c. 12.

764. The principle is explained: (a) Since man and woman are one flesh, they must not be separated for a longer time without grave cause. But since the man is the head of the woman, regularly the wife is held to follow the husband wherever he goes, even if he is sent into exile or goes away into a distant region, unless there is a grave excusing reason. But on the other side, a man departing for a long time is held to bring his wife with him, unless a grave reason stands in the way. But if the man is going to depart for a short time, he is not held to take his wife with him.

It was said regularly, because the wife is not held to follow the husband if this cannot be done without grave spiritual or temporal harm, for example if she would be exposed to proximate danger of sin, death, or grave detriment. Hence there does not fall upon her the obligation of following a man wandering everywhere, unless before the nuptials she had known his wandering life.

(b) Regularly also the spouses ought to share the same table, so that they may be able to enjoy the consolation of mutual conversation. The man is held to support his wife, unless it has been otherwise agreed, even if she does not have a dowry; but the wife is to attend to domestic matters, according to her condition.

(c) Generally also communion of bed ought to be present: but if the spouses, on account of a reasonable cause, have a distinct room and bed, free access to the other's room should be open to each.

765. Corollary. That spouses may cohabit peacefully and happily, they must cultivate certain virtues, especially chaste love, constant fidelity, mutual assistance; besides, the man must furnish protection to the wife, and the woman obedience to the man.

Leo XIII excellently declares this thus, in the Encyclical *Arcanum*: "Namely, they themselves must always be so disposed in soul that they understand that each owes to the other the greatest love, constant fidelity, and careful and assiduous protection. The man is the prince of the family and the head of the woman; yet she, because she is flesh of his flesh and bone of his bones, is to be subject and obedient to the man, not in the manner of a slave, but of a companion; so that, namely, neither honor nor dignity be absent from the obedience furnished. But in him who presides, and in her who obeys, since each bears the image, the one of Christ, the other of the Church, let divine charity be perpetually the moderator of duty."

(a) They must cultivate chaste love: "Men, love your wives, as Christ also loved the Church, and delivered Himself up for her... So also men ought to love their wives as their own bodies. He who loves his wife loves himself."[1]

[1] *Ephes.*, V, 25, 28.

Hence that love must be chaste: for if it is lustful, it will soon become adulterous; pleasure is naturally inconstant and is carried toward various objects, so that those who serve lust, after some time, foster other loves; - patient, by cheerfully bearing mutual infirmities and forgiving each other mutually; otherwise discord arises: the man, abusing his power, treats the wife badly not as a companion, but as a slave; the wife despises the husband and refuses to be subject to him; - full of devotion, insofar as each seeks not exclusively his or her own things, but the man those things which please the wife, and the wife those things which please the man; likewise insofar as each is prepared to sacrifice himself or herself for the other, just as Christ delivered Himself for the Church.

766. (b) They are held to preserve mutual fidelity for each other, not only by avoiding adultery, but also whatever can lead to so great a crime and deservedly excite the jealousy of the other spouse: "The woman has not power over her own body, but the man; and likewise the man has not power over his own body, but the woman."[1] In reality nothing destroys domestic happiness more effectively than the very suspicion of conjugal infidelity.

[1] *I Cor.*, VII, 4.

Moreover, the spouse who, without legitimate cause, nourishes sinister suspicions as to the fidelity of the other party sins gravely: for this is against charity and justice, and often becomes the cause of quarrels and of other evils. Hence let the confessor seriously warn him or her to lay aside so unjust a suspicion, as though it were a suggestion of the devil himself.

767. (c) They must furnish mutual assistance to each other; for God created the woman so that she might be a help to the man: "It is not good for man to be alone; let us make him a help like himself."[2] And surely the woman herself needs the help of the man.

[2] *Gen.*, II, 18.

St. Thomas explains this thus:[3] "For it is immediately apparent that the human works which are necessary for life are distinct between male and female; so that certain things are fitting to the man, I mean those things which are to be done outside, and certain things to the wife, such as spinning and other things which are to be done at home. Thus therefore they suffice for each other, while each reduces his or her proper works to the common." Therefore let them divide among themselves the works of domestic life; and in all things let them strive to please not so much themselves as the other party.

[3] *Comment. in lib. Ethic.*, lib. VIII, c. 12, p. 608, t. XXV, ed. Vives.

768. (d) The man is held to furnish protection to the wife, and the wife obedience to the man.[4] This flows from these words of St. Paul:[5] "Let women be subject to their husbands, as to the Lord, because the man is the head of the woman, as Christ is the head of the Church: He is the savior of His body."

[4] The Gallican civil Code thus sets forth these various duties: "The spouses owe each other fidelity, help, assistance" (a. 212). "The husband owes protection to his wife, the wife obedience to her husband" (a. 213). Cf. Baudry-Lacantinerie, nn. 714-718.

[5] *Ephes.*, V, 22-23. - It is lawful to advocate the rights and higher education of women, provided nevertheless that those words of St. Paul be kept in a pious mind.

Indeed spouses form a certain society, of which the man is the head or president: therefore there falls upon him the obligation of a president, namely of protecting the whole body; therefore he will furnish himself as a strenuous protector not only in dangers of the body, but also in dangers of the soul, not only in temporal matters, but also in spiritual matters. But the wife must obey the man in all things which are legitimately prescribed by him, "not in the manner of a slave, but of a companion, so that neither honor nor dignity be absent from the obedience furnished." The husband indeed cannot prohibit the wife from fulfilling the precepts of God and of the Church, for example from being present at Mass, approaching the tribunal of Penance and the sacred table; but she herself must satisfy religious works in such a way that at the same time she fulfills the duties of her state. - If these things are rightly attended to, Christian spouses will live piously and happily.[1]

[1] On the duties of married life see St. Francis de Sales, *Introd. à la vie dévote*, 3rd Part, ch. 38-39; A. de Margerie, *De la Famille*, Paris, 1869, vol. I, pp. 1-53, 151-225; Devas, *Studies of family life*, London, 1886, part II; P. Janet, *La Famille*, Paris, 1894, pp. 23-106; Landriot, *La Femme forte*, 1868; *La Femme pieuse*, 1874; Baudrillart, *La Famille et l'Education*; Meignan, *Instructions et conseils aux familles*; Turgeon, *Le Féminisme français*, Paris, 1902, vol. II, pp. 80-113.

2° On the Legitimacy of Separation as to Bed and Habitation

769. Principle: Separation as to bed and habitation, while the bond of marriage remains, can be permitted for legitimate causes.

It is certain against many Protestants, who assert that a full divorce can be permitted in many cases, but not a simple separation, as if this opened the way to more and graver evils than divorce itself.

(A) Trent condemned the Lutheran error, by defining:[2] "If anyone shall say that the Church errs when, on account of many causes, it decrees that separation between spouses can take place, as to bed or as to cohabitation, for a determinate or indeterminate time, let him be anathema."

[2] Sess. XXIV, can. 8.

(B) Scripture declares that for God's sake the closest bonds can be broken: "And everyone who has left house, or brothers, or sisters, or father, or mother, or wife, or children, or lands, for My name's sake, shall receive a hundredfold, and shall possess life everlasting."[3] Hence Christ Himself, while, except in the case of adultery, He prohibits divorce as to the bond, allows separation as to cohabitation and bed, when He says: "Whoever shall put away his wife, except for the cause of fornication, makes her commit adultery."[4] And in fact St. Paul grants the converted spouse that he or she may separate from the other party who wishes to depart: "But if the unbeliever depart, let him depart."

[3] *Matt.*, XIX, 29.

[4] *Matt.*, V, 32.

(C) Reason shows that this separation is sometimes lawful and useful. For the cohabitation of spouses does not pertain to the essence of marriage, but only to its integrity, and therefore it can be

suspended or taken away, if the goods which arise from it are far surpassed by the evils which result from it. But when separation is granted only for most grave causes, it often brings more goods than disadvantages; for the Church, by cares and remedies accommodated to the condition of the spouses, strives to soften the disadvantages of separation; moreover, she never ceases to labor toward reconciling peace; and in reality experience shows that not a few of those who have been thus separated, or even have obtained full divorce, after some time wish to live together again: for when they are placed under the necessity either of observing continence or of returning to the other party, they are more cautious in seeking separation and more ready for reconciliation. - Nor should it be said that in this way a way is opened to adulteries: for while separation endures, spouses can obtain from God, both by prayer and by frequenting the sacraments, the special graces by which they need to preserve continence.

3° On the Legitimate Causes of Separation

There are especially four, of which some suffice for perpetual separation, others for temporary separation, as will be clear from what is to be said.

770. (A) The adultery of either spouse, as is clear from the words of Christ related above (n. 85), and from the ecclesiastical canons.[1] Now under the name of adultery there more probably comes any illicit lying together with another, as sodomy and bestiality: for by these crimes, just as by adultery itself, conjugal fidelity is broken; moreover, fidelity is broken without penalty toward the same one who breaks fidelity.

[1] *Decretal.*, lib. IV, tit. XIX, *de Divort.*, cc. 4, 5, 8.

Adultery is of itself a cause of perpetual separation; hence the innocent spouse can depart from the adulterer forever; and, if he or she wishes, enter religion or vow chastity in the world. - Yet this is not immediately to be advised, since charity sometimes counsels that pardon be given. (*Codex*, c. 1130.)

In order that this crime may be a just cause of separation, certain conditions are required: (a) adultery must be *formal* and *culpable*:[2] otherwise there is not present a voluntary violation of conjugal fidelity. Therefore good faith excuses, for example if a man, thinking his wife to be dead, contracts and consummates another marriage; error, for example if a spouse thought the person with whom he or she had intercourse to be his or her own other party; force, if a woman was oppressed against her will. But it is doubted whether grave fear excuses: wherefore the matter must be left to the sentence of judges.

[2] Fornication committed before the nuptials, and afterwards detected, is not a sufficient cause of separation, unless it inflicts injury on the husband, as would happen if the woman were pregnant by another. Thus Kenrick, n. 114.

(b) The adultery must be *consummated*; for this embraces, kisses, touches, nor even intercourse only attempted, do not suffice, but there is required an act of itself apt for the generation of offspring.

(c) It must be *morally certain*, for in doubt no one is to be deprived of his or her right; therefore probable suspicion does not suffice, but there are required at least those presumptions which induce moral certitude, for example the confession of the accused, or if a man alone with a woman alone is found in the same bed.

(d) It must *not be mutual*; for equal offenses are taken away by mutual compensation; nor does it matter who first or more often fornicated.

(e) It must *not have been permitted nor pardoned*; for by permission or pardon the injustice is taken away. Therefore there is no place for separation if the other spouse ordered the adultery or consented to it expressly or tacitly, not preventing it when he or she easily could; or pardoned it either explicitly, or tacitly, for example by the use of marriage after the crime was known, or if he or she did not expel or abandon the adulterous spouse within six months or did not legitimately accuse him or her. (*Codex*, c. 1129.)

771. In the case of adultery clothed with these conditions, the innocent spouse is not held *of himself or herself* to dismiss the guilty one, since separation is granted in favor of the innocent one, not for his or her punishment; sometimes, however, *accidentally* a man can be held to dismiss an adulterous wife, by reason of fraternal correction or of avoiding scandal; but rarely, because there are other means for obtaining this, and besides grave disadvantages can be feared from separation. - Moreover, the innocent one can also call the guilty one back to himself or herself, certainly when the guilty one departed by his or her own authority, and at least more probably when separation was made judicially, because it was granted in the innocent one's favor; furthermore, anyone can renounce a favor. - But the dismissed spouse cannot embrace religion or receive sacred orders, unless with the consent of the innocent one, either express or tacit, such as is judged to be given when the innocent one embraces a state incompatible with conjugal life.

But if the innocent party commits adultery after a separation made privately, he or she is held to call the other back, because compensation of injuries takes place; if after a juridical separation, he or she is not indeed held to furnish this, because by the sentence of the judge the adulterer has lost his or her rights; but this is altogether to be advised.

772. (B) Recession from the true religion, which, according to can. 1131, can be manifested by a threefold act: "if a spouse has given his or her name to a non-Catholic sect; if he or she has educated the offspring in a non-Catholic manner; if he or she leads a criminal and ignominious life."

But this separation ought to be temporary, that is, to cease as soon as the dismissed spouse has returned to the true faith: this is certain, if the separation was made privately; and more probable, if judicially, unless nevertheless in this last case the innocent one wishes to enter religion.

773. (C) Grave damage, whether of soul or of body, because the law of cohabitation does not oblige with so great a disadvantage (c. 1131).

(a) There is present a *danger of the soul*, if one of the spouses solicits the other to sin, for example to theft, adultery, sodomy;

(b) a *danger of the body*, if one prepares snares against the life of the other; or suffers from a contagious disease with danger of infecting the other, if there is no other way by which that disadvantage can be met; but generally a disease of this kind prohibits sleeping together, but not cohabitation: in which

case the one who is healthy must minister to the sick one; likewise if the man exercises cruelties against the wife, and indeed grave ones, with regard had to the persons, character, and condition; or has denied necessary foods or medicines.

If the danger is such that it does not admit of delay, the innocent one can depart by his or her own authority, but for a time; for when the danger has been removed, he or she can be compelled judicially to return. But if time is present, regularly recourse should be had to the ecclesiastical judge, who will prescribe temporary or perpetual separation according to the circumstances.

774. (D) Mutual consent, since each person can freely renounce his or her own right, from an honorable end, for example in order to devote himself or herself to prayer or to lead a more perfect life. Yet this must be permitted cautiously, because of the danger of incontinence. Hence in practice: (a) if there is question only of separation as to bed, for a brief time, it can easily be granted;[1] if for a long time, or to be sanctioned by a perpetual vow, it should be permitted only after mature deliberation has been first had and after long experience, because of the inconstancy of the human heart.

[1] "Do not defraud one another, except perhaps by consent for a time, that you may devote yourselves to prayer: and return again to the same thing, lest Satan tempt you because of your incontinence" (*I Cor.*, VII, 5).

(b) If there is question of separation not only as to bed, but also as to habitation, it is to be permitted with more difficulty, since it stands in the way of the secondary end of marriage, namely mutual help, and moreover can easily furnish scandal to others. Yet it is lawful, provided that a grave reason is present, that the danger of incontinence is absent, and that sufficiently provision is made for the education of the offspring.

(c) If there is question of entering religion, or of ascent to orders, there can scarcely be place for separation under the new discipline. Dispensations, however, can be granted by the supreme authority of the Church. See can. 132, § 3; can. 572, § 1, 3°; can. 987, 2°.

4° On the Manner to Be Observed in Separation

775. (A) From can. 1130, 1131 these things can be established:

Separation on account of *adultery* can be made by private authority, but it is required that the delict be certain and that it can be proved *in the external forum*; for there is question of separation in the external forum. If it is only certain, separation can be made only as to bed.

On account of other reasons, it must be made by the authority of the Ordinary; nevertheless it can also be made by one's own authority, if they are certainly established and there is danger in delay. - Yet it is expedient not always to urge the obligation of approaching the Ordinary, and to leave the spouses in good faith.

Of themselves unworthy of absolution are those who, without a canonical reason, have been separated by their own counsel on account of mutual aversion or some other reason of this kind; but if they are in good faith, and scandal is absent, and it is foreseen that an admonition will not be profitable, they can be left in good faith and absolved.

776. (B) Strictly speaking, recourse must be had to ecclesiastical judges alone in order to obtain separation: for this is a truly matrimonial cause, in which there is question of relaxing rights arising from the sacrament itself, and therefore it pertains to the ecclesiastical forum. Nevertheless, having regard to the very grave circumstances of things, it can be tolerated that in regions in which civil marriage exists, separation be sought from a civil tribunal: for otherwise before the law spouses remain obliged to cohabit. Yet this regularly cannot be done without consulting ecclesiastical authority.[1] But if spouses in good faith have been separated by civil authority, without recourse to the Bishop, they are not generally to be disturbed, since scarcely any fruit can be hoped for from an admonition.

[1] "We command all those who are joined in marriage that, without consulting ecclesiastical authority, they not approach civil tribunals to obtain separation from bed and table. But if anyone shall have attempted this, let him know that he incurs grave guilt and is to be punished according to the judgment of the Bishop." Thus the Third Plenary Council of Baltimore, n. 126. - Yet a judicial process is not required, but a license granted by the Bishop suffices, where custom so permits: thus Smith, *Marriage Process*, New York, 1893, n. 80.

777. (C) According to can. 1132, unless the Ordinary has decreed otherwise for the good of the children: (a) if one of the spouses is an infidel or heretic, by divine and canonical law the offspring must always be committed to the faithful one, so that they may be instructed in the true religion;[2] (b) if both are Catholic, the offspring to be educated must be handed over to the innocent one, but expenses are to be paid either totally or in part by the guilty one, especially if this one is the father. - Yet as to expenses, civil laws in various regions do not establish the same thing: and therefore they must be read and carried out, unless they are manifestly unjust.

[2] "Once separation has been instituted, the children are to be educated with the innocent spouse, and if the other spouse is non-Catholic, with the Catholic spouse, unless in either case the Ordinary, for the good of the children themselves, always saving their Catholic education, shall have decreed otherwise." (*Codex*, c. 1132).

778. (D) Since the separation of spouses is full of dangers, and, where civil divorce is in force, easily prepares the way for full divorce,[3] priests should strive by suitable remedies and admonitions to avert it, and should prudently endeavor to reconcile separated spouses, unless greater evils are feared from cohabitation.

[3] Thus in France separation as to bed and habitation, after three years, can be converted into a sentence of full divorce, if one of the spouses requests it (a. 310).

But the means of preventing separations and divorces are to instruct the faithful diligently concerning mutual duties and concerning the virtues to be cultivated by spouses (above, n. 765), and especially concerning the practice of the Christian religion, "which brings it about that vices, if there are any in the persons, that differences of morals and characters, that the weight of maternal cares, that the laborious solicitude of educating children, that the labors that accompany life, that adverse events, are borne not only moderately, but even willingly."[4]

[4] Leo XIII, Encyclical *Arcanum*, near the end.

Chapter II: On Marriage as Sacrament

Chapter II. On Marriage as Sacrament

779. Among many peoples the contract of marriage bore before itself something sacred and religious, and was often celebrated with sacred rites.[1] But Christ raised the same to the dignity of a sacrament, so that, among Christians, it is a sign not only sacred, but also productive of grace. That we may embrace in this chapter questions both speculative and practical, we shall speak: 1° of the sacrament itself; 2° of the celebration of this sacrament.

[1] P. Sauzet, *Reflexions sur le Mariage civil et le Mariage religieux*, Lyon, 1853, p. 11 sq.; Glasson, *Le Mariage civil et le Divorce dans l'antiquite*, Paris, 1880, p. 139 sq.; R. Lemaire, *Le Mariage civil*, Paris, 1904, p. 4-15.

Article I. On the Sacrament of Marriage Itself

We shall declare four things: 1° the existence of this sacrament; 2° its nature; 3° its effects; 4° by way of corollary, the power of making laws concerning marriage.

§ I. On the Existence of the Sacrament of Marriage — I. The Thesis Is Set Forth and Proved

780. (A) Errors. Formerly the Gnostics and Manichaeans condemned nuptials as evil, as being an incentive of concupiscence and a means by which original sin is propagated. Protestants indeed are far from the error of those forbidding to marry, since they extol nuptials above virginity; but they commonly deny, Ritualists excepted, that marriage is a sacrament. Luther indeed says:[3] "Marriage is not a sacrament of the New Law, since the divine promise is lacking to it"; but Calvin[1] affirms that the notion of a sacrament is no more suited to nuptials than to agriculture or to the shoemaker's art, and that they were not regarded as a sacrament before the times of Gregory I.[2]

[2] St. Thomas, *Supplement*, q. 42, a. 1-3; Bellarmine, *De sacr. Matrimonii*, c. 1-5; Sanchez, l. II, disp. 10; Drouin, l. X, *de sacr. Matrim.*, q. I; Liebermann, cap. II, a. 1; Perrone, *De Matrim. christ.*, l. I, sect. I, c. 1; Carriere, *De Matrimonio*, p. I, sect. 2, c. 1; Palmieri, c. II, th. 7-9; de Augustinis, a. 1; Billot, th. 36.

[3] *De Capt. Babyl.*, § *de Matrim.*

[1] *Instit.*, l. IV, c. 19, n. 34.

[2] Modern Protestants willingly acknowledge that Marriage is a religious institution: "Marriage is not a sacrament in the sense in which Baptism and the Supper are, nor in the sense of the Roman Church, although it must be regarded as a holy institution. Its celebration is an act of religion only. Therefore we ought to enter this state with due solemnity and in the fear of God. Let the ceremony be performed by a minister of Christ, who alone can vindicate to himself authority in the law of God; who alone can receive, and in the act refer to God, the vows pronounced by the contracting parties" (Hodge, op. cit., t. III, p. 377). But the Ritualists acknowledge it as one of the lesser sacraments: "The same is to be said of the holy institute of Matrimony. As regards this sacred rite, we are able with willing mind to show that this sacramental title can be applied to it authentically; the *Book of Homilies* speaks of it as of a sacrament, which binds man and woman by the bond of eternal love. From the same book it is gathered that marriage is a certain kind of life instituted by God when man was still enjoying innocence; that it expresses the mystical union of Jesus Christ and the Church; that at the nuptials of Cana in Galilee it was honored by the presence of Christ, and by His first miracle then

performed. Rightly therefore and deservedly among us it is called the sacrament of marriage" (Morgan Dix, *Sacramental System*, p. 87-88).

781. (B) Doctrine of the Church. Before Christ, marriage indeed was not a sacrament productive of grace, nay, nor was it counted among the sacraments of the Old Law; nevertheless it was called a sacrament by some Fathers, but in a broader sense, insofar as it was the sign of a sacred thing, namely of the future conjunction between Christ and the Church; for, according to the doctrine of the Fathers, Adam cast into sleep[3] represented Christ dying on the cross, Eve represented the Church flowing from His side; as a man leaves father and mother and cleaves to his wife, so the Word in a certain way left the Father that He might cleave to the Church; as two spouses are in one flesh, so the Word was made flesh, so that from His union with flesh one person arose; as from Adam and Eve men were born, so from Christ and the Church spiritual children are born daily. But Christ raised the matrimonial contract to the dignity of a sacrament properly so called, as we are now about to prove.

[3] *Gen.*, II, 18-25.

782. Thesis: Marriage legitimately celebrated among Christians is a sacrament properly so called. It is of faith from the canon of Trent: "If anyone shall say that Matrimony is not truly and properly one of the seven sacraments of the evangelical Law instituted by Christ the Lord, but was brought into the Church by men, and does not confer grace, let him be anathema."

It is not indeed proved from Scripture, but it is suggested. 1° In the Gospel there is indeed found no explicit declaration of Christ concerning the institution of the sacrament of marriage, but from those things which He brought forth concerning the unity and indissolubility of the matrimonial bond, His mind can probably be inferred.[1] For when He was asked by the Pharisees whether it was lawful to dismiss a wife for any cause whatever, He recalls to their memory the words of Genesis concerning the unity and indissolubility of marriage. But when they objected that divorce had been permitted by Moses, He said: "Because Moses by reason of the hardness of your heart permitted you to put away your wives: but from the beginning it was not so." Wherefore He promulgates a new law concerning the indissolubility of marriage: "Whoever shall put away his wife, except for fornication, and shall marry another, commits adultery; and he who shall marry her who has been put away commits adultery." The disciples themselves think this law too difficult: "If the case of a man with his wife is so, it is not expedient to marry." In reality divorce, or at least the privilege for a man of repudiating his wife, flourished among almost all peoples, and, because of the natural inconstancy of the human heart, was regarded as natural and necessary: for from things commonly happening, it was judged morally impossible to cleave to one wife through the whole of life. Yet Christ demands this absolute fidelity not from a few, but from all. But He cannot wisely demand this unless He infuses the grace necessary for furnishing that which commonly surpasses human powers. But given the economy of the New Law, the grace which is necessary for a permanent state of life is usually conferred through a sacrament. - The inference is confirmed from the doctrine of the Apostle.

[1] *Matt.*, XIX, 1-10.

783. 2° St. Paul, treating of the mutual duties of spouses, in order to induce spouses more efficaciously to fulfill the same, brings forward the example of the union of Christ with the

Church: "Let women be subject to their husbands as to the Lord. For the man is the head of the woman, as Christ is the head of the Church: He is the savior of His body. But as the Church is subject to Christ, so also let women be to their husbands in all things. Men, love your wives, as Christ also loved the Church, and delivered Himself up for her, that He might sanctify her... that she might be holy and immaculate. So also men ought to love their wives as their own bodies. He who loves his wife loves himself. For no one ever hated his own flesh: but nourishes and cherishes it, as Christ also does the Church. Because we are members of His body, of His flesh, and of His bones. For this cause 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."[1] Now, from these words of the Apostle, Christian Marriage: (a) is a sacred sign; (b) a sign of grace; (c) and very probably produces grace, and thus is truly and properly a sacrament.

[1] *Ephes.*, V, 22-32.

(A) Christian Marriage signifies something sacred; namely, the union of Christ with the Church.

For the Apostle exhorts Christian spouses that wives be subject to husbands, as the Church to Christ (*Ephes.*, V, 22-24), and that husbands love wives as Christ loves the Church (25-28), because in the same way as the husband is the head of the wife and the wife the body of the husband, so Christ is the head of the Church and the Church the body of Christ (23). Hence the things which Adam pronounced of Eve, that she was bone of his bones and flesh of his flesh, are equally true of the Church relative to Christ; for we are members of the body of Christ, of His flesh and of His bones (30). Therefore, as a man leaves his father and his mother and cleaves to his wife, and they are two in one flesh (31), so the Son of God left the bosom of the Father and cleaves to the Church through the communication of grace, and with the members of the Church constitutes one mystical body. This is a sacrament, that is, according to the force of the Greek word *mysterion*, a mystical sign, and indeed a great one, both because it signifies a great thing, namely Christ the bridegroom and the Church the bride, and because it signifies this most sacred thing in a wondrous manner (32). Therefore the marriage of Christians signifies something sacred.

784. (B) It is a sign of sanctifying grace; for it signifies the union of Christ with the Church; but this union is perfected through sanctifying grace, according to that word of the Apostle: "Christ loved the Church and delivered Himself up for her, that He might sanctify her" (25-26); and in reality the union of Christ with the Church brings forth fruits of sanctity; therefore Christian marriage signifies sanctifying grace.

(C) Finally, Christian marriage produces the sanctifying grace which it signifies. This third point St. Paul does not teach openly; nevertheless he suggests it, insofar as he hands down those things which, although of themselves they do not suffice, yet by reason of the Christian economy, which he rightly must be said to suppose, probably persuade the matter. For Christian marriage is presented as a supernatural and permanent union: (a) supernatural, because the mutual duties of spouses, such as are described by the Apostle, are supernatural by a double title, from the exemplar which is proposed, namely Christ's love for the Church and the Church's devout subjection toward Christ, - and also from the motive which is assigned, namely from the fact that the man is the head of the woman as Christ is the head of the Church; (b) permanent, for the love and obedience which the

Apostle commanded to Christian spouses ought to imitate the love of Christ and the subjection of the Church, which are something constant and permanent. But the union of spouses cannot be supernatural without grace, nor permanently supernatural without habitual grace, to which actual graces are joined, especially since such a permanent union presents a special difficulty, because of the inconstancy of human nature, as was noted above, n. 782. Therefore Christian marriage requires habitual grace, together with the right to actual graces. Moreover, given the economy of the New Law, sanctifying grace, with the right to actual graces, is usually conferred through a special sacramental rite, which not only signifies grace, but produces it. Therefore Christian marriage very probably not only signifies sanctifying grace, but also truly produces it; therefore it is truly a sacrament of the New Law.

785. It can be objected: Already from the time of Adam, marriage was a sign of the union of Christ with the Church; therefore from the time of Adam it conferred grace. But the consequent is false; therefore also the antecedent.

Response. From the beginning marriage was only the sign of the future union of Christ with the Church, while Christian marriage is the sign of the union already accomplished. Moreover, the mere adumbration of a future thing does not require so much perfection as a certain reproduction and extension of a thing accomplished. Hence before Christ, the sign of that future union was the matrimonial state alone, without sacramental grace, while Christian marriage, in order that it may be a worthy image both of the physical and of the moral union of Christ with the Church, must, according to St. Paul, be distinguished by special charity and by the virtues which charity begets.

Indeed, the matrimonial state itself before Christ gradually lost the prerogatives of unity and indissolubility, by which it chiefly represents the union of Christ with the Church. On the contrary Christian marriage became necessarily one and indissoluble. Special grace indeed was not required in order that the matrimonial state, disfigured by polygamy, divorce, and also by the tyranny of the man over the wife, might remain a certain very imperfect sign of the union of Christ with the Church; but special grace must altogether be present in Christian marriage, such as is described by the Apostle, namely firm in unity and indissolubility and adorned with constant love between the spouses, so that it can not only recall to mind the union of Christ with the human race, but express to the life His most devoted charity toward the Church and the Church's most faithful charity toward Christ.

Nor is it useful to add that in the cited text there is question only of the marriage of Adam with Eve; for Adam was speaking not so much of himself as of his posterity, when he said: "A man shall leave his father and his mother"...; for he himself did not have parents whom he would leave; therefore he spoke prophetically of the matrimonial union of posterity, and indeed of that union which more perfectly figures the union of Christ with the Church, namely of that which exists among Christians.

786. By Tradition. In the historical progress of this dogma, three stages can chiefly be distinguished.

1° In the four earlier centuries, only implicitly and obscurely do the Fathers teach that marriage is a sacrament productive of grace. For they are wholly occupied in defending the honesty and sanctity of marriage against the Gnostics and Manichaeans, and its indissolubility against the jurists. Nevertheless, when they assert that marriage is a sacred and religious sign, they set forth certain principles which suppose that by the same a certain grace is conferred.

Thus St. Ignatius declares that nuptials are a sacred thing, according to the Lord, to be celebrated with the judgment of the bishop:[1] "But it is fitting that the bridegroom and the bride contract marriage with the judgment of the bishop, that the nuptials may be according to the Lord, not according to cupidity." Tertullian thus extols the dignity of Christian marriage:[2] "Whence shall we suffice to recount the happiness of that marriage which the Church reconciles, and the oblation confirms, and the blessing seals, the angels announce, the Father holds ratified?" Now so splendid a description, regard also being had to the context where the pious and holy conversation of the spouses is depicted, supposes grace to be annexed to Christian marriage. - This is more clearly inferred from this testimony of Origen:[1] "And indeed God is He who has joined the two into one, so that, from the time when the woman has married the man, they are no longer two, and, because God is the author of the conjunction, therefore grace is in those who have been joined by God." There indeed it is not declared that this grace is bound to marriage itself, but nothing prevents these words from being understood in this way. Ambrose likewise commemorates this grace; after he has treated of the grace of baptism, he writes concerning Christian marriage:[2] "We know that God is, as it were, the president and guardian of marriage, who does not suffer another's bed to be polluted; and if anyone has done this, that he sins against God, whose law he violates, whose grace he loosens. And therefore because he sins against God, he loses the fellowship of the heavenly sacrament." Elsewhere he asserts[3] "that marriage itself is sanctified by the priestly veil and blessing": by which words it is at least suggested that grace is annexed to marriage. - Some Fathers teach that Christ, by assisting at the nuptials of Cana, showed His mind of binding grace to marriage. Thus St. Epiphanius:[4] "For two reasons Christ seems to me to have been invited. First, that He might bind by the chastity and honesty of nuptials the lust of mad men in the world, like to water and flowing away; then that He might amend what was lacking and soften it with the sweetness and grace of most pleasant wine."

[1] *Ad Polycarpum*, c. 5, p. 293, ed. Funk.

[2] Lib. II *ad Uxorem*, c. 9, P. L., t. I, p. 1302.

[1] *Comment. in Matth.*, 14, n. 16, P. G., XIII, 1230.

[2] *De Abraham*, lib. I, c. 7, P. L., t. XIV, p. 442.

[3] Ep. 19 *ad Vigil.*, n. 7, P. L., XVI, p. 984.

[4] *Haeres.* 51, n. 30, P. L., t. XLI, p. 942.

787. 2° From the time of Augustine to the twelfth century, it is more expressly asserted that marriage is a sacrament productive of grace, not indeed in express words, but equivalently. The holy Doctor distinguishes three goods in nuptials, which excuse intercourse from sin: offspring, fidelity, and sacrament: offspring, which is therefore born that it may be reborn through grace; fidelity, by which spouses are joined by a perennial bond; sacrament, "which neither separated nor adulterous spouses lose; let them guard it concordantly and chastely."[5] But that this sacrament is not an empty sign, but truly efficacious or productive of grace, is clear from these words: "Without doubt the reality of this sacrament is that male and female joined in marriage persevere inseparably as long as they live, nor is it lawful, except for the cause of fornication, that a spouse be separated from a spouse."[1] Now, according to Augustine's manner of speaking, the reality of a sacrament is nothing other than grace; therefore he signifies that through the grace of the sacrament spouses are so helped that, notwithstanding

their natural inconstancy, they persevere inseparably united. And thus that which we were saying in the biblical argument is confirmed, namely that the indissolubility of the bond supposes the conferral of grace.

[5] St. Augustine, *De nuptiis et concup.*, l. I, c. 17, P. L., t. XLIV, p. 424.

[1] Ibid., c. 10, p. 420.

Elsewhere he speaks of the sanctity of this sacrament, which likewise consists in its indissolubility, and under this respect he compares marriage with baptism and order, by which an indelible character is impressed: "Therefore the good of nuptials among all nations and all men consists in the matter of generation, and in the fidelity of chastity; but what pertains to the people of God consists also in the sanctity of the sacrament, through which it is unlawful even for one departing by repudiation to marry another, while her husband lives, not even for the sake of bearing children... In the same way, if an ordination of clergy is made for gathering a people, even if the gathering of the people does not follow, nevertheless the sacrament of ordination remains in those ordained."[2] From this he concludes that marriage is indissoluble, even if children have not been begotten; in this consists the sanctity, or grace, of the sacrament.

[2] *De bono conjugali*, c. 24, P. L., t. XL, p. 394.

788. Almost at the same time, St. Cyril of Alexandria, writing concerning the nuptials of Cana, taught that Christ was present there that He might sanctify the principle of human generation: "When nuptials were being celebrated, chastely indeed and honorably, the mother of the Savior is present, but He Himself also, together with His disciples, came invited; not so much to feast, as that He might work a miracle and moreover sanctify the principle of human generation, that is, as it pertains to the flesh." There indeed it is not asserted that marriage is a sacrament, but only that Christ wished to sanctify the principle of human generation; and surely this could not better be done than by raising marriage to the dignity of a sacrament.

Around the year 458, St. Leo the Great, relying upon the doctrine of Paul, declares that marriage is a sacrament, or a sign of the union of Christ and the Church: "Whence, since the society of nuptials has been so constituted from the beginning that, besides the conjunction of the sexes, it had in itself the sacrament of Christ and the Church (*Ephes.*, V, 32), there is no doubt that that woman does not pertain to marriage, in whom it is taught that there was not the nuptial mystery."[3] There indeed nothing is said explicitly concerning grace, but the argument proposed above concerning the text of St. Paul returns.

[3] St. Leo, ep. 167 *ad Rusticum*, n. 4, P. L., t. LIV, p. 1204-1205.

789. The thesis is confirmed from liturgies. For in the most ancient Sacramentaries and Orders or Rituals, whether Latin or Greek, there are to be found ceremonies and prayers for nuptials, from which it is inferred that marriage is a thing divinely instituted, joined with sanctification and grace.

Thus, for example, it is declared "that God is He who connects spouses by legitimate society, and pours forth upon spouses the help of His blessing, so that in the conjugal fellowship they may be joined by mutual sanctity, and the rudiments of the woman may be sanctified"; so, for example, in the

Armenian liturgy it is read: "Bless, O Lord, and sanctify the marriage of Thy servants... For Thou hast not prohibited nuptials, but hast sanctified them and blessed them in priestly fashion."[1] - It is confirmed from ancient monuments,[2] in which the celebration of nuptials is found depicted; for there are shown a man and a woman joining right hands, and between them stands the monogram of Christ, or sometimes Christ Himself crowning the spouses, so that from this it may appear that marriage is a sacred thing; indeed in a Greek coin pertaining to the fifth or sixth century, Christ is shown as joining spouses and imparting grace to them, for this inscription is read: Θεοῦ χάρις (grace of God). Now all these things, which indeed by themselves alone would not suffice to demonstrate the thesis, are nevertheless like traces which show that the Catholic doctrine concerning the elevation of marriage to the dignity of a sacrament was handed down implicitly from antiquity, so that the Church did nothing else, in the definitions of a later age, than to set forth explicitly and distinctly what previously was held obscurely and implicitly.

[1] Gallanus, *De Conciliat. eccles. armenae cum roman.*, t. II, q. 3, § 5. Cf. Martene, *De Ant. Eccl. Ritibus*, l. 1, c. 9, a. 5 sq.; Goar, *Eucholog. Graecorum, De officio coronationis* (i.e., of nuptials, in which the bride was crowned), and other authors cited above; Duchesne, *Origines du culte chretien*, ch. 14.

[2] Garrucci, *Vetri*, tab. 26-30; Martigny, *Dict. des Antiquites*, word *Mariage*; *Perpetuite de la Foi*, ed. Migne, t. III, p. 965.

790. 3° From the twelfth century, marriage is counted among the seven sacraments, although among theologians even to the fourteenth century it was disputed whether and how it produces grace. Thus, in the year 1181, Lucius III decreed against the Albigensians that those were to be struck with anathema who think and teach otherwise concerning the sacraments than the Roman Church does; now among the sacraments he counts marriage.[3] Likewise, in the Second Council of Lyons, 1274, there was read, in the name of the Greeks, the confession of faith of Michael Palaeologus, in which it was declared that there are seven sacraments, among which marriage was counted.[4]

[3] *Decretal.*, lib. V, t. 7, c. 9; Denzinger, n. 339.

[4] Denzinger, n. 388.

Theologians, already from the twelfth century, teach almost unanimously that there are seven sacraments, and they reckon marriage among them. But, because the efficacy of the sacraments had not yet been clearly defined, some doubted whether it conferred grace. Three opinions flourished, according to the testimony of Albert the Great:[1] some said, with Praepositinus and William of Auxerre, that marriage was indeed a sign of grace, but did not produce it; and this seems to have been the opinion of Peter Lombard. Others held that through marriage grace is conferred, but only for avoiding evil. Others finally taught that grace is conferred also in relation to good; Albert adhered to these. - St. Thomas likewise embraced this opinion as the more probable when he explained the book of the Sentences,[2] and as certain in the *Summa theologica*.[3] Scotus likewise held that grace is conferred upon marriage, although he admits that some think otherwise: "Because the Church commonly holds that the sacrament of marriage is the seventh among the ecclesiastical sacraments... therefore it can be said that God has annexed to the matrimonial contract a sacrament properly so called."[4] Nevertheless, afterwards Durandus, although he admits that modern theologians commonly teach that grace is conferred upon marriage, asserts that certain canonists think otherwise, and therefore concludes that the matter has not yet been defined by the Church.[5]

[1] *In Sentent.*, IV, 26, 14.

[2] *In Sentent.*, IV, d. 26, q. 2, a. 3; cf. *Supplement*, q. 42, a. 3.

[3] St. Thomas, 2. 2ae, q. 100, a. 2, ad 6.

[4] *In Sentent.*, IV, 26, q. 1, n. 13.

[5] *In Sentent.*, IV, 26, q. 3, n. 5-6.

From the time of Durandus, not only theologians, but canonists taught that grace is conferred upon Christian marriage, and indeed as something certain.

Soon the Council of Florence, in the Decree for the Armenians (1445), declared that marriage is one of the seven sacraments, and therefore productive of grace. Therefore, when the Protestants denied this, the Catholic Church, not only Western but Eastern, already publicly professed this truth; Trent therefore deservedly defined it as being of Catholic faith.

This argument can also be proposed by way of prescription, as we noted in *De Sacramentis*, n. 23.

791. Reason shows how fitting it is that marriage should truly be a sacrament, productive of grace. For by this spouses are deputed to a most noble work and one most useful to society, both civil and spiritual, namely the procreation and education of offspring; they are connected by an indissoluble bond, nor can they fly to other nuptials unless the other spouse has died; but obligations of this kind are so grave that not rarely they require not common but heroic virtue. Moreover, the sacraments were instituted for this end, that they may confer grace in those states of life which are of the greatest moment, and upon which the salvation of souls most depends, especially when from the same there arise onerous duties, which scarcely can be fulfilled without special help. Therefore it was fitting that sacramental grace be annexed to Marriage, by the force of which the procreation and education of children would be sanctified, and Christian spouses would be able to bear more easily the burdens imposed upon them.

III. Corollaries

792. 1° Marriage, whether ratified or consummated, is in itself an honest and laudable work. It is certain against the Gnostics, Manichaeans, and others cited above.[1]

[1] St. Thomas, *Supplement*, q. 41; Drouin, l. IX, q. II; Carriere, p. II, c. II; Billuart, disp. I, a. 2; Palmieri, th. 2; Billot, th. 39.

(A) Scripture. For that is good and laudable which God Himself instituted, Christ confirmed, and the Apostles commended; but thus it is concerning Marriage. (a) God indeed instituted it, both by creating the first parents diverse in sex, and by associating them in a close covenant that they might procreate offspring: "Male and female He created them, and He blessed them and said: Increase and multiply."[2] Indeed sometimes He commanded the same, by ordering a brother to take the wife of his deceased brother, that he might raise up seed for his brother.[3] (b) Christ confirmed it, both by being present at the nuptials of Cana, by raising the matrimonial contract to the dignity of a sacrament, and by recalling the same to its pristine indissolubility.[4] (c) The Apostles commended the same; thus St. Paul calls marriage honorable;[5] he says that he who joins his virgin in marriage does well, and he commands spouses to render the debt;[6] he admonishes younger widows to marry, and reproves the doctrine of those forbidding to marry.[7]

[2] *Gen.*, I, 27-28; cf. II, 21-24.

[3] *Deut.*, XXV, 5.

[4] *John*, II, 1 sq.; *Matt.*, XIX, 4 sq.

[5] *Hebr.*, XIII, 4.

[6] *I Cor.*, VII, 38; VII, 3.

[7] *I Tim.*, V, 1-3, 14.

(B) We do not institute a special argument from tradition, since it is acknowledged by all that the Fathers, not only in passing, but expressly, in their works, defended the honesty of marriage. Let Tertullian against the Marcionites, Clement of Alexandria, l. III *Stromata*, St. Jerome in the books against Jovinian, St. Augustine *De Bono conjugali*, *De Nuptiis*, etc., be approached, if time is present.

793. (C) Theological reason. That indeed is good and laudable which is necessary for the propagation of the human species, is in itself a noble work, and moreover can be honored by a good end; but marriage (a) in the present order of things, insofar as it has been constituted by God Himself, is necessary for the conservation and propagation of the human species; (b) it is in itself a noble work, since spouses, by giving themselves to the marital matter, together with God procreate a human body, into which a rational soul is infused: which work is akin to creation itself; (c) finally it can be honored by a good end, for example by the virtue of religion, that offspring may be procreated for the worship of God, by love of country, that citizens may be generated who may be a guard for the State, by the motive of justice, that the debt may be rendered, or it can also be intended as a remedy of concupiscence. It is indeed true that the use of marriage is often not without some lust; but this is accidental, and moreover such pleasure is not evil unless it so dominates that it excludes the other honorable ends: and this indeed must be turned as a vice not to marriage itself but to those who abuse it.[1]

[1] Tertullian (*ad Uxorem*, II, 9, P. L., t. I, p. 1302) thus splendidly describes the sanctity and happiness of Christian spouses: "Both are brothers, both fellow-servants, no distinction of spirit or flesh. And truly two in one flesh; where there is one flesh, there is one spirit. Together they pray, together they prostrate themselves, and together they pass through fasts, teaching each other, exhorting each other, sustaining each other. Each is alike in the Church of God, alike at the banquet of God, alike in straits, in persecutions, in refreshments; neither hides from the other, neither avoids the other, neither is burdensome to the other; the sick are freely visited, the needy are supported; alms without torment, sacrifices without scruple, daily diligence without impediment; no furtive signing, no trembling congratulation, no mute blessing; psalms and hymns sound between the two, and they mutually challenge one another who may better sing to his God. Seeing and hearing such things, Christ rejoices, sends His peace to these; where the two are, there He also is; where He also is, there also the evil one is not."

794. 2° The state of virginity or celibacy, undertaken for God, is more excellent than the matrimonial state. It is of faith from Trent:[2] "If anyone shall say that the conjugal state is to be preferred to the state of virginity or celibacy, and that it is not better and more blessed to remain in virginity or celibacy than to be joined in marriage, let him be anathema."

[2] Sess. XXIV, can. 10.

This proposition is directed against Jovinian (fourth century), and the Innovators who contended that nuptials are either to be equated with virginity or even preferred to it. That the proposition may be

rightly understood, it must be noted that the comparison is instituted between the state of virginity and the conjugal state, not between persons who are found in either state: for there can be married persons who are more perfect than some virgins. Besides, the celibacy concerning which there is question is not only lack of the conjugal bond, which is sometimes combined with a disgraceful life, but celibacy undertaken *for God*, by which a life exempt from the pleasures of the flesh is led.

(A) Scripture. (a) When Christ had explained to the Apostles the various burdens of marriage arising from its indissolubility, they exclaimed: "If the case of a man with his wife is so, it is not expedient to marry"; but seizing this occasion, the Savior asserts that certain ones cultivate virginity on account of God, and yet that not all grasp a word of this kind, because of its sublimity: "And there are eunuchs who have castrated themselves for the kingdom of heaven: he who can grasp it, let him grasp it."[2] Moreover, these things imply that the state of virginity is more excellent than the conjugal state: for thus, according to Jerome,[3] the words of Christ can be understood: "Those eunuchs are pleasing to Me whom not necessity, but the will, has castrated: freely do I receive into My bosom those who have abstained from nuptials on account of the kingdom of heaven, and for My worship have refused to be what they were born... It is of great faith and of great virtue to be the most pure temple of God, to offer oneself wholly as a holocaust to the Lord, and, according to the Apostle, to be holy in body and spirit."

[2] *Matt.*, XIX, 9-12.

[3] *Contra Jovin.*, l. I, c. 7, n. 12, P. L., t. XXIII, p. 228.

(b) The Apostle teaches the same more expressly;[4] for although there he writes honorably concerning marriage, he proposes virginity, as something better, by way of counsel: "It is good for a man not to touch a woman (1)... for I wish all of you to be as myself (7)... but I say to the unmarried and to widows: it is good for them if they so remain, as also I (i.e., without a wife) (8)... He who is without a wife is solicitous for the things that are the Lord's, how he may please God; but he who is with a wife is solicitous for the things that are of the world, how he may please his wife, and he is divided (32)... Therefore both he who joins his virgin in marriage does well; and he who does not join her does better" (38). These things are so clear that Protestants strive to twist them, asserting that the Apostle there speaks only hypothetically, namely thinking that the second advent of the Lord was already near (29); but in vain, for the reason alleged, namely that he who is without a wife is solicitous for those things which are the Lord's, remains true in all places and times, and luminously demonstrates that the state of virginity is more apt for the service of God.

[4] *I Cor.*, VII, 1-40.

This also is the open doctrine of the Fathers, as is to be seen from their works: cf. St. Cyprian, *de habitu Virginum*; St. Ambrose, *de Virginibus*; St. Jerome, *contra Jovinianum*; St. Augustine, *de sancta virginitate*, etc.

795. (B) Theological reason. For that state is more excellent than the conjugal state in which the divine good is preferred to the human good, and the good of the soul to the good of the body; but virginity is ordered to the good of God, for whose love the pleasures of the flesh, even lawful ones, are freely despised; and to the good of the soul, since it disposes it to the contemplative life, to prayer, and to the consideration of those things which are God's;[1] while marriage is ordered to the good of the body, which is the multiplication of the human race, and

pertains to the active life, by which a man and woman living in marriage necessarily have to think of the things which are of the world. Hence Christ chose a virgin mother, Himself perpetually cultivated virginity, loved a virgin disciple before the rest, and to him alone, dying on the cross, commended His virgin mother, manifestly showing by His example that the virginal state is of greater price than the conjugal state.[2]

[1] Hence St. Thomas (*Opusc. de perfect. vitae spiritualis*) teaches that especially those who tend to perfection ought to abstain from marriage, "because through this man is most entangled in secular cares" and is most ensnared by conjugal affection.

[2] St. Thomas, 2. 2., q. 152, a. 4.

796. Nor should it be said that marriage is a sacrament, and therefore more excellent than virginity, which does not have the notion of a sacrament. For here we compare the state of virginity with the conjugal state, not with the sacrament of Marriage; moreover, although the sacrament of Marriage confers graces *ex opere operato*, it does not follow from this that it is better than virginity: for graces of this kind are given because of the dangers and burdens of marriage, which are absent in the virginal state; besides, in place of the graces which spouses receive by the sacrament of Marriage, virgins are able to obtain much greater ones on account of the fervent acts of love and devotion which, by the Apostle's testimony, they elicit far more easily than the married.

Nor should it be said that celibacy contains itself within the limits of a private good, and therefore is less useful than the matrimonial state. For it contributes much to the common good of society, both by way of example, by teaching how unbridled passions are restrained, from which the sanctity of marriage is imperiled; and by making a continent man most apt for exercising works of charity, namely the care of the poor, orphans, and the sick, or the education of little ones, etc.; and also by recalling to memory that heavenly fatherland, where they neither marry nor are given in marriage.

Nor should it be said, with many Protestants, that continence is morally impossible, and therefore that those who vow virginity fall into the snare of the devil; for to preserve continence for a long time is indeed very difficult, indeed morally impossible for those who reject the means proposed by Christ, but not for those who flee dangerous occasions, give themselves to mortification of the flesh, study or labor, and at the same time are assiduously devoted to prayer, and frequently receive the sacraments, especially the Eucharist; for by these means concupiscence is efficaciously restrained. This the Protestant Leibnitz candidly acknowledged:[1] "Let clerics and religious be firmly persuaded that, for preserving continence, there is scarcely need of any other thing than to avoid idleness and dangerous occasions, and to have a firm will, the grace of which God does not deny to one asking it with fervent zeal." In reality, among the Protestants themselves, are there not widowers and widows and unmarried virgins, upon whom the obligation of preserving continence for a long time lies? Is it permissible to presume that all these are given over to vice? If it is not permissible, why are Catholic priests or others who vow virginity for God accused as though guilty of incontinence?

[1] *Systema theolog.*, n. 66. This had already been observed by St. Gregory Nazianzen, *Orat*. 31; Sts. Chrysostom and Jerome on chapter XIX of Matthew; St. Augustine, l. VI *Confess.*, cap. XI; cf. M. Rosset, op. cit., t. I, n. 398 sq.

§ II. On the Nature of the Sacrament of Marriage

We shall set forth: 1° that the nature of the sacrament consists essentially in the contract itself; 2° who are the ministers; 3° what are the matter and form of this sacrament.

I. On the Inseparability of the Sacrament from the Contract

797. State of the question. Christ could have instituted the sacrament of marriage in a twofold way: either by adding to the natural contract some external sign productive of grace, for example a priestly blessing, or by raising the matrimonial contract itself to the dignity of a sacrament. Now, in the seventeenth century, Marcus Antonius de Dominis[2], Bishop of Spalato, afterwards a heretic, and J. Launoy[3], and also in our times J. Nuytz, professor of Turin, taught that the sacrament so supervenes upon the contract of marriage already constituted that it can be separated from it, and therefore that diriment impediments can be established by princes, since the contract of marriage is by its nature civil. Politicians willingly embraced this doctrine, that they might thus more easily be able to make laws concerning marriage.

[1] St. Thomas, *Supplement*, q. 42, a. 1, ad 1; a. 3, ad 2; Bellarmine, *de Matrim.*, c. 7-8; Billuart, diss. I, a. 5; Carriere, p. I, sect. 3, c. I, a. 1; Perrone, sect. I, c. 6; Palmieri, th. 10; Pesch, n. 718 sq.; Billot, th. 37.

[2] *De Republ. christiana*, l. III and V, c. 2.

[3] *De regia in matrim. potestate*, t. I, p. 2, c. 4.

Certain Catholics, as M. Cano,[4] thought indeed that the contract is the matter of the sacrament, but that the priestly blessing is the form, so that if the blessing is omitted, marriage exists as a contract, but not as a sacrament. A few others, after Vasquez,[5] indeed acknowledged that the contract is the whole and integral sacrament, but held that contracting parties could by their own intention effect that a natural contract exist without the sacrament.

[4] *De Locis theolog.*, l. VIII, c. 5.

[5] *De Sacram.*, disp. 138, c. 5, n. 63-64.

But the Catholic doctrine is that the matrimonial contract itself has been raised to the dignity of a sacrament, so that among the baptized there cannot be given a contract of marriage unless at one and the same time it is a sacrament.

798. Thesis: "Among the baptized a valid matrimonial contract cannot subsist unless it is by that very fact a sacrament" (can. 1012, § 2). It is certain.

It is said *among Christians*; for Infidels can contract valid marriages, which have the notion of a contract, but not of a sacrament.

(A) By Scripture it is not indeed demonstrated but suggested; for from the words of St. Paul to the Ephesians praised above, with the interpretation of the Fathers added, that very marriage was raised to the dignity of a sacrament which God had instituted from the beginning; but what God had instituted from the beginning is nothing other than the matrimonial contract itself; therefore the contract itself, and not some other accessory rite, was truly raised to the dignity of a sacrament. - In reality, no rite, no prayer, no matter or form is determined in Scripture, besides the matrimonial

contract itself; therefore every marriage legitimately celebrated among Christians is a sacrament; and conversely, if the sacrament is not present, neither will there be a true matrimonial contract.

799. (B) Tradition. (a) The Fathers indeed did not directly examine this question, but they so spoke of Christian marriage that from this it can be drawn out that the contract itself was raised to the dignity of a sacrament. All the Scholastics who flourished before the sixteenth century declared this more openly, teaching, after St. Thomas,[1] that the words by which consent or the matrimonial contract is expressed are the form of the sacrament, or, after St. Bonaventure,[2] that the sacrament of Marriage has legitimate persons for matter, and consent for form: and this indeed implies that consent, or the matrimonial contract, pertains to the essence of the sacrament, and cannot be torn away from it.

[1] *Supplement*, q. 42, a. 1, ad 1.

[2] *In IV*, dist. 28, a. 1, q. 5.

(b) The same is also inferred from various documents of the Church. First, the Decree for the Armenians has these words:[3] "The efficient cause of marriage regularly is mutual consent expressed by words concerning the present." Hence thus: here certainly there is question of Matrimony as sacrament, since the Decree is an instruction concerning the sacraments; but the efficient cause, and therefore the essence, of this sacrament is declared to be mutual consent, or the matrimonial contract; therefore the contract cannot be separated from the sacrament. The same can be drawn from Trent: for it teaches[4] that clandestine marriages were ratified and true marriages as long as the Church did not make the same null: and this indeed implies that they were a true sacrament, for, according to Innocent III,[1] marriage "exists true and ratified, because the sacrament of faith, which once has been admitted, is never lost, but renders ratified the sacrament of marriage." But in clandestine marriages nothing is found except the matrimonial contract; therefore such a contract truly constitutes the sacrament, and cannot be separated from it.

[3] Denzing., n. 597.

[4] Sess. XXIV, *de Reformat.*, c. 1.

[1] *Decretal.*, l. IV, tit. 19, c. 7, ap. Denzing., n. 351.

(c) Finally the matter has been placed beyond every doubt by the express declarations of Pius IX and Leo XIII.

The former, in an Allocution held to the Cardinals (September 27, 1852), reproving the law by which marriage was held only as a civil contract, gives this reason for the aforesaid condemnation: "Since no one from among Catholics is ignorant or can be ignorant that Matrimony is truly and properly one of the seven sacraments of the evangelical law instituted by Christ the Lord, and therefore that among the faithful there cannot be a marriage which at one and the same time is not a sacrament; and for that reason any other conjunction whatever between a Christian man and woman, made even by the force of any civil law whatever, is nothing other than a base and deadly concubinage so greatly condemned by the Church; and therefore that the sacrament can never be separated from the conjugal covenant; and that it altogether pertains to the power of the Church to decree all those things which can in any way pertain to the same marriage." But the latter, in the Encyclical *Arcanum* (February 10, 1880), where he splendidly sets forth the Catholic doctrine concerning Christian

marriage, has these words: "Nor should anyone be moved by that distinction so greatly proclaimed by the Regalists, by the force of which they disjoin the nuptial contract from the sacrament... For a distinction of this kind, or rather a tearing apart, cannot be proved; since it has been ascertained that in Christian marriage the contract is not dissociable from the sacrament; and therefore that a true and legitimate contract cannot subsist unless it is by that very fact a sacrament. For Christ the Lord increased marriage by the dignity of a sacrament; but marriage is the contract itself, provided only that it is made by law... And so it appears that every just marriage among Christians is in itself and through itself a sacrament: and that nothing is more abhorrent from truth than that the sacrament is some added ornament, or an extrinsically appended property, which can be separated and severed from the contract at the discretion of men."

The Code, can. 1012, thus condenses this doctrine: "Christ the Lord raised the matrimonial contract itself among the baptized to the dignity of a sacrament. Wherefore among the baptized a valid matrimonial contract cannot subsist unless it is by that very fact a sacrament."

800. Corollary. Hence, even if the baptized contracting parties are entirely ignorant that the matrimonial contract is a sacrament, they nevertheless effect the sacrament by the very fact that they intend to contract maritally. But if, well instructed, on account of their impiety they should be unwilling to make a sacrament, a distinction must be made: if their predominant intention is to enter marriage, they effect the contract and the sacrament together; but if their intention is so depraved that they prefer to choose concubinage rather than the sacrament of Marriage, their union is concubinary, not marital.

II. On the Minister of Matrimony

801. Melchior Cano seems to have been the first who taught that not the contracting parties themselves, but the Priest who joins them in marriage, are the ministers of the sacrament;[2] many theologians embraced his opinion, among whom are Sylvius, Drouin, Tournely, and others: but today the ancient opinion, which had flourished for so many centuries, is altogether certain from the practice and declarations of the Church.

[1] St. Thomas, *Supplement*, q. 45, a. 5; q. 46, a. 2; Bellarmine, c. 6; Drouin, lib. X, q. II; Billuart, diss. I, a. 6; Carriere, pars I, sect. 2, c. 2; Perrone, sect. I, c. 2; de Augustinis, a. 3; Palmieri, th. XI.

[2] *De Loc. theolog.*, l. VIII, c. 5. Melchior Cano attributes his opinion to William of Paris, Peter Paludanus, indeed to St. Thomas, but undeservedly, as Perrone shows at length, l. c., p. 48 sq.

802. Thesis: The ministers of the sacrament of Matrimony are the contracting parties themselves, and not the Priest blessing the nuptials. It is certain.

(A) From ancient Rituals. For as Martene,[3] a man very well versed in ancient rites, rightly observes, in this way marriage was formerly celebrated: the spouses stood before the priest at the doors of the church; then, right hands having been mutually given, they furnished consent, "in which the ancients placed the whole essence of the sacrament of marriage. For among them those words of the pastor, *I join you*, were unheard of, in which some of the more recent Scholastics constitute the form of this sacrament." In reality these words are lacking in most ancient Rituals. Now if the essence of the

sacrament of marriage consists in the sole consent of the spouses, not in the blessing of the priest, the contracting parties themselves, who furnish the consent, administer the sacrament to themselves.

[3] *De Antiquis Eccl. Rit.*, p. II, c. 9, a. 1.

(B) By the authority of theologians. The old Scholastics declared this openly; thus St. Thomas writes:[1] "Consent expressed by words concerning the present, between persons legitimate for contracting, makes marriage, because these two are of the essence of the sacrament; but all other things are of the solemnity of the sacrament, because they are employed for this, that marriage may be made more fittingly." In the same place (ad 2) he adds: "And therefore the blessing of the Priest is not required in marriage, as though of the essence of the sacrament." Now it certainly would be required, if the Priest were the minister of marriage. St. Bonaventure[2] and other theologians even to the sixteenth century taught the same. Now it is impossible that the teaching Church should have erred in so grave a matter through many centuries. Therefore.

[1] *Supplement*, q. 45, a. 5.

[2] *In IV Sent.*, dist. 28, q. 5.

(C) By the practice and declarations of the Church. (a) Trent declared that clandestine marriages, contracted without the presence of a Priest, were ratified and true, as long as the Church did not make them null.[3] But from ecclesiastical usage of speaking a ratified marriage is the same as the sacrament of marriage; for Innocent III says (l. c.): "Although a true marriage exists among infidels, nevertheless it is not ratified; but among the faithful it exists true and ratified: because the sacrament of faith, which once has been admitted, is never lost, but renders ratified the sacrament of marriage, so that it may endure in spouses while that endures." Therefore, according to Trent, marriages celebrated without the presence and blessing of a priest can be ratified, that is, a true sacrament. Therefore priests are not the ministers of this sacrament, but the contracting parties are.

[3] "Although it is not to be doubted that clandestine marriages, made by the free consent of the contracting parties, are ratified and true marriages, as long as the Church did not make them null; and therefore those are deservedly to be condemned, as the holy Synod condemns them with anathema, who deny that they are true and ratified..." (Sess. XXIV, *de Ref. Matrim.*, c. 1.)

(b) Moreover, when the doubt had been proposed whether marriages performed at the time of the Gallican disturbance, without the presence of a Priest, were to be revalidated by the blessing of a Priest, the Congregation deputed for the affairs of the Gallican Church answered (April 22, 1792) "that the faithful are to be exhorted that, when they can have the supply of a Priest, they ask a blessing from him, who nevertheless will declare to them that a blessing of this kind pertains least of all to validity."

(c) This thesis is altogether confirmed from can. 1098, according to which in some cases it is lawful to contract without the presence of a priest.

(D) Theological reason. From what was said in the preceding thesis, the matrimonial contract is inseparable from the sacrament itself, and therefore those truly effect the sacrament who at the same time perfect the contract; but the contracting parties themselves, not the Priest, perfect the matrimonial contract, as is clear; therefore the contracting parties themselves effect the sacrament, or in other words are the ministers of the sacrament.

803. (E) Principles for solving difficulties. Since it would be too tedious to refute one by one the various arguments brought forward by adversaries, let it suffice to set forth some principles, from which they can be solved.

(a) Arguments taken *a pari* from other sacraments have little or no force, since each sacrament has its own proper matter and also its own ministers. Therefore adversaries say in vain that regularly priests alone are the ministers of the sacraments, and therefore of marriage; for the parity is denied, since marriage is a contract and follows the laws of a contract; but besides, is not baptism, ministered by a layman, valid? Why therefore would marriage, ministered by laymen, be invalid?

(b) The minister of the sacrament is one thing and the minister of solemnity another; therefore, if in ecclesiastical documents there is question of the Priest as minister of marriage, it must be determined from the context whether the question is about the minister effecting, or only sanctioning, the sacrament by a special blessing.

(c) Marriages celebrated without the presence of a Priest were called illicit, or sometimes illegitimate, because they were contracted against the laws of the Church; but from this it least of all follows that the same were invalid. Again, some attribute sacramental power to the priestly blessing, but, when the context is inspected, the sense is that a blessing of this kind is a certain sacramental. Sometimes it is asserted that marriage, without that blessing, is not a sacrament of the true name, because the contracting parties, violating the law of the Church, were not receiving the grace of the sacrament. By the help of these principles, the principal difficulties can be solved: but if any authorities remain against our thesis, they cannot weaken the force of the decisions of the Church.

III. On Matter and Form

804. All theologians hold that the matter of the sacrament of Matrimony is the contract itself. But some, with Melchior Cano, thought that the form was to be placed in the blessing of the Priest: and this opinion indeed remains refuted from the things already said. Therefore the common and certain doctrine is that the matter and form of the sacrament are situated in the matrimonial contract itself. But this is explained in diverse ways.

[1] St. Thomas, *Supplement*, q. 45, a. 5; Bellarmine, c. 6; Drouin, l. X, q. 3; Billuart, diss. I, a. 7; Carriere, p. I, sect. 2, c. 3; de Augustinis, a. 4; Billot, th. 37, corollary I, p. 344.

(A) Certain ones, with Navarrus, said that internal consent is the matter, but that the form consists in the external signs which express the consent; which cannot be admitted, for the matter ought to be in some way sensible, independently from the form; but merely internal consent is in no way sensible.

(B) Others held, with Vasquez, that the bodies of the contracting parties, or dominion over them, are the matter, but that the form is constituted by the words signifying consent. We indeed admit that dominion over the bodies is the remote matter, about which the sacrament is concerned, but we deny that it is the proximate matter; for such dominion in no way signifies grace, but the proximate matter of a sacrament ought in some way to signify the grace produced by it.

(C) Therefore the common opinion is that the remote matter is the right over bodies in order to conjugal acts, that the proximate matter is consent, insofar as it expresses the reciprocal handing

over of bodies, and that the form is the same consent, insofar as it signifies their mutual acceptance. (a) Benedict XIV first declared this:[2] "The legitimate contract is at once both the matter and the form of the sacrament of Matrimony; namely, the mutual and legitimate handing over of bodies, by words and nods expressing the interior assent, is the matter, and the likewise mutual and legitimate acceptance of bodies is the form." (b) It is confirmed by reason: for that which is determinable holds itself in the manner of matter, and that which is determining in the manner of form; but the mutual handing over of bodies is something only determinable, since it is only the beginning of the contract, and remains in suspense until acceptance comes; but the acceptance of bodies is something determining, since it completes the contract and renders it efficacious; therefore.

[2] Brief to the Archbishop of Goa, March 19, 1758.

It is indeed objected that the matrimonial contract is not the matter and form of this sacrament, because it least of all signifies grace. But undeservedly; for a contract of this kind signifies the union of Christ with the Church, which is, as it were, the font and cause of the grace proper to this sacrament, and therefore the grace itself by which the spouses themselves are sanctified; but besides, that consent also directly represents that spiritual union of souls which is one of the principal graces annexed to this sacrament.

Corollaries

805. From the three theses set forth above, certain corollaries can now be drawn.

(A) Marriage is a contract *sui generis*, bearing special characteristics before itself; namely it is: (a) natural, insofar as it is founded on the natural inclination of men, and is ordered to the good of nature, namely the propagation and education of the human race; but it far excels other contracts, both because it was instituted by God, and because it is concerned not with material things, but with the very persons contracting and their affections, and because it cannot be dissolved by the consent of the contracting parties but of its own nature is indissoluble, as was shown above; (b) sacred and sacramental, since it signifies the union of Christ with the Church and has been raised to the dignity of a sacrament; (c) ecclesiastical, insofar as it is ordered to the good of the Church and is governed by many laws of the Church; (d) civil, as tending to the good of the republic, and in some accessory matters subject to the civil power.

806. (B) Marriage among Infidels is not a sacrament, since Baptism is the door of all the sacraments, so that none can be validly received by the non-baptized. Nevertheless their marriages are valid as natural contracts: "Although a true marriage exists among infidels, nevertheless it is not ratified," says Innocent III (l. c.). But heretics who have been validly baptized, and contract legitimately, validly receive the sacrament of Matrimony, even if they are ignorant of or deny the existence of this sacrament. For provided that they have the general intention of marrying according to the laws instituted by Christ, they validly effect the natural contract of Matrimony, and, since among the baptized this cannot be separated from the sacrament, they truly receive also the sacrament.

807. On the occasion of this matter two questions are discussed among theologians: (a) The former is whether a marriage contracted by non-baptized persons becomes a sacrament, if each spouse

is afterwards baptized. Some deny this, among whom are Vasquez, the Salmanticenses, Carriere[1], etc., because matrimonial consent already validly given cannot be renewed: for a thing once given cannot validly be given anew, since it is no longer under the power of the giver. But others more commonly and more probably affirm this with Sanchez, Bellarmine, Perrone, and others;[2] for although a new contract is not posited simply, nevertheless there is effected a new contract morally distinct from the former, since converted infidels consent that the marriage previously contracted become indissoluble and represent the union of Christ with the Church; therefore nothing prevents the consent thus renewed, explicitly or implicitly, from being the matter and form of the sacrament and conferring grace. Indeed a renewal of the contract is not required, but the prior consent given in infidelity suffices. For the sole reason why this contract was not at the same time a sacrament is that the Christian character was lacking to the contracting parties; therefore, as soon as they receive the baptismal character, the obstacle is removed, and nothing prevents the contract from being at the same time a sacrament. This moreover is confirmed by the authority of the Apostle; for in the epistle where he treats of the sacrament of Matrimony, he addresses the Ephesians, recently converted, of whom very many had contracted marriage before receiving Baptism, and nevertheless supposes that these same persons have been sanctified by the sacrament of Matrimony.

[1] Salmanticenses, c. 3, n. 82; Collet, c. II, n. 278; Carriere, n. 150.

[2] Sanchez, l. II, disp. IX, n. 5; Wirceburgenses, n. 285; Benedict XIV, *De Synodo dioeces.*, l. VIII, c. 13, n. 8; de Augustinis, a. 5.

808. (b) The latter question is whether the marriage of a faithful person with an infidel is a sacrament. It is of course supposed that such a marriage has been permitted by the Church: otherwise it would be invalid. But, this being posited, many deny it, as Sanchez, Billuart, the Theologians of Wurzburg,[3] because marriage is a contract, and just as for one contract there are required essentially two persons able to contract, so for a sacrament there are required two persons able to furnish sacramental consent; but in the case of which there is question, only one of the contracting parties is able for the sacrament. - But others, and indeed more probably in our judgment, affirm that a marriage of this kind is a sacrament in the faithful party; thus the Salmanticenses, Tournely, Perrone[1], etc. For the faithful person who, by dispensation of the Church, enters marriage with an infidel effects a true matrimonial contract, and moreover he or she is capable of grace; but every matrimonial contract effected by a baptized person has been raised to the dignity of a sacrament; therefore in the present case the contract is truly a sacrament. Nor should it be said that a sacrament cannot limp, or be valid in one party but invalid in the other; for this is asserted wholly gratuitously, and, although we admit that the matter depends on the will of God, nevertheless of itself nothing prevents one and the same sacrament from being valid in one who labors under no impediment, but invalid in the other who is incapable of the sacrament; in reality absolution given to two persons at once can be valid for the one who is rightly disposed, but invalid for the one who lacks contrition. It can also be added that it would have been very harsh for Christian women, who in the earlier centuries had to marry pagans, to be deprived of sacramental grace so necessary to them.

[3] Sanchez, l. II, disp. VIII, n. 2; Billuart, d. I, a. 5, pet. 7; Wirceburgenses, n. 288.

[1] Salmanticenses, cap. XII, n. 82; Tournely, q. II, a. 2, ed. Veneta 1739, p. 45.

§ III. On the Effects of the Sacrament

809. Since Matrimony is one of the sacraments of the New Law, it produces habitual grace *ex opere operato*, as was expressly defined by Trent:[3] "If anyone shall say that Matrimony is not truly and properly one of the seven sacraments of the evangelical law, instituted by Christ the Lord... and that it does not confer grace, let him be anathema."

[2] Drouin, l. X, q. 4; L. Habert, *Theol. dogm. et moralis, de matrim.*, c. 5; Carriere, n. 58 sq.; Bonal, n. 84.

[3] Sess. XXIV, can. 1.

But the grace which it confers is not first grace but second, since, by the testimony of Trent, it was instituted not for remitting sins, but for sanctifying spouses. Again the grace proper to this sacrament consists in the right to receive, at the opportune time, actual graces necessary for Christian spouses to fulfill their duties rightly: 1° for the Christian procreation and education of offspring; 2° for mutual love and fellowship of life; 3° for restraining concupiscence.

810. 1° For the Christian procreation and education of offspring; for this is the principal end of marriage: for just as Christ was joined to the Church for no other end than that, from this divine marriage, adoptive children of God might be born, so spouses ought to be united that they may generate and holily educate children, who may be useful not only to the earthly fatherland, but also the best citizens of the Church and candidates of the heavenly kingdom. Moreover, for this there is required a special grace, which is conferred through the sacrament of marriage: for men, vitiated by original sin, naturally seek their own pleasure rather than the good of offspring; but, with the help of sacramental grace, they raise their minds higher, and with pious Tobias are able to say: "And now, O Lord, Thou knowest that I take my sister as wife not for the cause of lust, but solely for love of posterity, in which Thy name may be blessed unto ages of ages."[1] Nor is less grace required for educating children holily; for, as Leo XIII says (*Encycl. Arcanum*): In protecting children and especially forming them to virtue, all the cares and thoughts of parents must be vigilant: Fathers, educate them in the discipline and correction of the Lord.[2] From this it is understood that the duties of spouses are not few nor light; yet for good spouses, on account of the virtue which is received in the sacrament, they become not only tolerable, but even pleasant.

[1] *Tob.*, VIII, 9.

[2] *Ephes.*, VI, 4.

811. 2° For fostering chaste love; for often nuptials are disturbed by the discord of spouses, when each follows his or her own inclinations: the man, by abusing his power, regards the wife not as a help like himself, but rather as a servant whom he treats badly; the wife in her turn despises the husband and refuses to be subject to him; from this there arise innumerable quarrels, which overturn the peace of the family and render life miserable to each spouse. But the sacrament of Matrimony meets this evil, by the force of which the man loves his wife as Christ loves the Church, and the wife is subject to the man as the Church to Christ, and both more cheerfully bear mutual infirmities and pardon each other mutually: "They themselves,

namely," says Leo XIII (l. cit.), "must always be so disposed in soul that they understand that each owes to the other the greatest love, constant fidelity, and careful and assiduous protection. The man is the prince of the family and the head of the woman; yet she, because she is flesh of his flesh and bone of his bones, is to be subject and obedient to the man, not in the manner of a slave, but of a companion; so that, namely, neither honor nor dignity be absent from the obedience furnished. But in him who presides, and in her who obeys, since each bears the image, the one of Christ, the other of the Church, let divine charity be perpetually the moderator of duty." Moreover, sacramental grace works all these things in those who are rightly disposed.

812. 3° For moderating concupiscence; for those who loosen the reins to the propensities of corrupted nature defile the nuptial bed with every uncleanness, and, not content with one wife, are inclined to many, and, if polygamy is prohibited, have recourse to divorce, and indulge every kind of lust, as is reported of the pagans. But the grace of the sacrament remedies this vice; helped by it, Christian spouses are able to restrain the headlong impulses of lust and to use their rights chastely, not so much from desire for pleasure as for offspring; by the same grace it comes about that they perpetually adhere to each other in such a way that neither fosters adulterous loves: for as "Christ loved the Church and delivered Himself up for her that He might sanctify her,"[1] so the Christian man pursues his wife with chaste love, and the wife her husband, so that from that mutual love they become more holy.

[1] *Ephes.*, V, 25-26.

Nevertheless, that the sacrament of Matrimony may work the aforesaid effects, it must be received with a right intention and in the state of grace. Therefore pastors, both privately and publicly, should exhort adolescents not to approach the sacrament without fitting dispositions, from which they are able to receive such great fruits, so necessary for the whole course of life.

§ IV. On the Power of Making Laws Concerning Marriage

813. Since the contract of marriage has been raised to the dignity of a sacrament, by that very fact it is subject to the power of the Church.

[1] St. Thomas, *Quodlibet.*, V, a. 15; Bellarmine, c. 32; Sanchez, l. VII, disp. III; Drouin, l. IX, q. VI, c. 1; Billuart, diss. VI, a. 23; Carriere, p. III, sect. II, c. 2, n. 520 sq., with the emendations inserted in the sixth edition of the *Compendium*, n. 130 sq.; Perrone, l. II; Palmieri, th. 28 sq.; de Angelis, *Praelect. juris can.*, tom. III, p. I, p. 24 sq.; Cavagnis, *Institut. juris publ.*, 3rd ed., l. V, n. 184 sq.; Billot, th. 47-48; Paoli, *Etude sur les origines et la nature du mariage civil*, Paris, 1890; R. Lemaire, *Le Mariage civil*, 2nd ed., Paris, 1904.

Nevertheless, not only the Innovators, who held that marriage is not a sacrament, denied this authority of the Church, but also M. A. de Dominis, Launoy, not a few Regalists, and also the Jansenists who were present at the Synod of Pistoia (1786): these indeed were not ashamed to teach that the power of making laws concerning Christian marriage, especially for annulling marriages, belongs to secular princes alone, and not to the Church, except perhaps from the indulgence of princes. Moreover, not a few Catholic authors, especially in France, thought that the power of establishing diriment impediments belonged not only to the Church, but also to princes, because marriage is a contract both civil and ecclesiastical. Yet today this opinion cannot be admitted, after

repeated declarations of the Holy See. What the Church and what the civil power can decree concerning marriage, the following propositions will declare.

814. First thesis: The Church has the power of establishing by her own right impediments diriment of marriage, and of judging matrimonial causes which regard the bond of marriage. It is of faith from Trent:[2] "If anyone shall say that the Church could not constitute impediments diriment of marriage, or erred in constituting them, let him be anathema. - If anyone shall say that matrimonial causes do not pertain to ecclesiastical judges, let him be anathema" (sess. XXIV, can. 4, 12). Now canons of this kind are dogmatic, whatever a few may have said to the contrary; for here there is question of a matter not disciplinary, but pertaining to faith, namely of the very power of the Church and of her infallibility in the exercise of this right. Besides, that this power is in the Church by her own right, and not by concession of Princes, is gathered from the condemnation of the proposition of the Synod of Pistoia, in which the opposite error was defended: for such a proposition was reproved as contrary to Trent and proceeding from a heretical principle.[1]

[2] Trent, sess. XXIV, can. 4, 12.

[1] Ap. Denzing., n. 1422-23.

815. (A) By the practice of the Church. Christ Himself had established the law of indissolubility, contrary to Roman law; Paul had promulgated the privilege of faith, above, n. 730. Adhering to their footsteps, the Church established various statutes concerning marriage; especially by her own right she established diriment impediments, and, when the occasion was given, judged concerning matrimonial causes as to the bond itself. (a) First, the law of the Church is most ancient by the force of which marriages of virgins who had solemnly vowed their virginity to God were held not only illicit but also invalid; thus, for example, Gelasius I writes:[2] "But we have known that certain men rashly join themselves to sacred virgins, and after the purpose dedicated to God mingle incestuous covenants and sacrilegious ones"; now incestuous covenants surely cannot be called a valid marriage. Moreover, a law of this kind was taken from no civil Code; therefore it was enacted by the Church herself by her own right. (b) Likewise the Council of Neocaesarea (314), can. 2, establishes:[3] "If a woman has married two brothers, let her be cast out until death. But at death, on account of humanity, if she shall have said that, if she recovers, she will dissolve the marriage, she will have penance"; by which words it is supposed that the marriage of which there is question was held as null. Now this impediment was not borrowed from civil law, since this latter established the same thing only in the year 355.[4] (c) The Synod of Macon (585), can. 16, declared that marriages contracted by widows of clerics were null: "let the wife of a subdeacon, exorcist, or acolyte, when he has died, not dare to join herself to a second marriage"; which is found in no civil law. (d) Finally, at Trent, the Orators of the King of the Gauls asked that clandestine marriages, and marriages contracted without the consent of parents, be declared null: the former was granted, but the latter denied; this indeed clearly proves that the authority of the Church in establishing impediments was fully acknowledged, and indeed independent from the right of princes.

[2] Ep. *ad Episcopos Lucaniae*, c. 20, P. L., t. LIX, p. 54.

[3] Ap. Bruns, t. I, p. 71.

[4] *Cod. Theod.*, l. III, tit. 12, *Etsi licitum*.

Leo XIII (*Arcanum*) briefly gathers this argument thus: "The Church exercised power over the marriages of Christians in every time and place, and exercised it in such a way that it appeared that the power was her own, not sought by the consent 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 worship, consanguinity, crime, public honesty, were constituted by the prelates of the Church in the Councils of Elvira, Arles, Chalcedon, the Second of Milevis, and others,[1] which often differed greatly from decrees sanctioned by imperial law. Nay, it was so far from the case that ruling men arrogated to themselves power over Christian marriages, that rather they acknowledged and declared that this power, as great as it is, is in the possession of the Church. In reality Honorius, Theodosius the younger, Justinian (*Novel* 137) did not hesitate to admit that, in those matters which touch nuptials, no more was lawful to them than to be guardians and defenders of the sacred canons."

[1] D'Aguirre, *Conc. Hisp.*, tom. I, can. 13, 15-17; Harduin, *Act. Concil.*, tom. I, can. 11, 16-17.

Deservedly therefore the Code, c. 1016: "The marriage of the baptized is ruled not only by divine law, but also by canonical law, saving the competence of the civil power concerning merely civil effects..."

816. (B) Theological reason. Marriage, celebrated among Christians, is a sacrament, and, from what has been said, the contract is so closely connected with the sacrament that one cannot exist without the other; but a sacrament is something altogether sacred, which transcends the power of civil authority and is subject to the power of the Church alone. Nor should adversaries say that marriage is a natural contract and as such subject to civil authority; for Christ, by elevating this contract to the dignity of a sacrament, rendered it sacred and withdrew it from civil authority, since this latter has no power concerning sacred things. "Therefore since marriage is sacred by its own force, by its own nature, of its own accord, it is fitting that it be ruled and moderated not by the command of princes, but by the divine authority of the Church, which alone has the magisterium of sacred things" (Leo XIII, l. c.).

817. Second thesis: The civil power cannot establish laws regarding the bond of marriage, but only concerning the temporal and separable effects of the contract. It is certain. To understand this, it is helpful to note that the temporal effects of marriage are of two kinds, some inseparable from the contract itself, for example the mutual rights and duties of spouses as to bed and habitation, and the legitimacy of offspring; but others separable from the very substance of the contract, for example dowry, donations on account of nuptials, hereditary succession, etc.

(A) The former part is proved: (a) by the practice of the Church; for the Church never acknowledged this power in princes, but on the contrary judged civil laws concerning the matrimonial bond to have no force; thus Gregory the Great reproved marriages of cousins permitted by princes; Benedict XIV[1], speaking of the law by which Theodosius had prohibited marriages of Jews with Christians, says: "This law, as having been established by a lay prince, ought to have no force in marriages"; likewise Urban VIII and Pius VII[2] declared that the civil law invalidating marriages entered without the consent of parents had no force in the forum of conscience.

[1] Litt. February 9, 1749, to the Cardinal of York.

[2] Litt. June 27, 1805, to Napoleon.

(b) By the authority of the Roman Pontiffs; let it suffice to report the words of Pius VI[3]: "It is a dogma of faith that marriage, which before the advent of Christ was nothing other than a certain indissoluble contract, after the advent of Christ became one of the seven sacraments of the evangelical law... Hence it comes about that to the Church alone, to whom the whole care concerning the sacraments has been entrusted, there belongs every right and power of assigning her own form to this contract raised to the more sublime dignity of a sacrament, and therefore of passing sentence concerning the validity or invalidity of marriages." In the same place he refutes those who say that the canon of Trent (above, n. 814) does not say *ecclesiastical judges alone*, or *all* matrimonial causes: "For the words of the canon are so general that they comprehend and embrace all causes; but the spirit or reason of the law extends so widely that it leaves no place for any exception or limitation."

[3] Brief to the Bishop of Motula, September 16, 1788.

(c) Theological reason. For marriage, as Pius VI rightly says, l. cit., is not a merely civil or natural contract, but one of the seven sacraments; but the Church alone, by the force of the power divinely entrusted to her, can make laws concerning the sacraments; therefore. Nor should it be said that in modern societies, which are of mixed religion, the civil power must make laws concerning the very essence of marriage, so that uniformity may be preserved for all citizens. For, to preserve this uniformity, it suffices that the State determine the civil conditions and effects arising from the matrimonial contract, nor is it required that it touch the matrimonial bond itself. Indeed liberty of conscience itself demands that, in mixed societies, no law be made concerning the matrimonial bond itself: for since the statutes of the various spiritual societies concerning this matter are not the same, from any civil law whatever concerning the bond it would happen that some citizens would be held to regard as invalid a marriage which according to their conscience is valid, or conversely. Therefore one thing remains, namely that the State regard only the civil effects of the matrimonial contract.

818. (B) The latter part is declared and proved, namely that the civil power can establish laws concerning the temporal and separable effects of marriage, for example dowries, inheritances, and generally possessions of temporal goods which follow from the marital contract. (a) It can prohibit, not indeed under penalty of nullity, but under other penalties, for example pecuniary fines, loss of civil rights, that marriages be made unless those conditions are observed which the public good requires, for example that minors not contract without the consent of parents, that soldiers not marry except by permission of military authority, etc. (b) It can also deny to marriages prohibited by it the recognition of certain civil effects, for example recognition of dowry, of the right of succeeding in the privileges of the father, where such privileges are acknowledged, etc. (c) It likewise has the right of registering marriages and of considering this registration as legal proof of the existence of the aforesaid marriage, although from equity it has been received that this proof can be supplied by an equivalent one, if the legal one is lacking. The reason why the State can establish all these things is that on the one hand these do not affect the substance of the contract, but are accessory to it, and on the other hand the civil power can determine concerning matters of this kind whatever the public good requires; for it least of all can be denied that all those things which we have enumerated can contribute to the good of society.

It is nevertheless disputed among theologians whether the State can deny to children born from marriages in themselves valid, but prohibited by civil law, civil legitimacy and the right of succession to the paternal inheritance by intestacy. The reason for doubting is that these two rights are partly from nature, partly from civil law. Yet all acknowledge that denial of these rights is foolish and cruel, since there are other more efficacious penalties for impeding those marriages, and it is not expedient to punish in children the offenses of parents.[1]

[1] Cf. de Angelis, op. cit., p. 43 sq.; Palmieri, th. 31.

Corollary on the Right of Civil Authority over the Marriage of Infidels

819. Some theologians think that the State does not have power to make laws concerning the marriages of infidels, because these, although they are a mere contract, bear something religious before themselves, and moreover it is greatly to be feared that the State, if a power of this kind is conceded to it, may transgress just limits and invade the sanctuary of the family and of religion.[2]

[2] Thus Perrone, *De Matrim.*, II, 439 sq.; Feije, *de Impedimentis*, n. 67.

The common opinion, however, holds that this power belongs to the secular prince, so that he can establish diriment impediments for the common good. (a) For this was openly declared by the Sacred Congregation de Propaganda Fide in an Instruction which was issued in the year 1821:[3] "Although among infidels marriage is true, nevertheless it can be referred only to the office of nature and of the community, and therefore is plainly to be moderated by natural and civil law. It follows from this that secular princes, whether faithful or infidel, retain the fullest power over marriages of their infidel subjects, so that, by impediments being imposed which are not contrary to natural and divine law, they may rescind the same completely not only as to civil effects, but also as to the conjugal bond." This was also confirmed by several decisions of the S. C. P. F. and of the Holy Office.

[3] Ap. *Collectanea*, n. 1447, with note. Cf. Resemans, *De competentia civili in vinculum conjugale infidelium*, Rome, 1887; Cavagnis, l. c., n. 185; Gasparri, op. cit., n. 287 sq.; Sasse, II, p. 470.

(b) For princes can determine all those things which pertain to the common good of civil society, provided that the matter of which there is question, as being sacred, has not been withdrawn from their authority. But it especially concerns civil society that there exist a certain norm constituted by public authority, according to which marriages are rightly contracted; for by the law of nature this was not sufficiently determined in certain circumstances. Moreover, the marriage of pagans, although in some regions it is accidentally consecrated by some religious rite, nevertheless is not a sacrament, nor was it subjected by Christ to the authority of the Church, since the Church vindicates to herself no direct right over marriages of this kind. Therefore civil power can make laws concerning this matter. Nor indeed can the right of princes be denied because they can abuse it; otherwise, how many rights would remain untouched? Nor ought we to be wiser than the Roman Congregations themselves.

Article II. On the Celebration of Marriage

We shall speak: 1° of the preliminaries to the celebration of marriage; 2° of the celebration itself.

Section I. On the Preliminaries to the Celebration of Marriage

820. Here we shall treat of those things which are premised for the licit and worthy reception of the sacrament: 1° of espousals, which are sometimes, although not necessarily, premised to nuptials; 2° of the examination of the spouses, by which the pastor inquires whether they are able for marriage; 3° of the proclamation of banns, which regularly ought to precede marriage; 4° of the consent of parents; 5° of the dispositions necessary for the worthy reception of the sacrament.

§ I. On Espousals and the Promise of Marriage

Division:

[1] St. Thomas, *Supplement*, q. 43; Sanchez, lib. I; Reiffenstuel, lib. IV, tit. I; Schmalzgrueber, lib. IV, tit. I; St. Alphonsus, n. 831-878; Carriere, n. 360-374; Kenrick, n. 1-27; De Angelis, lib. IV, tit. I; Santi, lib. IV, tit. I; Bangen, tit. I; Heiss, p. 44-54; Ballerini A., n. 1-386; Gasparri, I, n. 1-120; Lehmkuhl, n. 657-672; De Becker, p. 7-21; Genicot, n. 440-447; Noldin, n. 34-59; Wernz, op. cit., n. 84-126; Esmein, *Le Mariage en Droit can.*, Paris, 1891, t. I, p. 139-187.

On the nature of espousals.

On the effects of espousals.

On the dissolution of espousals.

On the manner of acting of pastors concerning espousals.

I. On the Nature of Espousals

821. 1° Notion. (A) Before the promulgation of the Code, only a bilateral or espousal promise was acknowledged in ecclesiastical law. But from the Code[2] a promise, whether unilateral or bilateral, is acknowledged, and the same canonical value is attributed to each, provided that the same formalities are fulfilled in each case.

[2] Indeed "a promise of marriage, whether unilateral or bilateral or espousal, is null for each forum, unless it has been made by a writing signed by the parties and either by the pastor or the local Ordinary, or by at least two witnesses." Code, c. 1017.

A promise of marriage is an internal, free, and externally manifested promise, by which one party toward the other, or each party toward the other mutually, obliges himself or herself from justice to contract future marriage between themselves.

(B) Espousals are premised to marriage, not indeed necessarily, but fittingly: (a) so that the contract of marriage may be entered more maturely, namely with mutual knowledge of the character and morals of each spouse; and so that the parties may dispose themselves more perfectly for receiving the grace of the sacrament; (b) so that impediments may be detected more safely, if any are present; (c) so that honorable relations between the spouses may more easily be fostered, and thus wandering and dangerous loves may be warded off.

The use of espousals, which flourished among the Hebrews, Greeks, and Romans, is most ancient in the Church, as is clear from the Council of Elvira (305), which strikes with canonical penalties those who break espousals.[1]

[1] Elvira, can. 54, ap. Bruns, t. II, p. 9.

822. 2° Conditions necessary for the validity of espousals.

The general principle is that those conditions are required which are necessary for a valid contract; namely, the promise of future marriage must be: true, free, externally manifested, between determinate persons and persons able by law.

823. (A) True, that is, with the intention of gravely obliging oneself from justice, and therefore with that advertence and deliberation which is required for mortal sin.

Hence if the promise is made without sufficient advertence (which rarely happens today, since it is made in writing) or without internal intention, by feigning consent, or in jest, it is not valid, because true consent is lacking. Nevertheless one who promises fictitiously is held to repair the damage inflicted on the other.

824. (B) Free, and therefore immune both from substantial error and from grave fear; for since a grave obligation is induced by espousals, it cannot be contracted without the free assent of the will. Therefore whatever destroys liberty relative to marriage likewise takes it away relative to espousals.

825. Some indeed contend that espousals entered from grave fear are only rescindable, and not null by that very fact, provided that it is established that the consent was truly internal; but, since here there is question of a contract requiring full liberty, we think, with St. Alphonsus (n. 844), that they are null in this case.

826. (C) Externally manifested, and indeed, if there is question of Catholics, according to the norm of the decree *Ne temere* and of the Code, "by a writing[1] signed by the parties, and either by the pastor, or by the local Ordinary, or by at least two witnesses. But if each party or either party does not know how to write, this is to be noted in the writing itself; and another witness is to be added, who, with the pastor or local Ordinary, or with the two witnesses of whom above, signs the writing."

[1] This or a similar formula can be used:

On the 15th day of May 1913, before me, pastor of the church N... in the diocese X, there appeared A. C. Boileau, son of N. and N., and D. R. Lenoir, daughter of N. and N., who declared that they wished to enter true espousals between themselves; namely, A. C. Boileau promised that he would take D. R. Lenoir as wife; and she promised that she would accept A. C. Boileau as husband.

Witnesses of this promise, besides the undersigned pastor, were: J. B. M. (whose domicile is inscribed) and F. R. S.

There are indicated there the place, day, month, and year, and afterwards the pastor, spouses, and witnesses sign the writing.

You will find another Gallican formula in *Ami du Clerge*, May 1, 1913, p. 880.

This form is so necessary for validity that, if it is lacking, immediately, without any declaration of a judge, espousals deservedly are held as null in each forum.[2] - Already from the response of the Sacred Congregation concerning Extraordinary Affairs, November 5, 1901, it had been declared that in Spain and in Latin America espousals celebrated without a public writing are invalid even in the internal forum.

[2] Code, c. 1017, § 1.

The form required is: (a) A writing signed by the parties; but any writing suffices, even one written previously and separately, composed by anyone whatever, indeed a formula printed in type, provided that there is clearly expressed there the mutual promise of nuptials between determinate persons, whether absolute or conditioned. For validity it is required that the day, month, and year be designated; but not the place, although this is altogether expedient, so that the authenticity of the act may more easily appear. - But the writing ought to be signed by the parties, that is, by the contracting parties themselves, if they are able to write; but if each party or either party does not know how to write, this is to be noted in the writing itself, and another witness, besides those of whom below, is to be added, who signs the writing.

(b) The writing is moreover signed by the pastor of the place, or by the local Ordinary,[1] or at least by two witnesses. - Now competent is the pastor of the place where the act is made, or, where parishes have not been canonically erected, the priest to whom the care of souls has been committed. But the local Ordinary is anyone having ordinary jurisdiction or jurisdiction equivalent to ordinary jurisdiction in the external forum; thus the Supreme Pontiff for the whole world, the Bishop in his diocese, an Abbot nullius or Prelate, an apostolic Vicar, an apostolic Prefect, a capitular Vicar while the see is vacant, the legitimate administrator of a diocese or apostolic Vicariate, the Vicar General of a Bishop; - but not Cardinals in their titles, nor nuncios or apostolic delegates, unless these have obtained special faculties. - But the Ordinary and the pastor cannot validly delegate another priest, even a vicar delegated to the universality of matrimonial causes,[2] to espousals, as is clear from response V, March 28, 1908. (c) But suitable witnesses can be any persons who are able to testify and are able to subscribe. (d) According to a recent decision of the Sacred Congregation of the Council, July 27, 1908, ad I, for validly entering espousals, the parties are held to sign the writing in one context with the pastor or Ordinary, or with two witnesses; and therefore the witnesses ought to be present while the parties sign, so that they are witnesses of the contract itself, as is customary in writings in which there is the force of a public document; nor does it suffice that a writing, signed by one party with the pastor or with two witnesses, be sent to the other party, who in turn signs with the pastor or with two witnesses.

[1] S. Cong. Concil., March 28, 1908.

[2] Fourneret, *Le Mariage chretien*, p. 51.

Corollary: concerning espousals between absent persons. From what has been said it follows that espousals cannot be made between absent persons by letter, or by a writing signed at a different time by the parties, as formerly; and deservedly, lest a way be opened to frauds. But they can be contracted through a procurator specially designated for contracting espousals with such a determinate person: before the required witnesses he will sign the writing together with the other party; nevertheless he would act invalidly if meanwhile the mandator had revoked his consent even internally.

827. (D) Between determinate persons; therefore if someone promises marriage to two or three sisters, saying, *I pledge that I will marry one of you,* the espousals are not valid, because the person is not sufficiently determined.

828. (E) Between persons able by law, that is, who are able to contract marriage both validly and licitly. For a promise concerning a thing which is not in the power of the one promising, or

which cannot be furnished by him without sin, cannot be valid; for example, espousals contracted by one who had already validly promised to marry another person are null, even if the second espousals were confirmed by an oath.

(a) Now infants before the completion of seven years are not able. According to the common opinion, they are able after seven years have been completed; but if they contracted espousals before puberty,[1] they can withdraw from them after puberty has been attained. Besides, since discretion of mind and deliberation are required for the validity of espousals, if they are contracted long before puberty, they will often be invalid. - And surely it is very rarely expedient that they be entered at a tender age, or even immediately after puberty has been attained; for it is fitting that a long time not intervene between espousals and marriage, since otherwise the spouses are exposed to indulging excessive familiarity.

[1] Males juridically attain puberty when the fourteenth year has been completed, females when the twelfth year has been completed.

(b) Moreover, those who are bound by a diriment or prohibiting impediment are not able, unless they have sought a dispensation; but they are doubtfully able before the dispensation has been obtained. (See below, n. 830.)

829. 3° On espousals entered under condition. In a general way, the principles set forth above (n. 698 sq.) concerning conditioned consent are valid here. Yet certain special difficulties must be solved here.

(A) On espousals contracted conditionally between persons laboring under some impediment. (a) Espousals entered with an indispensable impediment are certainly not valid, that is, one in which the superior cannot or does not usually dispense, or also when in the case a just cause for dispensing is lacking: for then the condition is impossible or unreasonable; moreover, there is no obligation to the impossible.

(b) Espousals entered with the intention of contracting marriage at the time when the impediment has ceased, either of itself or from the very will of the contracting parties, without dispensation, are certainly valid; for example, I promise to marry you as soon as the vow of chastity, emitted for two years, has expired, - or as soon as you have embraced the Catholic religion.

(c) It is certain that espousals are valid if, after a dispensation has been obtained, the espousal consent is renewed either explicitly or implicitly, for example by consenting to the publication of banns: for then it takes place between persons able by law.

830. (d) But if the consent given under this condition, "if the superior shall dispense," has not been renewed after the dispensation has been obtained, it is disputed whether the espousals are valid or not at that instant at which the dispensation is granted. The opinion affirming seems more probable, provided that the consent of both still perseveres; for here there is question of an honorable and possible condition; now the general principle is that contracts entered under such a condition are valid as soon as the condition is verified, without any renewal of consent. Nevertheless, since some probably affirm that espousals in this case are invalid, as being

celebrated at a time when the contracting parties were not able in the present, the obligation of standing by the promises cannot be urged, but only advised.

831. (B) If espousals are entered under a base condition, for example of having intercourse, they are indeed not valid before the sin has been committed, since no one can oblige himself to sin; but, once intercourse has been had, there is already an obligation of contracting marriage, not indeed from the promise, which is certainly invalid as not given in writing (can. 1017, § 1), but by the force of the unnamed contract *facio ut facias*: for the woman did not furnish access to her body except on that condition that marriage would be celebrated. But if, because of various circumstances, nuptials are morally impossible, some compensation is owed to the woman.[1]

[1] The civil law concerning this matter is not the same in all regions; in some the injured party has a right to exact marriage, as in several States of America; in others only to compensation, as in France, not indeed from law, but from jurisprudence; cf. Baudry-Lacant., t. I, n. 484.

832. (C) If espousals are contracted under penalty, that is, under that condition that a sum of money be paid if marriage is not entered, it is disputed whether this condition is valid. - Now all admit that the penalty is not to be paid by him who justly withdraws from the contract: for penalty supposes a delict. But if someone unjustly withdraws, some affirm that he is held to pay the money; for the matter holds itself thus when earnests are handed over; moreover, between earnests and money to be paid there is no substantial difference; - yet many deny this, because a stipulated penalty diminishes the liberty of marriage: and this harms the public good; nevertheless an exception is given when the penalty is to be paid by an outsider, because this stipulation harms liberty less. - In practice, while the controversy stands, the confessor cannot compel one unjustly withdrawing to pay the penalty.

833. (D) Sometimes espousals are entered under earnests; earnests are, as it were, a pledge which the spouses hand over to one another under this law, that, if marriage does not follow, the one unjustly withdrawing loses what he gave and is held to return what he accepted. A condition of this kind seems sufficiently just, and renders young persons more cautious in promising marriage; hence it is licit and begets obligation. - But it is disputed whether a stipulation concerning earnests to be paid double or quadruple is valid; since this does not differ from a contract under penalty, the same must be said of it as concerning a penal condition attached to espousals.

Gifts which the spouses hand over to one another, and especially the man to the woman, differ in some way from earnests. When they are not of great value, regard being had to the fortune of the contracting parties, they seem to have been given absolutely, and therefore are not to be restored if the espousals are dissolved. But if they are of great price, and given with regard to future marriage, regularly they are to be returned when marriage does not follow, because they were given under condition; nevertheless they can probably be kept by the faithful party, if the other party withdraws unjustly, as compensation for fidelity not observed.

II. On the Effects of Espousals

Two are enumerated: -

834. 1° The obligation of marrying at the opportune time. (A) A certainly valid promise of marriage, whether unilateral or bilateral (espousals), obliges under grave sin to entering the promised marriage, unless a just cause of dissolution is present. For since it is a contract, it obliges each party from justice or at least from fidelity (when the promise is unilateral); and indeed under grave sin, especially if it is bilateral, since the object of the contract, namely marriage, is a grave matter. - Hence one withdrawing without just cause not only sins, but also from justice is held to repair the damage inflicted on the other.

It was said certainly valid; because if they are doubtful with doubt of fact or of law, the obligation is not to be urged, according to all, since obligations ought not to be imposed unless they are first proved.

835. (B) As to the time at which this obligation must be fulfilled, (a) if it has been fixed in the contract itself, this is to be stood by, unless a just cause of delay intervenes; but if it has not been determined, the promise must be fulfilled according to the custom of the region, by the judgment of a wise man, or when the other party has reasonably demanded it.[1] - If a difficulty arises between the spouses, the ecclesiastical judge can establish a term, and when this has elapsed, the one who does not wish to marry by that very fact renounces his or her right, so that the other party recovers his or her liberty.

[1] "Let Bishops and pastors take care that marriages not be delayed longer than a year after espousals have been entered." S. C. Prop. Fid., April 13, 1807, ap. Gasparri, n. 68.

(b) If one party should unjustly refuse to enter marriage, he or she should at most be admonished by the ecclesiastical judge rather than compelled by censures. Moreover, "from a promise of marriage, although it may be valid and no just cause excuses from fulfilling it, there is not given an action for seeking the celebration of marriage; nevertheless one is given for the reparation of damages, if any is owed."[1]

[1] Code, c. 1017, § 3.

(c) When espousals have been entered under an honorable and possible condition, the parties are held to wait for the event of the condition; as soon as the condition is fulfilled, they pass into absolute espousals, provided that neither party has revoked consent, except perhaps in the case in which the condition was "if the superior shall dispense," as was said above, n. 830.

836. 2° The obligation of omitting those things which can impede the future marriage, but especially carnal intercourse with a third person; for espousals give an initial right to the body of the other (a right to the thing, not in the thing), which is violated by intercourse with another person.

Hence fornication in spouses probably takes on a special malice, especially if it is committed by the woman, who is rendered much worse from it. Yet since the contrary opinion does not lack probability,[2] the burden of confessing this is not to be urged, unless the betrothed woman has conceived and introduces another's offspring into the family of the future husband.

[2] Cf. Lugo, *de Paenit.*, disp. XVI, n. 178; St. Alphonsus, n. 847; D'Annibale, n. 512, not. 46.

837. Until Pentecost 1918 espousal promises induced a twofold impediment: namely a prohibiting one with any other person, and the diriment impediment of public honesty. Each has practically been abolished.[3]

[3] Code, tit. VII, cap. III and IV.

III. On the Dissolution of Espousals

Espousals are dissolved not only by death, as marriage is, but also by various causes, among which are enumerated: -

838. 1° Mutual consent of the betrothed; for in contracts which depend on the will alone, the rule of law is applied: by whatever causes a thing is born, by the same it is also dissolved. This is true also of espousals confirmed by an oath; for the oath which is annexed to them is emitted under this tacit condition: unless it is remitted by the other party. Yet the consent ought to be free, just as the espousal consent itself, and therefore extorted neither by deceit, nor by force, nor by fear.

If espousals were entered before puberty, they are prohibited from being dissolved before the years of puberty, lest they be contracted and dissolved rashly; but as soon as either betrothed person has attained puberty, he or she can withdraw from the espousals, without waiting for the other, because a contract entered in tender age lacks firmness. But if within three days after attaining puberty and knowledge of the aforesaid privilege, the betrothed person does not declare before a judge or witnesses that he or she rejects the contract, by that very fact he or she is judged to ratify the same.

839. 2° Violation of espousal fidelity through subsequent fornication, or a grave immodest act by which either betrothed person has become more vile in common estimation; then the innocent party, but not the other, can withdraw from the espousals. The reason is that fidelity is broken without penalty toward the same one who breaks fidelity.

Hence if the betrothed woman fornicates with another man, the betrothed man is no longer bound, for a double reason: because the betrothed woman broke fidelity, and has become notably more vile. Say the same if she has freely suffered herself to be touched shamefully by another man, at least frequently. - If the betrothed man fornicates, the betrothed woman is free to pass to other vows; but if he has committed immodest touches with a third person, only rarely and occasionally, the espousals are not dissolved, because from this he has not become much more vile in common estimation; otherwise, if frequently, so that it can deservedly be feared that he will violate conjugal fidelity. - If each fornicates, according to some, the espousal obligation remains, because a mutual compensation of the delict is had; according to others, the espousals are dissolved for each party; finally, according to a few, the betrothed man is freed from obligation, but not the betrothed woman, because the sin of the betrothed woman is more shameful than that of the betrothed man, and her condition has become more vile. - Therefore, as concerns practice, in these various cases the espousal obligation cannot be urged.

Spiritual fornication also is equated with carnal sin, namely apostasy and heresy, which suffice for freeing the innocent person from the obligation undertaken.

840. 3° The choice of a more perfect state, namely the reception of sacred order, religious profession even without a solemn vow, indeed very probably a simple vow of perpetual chastity in the world. For espousals are entered under the tacit condition "unless I shall have chosen a more perfect state." Yet the case is excepted in which the betrothed man had intercourse with the betrothed woman under a formal promise of nuptials, or inflicted on her damage which can be repaired only by marriage.

(a) As soon as one party has manifested the purpose of entering religion, or sacred orders, or a seminary so as to prepare himself for sacred orders, the other party can pass to other vows. If the former changes his mind and does not enter religion or orders, more probably his obligation, which was only suspended, now revives, provided that the latter has not contracted new espousals;[1] probably, however, this obligation does not urge, because it was extinguished by the sincere intention of choosing a more perfect state; hence if he had deceitfully affected this intention, he would not be freed from the obligation. - Certainly, however, one is freed who, having undertaken a more perfect state, has been legitimately dispensed from it.[2]

[1] Thus the Salmanticenses, cap. II, n. 21; St. Alphonsus, n. 870; Gasparri, n. 92, etc.

[2] Thus Bonacina, quest. I, punct. 5, n. 2; Ballerini P., n. 186, ed. 3.

(b) Although a vow of perpetual chastity emitted in the world more probably dissolves espousals in the internal forum, the ecclesiastical judge deservedly is accustomed to compel the one vowing to keep espousal fidelity, or to enter some religion; otherwise someone could easily feign a vow of chastity in order to exempt himself from the obligation undertaken.

841. 4° A notable change supervening, or antecedent though not known.

(A) The general principle is that espousals are dissolved by that change which, if known from the beginning, would have prohibited them; or which would render the marriage unhappy. The reason is that those entering espousals are judged to contract under the clause: things remaining in the same state; otherwise marriage would beget displeasure and would obtain unhappy effects.[3]

[3] St. Thomas, *Sentent*. IV, dist. 27, q. 2, a. 3, ad 3.

(B) But this notable change can occur in goods of the body, of fortune, of the soul, or in external circumstances.

(a) In goods of the body, for example if a permanent chronic disease supervenes upon either party, as syphilis, paralysis, blindness; or a grave mutilation or deformity (especially in the betrothed woman); or if the betrothed woman, even unwillingly, has suffered intercourse, because from this she has become more vile.

(b) In goods of fortune: if each has become poorer, so that they cannot sustain the burdens of marriage; if only one has become much poorer, whether because he or she lost part of the goods or disinheritance is seriously feared, the other party can withdraw. But if each has become richer, the espousals are not dissolved. If one unexpectedly has become much richer, of itself the contract subsists; nevertheless if because of this other nuptials, much more opulent, offer themselves, it is probable that the party made richer is not held to stand by the espousals with the loss of a great gain; therefore in practice the obligation is not to be urged.

(c) In goods of the soul, if either party becomes prone to drunkenness, gambling, pleasure, impiety; or has committed an infamous crime, as homicide, grave theft, etc.

(d) In external circumstances, if enmities have arisen between the families; or if parents obstinately oppose the marriage; or if discord of minds exists between the parties; or if one party transfers domicile to a distant region, without the knowledge or against the will of the other party, and there is no hope that he or she will return shortly.

842. 5° Impossibility of entering marriage, namely when an impediment supervenes, whether diriment or impeding: for no one is held to the impossible.

(a) Marriage validly, although illicitly, contracted with a third person certainly frees the innocent party from every obligation. But it is disputed whether, as regards the other party, the espousals are dissolved or only suspended. St. Alphonsus (n. 875) holds as more probable that the espousals are only suspended; for he who contracts marriage does not become absolutely unable to fulfill the promise, but only for a time; hence, when the spouse has died, the obligation revives, if the innocent party is still free. Yet not a few probably judge the obligation to be wholly extinguished, since the marriage entered is of itself a permanent impediment lest the first promise be fulfilled. - Hence in practice the confessor cannot compel the widower or widow to stand by the promises, nor prohibit the other party from pursuing his or her right before an ecclesiastical judge.[1]

[1] Thus Gury-Ballerini, n. 733, note (b).

(b) When an impediment supervenes without the fault of either party, the espousals are dissolved for each party, unless the betrothed man had inflicted on the other party damage which cannot be repaired except by marriage: for then he would be held to seek a dispensation from the impediment. - If the impediment is culpable on the part of each, the espousals are dissolved, and neither is held to ask for or accept a dispensation. - But if the impediment arises from the fault of only one, the innocent party indeed is freed from the obligation, but not the other, lest he or she derive advantage from his or her own iniquity; hence this party is held to seek a dispensation, if the other insists upon his or her right.

843. Corollary. On the obligation of manifesting defects which can stand in the way of marriage. (a) Defects which would render marriage invalid must be manifested to the other party, unless they are such that they can be corrected before the nuptials; otherwise injury would be done both to the sacrament and to the other party. Thus it is if someone labors under an indispensable diriment impediment, or under a defect the absence of which the other party exacts as a condition without which not, for example if the betrothed man expressly said: I contract with you, if you are a virgin, or the first-born of Peter.

(b) Likewise an occult defect must be manifested, if it suffices for dissolving espousals, or is such that it renders marriage harmful or disgraceful; for example an incurable contagious disease; pregnancy of the betrothed woman; defamation which, although now occult, shortly will become public. Say the same very probably, if it is prudently feared that, when the defect is detected, grave enmities and perpetual quarrels will arise, for example if the betrothed woman a little before had intercourse with another, although she is not pregnant. The reason is that he sins against justice who, by voluntary deception, inflicts grave damage on another.

(c) But if the defect does not render the nuptials harmful, but only less desirable (for example if the betrothed woman is falsely thought rich, noble, a virgin), it is not necessary to manifest it, because no one is held to defame himself or herself and deprive himself or herself of hope of marrying, when by silence he or she does not inflict grave damage on another.

844. 6° Dispensation granted by the Supreme Pontiff. If espousals are valid, and not dissolved by any of the causes mentioned above, the Roman Pontiff can dispense from the obligation of contracting marriage for a just cause, namely if, after all things have been diligently weighed, greater goods are expected from dispensation than from the fulfillment of the promise. This he can do as interpreter of divine law, insofar as the public good demands that an obligation not be urged which would obtain unhappy outcomes; nevertheless he is not accustomed to do this except after admonitions and threats that the espousal obligation be fulfilled, and when a grave cause urges, for example when a civil marriage has been contracted with a third person and the first betrothed woman does not wish to renounce her right.

But the Bishop does not enjoy this faculty, but only can judge whether the espousals are valid or not, whether there is a just cause of dissolving them or not.

IV. On the Manner of Acting of Pastors and Confessors Concerning Espousals

845. 1° As to the dissolution of espousals. (A) If the cause of dissolution is certain and evident, the injured party regularly can enter new espousals or marriage with a third person, without recourse to the ecclesiastical judge: for neither by the law of nature, nor by the common canonical law, is it prescribed that in this case recourse be had to the authority of the judge.

It was said regularly; for an exception is given: (a) by the law of nature, if recourse to the judge is necessary for avoiding scandal, for example when the espousals are publicly known and the cause of dissolution is unknown; (b) by positive particular law, where diocesan Statutes prescribe this.

846. (B) But if there is some doubt and a complaint is made from one or the other side, the sentence of the Bishop is to be awaited. Now a threefold case can occur:

(a) If each party admits that the espousals were null, or at least dissolved, although the parents contradict, the betrothed are free from every obligation, because in a matter of this kind they are to be believed more than the parents.

(b) If each party confesses that the espousals were valid, and have not been dissolved, these things are to be established: if the betrothed man does not stand by the promises and the betrothed woman does not complain before the pastor or Ordinary, she is judged to renounce her right; - if she complains and demands that the promise be fulfilled, the pastor ought to admonish the betrothed man concerning his obligation: if this does not suffice, he will remit the case to the Ordinary, who likewise will admonish the betrothed man and set a time limit; when this has elapsed uselessly, the betrothed woman will be free; nevertheless he will not coerce him to the nuptials by censures, according to the new discipline, as was said above, n. 835, (b).

847. (C) He who without just cause withdraws from espousals, or by his own fault furnishes a cause for withdrawing, is held to repair the damage thence brought upon the other: whether positive, namely the expenses made in view of the future marriage; or negative, from the fact that, for example, the betrothed woman cannot so easily find another man.

848. 2° As to the visits of the betrothed.[1] Pastors and confessors ought to take care that the visits of the betrothed and of those in love not become a proximate occasion of sin. Visits of this kind are not *per se* illicit; for no one is held to marry an unknown person, but can and generally ought for some time to try what character, what morals, and what qualities he or she is endowed with; otherwise, once marriage has been entered, dissensions, quarrels, and divorces could arise. But since those frequent visits and conversations easily are an occasion of sins, whether internal or external, because of the innate frailty of man, certain cautions are to be suggested to penitents.

[1] Sanchez, lib. IX, disp. 46; St. Alphonsus, n. 452, and *Praxis*, n. 65; Konings, n. 1454; Aertnys, l. VI, n. 340-344; Ciolli, I, n. 95; Berardi, *De occasionariis*, n. 244-261; St. Francis de Sales, *Introduction*, IIIrd Part, ch. 17-22; Wood-Allen, *What a Young Woman ought to know*, Philadelphia, 1898, p. 247-257.

(a) Visits of this kind, especially frequent ones, are licit only for those who can and wish to enter marriage within a reasonable time, namely within a year; for since they are made in view of marriage, and are not without danger, they cannot be permitted unless there is a founded hope of celebrating the nuptials shortly.

Hence generally they are not licit when they take place between persons wholly unequal, since there is no hope of marriage; or between those who can marry only after a long time; or when already from the beginning the young man solicits the girl to sin, because he seems to be impelled by lust rather than by the hope of an honorable marriage.

(b) Let the visits not be too frequent or too prolonged; especially let not a man alone with a woman alone remain for a long time, in places removed from the sight of others, at night: for such a manner of acting, as experience proves, often excites lust, induces excessive familiarities, stimulates depraved motions of the flesh, and also foul thoughts and desires. - Hence, if at some time they are alone together, let no more signs of benevolence be shown than are usually offered before parents.

Wherefore parents themselves are to be admonished not to leave the betrothed for a long time; and deservedly on this matter Ballerini says:[1] "Therefore with parents and especially with mothers one must deal most severely, and the grave obligation of this watchful custody and caution must be urged; to this there ought to impel not only conscience, but also the fear lest daughters, once corrupted, dishonored in the paternal home, grow old."

[1] Gury-Ballerini, n. 413, note near the end.

849. (c) Embraces and kisses had as a sign of benevolence, in an honorable manner, according to the custom of the country, for conciliating and fostering mutual love in order to marriage, are *per se* licit; for the end is honorable, and besides these are honorable signs of love.

But pressed kisses and kisses rather often repeated are not without danger; and immodest touches are not more licit for the betrothed than for the unmarried. Therefore concerning this, younger

persons are to be cautiously admonished, especially girls, who because of the innate sense of modesty more easily shrink from these familiarities, that they carefully ward off whatever passes beyond the limits of decency; and all the more because they are shortly despised by their betrothed if they show themselves too easy in this matter.

(d) In order that these dangers may be removed more efficaciously, the betrothed are to be gently induced to the frequent reception of the sacraments: for strengthened by sacramental grace and the admonitions of the confessor, they will more easily flee the danger of sinning; and if, because of human frailty, they shall have sinned, they will immediately rise, and by using the means which a wise confessor will suggest, they will avoid worse delicts.

§ II. On the Examination of the Betrothed

Before marriage is celebrated, the nuptial banns must be proclaimed, and the examination of the betrothed themselves must precede the banns, by which the pastor can know whether anything stands in the way of the valid or licit celebration of the marriage.

[1] Benedict XIV, Constit. *Nimiam licentiam*, May 18, 1743; Bangen, tit. II, p. 1-26; Scavini, III, n. 937-938; Joder, *Formulaire Matrimonial*, pp. 4-23 and 39-49; Haine, q. 34; Gasparri, n. 126-148; id., *Des Procès d'état libre*, ap. *Canoniste*, 1890, pp. 62; 155; 296 sq.; Konings, n. 1542-1544; Lesêtre, *La Confession des futurs mariés*, ap. *Revue du Clergé français*, t. XXX, March 1902, p. 5-23.

850. 1° The obligation of this investigation is established: (a) from the Ritual itself,[2] where it is declared that the pastor ought to inquire "who and what sort of persons they are who wish to contract Matrimony; whether there is any canonical impediment between them; whether they wish to contract spontaneously, freely, and according to the honesty of the sacrament, etc."; (b) by the authority of Benedict XIV, who in the Constitution *Nimiam licentiam*, n. 10, has these words: "The burden has likewise been enjoined upon the proper pastor, that before the announcements concerning a marriage to be entered are publicly made in church, he himself should strive to explore both the betrothed man and the betrothed woman separately, cautiously, and, as is said, in the ear, whether by their own will, spontaneously and freely, and with true consent of mind, they are mutually joined in marriage"; (c) from can. 1020, § 1; (d) from the very office of pastor, whose part it is to care that the sacrament of Matrimony be administered not only validly, but also licitly and worthily; but he cannot accomplish this unless he questions the betrothed themselves: for the knowledge which is obtained from others often is insufficient, especially when there is question of occult impediments, or of the subjective dispositions of the parties.

[2] *De Sacram. Matrimonii*, n. 1.

851. 2° The object of this investigation is threefold: concerning the free state of those about to marry; concerning the impediments which can stand in the way of their marriage; concerning Christian doctrine, in which they must be instructed.

(A) On the free state. (a) Formerly by common law, when the betrothed or their parents notified the pastor concerning the marriage to be celebrated, he had to declare that two witnesses were to be presented for each party, known and suitable, who would depose concerning the free state of those about to marry, that is, would testify that they were immune from every matrimonial bond.

(b) But in practice these things have gone into desuetude in most regions. Now the pastor is held: 1) to exact the testimony of baptism, unless baptism was conferred in his own territory;[1] 2) in the better manner in which it can be done, to inquire concerning the free state of the betrothed, especially of outsiders, from whom testimonial letters will be required, signed by the pastor of the domicile or quasi-domicile, and of wanderers, for whom recourse will be had to the Bishop.[2] Otherwise it could happen, as in fact it does happen especially where divorce prevails, that the marriage is invalid because of the impediment of ligamen. Nevertheless it is not necessary to have recourse to the Bishop, if there is question of those who, having left a parish, dwell for a time in another parish of the same place, because these are not properly wanderers.

[1] Code, c. 1021, § 1 and 1103, § 2 and 3.

[2] Code, can. 1029, 1032.

852. (B) On other impediments. The pastor must furthermore prudently investigate whether any canonical impediment, prohibiting or diriment, intervenes between the contracting parties or not.

Therefore he will question the betrothed man and the betrothed woman separately and cautiously: (a) whether by their own will, spontaneously and freely, with true consent of mind, they wish to be joined in marriage; (b) whether they are conscious of any impediment of consanguinity, affinity, etc.; (c) whether they have given fidelity or a pledge to others; (d) whether they have obtained or at least sought the consent of the parents; (e) whether they have satisfied, or are prepared to satisfy, those things which are required by civil law.[3] - The manner of instituting this questioning is left to the prudence of the pastor, and must be different according to the different condition and character of the persons.[1]

[3] Cf. Code, can. 1019, 1020, 1029, 1030, 1034.

[1] You will find a formula of questioning at Joder, op. cit., p. 8-10.

The right of questioning the betrothed belongs to the proper pastor; if the betrothed belong to different parishes, each pastor can question his own subject; nevertheless it is better that the pastor who assists at the marriage (generally the pastor of the betrothed woman) examine both, if they are not too distant from his church.

If from this investigation some public impediment is detected, one cannot proceed to the publications except after a dispensation has been obtained.[2] - But if the impediment is occult, the pastor will not suspend the publications, lest perhaps from this it become public, but will immediately seek a dispensation from the competent authority.[3]

[2] Code, c. 1031, § 2, n. 2.

[3] Code, c. 1031, § 2, n. 1.

853. (C) On Christian doctrine. Since, according to the Ritual (l. c.), the pastor must inquire whether "each knows the rudiments of faith, since they must afterwards teach these to their children." Hence the Holy Office decreed,[4] in the year 1697, "that marriage is not to be proclaimed in church by pastors, unless beforehand they have found the betrothed sufficiently

instructed in the rudiments of the Christian religion." Benedict XIV likewise sanctioned this, l. c.

[4] Ap. Benedict XIV, *De Syn. dioeces.*, lib. VIII, cap. 14, n. 3. - Hence deservedly the Third Council of Baltimore says, n. 125: "An opportune examination should also be placed before the marriages of the faithful, by which the contracting parties are examined and instructed concerning religion."

The pastor therefore will take care that the betrothed sufficiently know: (a) the truths necessary by necessity of means and of precept, namely the Apostles' Creed, the precepts of the Decalogue and of the Church, the Lord's Prayer and the Angelic Salutation, the acts of faith, hope, charity, and contrition, and those things which regard the sacraments; for they are held to know these both for attaining their own salvation, and for instructing their children concerning this matter.

But if some are found who are dull of mind and of scanty memory, so that they cannot retain all these things, it suffices that they know and believe the principal mysteries of faith; but that they perceive in an imperfect manner the other things which are necessary by necessity of precept, provided they are prepared frequently to attend sermons, lest truths of this kind slip away altogether from their mind.[5]

[5] Thus Benedict XIV, l. c., n. 6.

(b) The duties proper to the state, namely the indissolubility of the matrimonial bond, the mutual duties of spouses, their duties toward children to be begotten, the necessity of educating offspring in a Christian manner, etc.[1] The pastor can seize this occasion for admonishing the betrothed concerning certain vices to be avoided, concerning the dangers which are found in secret societies, concerning the evils which are accustomed to follow from drunkenness or the frequenting of taverns, etc. - Yet this must be done prudently, according to the different condition of those about to marry; which is especially true of the mutual duties of spouses; for nothing must be said which could furnish scandal, with attention paid not only to the customs of each region, but also to the age and authority of the pastor. Hence if the betrothed woman asks what is licit for married persons, it will be enough to answer that all those things are licit which are required for the generation of offspring; and if she desires more, let her be referred to her mother or to another person of proved virtue, adding nevertheless that doubts which arise concerning the liceity of certain acts must be set forth to the confessor.

[1] You will find a form of examination and instruction at Joder, p. 10-24.

Besides, when it is established that the betrothed are well instructed, the obligation of questioning them concerning the truths of faith or the duties of their state does not urge so strictly, and the examination can be carried out briefly.[2] Nevertheless, when the betrothed refuse to be taught Christian doctrine, they are not to be barred from contracting marriage.[3] - Moreover, all are to be admonished that they prepare themselves for marriage by a previous confession, and not defer it to the very day of the nuptials; for thus occult impediments, if there are any, can be detected at an opportune time, and richer fruits are received from the sacrament.

[2] Sometimes the reading of certain books can be advised, in which the duties of spouses are chastely described; for example, Monsabré, *Conf. sur le Mariage*, rendered into English by Hopper, New York, 1890; F.-A. Vuillermet, *La Vocation au Mariage*, Lethielleux, 1913; Girardey, *Popular Instructions on Mariage*, New York, 1896; Taylor, *A Sure way to a Happy Marriage*, from the German of Sickinger.

[3] Response of the Pontifical Commission for interpreting the Code, June 2-3, 1918.

§ III. On the Banns, or Proclamations of Marriage

Division.

[4] Reiffenst., lib. IV, t. III, n. 3-51; Schmalzgr., l. IV, t. III, n. 1-88; Salmant., cap. VIII, n. 71-107; St. Alphonsus, n. 989-1007; Carrière, I, n. 375-442; Kenrick, n. 127; Ball. P., n. 572-599; Konings, n. 1533-1540; Lehmkuhl, n. 673-677; Feije, n. 240-279; Génicot, n. 448-453; Noldin, n. 145-149; Gasparri, n. 149-194; Deshayes, *Questions pratiques sur le Mariage*, q. 56-90.

On the notion and obligation of banns.
On the circumstances of promulgation.
On dispensation from the law of banns.
On the revelation of impediments arising from the banns.
Scholion: on morganatic marriages and marriages of conscience.

I. On the Notion and Obligation of Banns

854. 1° Notion. Matrimonial banns (from the German word *bann*, public promulgation) are public promulgations which are sent before a future marriage, especially for this end, that impediments, if there are any, may be detected.

Already in antiquity the practice prevailed of approaching the pastor before the nuptials, so that he could inquire whether there was any impediment or not. Thus Charlemagne, in the year 802, ordered that nuptials not be celebrated before the priests, with the elders of the people, had diligently inquired into the consanguinity of those being joined. Likewise in many places espousals were contracted publicly, so that the future marriage might become known to all: which was equivalent to banns.

But the manner of publicly announcing marriage in churches took its beginning in Gaul,[1] then in England; afterwards it was extended to the whole Church by the decree of the Fourth Lateran Council (1216), which the Council of Trent confirmed and enlarged. According to the Lateran Council, it suffices that the publications be made once; but three are required according to Trent. Therefore where Trent has not been promulgated as to the part which regards the banns, one publication strictly speaking suffices, although a threefold one often is more prudent.

[1] Thus Odo de Subiaco, Bishop of Paris, at the beginning of the thirteenth century, ordered that marriages be published in church, so that all the faithful could denounce to the episcopal court impediments which they knew.

855. 2° Obligation of banns. (A) Principle: The law of the proclamation of banns regularly obliges under grave sin both the pastor and those about to marry. For there is question of a law of grave importance, as is established: (a) from the very end of the law, which is manifold: that impediments, if there are any, may be more easily detected, and clandestine marriages avoided; - that children may not marry without the knowledge of their parents; - that the prayers of friends may be offered for the betrothed.

(b) From the Code (c. 1022-1030), which, although it does not renew the penalties previously enacted against violators of the law, nevertheless sets forth the matter so that from the context it is clearly established that the obligation of proclaiming the banns is grave.

856. (B) The principle is declared. This law obliges under grave sin even if the pastor knows otherwise that those about to marry are detained by no impediment; because the law is founded on the presumption of danger, and therefore does not cease in a particular case where in fact such danger is absent; for great inconveniences generally would follow if the application of the law were permitted to the judgment of pastors.

Certainly it is mortal to omit three publications, without dispensation; to omit only one would more probably be only a venial sin; indeed some think that the omission of two does not exceed venial sin, provided that the danger of a hidden impediment is removed by waiting several days before the nuptials are permitted, so that thus the faithful have time for denouncing impediments, if there are any. Nevertheless St. Alphonsus (n. 990) more probably teaches that the omission of two is a mortal sin.

It was said that regularly the banns are to be promulgated, because certain exceptions are given: -

(a) If the marriage cannot be deferred without great inconvenience, and a dispensation from the banns cannot be obtained from elsewhere, for example if a dying man wishes to marry his concubine: in this case, the sworn affirmation of the contracting parties suffices (can. 1019, § 2); (b) in marriages of princes, by universal custom, because they are so well known that an impediment, if there is any, can easily be detected; (c) in mixed marriages between Catholics and heretics, or between the faithful and infidels, announcements regularly are not made, lest marriages of this kind seem thus to be approved; nevertheless recently the Holy See declared that proclamations can be made in mixed nuptials which are contracted after dispensation has been obtained, with mention of the religion of the contracting parties nevertheless suppressed, if the Ordinary shall have judged them necessary for detecting impediments;[1] (d) in marriages of conscience (below, n. 871).

[1] Code, c. 1026. - Thus the Holy Office responded, July 4, 1874, "that proclamations can be made in the marriages of which there is question, insofar as they are contracted with apostolic dispensation, the religion of the contracting parties nevertheless being suppressed." Yet the S. Congregation adds that it is more expedient to dispense from the banns, if the freedom of state of the contracting parties has been made more certain from elsewhere, in order to avoid danger of astonishment or scandal. (*Collect. P. F.*, n. 1223; Gasparri, n. 621.) - According to the Statutes of the diocese of Baltimore, n. 55, proclamations should not be made except when, because of civil laws, they cannot be omitted; in which case they are to be made after Mass. Now the civil law requires them when those about to marry do not wish to pay money to obtain a license.

II. On the Circumstances of Banns

857. The manner in which banns must be promulgated is described by the Code in these words:[2] "The publications of marriages must be made by the proper pastor." "The publications are to be made on three continuous Sundays and other feasts of precept, in church during the solemnities of Masses, or during other divine offices to which the people come in numbers." Four things are declared there: 1° the person promulgating; 2° the place where the banns must be promulgated; 3° the time; 4° the form of promulgation.

[2] Can. 1023, § 1, 1024.

858. 1° On the person promulgating. Banns must be promulgated by the proper pastor of the contracting parties, who can perform this either by himself or through another priest or cleric;

but not through a layman, except in a case of necessity, for example when, the pastor being absent, the only priest who is present to celebrate the sacred rite can in no way understand or speak the language of the parishioners (which sometimes happens in the United States of America, because of the multiplicity of languages which are used in various churches). Now the proper pastor is the pastor of the domicile or quasi-domicile;[1] but for wanderers, who lack domicile, the pastor of the place where they contract.

[1] Code, c. 94.

859. 2° On the place. The place where banns must be promulgated is the parochial church, or another taking the place of the parochial church, as is a vicarial or annexed chapel to which a territory is assigned; but not a small chapel, whether public or private, unless nevertheless in this particular case it takes the place of the church, and there is a great concourse of people there: for then the end of the law is obtained. - For the same reason, if on the occasion of a sermon, procession, or pious pilgrimage the people were gathered in a place distinct from the parochial church, the announcements could be made there, with the license of the Bishop acceding.

860. Here, however, it is asked whether banns must be promulgated in several parishes.

(A) General rules. (a) If each betrothed person has domicile or quasi-domicile in the same parish, and in that parish only, the publications must be made there only.

(b) But if the betrothed have domicile or quasi-domicile in different parishes, banns must be promulgated in each.

(c) If one or each betrothed has several domiciles, or domicile in one parish and quasi-domicile in another, announcements must be made in all these parishes, unless nevertheless the Bishop dispenses, or one domicile is principal and the other wholly secondary.

(d) "If a party has dwelt in another place for six months after attaining puberty, the pastor is to set forth the matter to the Ordinary, who according to his own prudence either shall require publications to be made there, or shall prescribe that other proofs or conjectures concerning freedom of state be gathered. If there is some suspicion concerning an impediment contracted, the pastor even for a shorter stay shall consult the Ordinary, who is not to permit the marriage unless first the suspicion is removed."[1]

[1] Code, c. 1023.

(e) If the contracting parties, after the proclamations have been begun, leave their prior domicile and acquire a new one (which can happen especially as regards servants), it seems more consonant with the end of the law not to interrupt the announcements begun in the former place where the betrothed are known; nor will they have to be made in the new domicile, where they are scarcely known at all. Nevertheless the pastor of the new domicile has the right of assisting at the nuptials, as is said below.

861. (B) Special rules. From the Code: (a) the banns of minors[2] must be proclaimed both in the place of quasi-domicile, if they have one, and in the place where the parents or guardians

reside;[3] but prudence requires that they not be announced without the consent of the parents or guardians,[4] especially where civil law requires this consent.

[2] From the Code, both males and females are minors before the twenty-first year has been completed. (Can. 88, § 1).

[3] Code, c. 93, § 1, § 2.

[4] Code, c. 1034.

(b) The banns of soldiers are to be promulgated in the garrisons or places where they reside; and, in addition, in the domicile of the parents or guardians if they are minors, or, if they have become of age, in the parish where they resided before undertaking military service.[5]

[5] In Gaul, soldiers cannot marry without the consent of the minister of war, or of the President of the corps to which they belong. Cf. Baudry-Lac., n. 528 and 540.

(c) The marriages of wanderers cannot be celebrated unless the pastor has obtained the license of the Bishop and has diligently inquired concerning their free state;[6] yet this is not to be understood of those who wander about in the same city. The Bishop can also establish in what place the announcements must be made: generally they are made in the parish where the wanderers contract; but sometimes also in the place of origin, or where they have resided for a longer time, especially if there is doubt concerning their free state.

[6] Code, c. 1032.

N. B. If doubts arise concerning all these things, the Bishop should be approached, who, since he is able to dispense from the banns, *a fortiori* can establish where the proclamations must be made.

862. 3° On the time. Banns must be promulgated (a) on three Sundays and other feasts of precept; but not on suppressed feast days, unless by license of the Ordinary, which can be given if on these days there is a great concourse of people.[1]

[1] Which rule can be inferred from various decisions of the S. C. of the Council.

(b) On three continuous feast days, that is, with no feast day omitted; yet this does not oblige under grave sin, since it is not necessary for obtaining the end of the law, and it is free from every fault if a reasonable cause accedes. But if three feast days immediately follow one another (for example, Easter day and Monday and Tuesday after Easter), it is better to interrupt the announcements, so that the faithful can think about impediments for a longer time. Yet the pastor who promulgates the banns on three successive days cannot be blamed, provided that after the last one he waits a longer time, so that impediments can be manifested.

(c) During the solemnities of Masses, that is, during the parochial or conventual Mass. If nevertheless the pastor had omitted the last announcement at Mass because of forgetfulness, and the nuptials were urgent, he could proclaim the banns at vespers, or in another solemn act of religion, if there is a great concourse of people.[2]

[2] Thus from the Code, c. 1024.

Once the proclamations have been made, one is not immediately to proceed to the celebration of the marriage; but three days must be awaited "unless a reasonable cause demands otherwise,"[3] so that time may be given to the faithful for revealing impediments, if any exist.

[3] Code, c. 1030.

If the marriage is not celebrated within six months after the announcements have been made, according to the Code[4] these must be repeated, unless it seems otherwise to the Bishop. Concerning this matter it is necessary to read the diocesan Statutes, which are varied for various regions.

[4] Code, c. 1030, § 2.

863. 4° On the form of Banns. No special form was prescribed by Trent; therefore that form is to be observed which is found in the Ritual[5] or in the diocesan Statutes. There must be expressed in the vernacular tongue the name and surname of the betrothed, and also of their parents, their native place and place of domicile. If there is question of widows or widowers, the name, day, and year of the death of the prior spouse are to be expressed; if a previous marriage has been declared null, or dissolved by the authority of the Holy See, this likewise must be made known; the same must be said if dispensation from some publicly known impediment has been obtained. Finally, the faithful are to be admonished concerning the grave obligation of manifesting impediments to the pastor, if they know any;[1] if a dispensation from some publication has been granted, this is to be manifested, lest perhaps the faithful, expecting another publication, not reveal an impediment at the opportune time.

[5] "The announcements are to be made in this manner. During the solemnities of Masses let the pastor admonish the people in the vernacular tongue to this effect: Let it be known to all here present that N. man, and N. woman, of such or such family, and parish, God helping, intend to contract marriage with one another. Therefore we admonish each and all, that if anyone has known that there is some impediment of consanguinity, or affinity, or spiritual relationship, or any other impediment between them, which would mutually impede the marriage to be contracted, he ought to denounce it to us as soon as possible; and this we admonish the first time, if it shall have been the first; or the second, if it shall have been the second; or the third, if it shall have been the third announcement." Commonly a shorter form is found in the Statutes.

[1] Code, c. 1027.

But circumstances which can defame the contracting parties are to be carefully omitted; for example, if one is illegitimate, the parents are not to be named; if a woman had been a concubine, although commonly held as a wife, let her be designated under the name by which she is usually called.

Let the promulgation be made in a loud and intelligible voice; otherwise the end of the law is in no way obtained.

"The local Ordinary can for his own territory substitute for the publications the public affixing, at the doors of the parochial church or of another church, of the names of the contracting parties for the space of at least eight days, yet in such a way that, in this space, two feast days of precept are included." (Code, c. 1025.)

III. On Dispensation from the Banns

864. 1° Principle: Not only the Supreme Pontiff, but also the local Ordinary has the power of dispensing from the banns for a just cause. For Trent openly declares this (l. c.): "Unless the Ordinary himself shall have judged it expedient that the aforesaid announcements be remitted; which the Holy Synod leaves to his prudence and judgment." More explicitly the Code: "The proper local Ordinary, according to his own prudent judgment, can for a legitimate cause

dispense from publications, even those to be made in another diocese. If there are several proper Ordinaries, he has the right of dispensing in whose diocese the marriage is celebrated; but if the marriage is entered outside the proper dioceses, any proper Ordinary can dispense."[1]

[1] Code, c. 1028.

Now under the name of Ordinaries of places come the Bishop, the Vicar General, the Vicar Capitular or Administrator for his own diocese; the Abbot and Prelate nullius for his own territory; Apostolic Vicars and Prefects, and those who, when the aforesaid are lacking, meanwhile succeed in governance[2] from the prescription of law or from approved constitutions. But pastors do not enjoy this power, unless they have been expressly delegated to it;[3] and therefore if the Bishop denies dispensation, they cannot go against his decision. Nevertheless, "in dangers of death, if other proofs cannot be had, the sworn affirmation of the contracting parties, that they have been baptized and are detained by no impediment, suffices, unless contrary indications are present."[4]

[2] Code, c. 198.

[3] In many dioceses of the United States of America, for example in Baltimore (Statut. n. 55), pastors can dispense from one proclamation, for a just cause, except in the case of wanderers; from two, where Mass is not celebrated every Sunday; from all, in those counties in which there is no church.

[4] Code, c. 1019, § 2.

865. 2° For granting a dispensation, a legitimate cause is required, according to the prudent judgment of the Ordinary, as is established from can. 1028 already cited, - a greater one if there is dispensation from all, but a lighter one if there is dispensation only from one or two. According to St. Alphonsus (n. 1005), some are causes on account of which the Bishop is bound, but others on account of which he can dispense.

(A) He is bound to dispense as often as this is necessary for avoiding grave damage, common or private, spiritual or temporal; namely (a) if there is a founded fear lest the marriage be maliciously impeded, for example by a guardian or stepmother contemplating other nuptials; (b) if it is feared lest one party withdraw, especially in the case of defloration or espousals; (c) if either of the betrothed is at the point of death and wishes to legitimate offspring; (d) if one party is immediately about to depart into a distant region, and the marriage cannot be deferred; (e) if from the proclamations infamy would arise, or some other damage of soul or body, for example if those about to marry are already held by the community as true spouses, or if infamy threatens on the part of the deflowered betrothed woman.

(B) He can dispense: (a) if those about to marry would be exposed to the mockery of men, because, for example, they are very old, or very unequal in condition; (b) if it is morally certain that no impediment is present; wherefore dispensation is often granted to magnates, because, since they are known, impediments are more easily detected.

IV. On the Obligation of Revealing Impediments

866. 1° Principle: Whoever, certainly knowing that there is some diriment or prohibiting impediment between those about to marry, is held under grave obligation to reveal it, unless a legitimate cause excuses. This is certain.

This obligation arises: (a) from the very precept of charity, by which we ought to impede a grave evil of our neighbor insofar as it can be done; for from an illicit marriage a grave evil is born, namely the profanation of the sacrament; but from an invalid one graver evils proceed, namely concubinage, illegitimacy of children, etc.; (b) from the virtue of religion, which commands that we take precautions against irreverence toward the sacrament; (c) from the positive law of the Church, which, while it orders marriages to be announced, implicitly commands the faithful to manifest impediments known to them; which moreover is explicitly enjoined in the form of announcement such as is found in the Ritual (l. c.)[1] and in the Code, c. 1027.

[1] Besides, in some dioceses penalties are established against those not denouncing, for example in Baltimore an excommunication of ferendae sententiae. (Statutes, n. 57.)

867. 2° The principle is declared. It is said (A) whoever, whether he is from the parish, or from elsewhere, of whatever sex or age. Hence the contracting parties themselves are held to this: but if there is question of an occult impediment from which dispensation can be obtained, there is no obligation of manifesting it in the external forum; it suffices that it be declared to the confessor, so that he may seek dispensation.

(B) Certainly knowing; for if there is a mere suspicion arising from an uncertain rumor or from testimony which does not deserve faith, there is no obligation of manifesting the matter. Yet juridical proof is not required, but a well-founded persuasion suffices.

868. (C) Unless a legitimate cause excuses, namely: (a) grave damage or danger of grave damage either to the one revealing, or to a third person; for law does not oblige with so great an inconvenience.

Hence those are not held to denounce who prudently fear that, from the revelation of the impediment, grave dishonor or bodily damages threaten themselves or their own, or grave scandal would be caused, or the infamy of a third person; but one excused from denouncing ought, if he can, to impede the marriage from being contracted without dispensation. - But temporal damage or dishonor coming to the betrothed themselves from the revelation of the impediment does not excuse, because it is less than the spiritual damage which otherwise they would incur. Moreover, that their reputation may be spared, the betrothed themselves ought first to be warned privately; but if they spurn the warning, they ought to impute the defamation to themselves.

(b) The uselessness of denunciation, namely when no fruit is hoped from it, or when it is known that dispensation has already been sought. Some say that he also is excused who knows the impediment only from hearing, and does not remember from whom he heard it; but it is more advisable in this case to reveal the impediment, since this manifestation can be corroborated by other indications or furnish occasion for a serious investigation.

869. (c) The sacramental secret, or that which is committed to someone by reason of public office, for example to a pastor, physician, midwife, advocate, etc.; for the public good, which is preferred to the private good, demands that such a secret be altogether observed.

But if these persons have known the impediment from elsewhere - not by exercise of their office - they are held to reveal it, unless by acting thus they would come under suspicion of violating the

secret committed to them. Besides, all these ought privately to admonish those about to marry themselves concerning the existence of the impediment, and exhort them to manifest it; indeed the pastor can, without violation of the seal, and generally ought, secretly seek a dispensation.

But the confessor, who from the confession of a penitent detects a public impediment, ought to urge him to manifest the same to the pastor, or to grant permission to himself to seek dispensation; but if the impediment is occult, with the license of the penitent, he himself should secretly ask for dispensation.

But the natural secret, promised or committed (not however by office, as above), does not dispense from the obligation of denouncing; for from the secret being kept there would follow damage to an innocent third party, insofar as injury is brought upon one of the betrothed, and also damage to public right, insofar as injury is brought upon the sacrament; now a natural secret does not oblige with so great an inconvenience.

Moreover, the denunciation must be made at the opportune time, that is, before the marriage; indeed it is expedient that it be made as soon as possible, morally speaking, after the first promulgation of banns, so that either the nuptials may immediately be prohibited, or a dispensation obtained.

870. 3° On the manner of acting of the pastor in receiving revelations. The pastor, receiving a denunciation, (A) must weigh the value of the testimony: (a) by inquiring what sort of person the denouncer is, what authority he enjoys, whether he is moved by envy or only by love of the truth; (b) what sort of proofs he brings, whether full or half-full; (c) by questioning other witnesses, if it can be done; by approaching those about to marry themselves and their parents, so that he may see whether they are conscious of the impediment or not.

(B) When these things have been completed:

(a) In the case of a certain and indispensable impediment, he ought to admonish the betrothed concerning the impossibility of celebrating the nuptials; in the case of a certain and dispensable impediment, "if the impediment is occult, he shall carry out or complete the publications, and shall report the matter, withholding the names, to the local Ordinary or to the Sacred Penitentiary; if it is public and is detected before the publications have been begun, the pastor is not to proceed further, until the impediment is removed..., if it is detected after the first or second publication, the pastor shall complete the publications, and refer the matter to the Ordinary." (Code, c. 1031, § 2.)

(b) If there is doubt concerning the existence of some impediment, the pastor should accurately investigate the matter, by questioning under oath at least two witnesses worthy of faith, provided that there is not question of an impediment from the knowledge of which infamy would arise for the parties, and, if it shall have been necessary, the parties themselves also; if the doubt remains, he is not to assist at the marriage without consulting the Ordinary.[1]

[1] Code, c. 1031.

(C) If only the pastor or Ordinary knows an impediment, without being able to prove it, it is disputed whether he can and ought to stand in the way of the marriage; the more common and safer opinion affirms this, unless a dispensation can be obtained; for here there is question not of a penalty to be inflicted, but of the gravest evils to be averted.

Scholion: On Marriages of Conscience and Morganatic Marriages.[2]

[2] Benedict XIV, Constit. *Satis Vobis*, November 17, 1741; *Quaest. Canon.* 397; *De Syn. dioeces.*, l. XIII, c. 23, n. 12 sq.; F. Mazzei, *de Matrimonio conscientiae*, Rome, 1768; Bangen, II, p. 50-52; Carrière, n. 440-442; Feije, n. 343-346; Rosset, II, n. 1193-1204.

871. 1° On marriages of conscience. (A) They can be defined as those marriages which, with the announcements omitted, are celebrated secretly before the proper pastor, or another delegated priest, and two witnesses, under this law, that they remain secret.

(B) The conditions that they be contracted licitly are recounted by Benedict XIV and the Code: (a) Let them not be celebrated without the license of the Ordinary,[1] nor permitted by the Ordinary except from a most urgent and most grave cause,[2] for example, for impeding the danger of concubinage; (b) let a diligent inquiry be made by the Bishop, so that it may be established that no impediment stands in the way, especially a prior ligamen; (c) for assisting at the marriage let the pastor of one or the other contracting party be deputed; or, if he is lacking, a priest endowed with doctrine and prudence; (d) when the marriage has been celebrated, let a written document be shown to the Bishop, in which the celebration is described with note of the place, time, and witnesses who were present; let the same be transcribed in a secret book secured with seals; (e) let the spouses be admonished that, if offspring shall have been born, they immediately write to the Bishop, who will describe the name of the infant and of the parents in the secret book, so that the legitimacy of the offspring may be established;[3] (f) if they have not given notice concerning born offspring, the marriage must be divulged.[4]

[1] They cannot be permitted by the Vicar General without a special mandate. (Code, c. 1104).

[2] Code, c. 1104.

[3] Code, c. 1107.

[4] Code, c. 1106.

These things are besides to be noted from the Code: "The permission of the celebration of a marriage of conscience carries with it the promise and grave obligation of preserving the secret on the part of the assisting priest, the witnesses, the Ordinary and his successors, and also of the other spouse, when the other does not consent to divulgation."[5]

[5] Code, c. 1105.

"The obligation of this promise, however, on the part of the Ordinary does not extend to the case in which either some scandal or grave injury toward the sanctity of marriage threatens from observance of the secret, or the parents do not take care that children received from such a marriage be baptized, or take care that they be baptized with false names expressed, without meanwhile providing to the Ordinary within thirty days notice of the offspring received and baptized, with sincere indication of the parents, or they neglect the Christian education of the children."[6]

[6] Code, c. 1106.

872. 2° Morganatic marriages, or marriages *ad morganaticam*,[7] consist in this: that a noble man, after the death of a wife likewise noble, marries another from a humbler order, with the condition added that both the woman and the children thence to be born can acquire nothing from that

marriage besides those things which are necessary for honorable support. Hence the wife and children are not fully admitted into the family of the man, nor do they obtain his nobility or inheritance; and under this respect marriage of this kind differs from marriage of conscience, by force of which the children have a right to the paternal inheritance.[1]

[7] *Morganaticum* arises from two Germanic words (*morgen*, *gabe*, morning gift), because the wife and children must be content with that gift which they receive from the beginning, as it were on the morning day of the nuptials; by some it is also called marriage of the left hand.

[1] St. Thomas, *Opusc.* XXXVII, *De Erudit. Principum*, l. V, c. 26-29; St. Alphonsus, n. 882-884; Rosset, t. V, n. 3546-3548.

§ IV. On the Consent of Parents

873. State of the question. (A) It is certain that the consent of parents is not required for the validity of the sacrament of Matrimony; for Trent declared this, against the Protestants, striking with anathema those who "falsely affirm that marriages contracted by children of a family without the consent of parents are void, and that parents can make them ratified or void."[3] For children of a family, even minors, provided they are pubescent and enjoy the use of reason, have power over their own body in order to marriage, and therefore validly can, even against the will of their parents, hand this power over to others through marriage. Hence Trent did not wish to agree to the request of the King of France, who wanted marriages of children entered against the will of parents to be held as invalid.

[2] Sanchez, lib. IV, c. 23; St. Alphonsus, n. 849-850; Carrière, n. 443-452; Kenrick, 41-42; Gasparri, n. 485-488; Génicot, n. 514-516; Vantroys, *Étude historique et juridique sur le consentement des parents au mariage de leurs enfants*, Paris, 1899.

[3] Sess. XXIV, *de Reformat. Matr.*, cap. I.

(B) Therefore the question is concerning the liceity of contracting marriage without consulting parents or against their will, and also concerning the mutual duties and rights of parents and children in this matter. Now St. Alphonsus (n. 849) sets forth four opinions: the first teaches that children of a family sin lethally if they enter marriage, whether parents have not been consulted or are unwilling;[4] the second says that they are held under mortal sin to seek the counsel of parents, but not to follow it;[5] the third holds that they sin only venially if they contract whether parents have not been consulted or are unwilling;[6] the fourth distinguishes: if parents are trying to turn a son away from every marriage, with danger of incontinence, he is not held to obey; otherwise, if parents justly impede.[7]

[4] Pontius, l. II, c. I, n. 26; Sylvius, *Supplem.*, p. 47, a. 6, concl. 4, etc.

[5] Sanchez, l. IV, disp. 23, n. 10; Laymann, p. I, c. I, n. 14; etc.

[6] Salmant., c. VI, n. 22; Sporer, n. 206; etc.

[7] Lacroix, n. 570, with the authors there cited.

What seems more probable to us the following rules will declare.

874. Rule 1: *Per se*, minor children sin gravely who contract espousals or marriage with parents wholly unconsulted.

For such a manner of acting is opposed to the reverence due to parents, since it brings with it a certain contempt in a grave matter; and also to prudence, which demands that the counsel of parents be sought in a matter which, because of the affinity contracted, contributes to the temporal good, peace, happiness, and honor of the whole family.

It is said *per se*, because *per accidens* this omission is free either from every fault, or at least from mortal fault, according to various circumstances:

(a) There is no fault if there is a grave and just cause, for example if the son is far away, and cannot easily seek the counsel of the parents, or if it is prudently feared lest they unjustly impede the nuptials; in this case, however, one must beware of illusions.

(b) Likewise there is no fault if espousals are contracted under the condition that the parents consent, or with the intention and hope of obtaining their consent to the nuptials at a more opportune time.

(c) There will be only slight fault if it is prudently judged that the parents care little about this, because they are little solicitous concerning those things which pertain to the children, provided their own tranquillity is not disturbed. - Hence in practice attention must be paid to the customs of places and to the relations existing between parents and children.

875. Rule 2. *Per se*, children are not held, strictly speaking, to obey parents in order to marriage. For in all things which pertain to the choice of a state, they now do not depend on parents, but are truly of their own right; therefore, provided they have reverently sought the counsel of parents, they are not held, by the command of parents, to embrace the matrimonial state rather than the celibate state or religious life, nor to marry this person rather than that one; parents indeed can use persuasion in this, but not precept.[1]

[1] Cf. St. Thomas, 2. 2., q. 104, a. 5; *Supplem.*, q. 47, a. 6.

Yet *per accidens* parents could command that a son or daughter enter marriage, if this were the only means for relieving their grave poverty; or forbid that a daughter marry a young man ruined in morals or impious; for in these and similar cases, children are already held to perform this, since parents do nothing except urge the fulfillment of a natural precept.

876. Rule 3. Parents *per se* sin gravely when they absolutely deny consent to children desiring to enter a suitable marriage. For thus they unjustly affect them with grave sorrow, stand in the way of their happiness, scatter seeds of discords, and expose the children to the danger of sinning basely.

It is said *per se*; because, if from the marriage to be contracted very grave scandals or hatreds are foreseen, because, for example, there is excessive inequality of the betrothed, or the union tends to the damage of an honorable family, they have a just cause of dissenting. Yet it is not sufficient, for denying consent, that one of the betrothed be of mediocre condition, since this can be compensated by other qualities.

Nor *per se* are parents excused from fault because of civil law, which in some regions grants them the faculty of denying consent;[1] for human law cannot confer privileges contrary to divine law.

Nevertheless some, because of civil law, are in good faith, and can be left in it, if it is prudently feared lest they resist the priest admonishing them.

[1] In Gaul, a son and daughter, until they have completed the twenty-first year, need the consent of parents: if these disagree, the father's consent suffices; if one of the parents is dead, or incapable of giving consent, the consent of the other suffices; when father and mother are dead, grandfathers and grandmothers succeed to their rights in this matter; if both lines disagree, that dissent is equivalent to consent. Cf. *Cod. civ.*, art. 148-160, and law of June 21, 1907 (*Dalloz, Mariage*, 9 sq.)

All these things agree sufficiently with can. 1034: "Let the pastor gravely exhort minor children of a family not to enter nuptials without the knowledge of parents, or when parents are reasonably unwilling; but if they refuse, let him not assist at their marriage, unless the local Ordinary has first been consulted."

In most States of the United States of America, minors indeed contract validly, provided they are pubescent, but illicitly, unless the consent of parents given in writing or orally accedes; and in some States, not only the delinquents, but also the ministers before whom the nuptials are entered, are fined with various penalties. Cf. Bishop, op. cit., § 551-559. - Here it is worthwhile to note with Kenrick (n. 44) that children of a family, to whose marriage parents unjustly do not wish to consent, can licitly evade the civil laws by betaking themselves to another State; but it is not licit for them by a false oath or false witnesses to declare that they have reached the years of majority.

§ V. On the Dispositions for the Licit Reception of Matrimony

877. No one can validly receive the sacrament of Matrimony unless he is baptized,[2] as was said above. Besides, it is altogether becoming that those about to marry be confirmed,[1] as those who need divine strength for professing their faith in the new state of life which they have chosen; indeed, by usage or particular law, in certain dioceses this is required for the licit reception of Matrimony: there the betrothed must prove that they have not only been baptized, but also confirmed.

[2] Code, c. 1021, § 1.

[1] Code, c. 1021, § 2.

When these things have been briefly set forth, it remains to speak concerning the dispositions of those about to marry.

They are chiefly four: 1° right intention; 2° prudence in selecting a spouse; 3° the state of grace; 4° competent knowledge; but since it was said above concerning this last disposition (n. 853), we shall note a few things concerning the three former ones.

878. 1° Right intention. (A) The betrothed ought in contracting to set before themselves that intention which God Himself had in instituting marriage.

Now the primary end is the procreation and education of offspring; but the secondary ends are the consolation and help of common life, and also the moderation of concupiscence, as we showed above, n. 679-682: therefore the betrothed can intend these ends, even principally, provided that the primary end is not excluded. Besides, there are other extrinsic ends, such as concord to be conciliated between families, the honor of the family to be preserved, the acquisition of riches, etc.; these it is

licit to seek, provided they are honorable in themselves, and the primary end is not excluded: but if the end is not honorable, as disordered pleasure or immoderate desire of riches, there is a sin more or less grave according to the gravity of the disorder.

879. 2° Prudence in selecting a spouse. Since marriage is indissoluble, an error committed in this matter can scarcely be repaired, and often becomes a perpetual cause of quarrels, domestic unhappiness, and prepares the way for adulteries and divorce. Wherefore: -

(A) In order to proceed cautiously, (a) the one about to marry will pray frequently and fervently, that he may obtain from God a most faithful spouse: "House and riches are given by parents; but a prudent wife is properly from the Lord."[2] (b) He will carefully weigh the character, qualities, and defects of the one whom he intends to marry; for, if the qualities and defects of things to be bought are attentively inspected, how much more must the qualities and defects of a betrothed person be weighed, since temporal happiness and in some way eternal happiness often depend on this choice; for a wife is a perpetual consolation or a perennial torment; by persuasion and example she can lead the man to the practice of virtue and religion, or on the contrary to sin or infidelity: "Blessed is the husband of a good woman; for the number of his years is double. A strong woman delights her husband, and will fill the years of his life in peace[1]... Every wound is sadness of heart, and every wickedness is the wickedness of a woman[2]... It will be more pleasing to dwell with a lion and a dragon, than to dwell with a wicked woman"[3]... Now to detect vices and virtues is not the work of one day, but requires long and attentive consideration. (c) Besides, since it is difficult for younger persons, especially those taken by love, to form a right judgment concerning the qualities of the other betrothed person, let them seek the counsels of parents and friends, who are not so easily deceived concerning the qualities or defects of the other party.

[2] *Prov.*, XIX, 14.

[1] Ecclesiasticus, XXVI, 1-2.

[2] Ecclesiasticus, XXV, 17.

[3] Ecclesiasticus, XXV, 23.

880. (B) In selecting a spouse, (a) exterior qualities are not to be regarded exclusively or chiefly: beauty, vain adornment, riches, dignities, or anything of this kind; but rather intellectual, moral, and religious qualities, which can contribute more to the mutual happiness of the betrothed than vain beauty and other fleeting gifts. - Yet health of body is not to be omitted, since for conjugal life a sound mind in a sound body is required; hence those rather are to be kept from marriage who cannot discharge the function and duty of father or mother, at least until they become sufficiently robust.

(b) Attention must also be paid to stock, or progeny and the family of the consort: for offspring not rarely obtain by inheritance the vices or qualities of parents, in the order not only physical, but also moral.

(c) A certain equality, or at least proportion, between the betrothed is desirable: by reason of age;[4] the man can be older than the woman (by about five or ten years), but not the reverse, since a woman grows old more quickly than a man. But it is not becoming that a young girl marry an old

man: for soon she will hold him as hateful, and perhaps will foster adulterous loves. - By reason of education, insofar as a certain parity is necessary for a true companionship of minds. - By reason of condition; for if a noble man takes a common woman, soon both he himself, and especially his family, will despise her as rustic; if a poor man marries a rich woman, he himself shortly will be contemned both by the wife and by her family. - By reason of character, not indeed in the sense that both ought to be endowed with the same virtues or defects, but insofar as one ought to complete and perfect the other; for example, if one is prone to anger, it is expedient that the other be mild, lest perhaps they quarrel perpetually.

[4] Concerning the age at which it is becoming for young persons to marry, nothing absolute can be said; generally it is expedient to enter marriage between the twentieth and thirtieth year, and it is not fitting to defer longer except for special reasons. Cf. H. Joly, *La Crise du Mariage*, ap. *Le Correspondant*, January 10, 1902, p. 108-138; Turgeon, *Le Féminisme*, t. II, p. 67-80.

(d) Finally both ought to be joined by mutual love, not indeed by a mad and lustful love, but by an honorable and supernatural one, by which each seeks not so much his or her own pleasure as the happiness of the other. Hence marriages entered on account of riches or honors, without mutual love, or with voluptuous love founded only on exterior qualities, for the most part obtain unhappy outcomes.

881. 3° The state of grace. For marriage is a sacrament of the living, so that one approaching it knowingly and willingly in the state of mortal sin becomes guilty of sacrilege. Indeed it is not prescribed by divine law or by general ecclesiastical law that those about to marry confess before marriage; strictly speaking it suffices that, if they are guilty of grave sin, they elicit an act of perfect contrition. But Trent[1] "exhorts spouses that, before they contract, or at least three days before the consummation of marriage, they diligently confess their sins, and piously approach the sacrament of the Most Holy Eucharist." Indeed, since they are about to enter a new state of life, it is becoming that they make a general confession, so that they may receive richer graces, and begin conjugal life more fervently.

[1] Sess. XXIV, *de Reformat. Matrim.*, cap. I.

In certain dioceses confession before the nuptials is prescribed, and therefore the nuptial blessing regularly cannot be granted unless a certificate of confession has been shown. It is said regularly; for strictly it is not to be exacted when grave inconvenience is seriously feared, for example lest the betrothed, who have already contracted civil marriage, live in concubinage. Moreover diocesan Statutes cannot prescribe confession by way of an impediment.[2].. "Let not the pastor omit, according to the different condition of persons, to teach the betrothed the sanctity of the Sacrament of Matrimony, the mutual obligations of spouses and the obligations of parents toward offspring; and let him vehemently exhort them that before the celebration of marriage they diligently confess their sins, and piously receive the Most Holy Eucharist."[3]

[2] Card. Gasparri, *De Matrimonio*, n. 230.

[3] Code, c. 1033.

882. Corollary. From this it is permissible to infer what is to be done with the unworthy and those bound by censure who wish to marry.

(A) A betrothed man or woman entering marriage with a consort whom he or she certainly knows to be in the state of mortal sin, much more probably does not sin, provided the nuptials cannot be abandoned without grave inconvenience, which will scarcely ever be lacking; for he or she is indeed the minister of the sacrament, but not by force of a certain consecration, and his or her cooperation in the sin of the other is only material; besides, a sufficient reason is supposed to be present; therefore the cooperation in the case is licit.

(B) The pastor can, and when asked generally ought, to assist at the marriage of those who are occultly guilty of sin or bound by censure: for here he is not the minister of the sacrament, but only an authorized witness, and therefore his cooperation is not so immediate; besides, the sacraments cannot be denied to occult sinners publicly asking. "If a public sinner or one notoriously bound by censure shall first have refused to approach sacramental confession or to be reconciled with the Church, let the pastor not assist at his marriage, unless a grave cause urges, concerning which, if it can be done, he should consult the Ordinary."[1] But as regards the marriage of a Catholic party with a party who has cast off the faith without having enrolled himself or herself in a false religion, or has enrolled in Societies condemned by the Church, recourse is to be had to the Bishop.[2]

[1] Code, c. 1066.

[2] Code, c. 1065.

Section II. - On the Celebration of Matrimony[3]

[3] *Rit. Rom., De Sacram. Matrimonii*; *Missale Rom.*, Mass for bridegroom and bride; De Herdt, t. III, 271-283; O'Kane, *Notes on the Rubrics*, ed. 5, 1088-1114; Gasparri, n. 1001-1054.

883. Marriage indeed essentially consists in consent: but this regularly must be expressed in the manner, time, and place prescribed by the Church; hence we shall speak both of the rite and of the time and place of celebration; here, however, there is question only of marriages between Catholics, since below it will be set forth what is to be done in mixed marriages.

I. On the Rite of Celebrating Matrimony

This rite consists of a twofold part: 1° the celebration itself, described in the Ritual; 2° the nuptial blessing, which is found in the Missal.

1° On the Celebration of Matrimony

884. (A) The pastor, or another priest delegated by him, is vested in surplice and white stole, - or, if he is immediately about to celebrate, in alb, stole, and chasuble of the color corresponding to the Mass, but not in maniple, which he receives immediately before the Mass. - Let at least one minister be employed, vested in surplice, who carries the book and the vessel of blessed water with the sprinkler.[1]

[1] The use of spreading a white veil over the betrothed, which prevailed in some dioceses, was reproved by the S. Congregation of Rites, September 7, 1840, ap. Gasparri, n. 1010.

(B) Marriage is customarily celebrated before the high altar, or, if this is impeded, before another altar. The bridegroom stands at the right of the bride; the witnesses stand nearby either beside or

behind the betrothed, so that they can see and hear; after them, parents and relatives, by whose presence it is becoming that the nuptials be honored.

(C) Constrained neither by force nor by grave fear[2] (which condition also is required for validity), the priest before the altar asks for and receives the consent of the contracting parties. - Let the betrothed clearly express their consent in such a way that the pastor and witnesses cannot doubt concerning it.

[2] Code, c. 1095, § 1, n. 3.

885. (D) When the mutual consent of the contracting parties has been given and accepted, let the priest order them to join right hands with one another, saying: "I join you in matrimony. In the name of the Father +, and of the Son, and of the Holy Spirit. Amen." Afterwards let him sprinkle them with blessed water, saying nothing.

Yet the Ritual continues: "Or let him use other words according to the received rite of each province"; from which it follows that legitimate customs prevailing in this matter can be observed.[3]

[3] Thus in the United States of America, the betrothed, while they join right hands, give faith to one another with these words: "I, N., take thee N. for my lawful wife (husband), to have and to hold from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, till death do us part." (*Excerpta*, ed. 8, p. 207.) A similar formula is employed in Hibernia and England, as O'Kane, n. 1107, attests.

(E) Afterwards the ring will be blessed, even in second nuptials, with the prayers described in the Ritual, and it is sprinkled with blessed water in the manner of a cross. The bridegroom, having received the ring from the hand of the priest, places it on the ring finger of the left hand of the bride, in sign of mutual fidelity and love.[4] - If the ring is broken or lost, a new one can be blessed by the same formula, at any time. - After the handing over of the ring, the priest reads certain prayers over the betrothed.

[4] In certain regions two rings are blessed, one for the bridegroom, the other for the bride. Others are blessed together with the ring: coins; which is laudable; others a ring (*pièce de monnaie*, coin): which is less laudable.

When several are joined in marriage at the same time, after first having received the consent of each one, the priest, having said the formula for each: "I join you..." there is nothing to prevent the blessings of the rings and the remaining blessings from being made in common by words in the plural number.[1]

[1] Thus S. Office, September 1, 1841, ap. *Acta S. Sedis*, XXVI, p. 635.

886. Ceremonies (and indeed customs from c. 1100) oblige in conscience; the omission of all, without cause, would be a grave sin; the omission of one would be only a venial sin. Yet some think with St. Alphonsus (n. 899) that the words "I join..." or similar ones cannot be omitted without mortal sin.

2° On the Nuptial Blessing

887. (A) When the ceremonies described above have been completed, a votive Mass for bridegroom and bride is celebrated as often as this is permitted; and the nuptial blessing is given:[2] namely, after the *Pater noster* has been said, the priest, standing at the Epistle corner turned toward the betrothed kneeling before the altar, says over them two prayers which are found in the Missal;

then, after *Benedicamus Domino* or *Ite Missa est* has been said, before he blesses the people, having turned toward the betrothed, he recites over them the prayer *Deus Abraham*; finally he admonishes them with a grave sermon that they preserve fidelity to one another, and sprinkles them with blessed water.

[2] Sometimes the ceremonies of the Ritual are also called the nuptial blessing; but properly this name is reserved for the prayers contained in the Missal.

(B) But this blessing cannot be given outside Mass, notwithstanding contrary custom. For thus the Ritual prescribes and the S. Congregation of Rites decreed[3], by mandate of Pius IX, and the Code again sanctioned.[4] Moreover a votive Mass for the betrothed can be celebrated in closed time when, by permission of the Ordinary, the nuptial blessing is given, with only Sundays and feasts of precept excepted, feasts of the first and second class, privileged Octaves of the first and second order, privileged Ferias, and the Vigils of the Nativity of the Lord.[5]

[3] The S. Congregation, on September 1, 1838, had permitted this blessing to be given outside Mass; but, on June 23, 1853, it revoked this decree, and mandated that the blessing be imparted only in Mass. Cf. *Decreta authentica S. C. Rit.*, nn. 3016 (formerly 5190), 3079 (5275), 3380 (5640).

[4] Code, c. 1101, § 1. The nuptial blessing: a) can be given to spouses even after they have long lived in marriage; b) can be given only by a priest or by the delegate of a priest who can validly and licitly assist at the marriage (Code, c. 1101).

[5] S. C. Rit., June 14, 1918. Cf. Code, c. 1108.

And when Ordinaries, by license of can. 1108, permit the nuptial blessing on the Nativity of the Lord and the Sunday of the Resurrection, to the Prayer of the Mass of the respective Feast there is added, under a single conclusion, the commemoration for the betrothed, as on the Feasts of Epiphany, Pentecost, the Most Holy Trinity, and Corpus Christi.[1],

[1] S. C. Rit., June 14, 1918.

From the decree of the Holy Office of September 1, 1841, the priest is not held to apply the Mass for the betrothed, unless he receives an alms from them; in the same Mass the priest can bless several betrothed couples;[2] the celebrating priest, but not another, must sprinkle with blessed water the betrothed kneeling before the altar; it is not licit to bless the betrothed in a Mass of the dead, but rather the blessing is to be transferred to another day.[3]

[2] In this case, according to De Herdt, n. 282, the prayers are not to be said in the plural, but as they are placed in the Missal.

[3] S. Office, September 1, 1841, ap. *Acta S. Sedis*, XXVI, p. 635.

888. (C) According to the common opinion, a Mass with the nuptial blessing is of precept, not of mere counsel, unless a reasonable cause excuses. Yet more probably it does not oblige under mortal sin, as St. Alphonsus rightly teaches (n. 988). - The blessing is to be granted as often as the bride has not received it, whether she is a virgin, or a widow, or deflowered, even if the bridegroom is a widower and previously received the blessing; but not if the bride is a widow and has already once received the blessing. The reason is that the blessing, as it lies in the Missal, is properly uttered over the woman, and therefore it must be recited as often as the bride has not been blessed. - When the blessing is not given, the Mass for bridegroom and bride must be omitted.

According to the rubrics of the Missal, the priest, "after he has consumed the Blood, communicates the betrothed"; therefore this communion must be made within the Mass, and, according to the mind of the rubric, by way of sacrifice, insofar namely as two small hosts must be consecrated in this Mass for the bridegroom and bride. This indeed is altogether becoming, but does not strictly oblige; for the solemn blessing can be given even when the betrothed do not communicate; but Pastors ought to exhort those about to marry that they communicate in the nuptial Mass.

(D) The votive Mass for the betrothed, as we have already said, is permitted on any days, except Sundays, and also feasts of the first and second class, privileged Octaves of the first and second order, privileged Ferias, and the Vigils of the Nativity of the Lord, Epiphany, and Pentecost.[4] - It must be said as a private votive Mass.

[4] *Il Monitore eccles.*, XXX, 235; Cong. of Rites, June 14, 1918.

On days on which the Mass for bridegroom and bride is prohibited, the Mass of the day must be said with commemoration of the nuptial Mass.

II. On the Time and Place of Celebration[1]

[1] Thus S. Rit. Cong., March 21, 1874, ap. *Acta S. Sedis*, XII, p. 474.

889. 1° On the time. From the Code, marriage can be contracted validly and licitly at any time;[2] but the solemnities of nuptials are prohibited in the closed, or forbidden, time, that is, from the first Sunday of Advent to the day of the Nativity inclusively; and from Ash Wednesday to Easter Sunday inclusively; in each case the closed time begins from midnight. - Yet local Ordinaries can, with liturgical laws preserved, permit the nuptial blessing even in the aforesaid times for a just cause, after admonishing the betrothed that they abstain from excessive pomp.[3]

[2] Code, c. 1108. Therefore the custom by which, in our region, the matrimonial contract itself is prohibited "in closed time" is contrary to common law.

[3] Code, c. 1108, § 2 and 3.

The reason for this prohibition is that the aforesaid times are devoted to prayer and penance or spiritual gladness, from which nuptial solemnities distract minds.

890. 2° On the place. "Marriage between Catholics is to be celebrated in the parochial church; but in another church or oratory, whether public or semi-public, it can be celebrated only by license of the local Ordinary or pastor. The Ordinaries of places can permit marriage to be celebrated in private houses only in some extraordinary case, and with a just and reasonable cause always acceding; but in churches or oratories, whether of a Seminary or of religious women, Ordinaries are not to permit it, unless necessity urges, and opportune cautions have been employed. But marriages between a Catholic party and a non-Catholic party are to be celebrated outside the church; but if the Ordinary prudently judges that this cannot be observed without graver evils arising, it is committed to his prudent judgment to dispense on this matter (the celebration of Mass always excluded)."[4]

[4] Code, c. 1109.

"When the marriage has been celebrated, the pastor or he who takes his place shall as soon as possible describe in the book of marriages the names of the spouses and witnesses, the place and day of the marriage celebrated, and other things according to the manner prescribed in the ritual books and by the proper Ordinary; and this even if another priest, delegated either by himself or by the Ordinary, assisted at the marriage. Besides, the pastor shall note also in the book of the baptized that the spouse contracted marriage on such a day in his parish. But if the spouse was baptized elsewhere, the pastor of the marriage shall transmit notice of the contract entered to the pastor of baptism, either by himself or through the episcopal Curia, so that the marriage may be entered in the book of the baptized."[5]

[5] Code, c. 1103.

Chapter III

Chapter III: On the Impediments of Matrimony

On the Impediments of Matrimony

891. An impediment of marriage in general is everything which stands in the way of marriage being contracted licitly or validly. Hence impediments are of a twofold kind: (a) prohibiting, or impeding, which forbid that marriage be contracted licitly, but do not stand in the way of its validity; (b) diriment, or invalidating, which forbid that marriage be entered not only licitly, but also validly. Therefore they are called diriment, not because they dissolve a valid marriage, but because they bring it about that it is not contracted validly from the beginning.

Art. I. On Prohibiting Impediments

892. That the Church has the right of establishing prohibiting impediments is certainly inferred from the fact that it can also decree diriment ones, as was proved above, n. 814. Now in the Church there enjoy this power both the Roman Pontiff and a general Council, in whom resides full power of enacting laws, and indeed exclusively for the baptized, so that Bishops cannot establish impediments by way of law[1]. Yet they can, for a particular case, for a time, for a just cause, prohibit some marriage, and punish with severe penalties those violating this interdiction[2]. - Besides, from the Code, c. 1041, "a custom introducing a new impediment or contrary to existing impediments is reprobated."

[1] Code, c. 1038, § 2.

[2] Code, c. 1039.

By the old law there were several impediments of this kind, which have now departed from the court[3].

[3] Such were catechism, that is, the impediment which was contracted by him who answered for the infant, when the ceremonies of baptism were supplied, in almost the same manner as a sponsor today contracts the impediment of spiritual relationship, as will be set forth below; and certain graver crimes, namely incest, spouse-killing, killing of a priest, killing of an infant; an attempted marriage with a nun, abduction of another's betrothed woman, conferral of baptism on one's own offspring outside a case of necessity, public penance. Cf. Clericati, Decis. 37 *de Sacr. Matrim.*, n. 19 sq., Ballerini P., n. 534 sq., ed. 3; Feije, n. 548; Gasparri, n. 433. - On the origin and historical evolution of the various impediments of marriage see J. Freisen, *Geschichte des canonischen Eherechts bis zum Verfall der Glossenliteratur*, Tübingen, 1888; a summary of which is to be found ap. *Canoniste*, 1890, p. 433; 1891, p. 214; 1892, pp. 268, 344, 407, 459, 584, 705; 1893, p. 65; 1895, pp. 409, 667, etc.; Esmein, op. cit., t. I, p. 203-402.

Today, since espousals are no longer a prohibiting impediment, there are three, besides the prohibition of the Church, of which we shall treat: vow, mixed religion, and legal relationship.

I. On the Prohibition of the Church

893. The prohibition of the Church, which is not enumerated by the Code among impediments properly so called[2], is a prohibition, made by a legitimate superior for a grave cause, against contracting some determinate marriage. Therefore it is distinguished from a general law by which it is forbidden that nuptials be entered with some class of persons.

[1] Reiffenstuel, Schmalzgr., De Angelis, Santi, and other Canonists, lib. IV, tit. 16; St. Alphonsus, n. 982; Ball. P., n. 535, 538, ed. 3; Carrière, II, n. 916-917; Feije, n. 549-551; Noldin, n. 64.

[2] Impediments properly so called are those which render a person unable to contract marriage.

Now the legitimate superior in the case is: (a) the Supreme Pontiff, who can prohibit some marriage and even "add an invalidating clause"[3] in the universal Church, either by himself, or through another, for example through the Roman Congregations; (b) the Bishop for his own diocese; (c) the pastor himself also, but not by an act properly judicial, because of defect of jurisdiction in the external forum: namely, he can deny his assistance to some marriage, when he judges that the nuptials cannot be entered because of a grave cause.

[3] Code, c. 1039, § 2.

894. The causes on account of which nuptials can justly be forbidden are chiefly three, namely: (a) a founded suspicion of a hidden impediment, whether prohibiting or especially diriment; thus the Roman Congregations sometimes add this clause to a sentence in a matrimonial case when there is doubt concerning the impotence of either party: *Vetito transitu ad alias nuptias, inconsulta S. C.*; (b) fear lest the right of a third party be harmed, for example while a lawsuit concerning the value of a prior marriage or espousals is pending, *a fortiori* if valid espousals were contracted and not dissolved; (c) scandal, or some other grave damage to be avoided.

He sins gravely who contracts marriage against this prohibition of the Church; unless nevertheless the prohibition is made for a light cause and for a time, or when it is certainly established to the betrothed that the reason for the interdiction no longer subsists: for then the sin is only venial.

II. On the Prohibiting Impediment of Vow

895. Not every vow prohibits marriage, but only a vow which is opposed to the celebration or use of marriage. Now a fivefold vow renders marriage illicit: 1° the vow of perfect chastity; 2° the vow of virginity; 3° the vow of not marrying; 4° the vow of receiving sacred orders; 5° the vow of entering religion: concerning these one must speak separately.

[1] St. Thomas, *Supplem.*, q. 53, a. 1; Sanchez, lib. IX, disp. 33-34; St. Alphonsus, n. 986-987; Carrière, n. 925-935; Baller. P., n. 561-566, ed. 3; Feije, n. 559-565; Lehmk., n. 719-723; Génicot, n. 512-513; Gasparri, n. 434-441.

896. 1° On the simple vow of perfect chastity. Here there is question of a simple vow, not of a solemn one, which not only prohibits, but invalidates marriage, as will be said below. Now, whether it is emitted privately, or in a religious Congregation, it consists in a promise made to God perpetually and absolutely to abstain from every venereal delectation, whether external or internal.

(A) He who emitted such a vow regularly contracts marriage illicitly; for either he intends to consummate the marriage, and therefore to violate the vow; or at least he exposes himself to the danger of violating the vow, since, when the other spouse asks, he is held to render the debt. It was said regularly, so that the exceedingly rare case may be excepted in which each party intends to preserve virginity in marriage.

(B) But when marriage has been entered, (a) the one vowing cannot without sin ask for the debt, since this is directly against the vow; but he can and must render it as often as he is held to this by conjugal obligation. Hence, if the other spouse has lost the right of asking, because for example adultery was committed, neither can ask or render. - Therefore it is expedient to seek dispensation from the vow as soon as possible, lest the one vowing remain in perpetual danger of sinning.

(b) If the other spouse dies, the one vowing cannot fly to second nuptials, unless he has obtained dispensation from his vow. Generally dispensation is given only for entering marriage once, so that a new one is required for entering other nuptials.

N. B. If someone has emitted a temporary vow of chastity, he cannot enter nuptials except after the vow has expired; if he marries before, the same must be said as concerning him who is bound by a vow of perpetual chastity, as long as the prescribed time has not elapsed.

897. 2° On the vow of virginity. Most often one vowing virginity intends nothing other than perfect chastity: in which case the principles set forth above are to be applied. But taken strictly, a vow of virginity consists in the promise of abstaining from that first carnal work by which virginity is lost, or from voluntary effusion of seed for the man, and for the woman from intercourse or other acts by which the virginal seal is culpably broken. - In practice, however, he who vows virginity commonly intends either chastity or celibacy: wherefore his intention is to be explored cautiously.

These things being posited, (a) a vow of virginity is gravely harmed by the first consummated act by which virginity is lost; (b) after the first sin of this kind, marriage is licit, since the vow has now become impossible; (c) but he who after the vow has remained a virgin sins gravely by entering marriage, as one who exposes himself to grave danger of acting against the vow; except the case in which both contracting parties have promised virginity, as above; (d) when marriage has been contracted, he cannot ask for the debt as long as he has preserved the integrity of the flesh[1]; but, once virginity has been lost, he can licitly render and ask for the debt, since the fulfillment of the vow has now become impossible; (e) when the consort has died, if he has remained a virgin, he is still bound by the vow; otherwise, he can pass to new nuptials.

[1] Thus indeed objectively speaking: for not a few are ignorant of this, and indeed sin by marrying, but not by asking for the debt.

898. 3° On the vow of not marrying, or of celibacy. (a) This vow directly consists in the promise of not contracting marriage; therefore he sins gravely who marries with such a vow; (b) but when marriage has been entered, he can consummate it, since this is not opposed to this vow; (c) but when the conjugal bond has been dissolved, the vow revives and impedes second nuptials.

899. 4° On the vow of receiving sacred orders. (a) This vow renders marriage illicit, since a married man can no longer receive sacred orders, unless perhaps he intends, before consummation of the marriage, to enter and profess Religion; but in this case he deceives his wife; (b) when marriage has been entered, he is held to seek the consent of the spouse so that he can receive orders, after those things required by law have been posited; if consent is denied, now he can render and ask for the debt, since he did not directly vow chastity, and besides the vow of receiving orders has become impossible; (c) if the wife dies, or loses the right of asking for the

debt (for example by vow or adultery), now the obligation of the vow revives, unless dispensation has been obtained.

900. 5° On the vow of entering Religion. Here there is question of the vow of entering Religion with solemn vows, or a Congregation with simple vows: for each renders nuptials illicit. (a) The one vowing cannot licitly marry, since thus he exposes himself to the danger of breaking the vow or of deceiving the other spouse; (b) by the first consummation of the marriage he sins gravely, because he renders the fulfillment of the vow impossible[1]; but, once the marriage has been consummated, he can licitly render and ask for the debt, since he did not vow chastity, and besides entrance into Religion is impossible; (c) but when freedom has been recovered, because, for example, the spouse has died, or has lost the right of asking, or consents that the one vowing enter Religion, he is held to do this, unless dispensation is obtained, or the matter is morally impossible.

[1] Yet some do not advert that they sin by consummating marriage, because by marrying they already intended to have intercourse; they indeed sinned by marrying, but, judging the marriage to be valid, they do not think that marital intercourse is a sin.

901. To be noted. Most often it is expedient to seek dispensation from these vows. By common law, from can. 1309, before Matrimony only the Pontiff can dispense from the vow of perfect and perpetual chastity or of entering Religion properly so called; hence Bishops cannot dispense from the same by ordinary law, unless there is danger in delay.

After marriage has been contracted, the Bishop dispenses for asking the debt: (a) if there is question of a non-reserved vow (can. 1313); (b) if of an urgent case even in a reserved vow (can. 81); (c) likewise concerning a reserved vow by force of the faculties ordinarily granted by the S. Penitentiary. (Cf. de Smet, *De Sponsalibus et Matrimonio*, ed. 3, I, n. 231).

Besides, by force of Indults, they often receive broader faculties; thus in the United States of America they have the power "of dispensing for a reasonable cause in simple vows of chastity and religion"[2]; which in many dioceses they impart to all confessors.

[2] Ap. Putzer, n. 106-107, where this faculty is accurately explained.

III. On the Impediment of Mixed Religion

902. Mixed marriages, understood in the broad sense, are those which are entered between a Catholic and a non-Catholic, whether baptized or not. But in the strict sense, the impediment of mixed religion, as it is distinguished from the impediment of disparity of cult, is that which exists between two baptized persons, of whom one is Catholic, the other heretical or schismatic; marriage indeed it renders illicit, but not invalid. We shall speak: 1° on the illicitness of mixed marriages; 2° on dispensation from this impediment; 3° on the manner of celebrating them.

[1] Roskovany, *De Matrimoniis mixtis*; Feije, *De Matrim. mixtis*, Louvain, 1877; id., *De Impedimentis*, n. 566-574; Mazzei, *De Matrim. personarum diversae religionis*, Rome, 1771; Carrière, n. 753-765; Baller. P., n. 1084-1113; Gasparri, n. 442-472; Rosset, III, n. 1734-1769; De Becker, p. 258-267; Wernz, n. 573-590; Ullathorne, *An Instruction on Mixed Marriages*; Lambing, *Mixed Marriages*, 1876.

903. Principle: Mixed marriages, entered without dispensation, are gravely illicit. This is certain.

(A) In Scripture we already find the foundations of this prohibition. (a) For it carefully prohibits association with heretics: "A heretical man after a first and second correction avoid"[2]; "If anyone comes to you, and does not bring this doctrine, do not receive him into the house, nor say Ave to him. For he who says Ave to him communicates in his evil works."[3] Now he who contracts marriage with a heretic not only says *ave* to him, but has intimate and permanent association with him. (b) Besides, Paul being witness[4], Christian marriage is the symbol of the perfect union of Christ with the Church: women ought to be subject to their husbands as to the Lord, and husbands to love their wives as Christ loved the Church and handed Himself over for her; but if husband and wife are not of the same faith, their union is very imperfect, since it is not a union of minds in the same faith, nor in the same hope or charity; therefore it represents the union of Christ and the Church only very imperfectly and remotely.

[2] Titus, III, 10.

[3] II John, I, 10-11.

[4] Ephesians, V, 22-32.

904. (B) Councils and Roman Pontiffs not only in a general way strictly prohibited and severely condemned association with heretics, but also especially marriages with them. Thus the Council of Elvira (A.D. 305) decreed[1]: "Heretics, if they are unwilling to transfer themselves to the Catholic Church, Catholic girls are not to be given even to them: but it was pleasing to give them neither to Jews nor to heretics; because there can be no association of the faithful person with the unbeliever." Many other Councils, both particular and general, established the same.

[1] Can. 16, ap. Labbe, *Concilia*, I, p. 973. The Council of Laodicea established the same (around A.D. 364), can. 10, 31, ap. Labbe, I, p. 1510-1511.

Nor did the Supreme Pontiffs hold otherwise. Urban VIII, December 30, 1624, declared that "marriages of Catholics with heretics must be altogether fled"[2]; Clement XI[3], June 25, 1706, prohibited the same, "unless the good of the whole Republic demands this"; Benedict XIV, November 4, 1741, calls them detestable marriages, which Holy Mother Church perpetually condemned and interdicted, and he greatly praises the zeal of those Prelates who strive by more severe penalties to deter Catholics from these sacrilegious bonds; Clement XIII, November 16, 1763, writes that from conjugal unions of this kind a great disaster is brought upon the Church; Pius VIII, March 25, 1830, declares that the Church abhors marriages of this kind, which bring with them no little deformity and spiritual danger; Gregory XVI, April 30, 1841, says: "She herself has always held such nuptials as illicit and plainly pernicious, both because of the criminal communion in divine things, and because of the impending danger of perversion for the Catholic spouse, and the depraved institution of offspring." Leo XIII confirms their doctrine, writing in the Constitution *Arcanum*: "That such conjugal unions are chiefly to be abhorred is most clearly seen from this, that 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 education of children, and very often impel minds to become accustomed to holding all religions in equal account, with the distinction between true and

false removed." All these things have been gravely sanctioned by the Code: "Everywhere the Church most severely prohibits that marriage be entered between two baptized persons, of whom one is Catholic, but the other enrolled in a heretical or schismatic sect: but if there is danger of perversion of the Catholic spouse and of the offspring, the union is forbidden even by divine law itself."[4]

[2] Apud Rosset, n. 1739.

[3] Ibid.

[4] Code, c. 1060.

905. (C) Theological reason[5]. (a) Mixed marriages harm the intimate union and happiness of spouses. There ought to be an intimate union between spouses, and true concord of minds; the husband ought to love the wife as Christ loved the Church, and the woman to obey the man as the Lord. But this intimate union and friendship can scarcely exist where unity of faith is lacking; for friendship receives or makes equals, or in other words demands that friends feel the same and wish the same; now where faith is diverse, there will be discrepancy of minds not only in religious matters, but also in many historical or ethical questions which are indivisibly connected with religion, especially in those which concern the education of offspring. Thence frequent dissensions arise, which disturb the peace of the family.

[5] Here it is worthwhile to note that by the same arguments it can be shown how full of dangers are conjugal unions entered between Catholic girls and men who are irreligious.

This posited, the perfect happiness of spouses cannot exist. For true beatitude is enjoyed when they pray together, attend the same divine offices in church, receive the same sacraments, are made participants of the same divine banquet, provoke one another to the practice of the same virtues, are strengthened by the same hope, are united by the same charity. But these things are impossible when the spouses are not of the same faith: for then either each prays separately, or one or the other acts against conscience by exercising acts of religion which inwardly he does not approve. - Besides, since, from the things said, each differs in many things, mutual diffidence steals into their souls, and mutual love grows cold, without which nevertheless there is no true conjugal happiness.

906. (b) Marriages of this kind are very dangerous to the Catholic party as regards faith, and sometimes as regards morals. First of all, to enter nuptials with heretics is a communication in divine things, insofar as the Catholic party administers the sacrament to the heretic, and conversely. Besides, a Catholic, often associating with the heretic and his family, can easily be imbued with not a few errors, and conceive doubts concerning certain truths of faith, or at least blush over some acts of religion, especially since it not rarely happens that the ignorance and simplicity of Catholics are mocked. The danger becomes greater when, notwithstanding the promises made at the time of the nuptials, the husband prohibits the Catholic wife from attending Mass and other divine offices; nor is it less when a heretical woman by perfidious persuasion gradually turns the man away from the practice of religion; for, as Bellarmine rightly writes[1]: "Such indeed is the nature of women, that it is much easier for them to draw men into error, than for men to lead them to truth." The danger of indifferentism also is very great: for when in the same family there are found persons cultivating a different religion, and frequent and intimate relations are had among them, the persuasion easily arises that the various forms of religions are worthy of the same estimation. - Nor are dangers lacking as

regards morals; for since the abuse of marriage very greatly prevails among Protestants, as is established from their own testimony[1], the Catholic wife can more easily be drawn by a heretical husband to illicit acts.

[1] Letter among the familiar letters 35, ap. Ball. P., n. 1093.

[1] Cf. Sinclair, *The Crowning sin of the Age*, Boston, 1892, p. 16 sq.; Pomeroy, *The Ethics of Marriage*, New York, 1895, ch. III; Storer, *Is it I?* Boston, 1868, p. 104-112.

907. (c) Often the dangers are greater for the children who are born from marriages of this kind. Sometimes the non-Catholic party stands in the way of their Catholic education. Even when they are instructed in a Catholic manner, they easily slip into indifferentism: for they see that the same religion is not cultivated by the parents, and thence they are prone to infer that it matters not much what religion is observed; for if the parents themselves do not think the same concerning religion, who can be certain concerning the absolute truth of religion? Are not all religions of equal value? - Not rarely the heretical party mocks certain Catholic dogmas or practices, and thus excites doubts in the minds of the children. - Besides, if the mother is heretical, she can scarcely instill the sense of true piety into the hearts of the children; if the father is Protestant, the children, even when imbued by the mother with Catholic principles, when they grow up, are too prone to embrace the errors of the father, or even more often to bid farewell to every religion.

This indeed is established by lamentable experience; for although mixed marriages do not always obtain unhappy outcomes, but sometimes produce good effects, either by drawing the non-Catholic party to the true faith, or by removing prejudices; nevertheless more often greater evils than goods arise from them, especially as regards the offspring[2]. For from a computation recently made in the United States of America, sixty-six young people per cent, born from these marriages, cultivate no religion; while, when both parents are Catholic, only eight per cent bid farewell to religion[1].

[2] Cf. *Americ. Eccles. Review*, vol. I, 1889, p. 61-74; vol. II, 1891, p. 9-23.

[1] That reckoning was instituted by the Protestants themselves; cf. *Association Men*, New York, November 1901; *Literary Digest*, January 4, 1902, p. 17.

908. Corollaries. (A) Catholics who, without dispensation, enter marriage with heretics sin gravely. Nor does custom even of the longest time render it licit, as the Holy See declared many times, especially the Holy Office[2], January 3, 1871: "Wherefore although, as you affirm, the opinion has long since grown up there, that mixed nuptials can licitly be entered without dispensation of the Holy See, nevertheless this opinion, notwithstanding any custom whatever, cannot be tolerated." - This is true even if in the case the danger of perversion is absent; for there are other dangers, and besides, even when the natural precept ceases, the positive precept of the Church remains, founded on the presumption of danger.

[2] Ap. *Collect. P. F.*, n. 1434.

Hence, when they have contracted without dispensation, they ought to have recourse to the Bishop, so that they may satisfy for the violation of the law and promise to employ the necessary cautions for

removing the danger of perversion from themselves and their offspring[3]. These cautions are to be exacted even at the point of death[4].

[3] Thus S. Office, March 12, 1881, ap. *Collect. P. F.*, n. 1440.

[4] S. Office, March 18, 1901, ap. *Acta S. Sedis*, XXXI, p. 52.

909. (B) Pastors sin gravely when they assist even passively at marriages of this kind, because they cooperate in the sin of the contracting parties; thus the S. C. of the Council[5] decreed: "Catholic pastors cannot be present at the celebration of these marriages. For it is shameful for them to be witnesses of so great a crime, and by some rite or by their presence to confirm a sacrilegious marriage."

[5] Ap. Roskovany, II, p. 102; Gasparri, n. 446.

Yet passive assistance of the pastor is tolerated by the Holy See in certain regions: (a) if it is required by civil law under grave penalties; (b) as often as a mixed marriage cannot be impeded without graver damage, and besides it seems to be expedient for the utility of the Church and the common good if it is contracted before the pastor rather than before a non-Catholic minister, to whom the parties would easily flee[6]. - Moreover in these cases the pastor should have recourse to the Bishop, and the Bishop himself to the Holy See, if there is time and there is question of places for which this declaration was not given.

[6] Thus from the Letter of Gregory XVI, April 30, 1841, to the Bishops of Hungary, ap. *Collect. P. F.*, n. 1428, p. 522.

910. (C) Pastors ought with all their strength, by exhortations, persuasions, and also rebukes, to try that marriages of this kind not be entered. This is clear from the Code, c. 1064: "Let Pastors, as much as they can, deter from mixed nuptials."

To the matter the Third Plenary Council of Baltimore says, n. 133: "To attain this end, however, these things especially conduce: (a) the frequent instruction of pastors by which the faithful are taught concerning the prohibition of the Church against mixed marriages." - This instruction indeed ought to be given at an opportune time, that is, before the Catholic party has been captivated by love toward the non-Catholic party; therefore in the sacred tribunal, when the confessor knows that the penitent rather often frequents non-Catholics, - before Sodalities of young people, where it is established that amorous dealings are had with heretics, - before parents, so that they themselves may watch over adolescent offspring.

(b) "The uniform practice of the same pastors in occurring cases, of impeding with all their strength, by exhortations, persuasions, and also rebukes, that marriages of this kind be entered." This cannot be efficacious unless priests deter younger persons from excessive frequenting of Protestants; and therefore furnish occasions to Catholic youth for coming together, and for devoting themselves to honorable recreation, with certain parents or persons of mature age and proved virtue present: for unless Catholic adolescents come together, they will go to the gatherings and associations of heretics.

(c) "An accurate examination concerning the canonical and grave causes which are required for a dispensation to be granted upon this impediment of mixed communion." Wherefore pastors should not always and easily acquiesce to those seeking dispensation; but they should inquire concerning the

canonical causes, and not immediately believe whatever those about to marry say, but accurately investigate the matter.

911. (D) "After mixed nuptials have been celebrated, let pastors know that they are burdened by a grave charge of conscience to watch that the conditions promised by the spouses be observed and obtain effect."[1] For unless pastors do this, and therefore sometimes visit families of this kind, often those promises will fall into oblivion, and the religious education of children will be little attended to. - Likewise, according to the Holy Office[2], since in this most grave matter nothing is to be left to the judgment of the priest alone, priests should as soon as possible make the Bishop more certain concerning any mixed marriage to be contracted, with all the circumstances of things, places, and persons most accurately reported.

[1] Thus S. C. de Prop. Fide to the Archbishop of Baltimore, June 25, 1884, ap. *Collect. P. F.*, n. 1442; Code, c. 1064, n. 3.

[2] Instruction to the Bishops of the East, December 15, 1888, n. 13, ap. *Collect. P. F.*, n. 1444.

2° On Dispensation from the Impediment of Mixed Religion

912. On the faculty of dispensing. Nevertheless, when these marriages cannot be prevented, or when in some particular case it is foreseen that greater goods than evils will come from them, or at least that the dangers will be sufficiently removed, the Supreme Pontiff is accustomed to dispense from the impediment of mixed religion, for a just cause. He indeed alone can do this by his own authority, since here there is question of a general law; but sometimes he grants the faculty of dispensing to Bishops, especially in those regions where many heretics are found[1].

[1] Thus in the United States of America, Bishops enjoy the faculty "of dispensing with their subjects upon the impeding impediment of mixed religion, provided that provision has been made for all the conditions prescribed by the Church." If, however, there is another impediment, for example of consanguinity or affinity, they cannot dispense unless they have an Indult of cumulating and at the same time the faculty of dispensing upon this other impediment. Besides, they enjoy the power "of dispensing in mixed marriages already contracted, not likewise to be contracted, upon the degrees of consanguinity and affinity, upon which they have already obtained apostolic faculty for Catholics, insofar as the Catholic party, with absolution first given from the guilt of incest and censures, can contract marriage anew duly and legitimately with the non-Catholic party, and of declaring legitimate the offspring received and to be received, provided that provision has been made for the conditions prescribed by the Church." - Formerly the prior faculty could not be exercised as regards Italians concerning whom it was not established that they had wholly abandoned Italian domicile; but that restriction was removed by a decree of the Holy Office, May 4, 1887. Cf. Putzer, n. 217; Zitelli, *Dispens.*, p. 94.

A mixed marriage contracted with dispensation, and with the due cautions to be set forth below, becomes legitimate, nor can it be called sacrilegious.

913. On the conditions necessary for dispensation. (A) A grave and canonical cause is required, without which it cannot be permitted that the faithful expose themselves to grave dangers of faith and morals. Now this cause can be (a) any reason tending to the public good, for example if it can probably be hoped that the heretical family, or at least the non-Catholic party about to marry, will embrace the true faith; if Catholics are few and mixed marriages can contribute to removing the prejudices of heretics; if otherwise great scandals would arise; if mixed marriage is the only means that children, born from another marriage, be instructed in the Catholic

religion; (b) also a reason of the private good of the contracting parties, provided that, after all circumstances have been carefully inspected, it can be foreseen that greater goods than evils will come from this marriage; which especially occurs when the Catholic party excels in faith, virtue, prudence, and fortitude.

(B) Besides, certain cautions are prescribed[1]. The non-Catholic party must promise (a) that he or she will leave full liberty to the Catholic spouse for the exercise of his or her religion; (b) that all offspring of each sex will be instructed in the Catholic religion, even if it should happen that the Catholic consort is snatched away by premature death[2]. - But the Catholic party is held to strive, according to the laws of charity and prudence, to promote the conversion of the other party.

[1] Code, c. 1061, § 1, n. 2.

[2] In certain regions, as in Prussia, it is provided by civil law that children of each sex be educated in the religion of the father, or at least according to his judgment, and at the same time it is forbidden to priests to exact any promise concerning offspring to be religiously instructed; which is opposed to canonical law. Then indeed it is tolerated that pastors assist at mixed marriages entered without these cautions; but they must do nothing which may seem to approve nuptials of this kind, nor mingle with them prayers or religious rites. Thus Pius VIII, March 25, 1830, ap. *Collect. P. F.*, n. 1426.

In the Code, c. 1061, it is established that promises of this kind must regularly be made in writing. If this cannot be obtained, it suffices that they be made so seriously that the Bishop has moral certitude that they will be faithfully fulfilled; but when, because of various circumstances, such certitude cannot be acquired, he can by right require that the promises be confirmed by oath[3]. Sometimes it is also expedient that they be made in writing and be preserved in the parochial archive[4], so that at an opportune time they can be shown to those whom the matter concerns.

[3] Thus the Holy Office, February 17, 1875, ap. *Collect. P. F.*, n. 1437.

[4] Which is prescribed in some dioceses, for example in Trent (Statutes, n. 144); in Wilmington (Excerpta, n. 167); in Baltimore for a non-Catholic man, but not for a woman (Statutes, n. 61).

3° On the Manner of Celebrating Mixed Marriages

914. (A) Even when dispensation has been granted, and the necessary cautions exhibited, by common law the pastor can offer only the assistance necessary for validity, avoiding all those things which savor of a religious rite. Therefore the priest, with the witnesses, outside the church, without sacred vestments, should ask for and receive the mutual consent of the parties[5], and afterwards inscribe the marriage in the book.

[5] Code, c. 1064, n. 4.

In certain places it is permitted that nuptials be entered in the sacristy or in a private chapel[1], and that the priest question the parties concerning consent and declare them united in marriage; likewise the blessing of the ring and a brief allocution can be permitted with the consent of the Bishop[2].

[1] Thus S. Office, January 17, 1877, ap. Wernz, n. 588.

[2] Thus S. Office, January 17, 1877, ap. Gasparri, n. 463; cf. *Collect. P. F.*, n. 1443; *Statuts Synodaux de Paris*, n. 482.

Besides, where grave inconveniences are feared from assistance of this kind, the Bishop can permit more active assistance[3], with certain religious rites, the celebration of Mass and therefore the nuptial

blessing always excluded[4]: according to the decree of the Holy Office, January 17, 1872, not only in this case is the Mass for bridegroom and bride prohibited, but also any Mass which could be held as the complement of the ceremony of marriage.[5] - Hence in all these things the pastor will faithfully follow the Statutes and precepts of the Bishop.[6]

[3] On the question whether it is expedient or not to offer active assistance to mixed marriages, cf. *Amer. Eccles. Review*, VIII, 1893, p. 172-179; 354, 364.

[4] Instruct. Antonelli, November 15, 1858, ap. *Collect. P. F.*, n. 1450; Code, c. 1102.

[5] S. Office, January 17, 1872, ap. Gasparri, n. 463.

[6] In the United States of America, the manner of assisting at mixed marriages is described in the *Excerpta*, ed. 8, p. 242-247: "First the priest should question the man concerning consent in this manner: 'N. N., wilt thou take N. N. here present for thy lawful wife?' - The bridegroom responds: 'I will.' - Then the woman: 'N. N., wilt thou take N. N. here present for thy lawful husband?' - The bride responds: 'I will.' - Then with right hands joined to one another, they give mutual faith to themselves by the following formula, the bridegroom first saying: 'I, N. N., take thee,' etc., as above (n. 885, note 1). - When these things have been carried out, the priest shall say: 'By the authority committed to me, I pronounce you united in the bonds of matrimony.' - Then the bridegroom will place the ring on the ring finger of the left hand of the bride, saying: 'With this ring I thee wed, and I plight unto thee my troth.' - After these things, the priest should address the spouses with the words added in the Appendix, or similar words..."

915. (B) The spouses cannot either before or after the marriage entered before the pastor approach a non-Catholic minister, unless he acts the part of a civil magistrate, and the law prescribes this for obtaining the civil effects of marriage. Now he acts the part of a civil magistrate when he receives and addresses the spouses not in a temple, but in a hall, and without sacred vestments[7].

[7] Code, c. 1063.

The Catholic party who enters marriage before a non-Catholic minister, as one assigned to sacred things, sins gravely, insofar as he or she communicates in sacred things with a heretic and furnishes scandal; and incurs excommunication reserved to the Ordinary[8]. - Hence "if the pastor certainly knows that the betrothed are about to violate or have already violated this law, let him not assist at their marriage, unless from most grave causes, scandal being removed and the Ordinary first consulted."[1] But if he does not certainly know that they are about to go to the heretical minister, he can be silent concerning the law of the Church, when he foresees that the admonition will not be profitable, for avoiding greater evils[2].

[8] Code, c. 2319, § 1, n. 1.

[1] Code, c. 1063, § 2.

[2] Thus S. Office, December 12, 1886, to the Bishops of the East, ap. *Collect.*, n. 1444 (9).

(C) On this occasion it was also asked whether it is licit for a Catholic priest to act as a civil minister in the celebration of the marriage of two heretics; now the Holy Office responded[3], December 20, 1837: "Although an intervention of this kind is not so reprobated that it could never be licit, nevertheless commonly it is to be dissuaded." Yet most recently the Prefect of the S. C. de Prop. Fide wrote to the Archbishop of New Orleans, January 26, 1895, that this is licit, because in this case the priest is as an authorizable witness[4].

[3] *Collect. P. F.*, n. 1523; cf. n. 1523, ad 3.

[4] Ap. De Becker, p. 267.

N. B. - "The faithful are also to be deterred from contracting marriage with those who notoriously have cast off the Catholic faith, even if they have not passed to a non-Catholic sect, or who are enrolled in societies condemned by the Church. Let the pastor not assist at the aforesaid nuptials unless the Ordinary has been consulted, who, after inspecting all the circumstances of the matter, can permit him to be present at the marriage, provided that a grave cause urges and according to his own prudent judgment the Ordinary judges that sufficient provision has been made for the Catholic education of all offspring and for removing the danger of perversion of the other spouse."

"If a public sinner or one notoriously bound by censure shall first have refused to approach sacramental confession or to be reconciled with the Church, let the pastor not assist at his marriage, unless a grave cause urges, concerning which, if it can be done, he should consult the Ordinary."

IV. On the Impediment of Legal Relationship

916. Formerly many difficulties were raised concerning legal relationship, whether or not it was an impediment, and in what degree. The Code, c. 1059, hands down the principle of solution, decreeing that in this matter civil law is to be followed, so that in regions where, by civil relationship, nuptials are rendered illicit, by canonical law marriage is likewise illicit, or a prohibiting impediment, and indeed in the same degree and manner: "In those regions where by civil law legal relationship, arising from adoption, renders nuptials illicit, by canonical law also, marriage is illicit."

Therefore the civil legislation concerning this matter must be carefully inspected. In Gaul legal adoption is held as a prohibiting impediment[1].

[1] "Marriage is prohibited: between the adopter, the adopted, and his descendants; between the adoptive children of the same individual; between the adopted and the children, whether legitimate or natural, who could be born to the adopter; between the adopted and the spouse of the adopter; and reciprocally between the adopter and the spouse of the adopted." (*Cod. civ.*, a. 348.)

Art. II. On Diriment Impediments. — § I. Things to Be Premised Concerning Diriment Impediments in General.

Division.

[2] Sanchez, lib. VII, disp. 1-6; St. Alphonsus, n. 978-981 and n. 1008; Carriere, n. 508-627; Feije, n. 73-104; De Angelis, l. IV, t. I, n. 15-17; Lehmkuhl, n. 726-731; Gasparri, n. 244 sq.; De Becker, p. 49-53; Haine, q. 94-100; Rosset, n. 1246; Genicot, n. 465-477; Noldin, n. 58-61.

The nature and division of diriment impediments.

Who can establish them?

Who are subject to them?

What causes excuse from them?

1° The Nature and Division of Diriment Impediments.

917. Nature. (A) A diriment impediment is of such a nature that it renders marriage invalid: "A diriment impediment both gravely prohibits marriage from being contracted, and prevents it from being validly contracted" (*Code*, c. 1036, § 2).

(B) A diriment impediment directly affects the contract and indirectly the sacrament. For indeed the Church cannot directly touch the substance of a sacrament, that is, change what Christ Himself instituted as essential in the sacraments; therefore, granted that valid consent is the matter and form of the sacrament of Matrimony, she cannot bring it about that Christians who validly consent do not contract valid nuptials. But she can determine and prescribe the conditions required in order that matrimonial consent be valid, with attention to the public good; for that is valid in the spiritual order which the State can furnish in temporal matters; now the State can prescribe, on account of the public good, certain conditions for completing civil contracts, and if these are omitted, the contract will be invalid; which it has in fact done in relation to purchase-sale, testaments, and other matters of this kind. Therefore likewise the Church can determine the conditions without which matrimonial consent will not be valid.

Moreover, by directly touching the contract, the Church indirectly touches the sacrament; for since the matter and form of the sacrament is matrimonial consent itself, as often as the contract is invalid, so often the sacrament is invalid. Nor in this is the matter and form of the sacrament changed, which always consists in a valid contract; but the conditions necessary for the validity of the contract are changed. This is made clear by comparison: if someone chemically dissolves baptismal water, by that very fact he indirectly invalidates the baptism administered with it, without, however, changing the substance of the sacrament; so the Church, by her power dissolving matrimonial consent, or rather preventing this consent from being validly given, does not change the substance of matrimony.

918. (C) But the end for which a diriment impediment is established is, in a general way, that marriage be entered rightly and worthily for the good of the contracting parties and of society; and therefore that the evils and disadvantages which would destroy or diminish the sanctity and honorableness of marriage be efficaciously averted. Hence certain impediments are instituted: (a) on account of the physical or spiritual good of the spouses, such as consanguinity, especially in the first degrees, affinity, or crime; (b) others, however, on account of the public good of both societies, civil and ecclesiastical; for example, relationship and affinity in remote degrees, so that young persons, contracting outside blood relatives and affines, may unite by a common bond families otherwise separated; (c) others finally on account of the good of religion and of the sacrament, such as order, vow, bond.

919. Division. (A) Fifteen diriment impediments are generally enumerated, and they are contained in these verses:

Error, condition, vow, relationship, crime[1],

[1] But a threefold relationship is distinguished: natural, spiritual, and legal; likewise the impediment of crime is threefold, as will be said below; hence nineteen impediments are acknowledged by some. Of these diriment impediments, thirteen are diriment impediments properly so called. Cf. *Code*, can. 1067 sq.

Disparity of worship, force, order, bond, honesty,

Age, affinity, if clandestine and impotent,

If the woman has been abducted and not restored in a safe place.

(B) By reason of the authority from which they take their origin, impediments are: (a) of natural law, if they have been instituted by God as author of nature, for example error, impotence, and consanguinity in the first degree of the direct line; (b) of positive divine law, when they have been established by positive divine law, as is the bond; (c) of ecclesiastical law, when they have been established by the authority of the Church, such as order, vow, disparity of worship, etc.

(C) By reason of extension, impediments are (a) absolute, when they dirimently impede marriage with any person whatever, for example vow, order, bond; (b) relative, when they invalidate nuptials only with certain persons, for example relationship, affinity, crime, etc.

(D) By reason of the end for which they were instituted, impediments are: (a) of private right, which are established on account of the private good of the contracting parties, so that to them alone belongs the right and duty of impugning the marriage; there are four: error, condition, fear, impotence, to which some, such as Lehmkuhl (n. 732), add the bond; (b) of public right, which are established on account of the common good, or on account of the sanctity of Christian Matrimony, so that the right and duty of impugning the marriage belongs not only to the contracting parties, but also directly to the ecclesiastical judge and indirectly to any person who has known of such an impediment; such are age, order, vow, and the rest except the five enumerated above (*Code*, c. 1971).

(E) By reason of the manner in which they are known, impediments are public or occult, according as they can be proved in the external forum or not, as will be explained below, where Dispensations are treated (*Code*, c. 1037).

920. (F) But in the logical order, which we shall follow, they can be reduced to three heads: (a) impediments which affect consent: age and amentia, error, condition, force and fear; (b) those which affect the capacity of the contracting parties, either absolutely: impotence, bond, vow, and order; or relatively: relationship, affinity, public honesty, disparity of worship, abduction, and crime; (c) those which regard the form of the contract, namely clandestinity[1].

[1] St. Thomas (*Supplement*, q. L, single article) thus logically and philosophically expounds the order of the impediments existing in his time: "For marriage can be impeded either on the part of the marriage contract, or on the part of those contracting. If in the first way, since the marriage contract is made by voluntary consent, which is taken away by ignorance and by violence, there will be two impediments of marriage, namely force, that is, coercion, and error on the part of ignorance. And therefore concerning these two impediments the Master made his determination where the cause of marriage was being treated (*Sent*. IV, dist. 29 and 30). But now he treats impediments which are taken on the part of the persons contracting, which are distinguished thus. For someone can be impeded from contracting marriage either simply, or with respect to some person. If simply, so that he can contract marriage with no one, this cannot be except because he is impeded from the matrimonial act. And this happens in two ways: first, because he cannot in fact, either because he cannot at all, and thus the impediment of impotence for coition is posited; or because he cannot freely, and thus the impediment of the condition of slavery is posited; secondly, because he cannot licitly, and this insofar as he is obliged to continence, which happens in two ways: either because he is obliged by reason of an office received, and thus there is the impediment of order; or by reason of a vow emitted, and thus vow impedes. But if someone is impeded from marriage not simply, but with respect to some person, either this is on account of an obligation to another person, as he who is joined in one marriage cannot be joined to another, and thus there is the bond of marriage; or because proportion to another person is lacking, and this on account of three things: first indeed on account of too great a distance from her, and thus there is disparity of worship; secondly, on account of too great nearness, and thus a threefold impediment is posited, namely relationship, then affinity, because it imports the

nearness of two persons by reason of a third person joined by marriage, and the justice of public honesty, in which there is the nearness of two persons by reason of a third person joined by betrothals; thirdly, on account of an undue conjunction with her first made, and thus the crime of adultery previously committed with her impedes."

2° Who Can Establish Diriment Impediments?

921. It has already been proved above, n. 814, that the Church, and indeed she alone, has the right of establishing among the baptized impediments diriment of marriage; but the question is who in the Church enjoys this power.

(A) The Supreme Pontiff and general Councils certainly can establish impediments of this kind, since they possess supreme authority over the universal Church. And this they can furnish either by way of a universal law, or by way of a particular precept[1].

[1] *Code*, c. 1038.

(B) "A custom introducing a new impediment or contrary to existing impediments is reprobated."[2]

[2] *Code*, c. 1041.

(C) But a Bishop and particular Councils today lack the power of establishing impediments, although formerly they exercised it. The reason is that this is a major cause, which the Supreme Pontiff has reserved to himself, and deservedly; for if any Bishop were able to establish impediments for his own diocese, there would now be the greatest confusion in a matter of grave moment.

3° Who Are Subject to Diriment Impediments?

922. (A) It is certain that all, even heretics and infidels, are bound by impediments of natural law and positive divine law, such as consanguinity in the first degree of the direct line, the bond, etc.; for divine law, even merely positive law, binds all subjects of God.

It is likewise certain that infidels are not directly touched by merely ecclesiastical impediments, since the Church does not judge those who are outside, and therefore does not make laws for them. Yet infidels are indirectly touched by these when, namely, they wish to contract with the faithful, who themselves are bound by the ecclesiastical bond; for for the nullity of marriage it suffices that one of the betrothed be incapable of contracting (*Code*, c. 1036).

923. (B) But it is disputed whether heretics, schismatics, and apostates who were validly baptized are subject to merely ecclesiastical impediments.

(a) Formerly not a few theologians and canonists, such as Laymann and Schmalzgrueber[1], denied this. For although, they said, the Church has the power of binding even rebellious children, in fact she does not wish to bind those who are members of a Society entirely separated from the Church, and who are born, but do not become, heretics. For it is not credible that she would wish to press laws whose observance is impossible, and from which the greatest harms necessarily arise; but ecclesiastical laws diriment of marriage cannot be observed by heretics, since they are unknown by most, and are not held as obligatory by those who know them; besides, if heretics are bound by these laws, many marriages will be invalid: which indeed is a very great evil.

[1] Laymann, l. V, tr. X, p. 2, c. 4, n. 7; Schmalzgr., lib. I, tit. 1, n. 379-380.

924. (b) Nevertheless, according to present-day canonists, the affirmative opinion must wholly be held, on account of the decisions of the Church. - An exception, however, is admitted with regard to schismatics dwelling in the East, who now through long centuries have had their own particular laws concerning this matter, while the Roman Pontiffs were silent.

1. For Benedict XIV several times declared, whether implicitly or explicitly, that heretics are bound by canonical impediments. In the Constitution *Matrimonia*, November 4, 1741, he established that marriages contracted, without the Tridentine form, between heretics or between a heretical and a Catholic party in Belgium and Holland were valid, provided nevertheless that no other canonical impediment stood in the way; therefore they are invalid if such an impediment stood in the way. Likewise in the Constitution *Singulari nobis*, February 9, 1749, to the Cardinal of York, he declares that a marriage between a Hebrew and a heretical woman is invalid, because "it is established, he says, that heretics indeed are repelled from the unity of the Church, and are deprived of all those goods which those living in the Church enjoy, yet they are not freed from her authority and laws."
2. This is also clear from the manner of acting of the Roman Congregations. For, when spouses entangled in an ecclesiastical impediment are converted from heresy or schism, the Apostolic See sanates their marriages in the root; moreover it grants special faculties to Bishops with regard to converted heretics, for example, the faculty of dispensing in marriages contracted with converted heretics in the simple and mixed second degree, that is, in the second mixed with the third or fourth; therefore it supposes that nuptials entered with a canonical impediment are invalid.
3. In reality, impediments of this kind, if you except clandestinity (concerning whose extension it will be said below), had already been promulgated when the modern sects of heretics were born, and therefore they had the force of law where heresy now is widespread; besides, nothing proves that the Church afterward wished to exempt heretics from these laws, but, on the contrary, the documents already brought forward rather prove the contrary. And deservedly so; for otherwise the Church would seem to favor rebellious children. - Besides, the Code exempts non-Catholics only from observing the Catholic form of marriage (*Code*, c. 1099).

Nor should it be said that the greatest inconveniences arise from this; for often present-day heretics in good faith are excused from sin when they contract marriage with a canonical impediment; if they are deprived of sacramental grace, they can receive other graces, and, since they entered the nuptials in good faith, the offspring is legitimate.

4° What Causes Excuse from Diriment Impediments?

925. (A) Even invincible ignorance does not excuse from a diriment impediment, because from the Code, c. 16, "no ignorance of invalidating or inhabilitating laws excuses from them, unless something else is expressly stated." This, moreover, the Holy Office openly declared in the Instruction to the Vicar Apostolic of Siam[1], July 4, 1855: "It must also be noted, with regard to diriment impediments, that invincible ignorance or good faith is not sufficient for marriage to

be validly contracted. Although sometimes (which, however, must rarely be believed in practice) that ignorance and good faith can avail to excuse from sin, nevertheless it can never effect that a marriage is valid which has been entered with a diriment obstacle."

[1] *Ap. Collect. Paris.*, n. 950, p. 427.

926. (B) Nor, regularly, does grave harm to the contracting parties, or the impossibility of obtaining a dispensation, excuse from impediments to be incurred; for invalidating laws, which are made on account of the public good, do not cease on account of some private good. This is confirmed from the response of the Holy Office to the Vicar Apostolic of Japan[2], March 11, 1868; for it had been explained that Japanese Christians, during a century-long persecution, had in good faith contracted marriages with impediments of ecclesiastical law; now it was answered that those who were persevering in good faith were not to be disturbed; but that others were held to renew consent, or, if this were impossible, petition should be made for a dispensation in the root; from which it is inferred that these marriages were held by the Holy Office as invalid.

[2] *Ap. Collect. P. F.*, n. 1226.

It is said regularly, because if someone in this case had altogether to abstain from marriage, - because, for example, the case concerns a Catholic woman who lives in a region where all young men are pagans, - the impediment ceases, since the natural right of marrying prevails over ecclesiastical law.

927. Corollary: Is it licit to contract with a doubtful impediment? According to all, first the matter must be seriously investigated; but if, after diligent examination, doubt remains, a distinction must be made:

(A) If there is question of an impediment of natural or divine law, for example of consanguinity, of the bond, he who enters nuptials with such a doubt sins gravely; for here there is question of the validity of the sacrament, and indeed of a defect which the Church cannot supply; therefore here it is not licit, before the fact, to follow a probable opinion; and he who acts thus voluntarily and without necessity exposes himself to the danger of violating chastity.

Nevertheless, "if the impediment of impotence is doubtful, whether by a doubt of law or by a doubt of fact, marriage is not to be impeded."[1]

[1] *Code*, c. 1068, § 2.

(B) If the impediment is of ecclesiastical law, a distinction must likewise be made: (a) in a doubt of law, whether the law exists, it is licit to contract, because the Church supplies, that is, gives the faculty of marrying, if perhaps this does not exist; for from the Code, "laws, even invalidating and inhabilitating laws, do not urge in a doubt of law."[2] Therefore in practice a doubtful ecclesiastical impediment by a doubt of law is no impediment.

[2] *Code*, c. 15.

(b) In a doubt of fact, whether, for example, between A and B there is a prohibited degree of consanguinity or affinity, it is not licit to contract, but a dispensation must be obtained *ad cautelam*; for from the Code "in a doubt of fact the Ordinary can dispense in these, provided the case concerns laws in which the Roman Pontiff is accustomed to dispense."[3] Otherwise the marriage is exposed to

the danger of nullity without sufficient reason, since it is easy to obtain a dispensation from the Ordinary. After the fact, one must stand for the validity of the marriage until the contrary is proved (*Code*, c. 1014).

[3] *Code*, c. 85.

[1] *Decret.*, lib. V, tit. 39, cap. 44.

§ II. On Impediments Which Affect Consent.

There are four: amentia and age, error, condition, force and fear.

I. On Amentia and Age.

928. 1° On amentia[2]. (A) Perpetual and absolute amentia by natural law dirimently impedes marriage; for, from what was said above (n. 692), for the validity of marriage there is required a free and therefore rational consent, of which those perpetually and absolutely demented are wholly incapable. - But if the amentia is not perpetual, and marriage was entered at a time when each spouse was of sound mind, it is not dissolved by subsequent amentia.

[2] *Decret.*, lib. IV, tit. I, cap. 24; St. Thomas, *4 Sentent.*, dist. XXXIV, q. I, a. 4; Sanchez, lib. I, disp. 8, n. 82-24; Schmalzgr., lib. IV, t. I, n. 14-17; Carriere, n. 827; Gasparri, II, n. 779-781.

(B) Those, however, who have lucid intervals do indeed validly contract during the time when they enjoy the use of reason; but regularly they are to be turned away from marriage, on account of the evils which follow from it and the difficulty of rightly educating the offspring. It is said regularly, because these marriages can be permitted on account of a grave cause, for example to repair the honor of a girl, to ratify a civil union, or to legitimate offspring; yet this generally should not be done without consulting the Bishop.

If it is doubted whether the marriage was contracted during a time of amentia or during a lucid interval, it is generally presumed to have been entered during the time of amentia, and therefore to be invalid, because lucid intervals occur by accident, and therefore must be proved.

(C) The demented, or monomaniacs, who are insane concerning one or another matter, and in other things possess reason, more probably are capable of marriage, provided they understand the rights and duties of wedlock; but they are to be turned away from marriage, insofar as it can be done, on account of the inconveniences to which the other party and the offspring to be born will be subject[3].

[3] Generally civil laws hold such marriages as invalid.

929. (D) Fools or stupid persons, if they possess sufficient discretion, so that they understand the rights and burdens of marriage, can validly contract; but, since they are more easily deceived, it is also more easily proved that their consent was vitiated by error.

(E) Deaf-mutes, rightly instructed, are capable of marrying. But if they are not capable of sinning gravely, neither are they judged capable of contracting.

Those, however, who from birth have been at the same time deaf, mute, and blind, are generally incapable of marriage, unless nevertheless they have been instructed by a special method[1].

[1] For some of these have in reality been instructed, as is seen in Dickens, *American Notes*, ch. III, where it is described how Laura Bridgman, a girl deprived of all the senses except touch, was excellently educated; cf. *Amer. Supplement to Encyclop. Britannica*, under the word Bridgman; another example is seen in *La Quinzaine*, Dec. 1902.

(F) The drunk, who for the time truly lack the use of reason, and also those sleeping, even sleepwalkers, cannot enter marriage during the time of drunkenness or sleep.

But if the marriage is made through a procurator, it is validly contracted even in the case in which the mandator is drunk or sleeping at the time of the nuptials, provided that he enjoyed the use of reason when he gave the mandate.

930. 2° On age[2]. (A) General rule: By canonical law a marriage entered before the required age is invalid, that is, before the completed sixteenth year for the man, and likewise before the completed fourteenth year for the woman[3].

[2] *Decret.*, lib. IV, tit. 2, *de Desponsat. impuberum*; Reiffenstuel, Schmalzgr., De Angelis, Santi, and other Canonists on this title; St. Alphonsus, n. 1065-1067; Carriere, n. 900-904; Feije, n. 531-537; Gasparri, n. 491-509; Lehmk., n. 748; Mansella, p. 21-25.

[3] *Code*, c. 1067. - Puberty exists at the completed twelfth year for females, at the completed fourteenth year for males, from can. 88, § 2; but, according to recent law, the age of puberty is no longer the canonical age for contracting marriage.

(a) The reason of the law is that before this age that perfect discretion which is desired for understanding the duties of marriage is presumed to be lacking; and, moreover, it is altogether fitting that nuptials not be permitted to young persons before a more mature age renders them capable of rightly sustaining all the burdens of marriage.

(b) But as soon as the aforesaid age is completed, the marriage is valid of itself, even if perhaps the immediate power of generating were still lacking; for by the law of nature, for the validity of marriage the remote power of generating suffices, provided there is also present discretion of mind from another source: and this is presumed at the canonical age, unless by contrary indications it is proved to be lacking.

(c) A marriage null on account of defect of age is not validated by the mere attainment of age; rather it is necessary that consent be renewed after the canonical age has been attained.

931. (B) Note. More probably a marriage entered before that age is not valid, even if malice supplies age, that is, if there is present at the same time the immediate power of generating and sufficient discretion for understanding the duties of wedlock; in which case the old law decreed that marriage was valid, because marriage of the impubes was declared invalid for this reason, that they were presumed incapable of contracting; but a presumption yielded to truth.

Therefore, before a marriage of impubes was permitted, two aforesaid conditions had to be proved; but concerning these it was not the pastor himself who had to judge, but the Ordinary or the Pontiff. (a) The power of generating could be proved either from copulation already had, - or from menstruation in the female, or from the emission of semen in the male, or from inspection of the bodies carried out by a physician. (b) But due discretion of mind was discerned from a questioning of the impubes made separately, by inquiring from each whether he or she wished to marry, whether he

or she knew the nature, burdens, and properties of marriage; whether he or she was induced to marriage spontaneously, or by force, fear, flatteries, or promises.

We said that exception now more probably does not hold, since can. 1067 decrees simply that marriage before the fixed age cannot validly be entered, in no way alluding to the old exception very well known to all. Silence in so grave a matter seems to us a change of the old discipline.

932. (C) The impediment of age, as it was explained, is only of ecclesiastical law. Natural law indeed invalidates marriages which are contracted without sufficient discretion, but not those which are entered by impubes who already understand the duties of wedlock. Hence (a) among the non-baptized, posited maturity of judgment, marriage entered before puberty is valid: which is practical, not indeed in our regions, but in many Catholic missions of India and of the Chinese empire, where marriages are frequently entered among impubes.

(b) The Church is able to dispense from this impediment as soon as sufficient discretion is present; but a dispensation is very rarely granted, only on account of a most grave cause, for example the reconciliation of two nations or families, and under the condition that the contracting parties not cohabit before they have arrived at a marriageable age.

933. (D) Things to be noted for practice. Although marriage is valid as soon as puberty is reached, it is not expedient to contract immediately; but it is fitting to wait for a more mature age, lest by too premature a use of marriage the strength of the spouses be exhausted and a weak offspring be generated; lest likewise the spouses lack that prudence which is desired for the right education of offspring. Besides, the time of nuptials ought not to be deferred too long, lest perhaps the morals of the young persons be corrupted. In this matter attention must be paid to the various customs and conditions of places: in warmer places maturity is acquired sooner, in colder places later (*Code*, c. 1067).

II. On the Impediment of Error.

Error invalidating marriage can be threefold: 1° concerning the nature or essential property of marriage; 2° error concerning the person; 3° error concerning the qualities of the person.

[1] St. Thomas, *Suppl.*, q. 51; Reiffenst., l. IV, t. I, n. 342-350; Schmalzgr., l. IV, t. I, n. 433-461; Sanchez, lib. VII, disp. 18; St. Alphonsus, n. 1009-1016; Carriere, n. 631-634; Ball. P., n. 601-610, ed. 3; Feije, n. 105-118; Gasparri, II, 782-793.

1° Error Concerning the Nature or Essential Property of Marriage.

934. (A) He invalidly contracts marriage who so errs concerning the very nature of marriage that he positively does not wish to hand over the right over his own body, when, namely, he thinks marriage is a certain friendly society, but not a union for generating children; for then matrimonial consent is lacking, since the intention of giving the right over his own body is lacking.

Nevertheless it is not required that those about to marry know that offspring is generated through copulation, but it suffices that they know that marriage is contracted for having offspring, and that

some right over the body is mutually given (can. 1081, § 2). Moreover, error of this kind is not presumed in those who have reached puberty[2].

[2] Thus in the Code, can. 1082: "In order that matrimonial consent can be had, it is necessary that the contracting parties at least not be ignorant that marriage is a permanent society between man and woman for procreating children. - This ignorance is not presumed after puberty."

(B) Likewise error invalidates the sacrament when it is so concerned with an essential property of marriage, unity, indissolubility, or sacramentality, that such a property is positively excluded: then there is not only error, but a condition contrary to the essence of the contract is placed. But if this property is not excluded, and there is the intention of contracting according to the manner of others, the nuptials are valid.

935. 2° Error concerning the person exists when someone, wishing to contract with one woman, for example Magdalene, marries another, for example Mary.

Error concerning the person, whether vincible or invincible, whether antecedent or concomitant, by natural law dirimently impedes marriage, unless the intention of the contracting party is to marry the present person, whoever she may be[1].

[1] "Error concerning the person renders marriage invalid" (*Code*, c. 1083).

For marriage is a contract with a determined person, and the person herself is truly the object of the contract, and therefore pertains to its substance: but he who errs concerning the person, and marries Mary, whom he thinks to be Magdalene, does not consent to the person with whom he contracts, but to another, and therefore the consent is vitiated. Thus when Jacob married Leah, thinking her to be Rachel, the marriage was null, although afterwards he ratified it by new consent.

The exception is likewise understood; for, if someone wishes to marry the woman present, whoever she may be, he truly consents to the present person, although he erroneously supposes her to be Cecilia, while in reality she is Agnes.

936. 3° Error concerning the qualities or fortune of the person of itself does not invalidate marriage. For matrimonial consent of itself is terminated upon the person herself; and, although her qualities render consent readier and fuller, nevertheless they do not determine it; and therefore consent exists even if these qualities are lacking. - Therefore he validly contracts who marries a person whom he thinks to be noble, rich, a virgin, while in reality she is common, poor, corrupted[2].

[2] "Error concerning a quality of a person, even if it gives cause to the contract, invalidates marriage only: 1° if error of quality redounds to error of person; 2° if a free person contracts marriage with a person whom he thinks free, while instead that person is a slave by servitude properly so called."

It was said of itself, because by accident error concerning qualities or fortune invalidates marriage in a threefold case:

(a) If someone thinks the other party is free, while she is a slave, as will be explained below.

(b) If consent is given under an explicit condition of that quality, for example, I wish to marry Mary, provided she is noble, as is clear from what was said where conditional consent was treated, n. 699.

(c) If error of quality redounds to error of person; which happens when the quality is so determinative of the person that the contracting party does not wish to marry except a person endowed with such a quality; for example Titius wishes to contract with the firstborn daughter of Peter, unknown to him; in fact he marries Rosa, who falsely says that she is Peter's firstborn; the contract is invalid, since in reality the consent of Titius is bound to the quality of firstborn daughter of Peter, which in the case is lacking[1].

[1] Bangen, II, 18, illustrates the matter by an example. Count A wished to marry the only daughter of Count B, unknown to him; in fact he contracted with a chambermaid of this daughter, who pretended that she was the daughter of Count B: the contract is invalid.

Therefore from what has been said it is clear that error in these various cases invalidates nuptials by natural law, and therefore is an indispensable impediment.

III. On the Impediment of Servile Condition.

937. 1° This impediment exists when a free man marries a person of servile condition, thinking her to be free. - But if he has known this servile condition, and nevertheless has wished to accept her, the nuptials are valid. Hence this impediment is reduced to error. Therefore marriage between two slaves can be valid.

[2] *Decretal.*, lib. IV, tit. 9, *de conjugio servorum*; St. Thomas, *Supplem.*, q. 52; Reiffenst., Schmalzgr., and other Canonists on tit. 9, lib. IV; Sanchez, lib. VII, disp. 19; St. Alphonsus, 1017-1023; Carriere, II, n. 636-638; Ball. P., n. 611-619, ed. 3; Feije, n. 119-124.

Slavery, of which there is question, is slavery properly so called, not however the condition of those who voluntarily bind themselves to the service of others. And since slavery now does not exist among Christian nations, this impediment does not pertain to practice except in the Missions.

2° This impediment much more probably is only of ecclesiastical law, because the error on which it is founded is concerned only with the qualities of the person; therefore it does not bind infidels. But the Church deservedly established it, because the servile condition, although it does not exclude the essential goods of marriage, nevertheless is opposed to them, insofar as a slave cannot, against the master's will, live with the spouse, nor rightly educate the offspring.

IV. On the Impediment of Force and Fear.

938. 1° Notion. Force and fear are judged to be one impediment: force is physical coercion, while fear arises from moral coercion: each harms the perfect liberty of consent.

[3] St. Thomas, *Supplem.*, q. 47, a. 1-4; Sanchez, lib. IV; Reiffenst., lib. IV, tit. I, n. 325-341; Schmalzgr., ibid., n. 384-432; St. Alphonsus, n. 1045-1047; Carriere, n. 766-785; Ball. P., n. 737-762, ed. 3; Feije, n. 125-144; Mansella, p. 12-16; Gasparri, n. 805-826; Genicot, n. 490.

(a) Force invalidates marriage by natural law, when it is such that it cannot be resisted; for example, if someone physically compels Sempronia to express exteriorly, by a sign of the head, matrimonial consent, interior consent is lacking, and therefore by natural law the marriage is invalid. Sometimes, however, force is taken for moral coercion, and then it does not differ from fear.

(b) Fear is "a trepidation of mind by reason of a present or future danger." It is twofold by reason of intensity: grave or light, according as the trepidation of mind greatly disturbs the mind or not; generally a grave evil induces grave trepidation, especially when it is apprehended as imminent. It is grave absolutely when the evil is such that it can seriously disturb even a steadfast man; relatively, when an imminent evil, with attention to all the circumstances of sex, age, and disposition, can gravely disturb the person of whom there is question.

939. 2° Conditions required that fear invalidate marriage. By canonical law four conditions are required: fear relatively grave, - inflicted by an extrinsic and free cause, - unjustly, - for extorting consent (*Code*, c. 1087).

(A) Fear grave relative to the person contracting; hence in individual cases the judge must explore whether or not the fear caused grave trepidation of mind.

Now fear is judged grave when these two things concur at the same time: an evil grave relative to the person of whom there is question, and persuasion that it is imminent. (a) The evil must be grave relative to the person contracting. There are certain evils which by law are held as grave for all, such as death, mutilation, bodily tortures, exile, incarceration, loss of liberty, loss of all temporal goods or of a notable part of them, loss of a great profit to which one has a right, infamy of law or of fact, threat of defilement, unjust excommunication, and other evils of this kind which threaten not only the person himself or herself, but also his or her parents, blood relatives, affines, or domestics. All these are presumed grave even relative to that person, unless, with attention to his or her disposition, the contrary is clear; thus the threat of jail for a few days moves very little a most ruined man already detained many times in jail; temporary enclosure in a monastery terrifies very little a girl who loves solitude. - Moreover there are other evils which, although light in themselves, are grave relative to the age, sex, or disposition of the person; hence the judge, in judging the gravity of fear, will attend especially to three things: to the person who threatens, whether he is irascible, violent, and possesses great authority; to the person into whom fear is cast, whether he or she is fearful, trembling; to the threats themselves, whether they are of such a nature that they greatly affect the person.

(b) Moreover a grave evil must be apprehended as imminent; for if it is remote, or can easily be guarded against, whether by one's own effort or by the help of friends; or if the person threatening cannot, or at least is not accustomed to, put threats into execution, fear is not judged grave, since it is easily despised.

Hence also reverential fear, by which someone fears the indignation of parents or of a master, although blows and threats are absent, is sometimes held grave, especially if such indignation is lasting. But in the external forum it is not presumed grave, unless quarrels, threats, or at least importunate and most urgent prayers[1] have been added.

[1] Concerning this see the case of the Prince of Monaco, ap. *Acta S. Sedis*, XII, p. 403-422; and other cases ap. *Acta*, XI, p. 338-347; XXXII, p. 727-745; XXXIII, p. 130-160; from which it is clear that fear is not easily proved in the external forum.

In doubt, however, whether the fear was grave or light, it is judged to be light, because a matrimonial cause is favorable, and in doubt one must stand for the validity of marriage[2]. Besides, if the fear had been grave in the internal forum, the marriage can be validated by afterwards giving free consent.

[2] *Code*, c. 1014.

940. (B) Fear inflicted by an extrinsic and free cause, but not by an intrinsic or necessary cause; hence a marriage entered from fear of hell is valid, so that someone may consult his conscience, - or from fear of death or disease, for example if someone has learned from a physician that the use of marriage is necessary for him to preserve health. For in these and similar cases, the contracting party is impelled to nuptials not by another, but by himself, insofar as he understands that it is consonant with reason to choose marriage in order to avoid a greater evil.

941. (C) Inflicted unjustly; now it is such, if the evil which another threatens is not proportioned to the offense. For if fear is inflicted justly, by threatening a just penalty, the liberty of consent, even if destroyed, is justly destroyed, and it is fitting that he who is worthy of penalty be deprived of liberty. "He brings fear upon himself" (D'Annibale).

(a) Thus nuptials are valid if a competent judge, the order of law having been observed, by threat of jail compels a defiler to marry the woman whom he knew by force[3]; likewise if someone, after betrothals contracted with a girl, or after copulation obtained under the promise of nuptials, is compelled under penalty of excommunication to marry the same girl; or if a young man, caught fornicating with a girl, is induced by the father, under threat of accusation before the judge, to contract with her.

[3] A law of this kind in fact exists in many States of America; when the case occurs, the priest should carefully explore the will of the young man; for there are some who simulate consent, in order to escape jail, without the intention of marrying; they should seriously be admonished that this is sacrilege, and that they are held either to abstain from nuptials or to give consent seriously. Cf. *Amer. Eccles. Review*, XVIII, 1898, p. 530.

(b) On the contrary, marriage is null if a father says to a defiler: unless you marry my daughter, I will kill you (because he does not have the right of killing); if a judge, according to the acts and proofs, compels a young man to contract with a girl, because he is thought guilty of seduction, while in reality he is innocent; or if in some other unjust way, from fear of jail, loss of office, etc., someone is compelled to marry.

(c) When fear is inflicted justly in itself, but not as to the manner, because, namely, the order of law was not observed, it is disputed whether the nuptials are valid; more probably it is affirmed, because then the injury is done rather to the law than to the injured person.

942. (D) Fear inflicted for extorting consent, "from which (fear), in order that one may free oneself, one is compelled to choose marriage" with such a person (can. 1087).

(a) Marriage is certainly invalid when fear is inflicted either by the other contracting party or by a third person, directly in order to marriage; for example, if Caius says to Martha: unless you marry me, I will kill you; or if Titius says to Martha: unless you marry Caius, I will kill you; for in each case the innocent person is compelled to choose marriage, and there is for him no other way of freeing himself.

(b) But if fear is brought in on account of another motive, for example, if a father threatens death to a defiler in vengeance for the offense, and the latter promises to marry the violated girl, more probably

the nuptials are valid; nevertheless, since some probably contradict this, the matter remains doubtful in practice. - Likewise marriage is doubtful if it is entered from fear of a grave evil unjustly brought upon one for an end different from marriage; for example, if a sick woman contracts with a physician, or with the physician's son, because she fears that otherwise the physician will refuse to care for her, provided nevertheless he is not held to this by justice; for if he were held by justice, and were unwilling to care for her except under the condition of marriage, the nuptials would be invalid.

N. B. In all doubtful cases, judgment must be made by a judge in the external forum, and therefore his sentence must be awaited.

943. 3° By what law does fear dirimently impede marriage? (A) If the trepidation of mind so removes the use of liberty that there is not sufficient liberty for mortal sin, it invalidates marriage by natural law, because the consent is not free.

(B) But if, even under fear, the will enjoys that liberty which suffices for mortal sin, as often happens, it is disputed; (a) some, with St. Thomas, affirm that the impediment proceeds from natural law, because marriage is the bond of perpetual love, for which full and perfect consent is required, the more so because the contract once entered is indissoluble; (b) many with Sanchez hold that it is only of ecclesiastical law, because liberty from such fear is diminished, but not taken away. - Whatever the case may be, in practice the Church is not accustomed to dispense in it, but wishes that consent be renewed, or that the marriage be dissolved.

944. Corollary. If the impediment of fear is public, the marriage is not revalidated by cohabitation and carnal copulation[1]; but it is necessary that consent be renewed, and indeed before the pastor and witnesses. But if the impediment is occult, it can be revalidated by copulation freely had and by consent, without solemnities, provided the solemnities had previously been observed.

[1] Thus from Trent, sess. XXIV, cap. 9 *de Reformat. matrim.*

945. N. B. Parents, masters, magistrates, and others compelling to marriage sin gravely, and can be punished by the Bishop. But the excommunication formerly laid against masters and magistrates who compel subjects or others so that they do not freely contract marriage no longer has force.

§ III. On Impediments Which Affect the Capacity of the Contracting Parties Absolutely.

There are four: impotence (concerning which in the Supplement); bond, vow, and order.

I. On the Impediment of Bond.

946. 1° Notion. The bond, of which there is question, is the matrimonial bond arisen from other nuptials and not yet dissolved. This impediment dirimently impedes a subsequent marriage by divine law, since, from what has been said, polygamy is prohibited by divine law.

[2] *Decretal.*, lib. IV, tit. 4 *de Sponsa duorum*; Sanchez, lib. VII, disp. 80; Schmalzgr., l. IV, tit. 4, n. 1-28; St. Alphonsus, n. 1060; Carriere, n. 804-808; Feije, n. 438-447; Ball. P., n. 765, ed. 3; Mansella, p. 97-124; Gasparri, n. 625-634; Lehmk.,

n. 740-742; Genicot, n. 492-493. - The Code, c. 1069, establishes concerning this impediment: "He invalidly attempts marriage who is held by the bond of a prior marriage, - although not consummated, saving the privilege of faith. - Although the prior marriage be invalid or dissolved from any cause whatever, it is not therefore licit to contract another before the nullity or dissolution of the prior marriage has legitimately and certainly been established."

Hence even infidels are bound by it, and, when they are converted to the faith, they can retain only one wife: this ought regularly to be the first legitimate wife; but, since in certain regions it is impossible to find the first, the convert can remain with the baptized wife as with the legitimate wife, although she is not the first. Moreover, the converted spouse, when he cannot find and interpellate the infidel party, is permitted to enter other nuptials, which are valid, even if afterwards it has become known that the other party had been converted to the true faith at the time of the second marriage. Whether this is done by force of the Pauline privilege, or by the power conceded to the Roman Pontiff of dissolving a marriage contracted in infidelity and not consummated after baptism, is disputed, as was explained above, n. 733.

But as regards the faithful, this impediment is indispensable when it arises from a ratified and consummated marriage.

947. 2° On the proofs required for entering a new marriage. He who has entered a first marriage cannot contract another unless the former has first been dissolved. Now this can be dissolved in four ways: by the Pauline privilege, concerning which above (n. 729); - by dispensation of the Supreme Pontiff, or by religious profession, when the marriage was not consummated (above, n. 742): in which case there must be exhibited an authentic testimony of the dispensation granted by the Supreme Pontiff, or of the religious profession of the other party, with juridical proof of the non-consummation of the marriage; - by authentic declaration of the invalidity of the first marriage; - or finally by the death of the other spouse; concerning these two latter modes a few things are to be noted.

(A) In order that the prior marriage be authentically declared invalid, regularly there must be a double judicial sentence favoring nullity, from the Constitution of Benedict XIV *Dei miseratione* and from cc. 1986-1987. Nevertheless, from cc. 1990-1992, a marriage can be declared null by the Ordinary, with the intervention, however, of the defender of the matrimonial bond, without need of a second sentence, and without the solemnities established in the Constitution *Dei Miseratione*: (a) when there is question of the impediment of disparity of worship, and it is evidently clear that one party is baptized and that the other was not baptized; (b) when there is question of the impediment of bond, and it is certainly clear that the first spouse is legitimate and still living; (c) when there is question of consanguinity and affinity, or also of spiritual relationship, or of the impediment of order or of a solemn vow of chastity; provided from a certain and authentic document it is evidently clear that impediments of this kind exist, concerning which there had not been a dispensation by the authority of the Church[1]. Likewise, if the form prescribed in can. 1094 was not observed where it had to be observed, no judicial process is required, nor the intervention of the defender of the bond, but the case is to be resolved by the Ordinary, or by the pastor, after consulting the Ordinary (*Pont. Commiss.*, October 16, 1919).

[1] Ap. *Collect. P. F.*, n. 1575.

948. (B) In the case of the death of the first spouse, moral certitude concerning his or her death is required, so that he sins gravely who contracts a new marriage without such certitude, even if in fact the prior spouse had died.

[2] Ap. *Acta S. Sedis*, XXXIII, p. 756-758.

But for obtaining this certitude, the mere absence of the spouse for many years does not suffice, unless other positive indications are added. Hence, according to the Instruction of the Holy Office[3], May 13, 1868, this method is to be followed: (a) first, an authentic document of death should diligently be sought from the registers of the parish or hospital or military service, or, if it cannot be had from ecclesiastical authority, from the civil Government of the place in which the person died. (b) If such a document cannot be had, witnesses should be heard, at least two, sworn, worthy of faith, who depose concerning their own fact, who knew the deceased, and who are concordant among themselves as to the place and cause of death and other substantial circumstances. (c) Sometimes one witness is admitted, provided he is immediate, above every exception, and his deposition is supported by other grave supports; or, if extrinsic supports are lacking, his testimony is in every part congruous and probable. (d) If there are no eyewitnesses, the testimony of those can be accepted who, otherwise worthy of faith, testify that they heard of the death of the spouse from others at a non-suspect time, provided their statements correspond to the other circumstances occurring in the case. (e) If not even one witness is found such as above, proof of death must cautiously be investigated from conjectures, presumptions, indications, and any adjuncts whatsoever, which can be had from relatives, friends, neighbors, and acquaintances of each spouse[4].

[3] Ap. *Acta S. Sedis*, VI, p. 436-441; Gasparri, t. II, p. 523.

[4] Concerning these read the cited Instruction, or Feije, n. 444. - Thus, from the decree of the Holy Office, July 20, 1898 (ap. *Acta S. Sedis*, XXXI, p. 252), faculty was granted to Italian Bishops of conceding a document of liberty to the wives of soldiers who had fought at Adwa in Africa, and of whom no memory remained, notwithstanding investigations made by the Government.

Nor, if there is need, is an investigation through public newspapers to be passed over, after all necessary indications of the person have been given to their director, unless prudence has prohibited this. But a new marriage is not to be permitted unless the greatest probability, or moral certitude, is obtained.

Therefore, in practice, the pastor can assist at new nuptials, no permission of the Ordinary having been sought, provided that it is morally certain concerning the death of the prior spouse. But if the matter is doubtful, let him have recourse to the Bishop, who himself, when the matter seems complex, should set forth the case to the Holy See.

949. 3° On the manner of acting after the second marriage has been entered. (A) If someone in fact has entered second nuptials with a probable and serious doubt concerning the death of the prior spouse, he is indeed held to render the debt to the other spouse, who is in good faith, but he cannot ask for it, because he is equated to a possessor in bad faith. If, however, the doubt was light, and, after inquiry has been made, no probable indication has been found that the prior spouse survived, it is licit to render and to ask for the debt, because then there is had the greatest probability, which is equivalent to moral certitude.

(B) If both spouses contracted in good faith, and doubt afterwards supervenes, the matter must diligently be investigated; but, if, after inquiry has been made, doubt remains, it is licit for the one doubting to ask for and render the debt; for since he is a possessor in good faith, he is not to be deprived of his right until it is morally certain that the possession is unjust[1].

[1] Thus it can be inferred from the response of the Holy Office, March 22, 1865, ad 2um, ap. *Collect. Paris.*, n. 973, and from the Instruction of the S. C. Prop. F., 1792, ibid., n. 971.

(C) If finally it is morally certain that the prior spouse is still living, the second marriage is null, and therefore must be dissolved; and one must return to the prior spouse. - Nevertheless the offspring, begotten from the second marriage, is held as legitimate, on account of the good faith of the parents.

II. On the Impediment of Vow.

950. 1° Notion. There are two vows which render marriage not only illicit, but also invalid: -

[1] St. Thomas, *Supplem.*, q. 53, a. 2; *Decretal.*, l. IV, t. 6, *Qui clerici vel voventes matrimonium contrahere possunt*; Canonists on this title; Sanchez, lib. VII, disp. 25-26; St. Alphonsus, n. 1024-1026; Carriere, n. 640-663; Ball. P., n. 620-623, ed. 3; Feije, n. 514-530; Gasparri, n. 564-576.

(A) A solemn vow of perfect chastity validly emitted in a religious Order approved as solemn: "If anyone shall say that clerics constituted in sacred orders, or regulars solemnly professed in chastity, can contract Matrimony, and that the contract is valid... let him be anathema."[2] (a) That vow must be solemn, not simple, and therefore simple vows, which are emitted in religious Orders after the novitiate, to last for three years, do not dirimently impede marriage. (b) It must be emitted in a religious Order approved as solemn; in antiquity there were no Orders except of this kind; but today there are many Congregations, especially of women, in which only simple vows are emitted, which indeed prohibit marriage (above, n. 895), but do not invalidate it. (c) It must be valid, that is, freely emitted, and with those things which by law must be observed for the validity of religious profession having been observed.

[2] Trent, sess. XXIV, can. 9.

(B) The simple vows of scholastics and coadjutors of the Society of Jesus, emitted after a two-year novitiate, by force of a special privilege conceded by Gregory XIII[3]; nevertheless the General can dispense from them.

[3] Constit. *Ascendente Domino*, May 25, 1584. This privilege is not extended to other Orders. Note, however, that the simple vows of the Jesuits do not dissolve a ratified marriage contracted before.

The Code, c. 1073, has sanctioned both thus: "Likewise religious who have professed solemn vows, or simple vows to which by a special precept of the Apostolic See the force of invalidating nuptials has been added, invalidly attempt marriage."

951. 2° Penalties against Regulars attempting marriage. Regulars or Nuns presuming to contract marriage after a solemn vow of chastity, even merely civilly, and also all those presuming to contract marriage with any one of the aforesaid persons[1], incur excommunication *latae sententiae* simply reserved to the Apostolic See. Nevertheless, since it is said "presuming," ignorance even crass or supine[2] excuses from this censure.

[1] Thus *Code*, c. 2388.

[2] *Code*, c. 2229.

952. 3° By what law does a solemn vow dirimently impede marriage? Today it is commonly handed down, against a few ancient Canonists, that a solemn vow does not dirimently impede marriage by natural law, but only by ecclesiastical law. For (a) a simple vow does not invalidate marriage; but the very solemnity of the vow certainly arises from ecclesiastical law, not from natural law. (b) Besides, from history it is clear that this impediment was successively introduced into the Church; thus in the time of Gregory the Great, it was provided that monks deserters from the rule should be brought back to the monastery even unwilling; at the beginning of the twelfth century, it was decreed in Lateran Council I that their marriages should be invalid; and in Lateran II, 1139, the same was declared with regard to the marriages of nuns[3]. (c) Finally the Church sometimes dispenses in this impediment; thus Pius VII dispensed with many solemnly professed monks and nuns, for revalidating marriages sacrilegiously entered during the French disturbance.

[3] Cf. De Angelis, lib. IV, tit. 6, n. 6; Esmein, I, p. 269-283.

Only the Pontiff can dispense from a solemn vow of chastity. But the Code concedes to Ordinaries the faculty of dispensing concerning impediments even public ones of ecclesiastical law (except the sacred order of the Presbyterate and affinity of the direct line from a consummated marriage), and therefore also concerning a solemn vow of chastity, when danger of death urges, scandal having been removed[4].

[4] *Code*, c. 1043.

III. On the Impediment of Order.

953. 1° Notion and existence. A sacred or major order, validly and freely received, dirimently impedes subsequent marriage, at least in the Latin Church. Thus from Trent cited above (n. 950)[6].

[5] St. Thomas, *Supplem.*, q. 53, a. 3-4; *Decretal.*, l. IV, tit. 6, *Qui clerici vel voventes matrim. contrahere possunt*; Canonists on this title; Sanchez, lib. VII, disp. 27-31; St. Alphonsus, 1058-1059; Carriere, n. 787-802; Ball. P., n. 763; Feije, n. 504-513; Gasparri, n. 577-595.

[6] "Clerics constituted in sacred orders invalidly attempt marriage" (*Code*, c. 1072).

But a law of this kind is much more ancient than the Council of Trent. For since Christ and the Apostles, both by words and by examples, had praised continence, from the first times of the Church many clerics preserved virginity, married men were gradually removed from the clerical state, or, after sacred orders had been received, lived separated from their wives; and thus, gradually and imperceptibly, the law of celibacy was introduced by custom, and sacred order was held as a diriment impediment. And deservedly so; for, as is set forth more fully in the Treatise *On the Various Obligations of States*, it is altogether fitting that major clerics abstain from marriage, both because the state of continence undertaken for God is more perfect than the matrimonial state, and because those cultivating virginity can devote themselves wholly and all their powers to the service of God and the salvation of souls, since they are not entangled in domestic cares. - According to St. Thomas,

marriage of clerics among Latins is dirimently impeded not only by force of order, but also from the vow of continence annexed to sacred orders[1].

[1] *Supplem.*, q. 53, a. 3. - In reality Boniface VIII (cap. unic. *de Voto*, in 6°) says: "We have judged that it must be declared that only that vow ought to be called solemn, as regards dirimently impeding marriage contracted afterwards, which shall have been solemnized by the reception of sacred order, or by profession"...

954. It is said (a) sacred order, that is, in the Latin Church[2], the subdiaconate and the other higher orders. Hence minor clerics can validly marry, but by marrying a wife they fall from the clerical state and lose the principal clerical privileges.

[2] Among some Eastern Churches, the subdiaconate is numbered among the minor orders, but everywhere the diaconate is held as a sacred order. Cf. Gasparri, n. 591.

(b) At least in the Latin Church; for, although among the Maronites and Italo-Greeks sacred order dirimently impedes subsequent marriage, it is disputed whether the same must be said with relation to all Orientals. The affirmative opinion seems more probable. Hence if any schismatics, after marriage contracted after sacred ordination, are converted, they must indeed be punished, because they married contrary to the canons, but the question concerning the validity of their marriage must be referred to the Holy See.

(c) Sacred order dirimently impedes a subsequent marriage, but not one contracted before, even if only ratified, but only prohibits its use in the Latin Church; among Orientals, clerics in sacred orders, with bishops excepted, can use a marriage previously validly contracted.

(d) Order freely received: for, if someone unwillingly receives order, the ordination is invalid, nor does it produce any obligation; if under grave fear, the ordination is valid, but he can be reduced to the lay state, coercion and defect of ratihabition having been legitimately proved, by sentence of the judge, without any obligations of celibacy and canonical hours, as is clear from the Code, can. 214. But coercion and defect of ratihabition must be proved according to the norm of can. 1993-1998.

955. 2° By what law does it dirimently impede marriage? By ecclesiastical law only; for divine law, although praising virginity, nevertheless did not prescribe it to the ministers of the Church. Hence the Supreme Pontiff, and indeed he alone, can dispense from this impediment; yet he is not accustomed to do this except for a most grave cause: for example, for the public good; thus Casimir, a deacon and Cluniac monk, having been made king of Poland, obtained from Benedict IX a dispensation that he could marry a wife; - or for avoiding greater inconveniences, as was done at the time of the French disturbance with regard to clerics who had entered nuptials civilly[1]. - Moreover, the Code concedes to Ordinaries the faculty of dispensing with deacons and subdeacons, but not priests, in the article of death, so that they can validly and licitly contract marriage, for consulting conscience and, if the case requires, for the legitimation of offspring[2].

[1] Nevertheless Pius VII did not wish to revalidate the marriage of Talleyrand, Bishop of Autun. In reality dispensation is granted rarely to subdeacons and deacons, very rarely to priests, never to Bishops. Whenever it is granted, it is enjoined that the cleric reduced to the lay state can in no way exercise the orders received; but the obligation of the breviary is commuted into other good works.

[2] *Code*, c. 1043.

956. 3° Penalties enacted against violators of this law. Clerics constituted in sacred orders who presume to contract marriage, and likewise persons presuming to contract with them, incur excommunication *latae sententiae* simply reserved to the Apostolic See, as was said above (n. 951) concerning Regulars.

§ IV. On Impediments Which Affect the Capacity of the Contracting Parties Relatively.

Six impediments of this kind are given: relationship, affinity, public honesty, disparity of worship, abduction, and crime. Relationship, however, is threefold: natural, or consanguinity, which arises from carnal generation; spiritual, which arises from regeneration through baptism; legal, which arises from adoption: concerning these, separate things must be said.

I. On the Impediment of Consanguinity.

957. 1° Notion. (A) Consanguinity (unity of blood) is the nearness of persons descending from the same stock, or progenitor; or more fully, the bond existing between persons of whom one descends from another, or who both descend from the same, as from a common and proximate stock, through carnal generation.

[1] St. Thomas, *Supplem.*, q. 54; *Decretal.*, l. IV, t. 14, *De consanguinitate et affinitate*; Canonists on this title; Sanchez, l. VII, disp. 50-53; St. Alphonsus, n. 1029-1030; Carriere, n. 664-677; Ball. P., n. 654-665, ed. 3; Feije, n. 347-369; Konings, n. 1580-1585; Scavini, III, n. 781, and annotation, n. 889-891; Noldin, n. 96-103; Gasparri, n. 662-684; Mansella, p. 32-41; Deshayes, *Nouvelle Methode pratique pour la recherche des empechements de Consanguinite*, Paris, 1898.

(B) It is explained. (a) Consanguinity exists both between persons of whom one descends from another, whether immediately, as a daughter from a father, or mediately, as a granddaughter from a grandfather; and between persons who descend from a common stock, although not one from another, as a brother and sister, who arise from the same father, a male cousin and a female cousin, from the same grandfather.

(b) The common stock can be either the father or the mother; nor is it required for consanguinity that both descend from the same father and mother.

(c) Nevertheless it is required that the stock be proximate, not altogether remote; for the force of the stock becomes weaker in proportion as it is derived through more generations; and therefore, if the stock is very remote, the persons flowing from it are no longer consanguineous except in a broad sense.

(d) Carnal generation, whether licit or illicit, is as it were the foundation of this consanguinity, and the medium by which common blood is transmitted; hence consanguinity is twofold: legitimate and illegitimate.

958. (C) Therefore three things must be distinguished in consanguinity: stock, line, degree. (a) The stock is the person (whether father or mother) from whom, as from a root, blood relatives take their origin: thus brothers have their father as a common stock.

(b) Line is the series of persons who arise from the same stock. It is twofold: direct and collateral; the former is the series of persons of whom one descends from another, and therefore includes

ascendants, such as father, grandfather, great-grandfather, etc., and descendants, namely son, grandson, great-grandson, etc. See the genealogical tree. - The collateral, or oblique or transverse line is the series of persons who descend from the same stock, but not one from another; for example brother and sister, male cousin and female cousin, etc. This line is equal when the blood relatives are equally distant from the common stock, as brother and sister, male cousin and female cousin; but unequal, when one is more and the other less distant from the common stock, for example maternal uncle and niece.

(c) Degree is the measure of distance between consanguineous persons and the common stock from which they take origin; thus brother and sister are in the first degree of collateral consanguinity, because they are distant by one degree from the common stock.

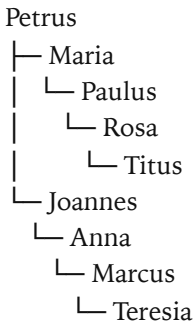
959. 2° On the computation of degrees. The mode of computing these degrees is not the same in canonical law as in Roman civil law or in most modern civil laws[1]. We hand down the canonical method, which is also called Teutonic, or Germanic, because the Church received it from the Germans.

[1] In the direct line canonical and civil law agree; but in the collateral line there is a great difference; for, according to Roman law, there are as many degrees as there are generations on each side, so brother and sister, by civil law, are in the second degree; brother and niece from a sister are in the third, brother and the daughter of a niece in the fourth, etc. Cf. Gasparri, n. 664.

(A) In the direct line, there are as many degrees as generations, or in other words there are as many degrees as persons, the stock alone being removed; thus father and daughter are in the first degree, grandfather and granddaughter in the second degree, great-grandfather and great-granddaughter in the third degree, etc.

(B) In the equal collateral line, persons are distant from one another by that degree by which they are distant from the common stock, or there are as many degrees as persons in one line, the stock being removed; for example, brother and sister (in the diagram Mary and John) are in the first degree; their children (Paul and Anna) in the second; their grandchildren (Rosa and Mark) in the third; and their great-grandchildren (Titus and Teresa), in the fourth; as is shown in the following diagram:

Diagram:



960. (C) In the unequal collateral line, persons are distant from one another by that degree by which the more remote of them is distant from the common stock, or there are as many degrees as persons in the longer line, the stock being removed; thus in the preceding diagram John and Rosa are in the third degree, because the more remote person, namely Rosa, is

distant by three generations from Peter, the common stock; Paul and Teresa are in the fourth degree, because Teresa is distant by four degrees from Peter. - Nevertheless, according to the style of the Chancery, sometimes it is necessary, when a dispensation is sought, to express also the nearer degree; which is thus explained: John and Rosa are blood relatives in the third degree mixed with the first[1], or in the third touching the first of the unequal collateral line; Paul and Teresa are blood relatives in the fourth degree mixed with the second, or in the fourth touching the second, etc.

[1] Here it is worth the trouble to note that the clause "in a simple and mixed degree," which is frequently found in faculties of the Holy See, is used in a threefold sense. More often it designates, as in our case, some degree of consanguinity mixed with some more remote degree. But sometimes by simple degree the numerical multiplicity of the same impediment is excluded, while by mixed degree a multiple impediment from the same head is understood. Finally, simple degree sometimes excludes the concurrence of impediments distinct in species, while mixed signifies that in the case there are several impediments distinct in species. - Therefore the sense must be determined from the context.

961. So that the degrees of consanguinity may be more easily understood, we here subjoin the tree of consanguinity, and the names of blood relatives up to the fourth degree.

(a) In the middle of the direct line is found the letter N., which represents the person whose relationship is being sought; above N. in the direct line are found his ascendants, and below his descendants, if there are any; since there can be several, we use the plural number, for example grandfathers, grandmothers, sons, daughters, etc. From the direct line the oblique or collateral lines are deduced: on the right side, in which the sisters are placed, are placed female blood relatives and males joined through the female sex; on the left side, in which the brothers are placed, are placed male blood relatives and females joined through the male sex. The numbers 1, 2, 3, 4 express the degree of consanguinity between N. and the persons placed in the cells.

(b) When the nearness of two persons is investigated, the name of one must be written in cell N., and afterwards inquiry must be made in what cell the other person is found; for example, if she is the daughter of his sister, her name must be written in the cell beneath the sister (see the tree); and thus it will easily be clear that they are blood relatives in the second degree touching the first.

(c) Where the lines are joined, there the common stock is had; thus in the aforesaid case the lines are joined in cell 1 of the direct line[1], above N.

[1] The numbers 1, 2, 3, 4 indicate the degree of consanguinity between N. and the various persons set forth in the diagram.

(d) If the person concerning whom it is doubted whether he or she is joined with N. is not found in one of the cells of the tree, it is inferred from this that he or she is not consanguineous within the fourth degree; for all persons joined with N. in the fourth degree are found there.

Tree of Consanguinity:

Direct line:
4 Abavi / Abaviae
3 Proavi / Proaviae
2 Avi / Aviae
1 Pater / Mater

N
1 Filii / Filiae
2 Nepotes / Neptes
3 Pronepotes / Proneptes
4 Abnepotes / Abneptes

Paternal collateral line:
1 Fratres / Sorores
2 Patrui / Amitae; Fratrum filii / Fratrum filiae
3 Patrui magni / Amitae magnae; Fratrum nepotes / neptes; Sobrini / Sobrinae
4 Propatrui / Proamitae; Fratrum pronepotes / proneptes; Sobrinorum filii / filiae; Abnepotes / Abneptes

Maternal collateral line:
1 Fratres / Sorores
2 Avunculi / Materterae; Sororum filii / filiae
3 Avunculi magni / Materterae magnae; Sororum nepotes / neptes; Sobrini / Sobrinae
4 Proavunculi / Promaterterae; Sororum pronepotes / proneptes; Sobrinorum filii / filiae; Abnepotes / Abneptes

962. Names of blood relatives up to the fourth degree.

Group	Degree	Latin	Italian	French	English	German
Names of ascendants in the direct line	1	Pater	Padre	Pere	Father	Vater
Names of ascendants in the direct line	1	Mater	Madre	Mere	Mother	Mutter
Names of ascendants in the direct line	2	Avus	Nonno, Nonna	Aieul	Grand father	Grossvater
Names of ascendants in the direct line	2	Avia	Avolo, Avola	Aieule	Grand mother	Grossmutter
Names of ascendants in the direct line	3	Proavus	Bisnonno, Bisnonna	Bisaieul	Great Grand father	Urgrossvater
Names of ascendants in the direct line	3	Proavia	Bisavolo, Bisavola	Bisaieule	Great Grand mother	Urgrossmutter
Names of ascendants in the direct line	4	Abavus	Trisnonno, Trisnonna	Trisaieul	Grand Great Gd. father	Ururgrossvater

Group	Degree	Latin	Italian	French	English	German
Names of ascendants in the direct line	4	Abavia	Trisavolo, Trisavola	Trisaieule	Grand Great Gd. mother	Urgrossmutter
Names of descendants in the direct line	1	Filius	Figlio	Fils	Son	Sohn
Names of descendants in the direct line	1	Filia	Figlia	Fille	Daughter	Tochter
Names of descendants in the direct line	2	Nepos	Nepote	Petit-fils	Grandson	Enkel
Names of descendants in the direct line	2	Neptis	Nepote	Petite-fille	Granddaughter	Enkelin
Names of descendants in the direct line	3	Pronepos	Pronepote	Arriere petit-fils	Great grandson	Urenkel
Names of descendants in the direct line	3	Proneptis	Pronepote	Arriere petite-fille	Great granddaughter	Urenkelin
Names of descendants in the direct line	4	Abnepos	Abnepote	Bisarriere petit-fils	Gr. Great Gdson	Ururenkel
Names of descendants in the direct line	4	Abneptis	Abnepote	Bisarriere petite-fille	Gr. Great Gddaughter	Ururenkelin
Blood relatives on the father's side in the collateral line	1	Frater	Fratello	Frere	Brother	Bruder
Blood relatives on the father's side in the collateral line	1	Soror	Sorella	Soeur	Sister	Schwester
Blood relatives on the father's side in the collateral line	2	Patruus	Zio paterno	Oncle paternel	Paternal uncle	Onkel (Vatersbruder)

Group	Degree	Latin	Italian	French	English	German
Blood relatives on the father's side in the collateral line	2	Amita	Zia paterna	Tante paternelle	Paternal aunt	Tante (Vaterschwester)
Blood relatives on the father's side in the collateral line	3	Patruus magnus	Fratello dell' avolo	Grand oncle paternel	Great uncle	Gross onkel (Gr. Vat. bruder)
Blood relatives on the father's side in the collateral line	3	Amita magna	Sorella dell' avolo	Grand'tante paternelle	Great aunt	Gross tante (Gross V.1 schwester)
Blood relatives on the father's side in the collateral line	4	Propatruus	Fratello del bisavolo	Gd-oncle frere du bisaieul	Great grand-uncle	Ur gross vaters bruder
Blood relatives on the father's side in the collateral line	4	Proamita	Sorella del bisavolo	Gd'tante soeur du bisaieul	Great grand-aunt	Ur gross vaters schwester
Blood relatives on the mother's side in the collateral line	1	Frater	Fratello	Frere	Brother	Bruder
Blood relatives on the mother's side in the collateral line	1	Soror	Sorella	Soeur	Sister	Schwester
Blood relatives on the mother's side in the collateral line	2	Avunculus	Zio materno	Oncle maternel	Maternal uncle	Oheim (Mutters bruder)
Blood relatives on the mother's side in the collateral line	2	Matertera	Zia materna	Tante maternelle	Maternal aunt	Muhme (Mutters schwester)
Blood relatives on the mother's side in the collateral line	3	Avunc. magnus	Fratello dell' avola	Grand oncle maternel	Gdmother's brother	Gross oheim (Gr. M. bruder)

Group	Degree	Latin	Italian	French	English	German
Blood relatives on the mother's side in the collateral line	3	Matertera mag.	Sorella dell' avola	Grand'tante maternelle	Grmother's sister	Gr. muhme (Gr. M. schwester)
Blood relatives on the mother's side in the collateral line	4	Proavunculus	Fratello della bisavola	Gd-oncle frere de la bisa.	Gr. gdmother's brother	Ur gross oheim (Ur g. m. br.)
Blood relatives on the mother's side in the collateral line	4	Promatertera	Sorella della bisavola	Gd'tante soeur de la bisa.	Gr. gdmother's sister	Ur gros muhme (Ur g. m. sch.)
Blood relatives on the sister's or brother's side in the collateral line	1	Frater	Fratello	Frere	Brother	Bruder
Blood relatives on the sister's or brother's side in the collateral line	1	Soror	Sorella	Soeur	Sister	Schwester
Blood relatives on the sister's or brother's side in the collateral line	2	Consobrini	Cugini carnali	Cousins germains	First cousins	Geschwisterkinder
Blood relatives on the sister's or brother's side in the collateral line	2	Consobrinae	Cugine carnale	Cousines germaines	id.	id.
Blood relatives on the sister's or brother's side in the collateral line	3	Sobrini	Cugini	Cousins issus de germains	Second cousins	andere Geschwisterkinder
Blood relatives on the sister's or brother's	3	Sobrinae	Cugine	Cous. issues de germains	id.	id.

Group	Degree	Latin	Italian	French	English	German
side in the collateral line						
Blood relatives on the sister's or brother's side in the collateral line	4	Abnepos	Abnepoti	Petit cousin	Third cousins	dritte Geschwisterkinder
Blood relatives on the sister's or brother's side in the collateral line	4	Abneptis	Abnepote	Petite cousine	id.	id.

963. 3° On the extension of the impediment of consanguinity. (A) The extension of this impediment was diverse according to diverse times: in the first centuries of the Church the impediment was in force in the first degree touching the second, namely between paternal uncle or maternal uncle and niece, between paternal aunt or maternal aunt and nephew, but not in the equal second; as the fourth century was passing, the impediment between first cousins began to be established; afterwards between second cousins; then up to the seventh civil degree; finally up to the seventh canonical degree; which indeed was established especially for joining, by the matrimonial bond, and therefore by the bond of charity, families or peoples separated from one another. Yet, since the prohibition of marriage extended so widely was liable to many difficulties, and rendered not a few marriages invalid, on account of the difficulty of knowing remote degrees, Lateran Council IV limited this impediment to the fourth degree inclusive in the collateral line[1].

[1] Cf. Esmein, I, p. 336-356.

(B) Consanguinity, licit or illicit, in the direct line dirimently impedes marriage to infinity; but in the collateral line formerly it dirimently impeded up to the fourth degree inclusive; but from the Code, c. 1076, it dirimently impedes up to the third degree, and indeed in such a way that the impediment is multiplied only as many times as the common stock is multiplied.

964. (C) If you look to merely natural law, (a) consanguinity in the first degree of the direct line (between father and daughter, mother and son) certainly dirimently impedes marriage by natural law; this is clear from the natural horror which even pagans and barbarians are accustomed to show for such a union; and also from the opposition between the reverence due to parents and the equality which ought to exist between spouses: "It is disordered, says St. Thomas (l. c.), that a daughter be joined to her father by marriage as an associate for the sake of generating and educating offspring, whom it is fitting in all things to be subject to the father, as proceeding from him... there is more derogation from the reverence which is due to parents if a son takes his mother as wife, than if a father takes his daughter, since a wife ought in some way to be subject to her husband."

(b) Probably also by natural law consanguinity in the direct line dirimently impedes marriage to infinity: for the same reason as above, with due proportion, extends to the remaining ascendants and descendants. - Whatever the case may be, in practice the Church never dispenses in this line.

965. (c) In the collateral line, more probably by secondary natural law marriage in the first degree, that is, between brother and sister, is prohibited, if not dirimently impeded; because even the Gentiles commonly abhor it, and in reality it seems opposed to the moral sense. - Yet because it is opposed only to secondary natural law, God could dispense in this, especially at the beginning of the human race, with regard to the sons and daughters of the first parents.

But the Church is not accustomed to dispense; indeed, according to many[1], she never dispenses in the first degree of the collateral line. Hence, if Gentiles converted to the faith had married a brother or sister and at the same time wished to cohabit, the case would have to be referred to the Holy See.

[1] Lehmk., n. 756; Santi, tit. 14, n. 12, thence conclude that a brother and sister who contracted marriage before baptism are to be separated; on the contrary Sanchez, l. VII, d. 52, n. 12, and Giovine, I, § 20, n. 1, think they can be left in the former marriage.

But the other degrees of the collateral line do not dirimently impede marriage by natural law, but only by ecclesiastical law; hence in them the Church can and is accustomed to dispense, not only on account of public but also on account of private utility, which nevertheless must be greater in the nearer degrees, as will be explained below, where Dispensations are treated.

966. 4° On the reason for the impediment of consanguinity. There is especially a threefold reason on account of which this impediment was established: (a) the social good, so that families and cities not only foreign, but also otherwise disassociated, may be bound by the bond of marriage; this reason indeed especially held good in the Middle Ages, when hostility was often in force not only between nations mutually, but also between cities and towns; for then it was especially expedient that citizens of one town should contract with citizens of another city, so that enmities might more easily be extinguished. Today indeed the social condition is not the same; nevertheless a law of this kind favors the diffusion of friendship.

(b) The moral good; for, if blood relatives could easily marry among themselves, frequent occasion would be given for indulging concupiscence; since, on the one hand, blood relatives often live under the same roof, sit at the same table, and frequently visit one another; on the other hand, sins are more easily committed among those with whom the hope of contracting marriage in the future is fostered; hence it is very expedient that, the hope of marriage having been removed, carnal love among blood relatives be restrained.

(c) Also the physical good of offspring: for experience makes clear that marriages among blood relatives, unless both are free from every bodily defect and flourish in strength and youth, are either little fruitful, or from them often arise children deaf or mute, or idiots, or blind, or deformed, or laboring under nervous disease. For if two spouses, troubled by the same defects and morbid tendencies, together contribute to the generation of offspring, defects of this kind will generally be doubled in the offspring; while spouses arisen from diverse families exercise influence upon each other in such a way that the healthier part supplies the weakened powers of the other; hence the

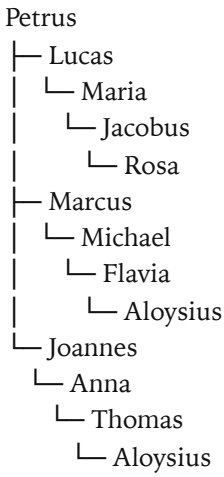
improvement and perfection of offspring is obtained much more efficaciously by avoiding unions, especially frequent ones, among members of the same family[1].

[1] According to Doctor Bemis, ten per cent of deaf-mutes, fifteen per cent of idiots, and five per cent of the blind who are found in public hospitals in the United States of America were born from first-cousin parents. From 757 marriages between first cousins, there were 256 from which deaf-mutes, blind, and idiots were procreated. (Ap. Cooke, *Satan in Society*, p. 182-183). According to Lefebvre (*Les Mariages consanguins*, ap. *Rev. des Quest. Scientif.*, I, 1877, p. 240, 249), from 460 marriages between first cousins there were born 1959 children, of whom 9 were deaf-mutes, 36 idiots; which proportion is much greater than for marriages among those who are not blood relatives. Cf. Charazain, *Du Mariage entre consanguins considere comme cause de degenerescence organique et particul. de surdo-mutite congenitale*, Montpellier, 1859; Allen, *Marriages of the Deaf in America*, 1898.

967. 5° On multiple consanguinity. Consanguinity can be multiple, arising either from one or from several stocks; and it is necessary to understand this rightly, since each bond of this kind constitutes an impediment that must necessarily be expressed for obtaining a valid dispensation.

(A) Under the old law, the first cause of multiplicity was when someone had offspring from a person consanguineous to himself; for although there is one common stock, the persons about to marry descend by a double way from this common stock: which sufficed for a double impediment.

Diagram:



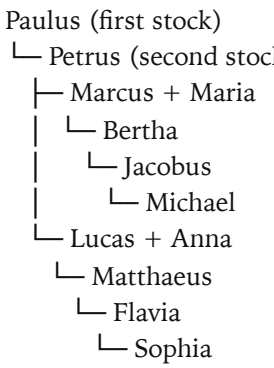
Thomas and Flavia are indicated as spouses.

In this diagram Peter is the common stock, from whom all the others descend. We suppose that Thomas married Flavia, his second cousin, and from her begot Aloysius. This being posited, Aloysius and Rosa were blood relatives in the double unequal fourth, because both descend from the common stock Peter, and are distant from him by four generations; and one of them, Aloysius, descends from Peter by a double way, namely through Thomas and Flavia. For in the old legislation impediments could be multiplied from the same stock, while in the new legislation the impediment of marriage is multiplied only as many times as the common stock is multiplied.

968. (B) The second cause is when persons consanguineous among themselves procreated offspring from persons consanguineous among themselves, for example when two brothers arisen from

one stock marry two sisters from another stock, and from them generate offspring.

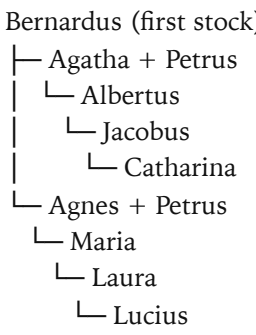
Diagram:



As appears from this stemma, two brothers, Marcus and Lucas, from the stock Peter, contract marriage with two sisters, Mary and Anna, from the stock Paul; hence Bertha and Matthew are blood relatives in the double equal second, because each descends both from Peter and from Paul, and each is distant by two generations from each stock; Jacob and Flavia are in the double equal third, because each is distant by three generations from each stock: which impediment still holds today; formerly Michael and Sophia were bound by the double equal fourth.

969. (C) The third cause is when someone has offspring from several persons consanguineous among themselves, for example when someone successively contracts with two sisters or first cousins and from them generates offspring.

Diagram:



Petrus is marked as the second stock.

In this diagram Peter successively marries Agatha and Agnes, two sisters arisen from Bernard: from the former he begot Albert, from the latter he begot Mary, etc. Wherefore Jacob and Laura are blood relatives in the equal third from the stock Bernard, and at the same time in the equal second from the stock Peter; Catherine and Lucius are in the equal fourth from the stock Bernard, and in the equal third from the stock Peter. - But today the impediment of the fourth degree is no longer computed.

Hence the twofold difference between the old and the new legislation must be carefully noted: 1° in the old, marriage in the collateral line is invalid up to the fourth degree inclusive, while in the new, up to the third inclusive; 2° in the old, impediments could be multiplied from the same stock, while

in the new, the impediment of marriage is multiplied only as many times as the common stock is multiplied.

970. Corollary: On the manner of finding the degrees of consanguinity.

(A) When there is one common stock, and it is known, a descending genealogical tree is easily made by writing the name of the common stock at the top of the page, and beneath it the names of persons descending from this side and that until the spouses are reached, as in the preceding diagrams. This being posited, the degrees are easily computed according to the rules set forth above.

971. (B) But the difficulty increases when multiple consanguinity is present and the persons about to marry know only in a confused way that they are blood relatives, without being able to indicate the various common stocks.

(a) First, a double ascending genealogical tree must be drawn, one for the bridegroom and the other for the bride; namely in the first cell is written the name of the bridegroom, - afterwards the name of his father and mother, - then the name of the grandfathers and grandmothers on the father's side and on the mother's side, and so on up to the third degree from the new law, up to the fourth from the old law. This indeed is done both from the declarations of the spouses and from the registers, by writing names and surnames, so that errors may more easily be avoided.

(b) Then a comparison should be made between each genealogical tree, and with a special sign, for example the same letter A, B, C..., the persons common to each tree should be marked: for there are as many stocks as there are common persons. Nevertheless two spouses, who are the cause of relationship, are not to be counted as a double stock: for they form only one and the same stock.

(c) Afterwards the computation of impediments and degrees is made. Now there are as many impediments as there are common stocks. Formerly, before Pentecost 1918, several impediments sometimes arose from the same stock: if from the persons about to marry one ascends to the common stock by a double or triple way, or, in other words, if a double or triple line can be drawn from one spouse to the other through the common stock, there is a double or triple impediment. The general rule was that there are as many distinct impediments as there are diverse ways of going from the bridegroom to the bride, by a continuous line, through the common stock. That diverse ways be present, it was enough that diversity be present in one of the links by which the spouses were connected. - In computing bonds and degrees, attention was paid only to the nearer stock; but, if the nearer stock consisted of two parents who were consanguineous among themselves, one had to ascend to the more remote stock from which those parents themselves arose, provided it was within the fourth degree; for example, if two spouses, Lucas and Sophia, were bound in the second degree, because they descended from grandparents Henry and Julia, who themselves were first cousins, as being grandchildren of Peter, a double stock was given: one nearer (Henry-Julia), and the other more remote, namely Peter; and thus there were three impediments: one in the second degree from the stock Henry-Julia, two in the fourth degree from the stock Peter, because by a double way (through Julia and through Henry) one ascended from the spouses to Peter[1], or, in other words, a double line could be drawn from Lucas to Sophia through the stock Peter. But from the Code this case cannot occur, because the impediment in the collateral line is not extended beyond the third degree.

[1] Thus from the decree of the Holy Office, March 11, 1896, ap. Deshayes, *Nouvelle Methode*, p. 37-48.

(d) Finally, after the various stocks have been found and the degrees computed, it is expedient to make a descending genealogical tree, so that it may be better clear whether an error has been committed or not; for thus the degrees are more easily computed and the genealogy of the spouses is more clearly exhibited.

We subjoin here a genealogical tree of the bridegroom and the bride, according to the ascending method, p. 610.[2]

[2] This stemma is taken, with a few changes, from the above-praised work of Deshayes, *Nouvelle Methode*, where the method which is called symbolic is explained, and which will greatly profit especially those who frequently have to delineate a genealogical tree.

Ascending genealogical tree of the bridegroom and bride:

Sponsus: Henricus Dubois
Parents: Julius Dubois + Maria Guerin

Line through Julius Dubois:
- Josephus Dubois + Aloysia Guerin
  - Stephanus Dubois + Lucia Guerin
    - Marcellus Dubois + Josephina Dugue
    - Robertus Guerin
  - Paulus Guerin + Anna Martin
    - Rob. Guerin
    - Felix Martin

Line through Maria Guerin:
- Petrus Guerin + Clara Dubois
  - Paulus Guerin + Prud. Boucher
    - Rob. Guerin
  - Stephanus Dubois + Lucia Guerin
    - Marcellus Dubois + Josephina Dugue
    - Rob. Guerin

Sponsa: Julia Guerin
Parents: Franc. Guerin + Adel. Guerin

Line through Franc. Guerin:
- Petrus Guerin + Anna Guerin
  - Paulus Guerin + Prud. Boucher
    - Robert. Guerin
  - Anatol. Guerin + Bertha Dubois
    - Robert. Guerin
    - Marcel. Dubois + Josepha Dugue

Line through Adel. Guerin:
- Alphons. Guerin + Desid. Guerin
  - Anatol. Guerin + Bertha Dubois
    - Robert. Guerin

- Marcel. Dubois + Josepha Dugue
- Paulus Guerin + Zoe Martin
- Robert Guerin
- Felix Martin

972. In this double stemma we have marked with the same letter A, B, C, D, E the persons who are common to the genealogy of the bridegroom and the bride, and from this it is immediately clear that there are five common stocks, namely A Peter Guerin, B Paul Guerin, C Marcel Dubois, D Robert Guerin, E Felix Martin. For computing the impediments, moreover, inquiry had to be made under the old law by how many ways Henry Dubois and Julia Guerin descend from these various stocks. - This indeed could be done from this stemma, since all the ways by which one ascends from the spouses to the stocks are carefully noted there. The degrees likewise are clearly shown by the numbers (1) (2) (3) (4). - But this is also better perceived in the descending tree or genealogy, which we delineate below.

Descending genealogy:

D Robertus Guerin
├─ Lucia Guerin
│ ├─ Jos. Dubois -> Jul. Dubois -> Henr. Dub.
│ └─ Clara Dub. -> Maria Guer. -> Henr. Dub.
├─ B Paulus Guerin
│ ├─ Aloysia Guerin -> Julius Dubois -> Henr. Dubois
│ ├─ A Petrus Guerin
│ │ ├─ Maria Guer. -> Henr. Dub.
│ │ └─ Fr. Guer. -> Julia Guer.
│ └─ Desida Guerin -> Adel. Guerin -> Julia Guerin
└─ Anatol. Guerin
  ├─ Anna Guerin -> Franc. Guerin -> Julia Guerin
  └─ Alph. Guerin -> Adel. Guerin -> Julia Guerin

C Marcellus Dubois
├─ Stephanus Dubois
│ ├─ Jos. Dubois -> Jul. Dubois -> Henr. Dubois
│ └─ Clara Dubois -> Maria Guerin -> Henr. Dubois
└─ Bertha Dubois
  ├─ Alphons. Guerin -> Adel. Guerin -> Julia Guerin
  └─ Anna Guerin -> Franc. Guerin -> Julia Guerin

E Felix Martin
├─ Anna Martin -> Aloysia Guerin -> Julius Dubois -> Henr. Dubois
└─ Zoe Martin -> Desida Martin -> Adel. Martin -> Julia Guerin

973. From this it is clear that Henry Dubois and Julia Guerin were bound by 21 impediments according to the old law: -

From the common stock A, Peter Guerin, the persons about to marry are in the equal second, since both descend from a grandfather = 1.

From the common stock B, Paul Guerin, there were three impediments in the equal third, because the spouses descend from the great-grandfather by a triple way; or, in other words, a triple line can be drawn from one spouse to the other through the common stock = 3; but now there is one impediment in the equal third, because there is one common stock.

From the common stock D, Robert Guerin, there were twelve impediments in the equal fourth, since by twelve ways one could ascend from the spouses to the great-great-grandfather Robert Guerin = 12[1]. Now no impediment.

[1] The first way is this: H. Dubois, Jul. Dubois, Jos. Dubois, Lucia Guerin, ROBERT GUERIN, from whom we descend to Paul Guerin, Peter Guerin, Fr. Guerin, Julia Guerin.

Second: H. Dubois, Maria Guerin, Clara Dubois, Lucia Guerin, ROB. GUERIN, Paul Guerin, Fr. Guerin, Julia Guerin.

Third: the same as the first, except that from Paul Guerin we pass to Desidam Guerin, Adel. Guerin, Julia Guerin.

Fourth: the same as the second, except that from Paul Guerin we likewise pass to Desidam Guerin, etc.

Fifth: the same as the first, except that from Rob. Guerin we pass to Anatol. Guerin, Anna Guerin, Fr. Guerin, Jul. Guerin.

Sixth: the same as the second, except that from Rob. Guerin we pass to Anatol. Guerin, etc.

Seventh: the same as the fifth, except that from Anatol. Guerin we pass to Alph. Guerin, Adel. Guerin, Jul. Guerin.

Eighth: the same as the sixth, except that from Anat. Guerin we pass to Alph. Guerin, etc.

Ninth: H. Dubois, Jul. Dubois, Aloysia Guerin, Paul Guerin, ROB. GUERIN, Anat. Guerin, Anna Guerin, Fr. Guerin, Jul. Guerin.

Tenth: the same as the ninth, except that from Anat. we descend to Alph. Guerin, etc.

Eleventh: H. Dubois, Maria Guerin, Peter Guerin, Paul Guerin, ROB. GUERIN, Anat. Guerin, Anna Guerin, Fr. Guerin, Jul. Guerin.

Twelfth: the same as the eleventh, except that from Anat. Guerin we descend to Alph. Guerin, etc.

From the common stock C, Marcel Dubois, there were counted four impediments in the equal fourth, since the spouses descend by four ways from the same great-great-grandfather Marcel Dubois = 4. Now no impediment.

Finally from the stock E, Felix Martin, there was one impediment in the equal fourth, since both spouses descend by one way only from the same Felix Martin = 1. Now no impediment.

II. On Spiritual Relationship.

974. 1° Notion. (A) The impediment of spiritual relationship is a certain nearness of persons arising from Baptism. For since in Baptism we are spiritually born, those who concur for this sacrament, as the minister and sponsors, are held as spiritual fathers of the baptized person.

[2] St. Thomas, *Supplementum*, q. 56; *Decretals*, lib. IV, tit. 11, *De cognatione spirituali*; Canonists on this title; Sanchez, lib. VII, disp. 54-62; St. Alphonsus, n. 1028 and n. 149; Carriere, n. 678-700; Ball. P., n. 642-653, ed. 3; Feije, n. 409-427; Gasparri, n. 733-750.

(B) This impediment already existed in the time of Emperor Justinian, who enumerates it in the catalogue of civil laws, and very probably it was introduced by custom. In the old law there were

three species of this relationship: paternity, co-paternity, and fraternity; and the limits of this impediment were broader than under the present law[1].

[1] Concerning this see, besides the authors cited, Esmein, I, p. 362-374.

975. (C) But Trent, seeing that from this multitude of prohibitions marriages were very often contracted invalidly, abrogated fraternity and limited paternity and co-paternity, so that the impediment of spiritual relationship was in force only:

(a) between the baptizing one and the baptized one, provided the baptizing one is not an infidel;

(b) between the baptizing one and the parents of the baptized;

(c) between the sponsors and the baptized;

(d) between the sponsors and the parents of the baptized[2].

[2] Hence, after Trent, a godfather and godmother do not contract this relationship between themselves, nor with the one baptizing or confirming.

The same had been decreed concerning the sacrament of Confirmation. This was comprised in these words:

The baptizing one, the baptized one, and the parents of the baptized;
The lifting one, the lifted one, and the parents of the lifted.

From the Code, the impediment of spiritual relationship is in force only: (a) between the baptizing one and the baptized one; (b) between the sponsors and the baptized[3].

[3] Code, cc. 1079 and 768.

976. 2° Conditions for incurring the impediment. (A) It is required that Baptism be validly conferred; for relationship is founded upon spiritual generation, and therefore where there is no regeneration, there is no impediment.

(a) Hence, if only the ceremonies of Baptism are supplied, the relationship is not contracted. (Code, can. 762, § 2).

(b) If Baptism is conferred under condition, "neither the sponsor who was present at the prior Baptism, nor he who was present at the later one, contracts spiritual relationship, unless the same sponsor was employed in each Baptism" (can. 763, § 2). - Does the baptizing one contract it? It is doubted.

(c) If Baptism, with the permission of the Bishop, is conferred at home, with the solemnities, as ought to be done, it is certain that the impediment arises from it.

If Baptism is conferred in a private manner, in a case of necessity and without the solemnities, the impediment is certainly contracted between the baptizing one and the baptized, and much more probably also between the sponsors and the baptized. Certainly it is not incurred by those who hold the infant without the intention of fulfilling the office of sponsor; but if they truly intend to undertake the office of sponsor, the S. C. of the Council decreed, not only in a particular case but also in a general manner, on March 5, 1678, that it is incurred[1]. This sort of decree seems to be quite openly confirmed from canon 762, § 2, of the Code, where it is read: "Even in private Baptism a

sponsor, if he can easily be had, is to be employed; if he was not present, he is to be employed in supplying the ceremonies of Baptism, but in this case he contracts no spiritual relationship."

[1] Ap. Gasparri, n. 738. The responses of theologians who were consulted concerning this matter may be read ap. *Analecta Juris Pontif.*, ser. VIII, fasc. 72, p. 1708 sq.

(B) It is required that the minister and sponsors be baptized; otherwise they are not subject to the laws of the Church, nor do they incur this impediment, which is merely ecclesiastical.

977. (C) As regards sponsors, in order that they incur the impediment, they must be validly sponsors, namely:

[2] Cf. Lehmk., n. 758; Marc, n. 2022.

(a) enjoy the use of reason; (b) physically touch the baptized: for this, however, it is not required that they receive the infant into their own hands, but it suffices that they place their fingers upon his shoulders, or in some other way physically touch him at the time when he is baptized[3]; (c) have the intention of undertaking the office of sponsor, but not necessarily of incurring the impediment; hence relationship is not contracted by him who receives the infant only materially, for the sake of greater convenience; hence also, if someone exercises the office of sponsor through a proxy, the mandator, but not the proxy, incurs the impediment, as the S. C. of the Council has declared several times[4]; (d) be designated by the one to be baptized himself, or by his parents or guardians, or, these being lacking, by the minister; (e) not be the father or mother or spouse of the one to be baptized; (f) not belong to any heretical or schismatic sect, nor by condemnatory or declaratory sentence be excommunicated or infamous by infamy of law or excluded from legitimate acts, nor be among clerics deposed or degraded[5].

[3] Thus the S. C. de Prop. Fide, January 21, 1856, ap. Gasparri, n. 744.

[4] Thus, for example, June 11, 1881, ap. *Acta S. Sedis*, XIV, p. 411-417.

[5] Code, c. 765.

978. Corollary. Hence, with Trent admonishing, before the pastor proceeds to confer Baptism, he ought diligently to inquire who, or which persons, have been chosen by the parents as sponsors; and to admit only them, namely not more than one godfather and one godmother, lest the impediments be multiplied; and to teach them what relationship they have contracted, lest they be able to be excused by ignorance.

979. 3° On dispensation in this impediment. Since this impediment is of ecclesiastical law only, the Church is always able to dispense in it; but much more with difficulty between the baptizing one and the baptized[1].

[1] Cf. *Canoniste Contemporain*, March 1903, p. 160.

980. 4° Difference between the new and the old law. (a) Formerly the impediment arose not only from Baptism, but also from Confirmation; now only from Baptism.

(b) Formerly there was also an impediment: 1) between the baptizing one and the parents of the baptized; 2) between the sponsors and the parents of the baptized or confirmed.

III. On the Impediment of Legal Relationship.

981. 1° Notion. (a) Legal relationship is the nearness of persons arising from adoption which is made according to civil laws. Now adoption is a legitimate act by which a person foreign to the family is assumed as a son.

[2] St. Thomas, *Supplementum*, q. 57; *Decretals*, lib. IV, tit. 12, *De cognatione legali*; Canonists on this title; Sanchez, lib. VII, disp. 63; St. Alphonsus, n. 1027; Carriere, n. 701-704; Ball. P., n. 624-641, ed. 3; Feije, n. 428-437; D'Annibale, I, n. 65; Heiss, § 39; Gasparri, n. 751-766; Esmein, I, p. 357-362.

982. (b) This relationship took its origin from civil law; it was introduced especially so that those who do not have offspring by nature might be able, in a legal manner, to obtain adoptive children.

Now in Roman law adoption was twofold: (a) perfect, which is called *adrogatio*, by which a foreign person and one of his own right, by rescript of the prince, passed into the power and family of the adopter, so that he became a necessary heir just as legitimate sons; (b) imperfect, or simple, by which a foreign person, remaining under the power of his father or grandfather, by the authority of a judge was assumed as a son or grandson of the adopter, without, however, passing into his family and becoming a necessary heir.

Now "Those who by civil law are considered incapable of entering marriage with one another on account of legal relationship arising from adoption cannot, by force of canon law, validly contract with one another."[3]

[3] Code, c. 1080.

983. 2° Extension. Hence it appears that the question concerning an impediment of this kind, formerly very complex, today has been placed in a clear state. For each people, the Church decrees that from legal adoption there arises a canonical diriment impediment for all who by civil law are considered incapable of entering marriage with one another because of adoption; but a merely prohibiting impediment where civil law so decrees the matter. Moreover the canonical impediment has the same extension as the civil one. In practice, therefore, recourse must be had to the civil Code of each nation.

In France, from adoption there certainly arises a prohibiting impediment: "Marriage is prohibited: between the adopter, the adopted, and his descendants; between the adoptive children of the same individual; between the adopted and the children, whether legitimate or natural, who might afterward come to the adopter; between the adopted and the spouse of the adopter; and reciprocally between the adopter and the spouse of the adopted" (*Cod. civ.*, 348). It is not, however, a diriment impediment, according to the common opinion of jurists. In Italy, Spain, Poland, Croatia, and Slavonia the impediment is held as diriment.

The reason for this impediment is that it is altogether fitting to exclude from marriage persons who dwell in the same family, lest otherwise they fall into danger of fornication, as was said above concerning consanguinity. Besides this, between the adopter and the adopted there is a special obligation of reverence, which can scarcely be reconciled with conjugal equality.

984. 3° Dispensation. Since this impediment is of ecclesiastical law only, the Church can dispense in it.

IV. On the Impediment of Affinity.

985. 1° Notion and origin. (A) Affinity is the nearness which someone has with the blood relatives of that person with whom he has contracted a valid marriage, whether ratified only, or ratified and consummated[2].

[1] St. Thomas, *Supplementum*, q. 55; *Decretals*, lib. IV, tit. 14, *De consanguinitate et affinitate*; Canonists on this title; Sanchez, lib. VII, disp. 64-67; St. Alphonsus, n. 1068-1078; Carriere, n. 828-949; Ball. P., n. 782-799, ed. 3; Feije, n. 370-383; Gasparri, n. 685-704; Genicot, n. 480-482; Rosset, n. 1912-1982.

[2] Code, c. 97, §§ 1 and 2.

(B) The impediment of affinity was instituted by the Church after the likeness of those prohibitions which are found in the Old Law[3]. First indeed marriages were forbidden between a man and the sister of his deceased wife; afterwards also between him and the first cousin of his deceased wife; then affinity was successively extended to other degrees, up to the seventh, just as consanguinity itself. Indeed, before the Fourth Lateran Council, there were three species of affinity, and affinity begot affinity; but the Lateran Council abrogated two species of affinity, and restricted the third species to the fourth degree[1]. But Trent limited illicit affinity to the second degree; from the Code, there is now no illicit affinity.

[3] Levit., XVIII, 8-18: thus in v. 14 it is said: "Thou shalt not uncover the nakedness of thy father, nor approach to his wife, who is joined to thee by affinity."

[1] Concerning the historical evolution of this impediment, one may read Esmein, t. I, p. 374-383.

986. 2° Extension of affinity. (A) By the new law, affinity dirimently impedes marriage in the direct line in every degree; in the collateral line up to the second degree inclusive[2].

[2] Code, c. 1077.

987. (B) So that the nature of this impediment may be better understood, it must be noted that it is incurred by the man alone with the blood relatives of the woman with whom he contracted marriage, and by the woman alone with the blood relatives of the man whom she married; but by no means by the blood relatives of the man with the blood relatives of the woman: for affinity does not beget affinity. Hence two brothers can marry two sisters; a father and son can marry a mother and daughter[3].

[3] Code, c. 97, § 2.

(C) "Affinity is computed in such a way that those who are blood relatives of the man are affines of the woman in the same line and degree, and vice versa."[4] This will be better understood from the following tree.

[4] Code, c. 97, § 3.

Diagram: Degrees of Affinity.

Center: Man - Wife

Direct ascending line:
Man's blood relatives: father (1), grandfather (2), great-grandfather (3), great-great-grandfather (4).
Wife's blood relatives: mother (1), grandmother (2), great-grandmother (3), great-great-grandmother (4).

Direct descending line:
Man's blood relatives: son (1), grandson (2), great-grandson (3), great-great-grandson (4).
Wife's blood relatives: daughter (1), granddaughter (2), great-granddaughter (3), great-great-granddaughter (4).

Collateral line on the man's side:
brothers (1); father's brother (2); father's brother's son (2); father's brother's grandson (3); father's brother's great-grandson (4);
father's paternal uncle (3); his son (3); his grandson (4);
great-uncle (4); his son (4);
brother's sons (2); brother's grandsons (3); brother's great-grandsons (4).

Collateral line on the wife's side:
sisters (1); mother's sister (2); mother's sister's daughter (2); mother's sister's granddaughter (3); mother's sister's great-granddaughter (4);
mother's maternal aunt (3); her daughter (3); her granddaughter (4);
great-aunt (4); her daughter (4);
sister's daughters (2); sister's granddaughters (3); sister's great-granddaughters (4).

(a) On the right side are found the blood relatives of the wife, and on the left side the blood relatives of the man. Now the wife is affine to all the blood relatives of the man in the same degree in which these are blood relatives of the man; on the other hand, the man is affine to all the blood relatives of the wife in the same degree in which these are blood relatives of the wife; for example, the man, after his wife has died, cannot marry her mother, grandmother, sister, first cousin, etc.; the wife, after her husband has died, cannot contract with his father, grandfather, brother, male cousin, etc.

(b) But the blood relatives of the man, for example his father, grandfather, paternal uncle, brother, etc., can marry the blood relatives of the wife, for example her mother, grandmother, maternal aunt, sister, etc.

988. (E) Names of affines:

Place	Degree	Latin	Italian	French	English	German
In the direct ascending line, on the man's side	1	Socer; Socrus; Nurus	Suocero; Suocera; Nuora	Beau-pere; Belle-mere; Bru, Belle-fille	Father-in-law; Mother-in-law; Daughter-in-law	Schwiegervater; Schwiegermutter; Schwiegertochter
In the direct ascending	2	Prosocer; Prosocrus; Pronurus	Avolo per affinita; Avola per	Aieul par affinite; Aieule par	Wife's grandfather; Wife's grandmother; Grandson's wife	Grossvater der Gattin; Grossmutter

Place	Degree	Latin	Italian	French	English	German
line, on the man's side			affinita; Pronora	affinite; Femme du petit-fils		der Gattin; Enkels Gattin
In the direct ascending line, on the woman's side	1	Socer; Socrus; Gener	Suocero; Suocera; Genero	Beau-pere; Belle-mere; Gendre	Father-in-law; Mother-in-law; Son-in-law	Schwiegervater; Schwiegermutter; Schwiegersohn
In the direct ascending line, on the woman's side	2	Prosocer; Prosocrus; Progener	Avolo per affinita; Avola per affinita; Progenero	Aieul par affinite; Aieule par affinite; Mari de la petite-fille	Husband's grandfather; Husband's grandmother; Granddaughter's husband	Grossvater des Gatten; Grossmutter des Gatten; Enkelins Gatte
In the collateral line	1	Levir, Sororius; Fratria, Glos	Cognato; Cognata	Beau-frere; Belle-soeur	Brother-in-law; Sister-in-law	Schwager; Schwagerin

989. 3° On multiple affinity. "The impediment of affinity is multiplied: 1) as often as the impediment of consanguinity from which it proceeds is multiplied; 2) by marriage repeated successively with a blood relative of the deceased spouse."[1] Thus, from the first head, a wife is three times affine to him who is three times blood-related to the husband; but from the second, a woman who successively contracts marriage with two men blood-related among themselves is twice affine to the other blood relatives.

[1] Code, c. 1077, § 2.

990. Sometimes affinity and consanguinity also exist at the same time between those about to marry; thus, for example, Peter marries Catherine, blood-related to him in the second degree; after his wife has died, he wishes to contract with Gertrude, his wife's sister; there are two impediments in the case, of affinity in the first collateral degree and of consanguinity in the second collateral degree.

991. 4° By what law does affinity dirimently impede marriage? Affinity, even in the first degree of the direct line, more probably arises from merely ecclesiastical law. Hence it is not an impediment for infidels, even if they afterwards receive Baptism. For canon 97 of the Code establishes that affinity arises from marriage whether ratified, or ratified and consummated; but, according to c. 1015 of the Code, a valid marriage of baptized persons is called ratified. - But the impediment is incurred from a valid marriage between a baptized party and an infidel[2], the ecclesiastical law directly reaching the faithful party and indirectly the infidel.

[2] "Although the impediment has itself from one party only, nevertheless it renders the marriage either illicit or invalid." (Code, c. 1036, § 3).

992. 5° On dispensation from affinity. (a) As regards the direct line, the Church very rarely dispenses in the first degree[3], rarely in the other degrees.

[3] A case of a dispensation of this kind may be found in *Le Canoniste contemporain*, November 1912, p. 659.

(b) In the degrees of the collateral line, not excepting the first[4], the Church "now shows herself not difficult in granting a dispensation."[5]

[4] The matter was formerly much disputed on the occasion of the dispensation granted by Julius II to Henry VIII.

[5] Desmet, n. 306. - Up to now, if someone wished to marry a person whose mother he had carnally known, a dispensation was not granted except under the condition: "Provided, however, that intercourse with the mother did not precede the birth of the daughter." The inconvenience which was thus guarded against is now removed, at least in part, through the new impediment of public honesty, concerning which below.

993. 6° On the difference between the old and the new law. Formerly affinity was defined as the nearness which someone contracted with the blood relatives of that person with whom he had had perfect carnal intercourse; thence a distinction was made between licit and illicit affinity; affinity from licit intercourse dirimently impeded marriage in the direct line to infinity, according to the more probable opinion; up to the fourth degree inclusive in the collateral line; but affinity from illicit intercourse dirimently impeded marriage up to the second degree inclusive in each line.

V. On the Impediment of Public Honesty.

994. 1° Notion from the Code. (A) The impediment of public honesty arises from an invalid marriage, whether consummated or not, and from public or notorious concubinage; and it dirimently impedes nuptials in the first and second degree of the direct line between the man and the blood relatives of the woman, and vice versa[2]. Thus if Titius publicly lived in concubinage with Lucia, the mother of Sophia, by that very fact he contracted the impediment of public honesty with Sophia. It is called public honesty because honesty of morals demands that illicit unions not be multiplied, from which there arises a certain quasi-affinity.

[1] St. Thomas, q. 55, a. 4; *Decretals*, lib. IV, tit. 2, cc. 3, 4, 8; tit. IV, *De sponsa duorum*; Canonists on this title IV; Sanchez, lib. VII, disp. 68-70; St. Alphonsus, n. 1061-1064; Carriere, n. 809-826; Ball. P., n. 760-776, ed. 3; Gasparri, n. 705-732; Feije, n. 384-408; Noldin, n. 106-107.

[2] Code, c. 1078.

995. (B) Traces of this impediment are found in Roman law, which acknowledged quasi-affinity between the betrothed woman of the father and the son, the betrothed woman of the son and the father, the mother of the betrothed woman and the betrothed man[3]. At what time public honesty was held as a canonical impediment is not certain; for the canons in the Decree of Gratian[4] which suppose its remote antiquity are apocryphal; more probably it was in force not long before the twelfth century. - Before Trent, public honesty, whether arisen from betrothals or from marriage, was extended to the fourth degree, and arose from invalid betrothals,

provided they were not invalid by defect of consent. But Trent established that the impediment would not arise in future from invalid betrothals, and from valid ones not beyond the first degree; but it changed nothing as regards public honesty arisen from ratified marriage[5].

[3] L. 12 § 1 and 2, l. 14 ff. *De ritu nuptiarum*.

[4] *Decret. Grat.*, c. 11, 14 and 15, c. 2, q. 2.

[5] Thus decreed St. Pius V, Const. *Ad Romanum*, July 1, 1568.

Hence up to Pentecost of the year 1918, the impediment of public honesty was the nearness of persons arising both from valid betrothals and from ratified and non-consummated marriage.

996. 2° Extension of this impediment, from the old law. (A) Public honesty arising from valid betrothals dirimently impeded marriage between the betrothed man and the blood relatives of the betrothed woman, and vice versa, up to the first degree; therefore the betrothed man would have contracted invalidly with the mother, sister, or daughter of his betrothed; but validly with all other blood relatives of the betrothed woman. This was true even if the betrothals had been legitimately dissolved; for an impediment once contracted does not cease except by dispensation.

It did not, however, arise from invalid betrothals, by whatever reason they had been invalid; nor from conditioned betrothals, except when the condition had been fulfilled.

997. (B) Public honesty from ratified marriage dirimently impeded nuptials up to the fourth degree inclusive, even if it had arisen from an invalid marriage, provided the invalidity had not been from defect of consent; for when consent was lacking, the foundation of the impediment was lacking, namely the joining of souls.

998. 3° On the multiple impediment of public honesty, in the old law. (a) This impediment was multiplied from several betrothals or non-consummated marriages. Let there be, for example, three sisters, Rosa, Martha, Lucia; if Titius had contracted betrothals with Rosa, and afterwards, having obtained a dispensation, marriage with Martha, without consummating it, he was bound by a double impediment of public honesty with regard to Lucia; if nevertheless he had married Lucia, having likewise obtained a dispensation without consummating the marriage, he labored under a triple impediment of public honesty with regard to Sempronia, the mother of the three sisters.

999. 4° On dispensation from this impediment. Since this impediment is of merely ecclesiastical law, the Church dispenses in it, but with caution, namely by taking care lest someone join his own offspring to himself in marriage; namely, if illicit and occult intercourse preceded the birth of the woman to be married, concerning whom it can be doubted whether she is the daughter or sister of the other party, can. 1076, § 3, must be applied: "Marriage is never to be permitted if there exists any doubt whether the parties are blood relatives in some degree of the direct line or in the first degree of the collateral line."[1]

[1] Commission for interpreting the Code, June 2-3, 1918.

VI. On the Impediment of Disparity of Cult.

1000. 1° Notion and origin. (A) Disparity of cult is a diriment impediment between one baptized in the Catholic Church or converted to the same from heresy or schism[2], and one not baptized, even a catechumen; and thus it is distinguished from mixed religion, which is a prohibiting impediment between a Catholic and a non-Catholic validly baptized. - In our days, not only among pagans, but also in the great cities of Catholic regions, an impediment of this kind can be found, because not a few adults have never been baptized.

[1] St. Thomas, q. 59, a. 1; *Decret. Gratiani*, c. XXVII, q. 1; Benedict XIV, Const. *Singulari nobis*, February 9, 1749; Canonists, lib. IV, on tit. I or tit. VI; Sanchez, lib. VII, disp. 74; St. Alphonsus, n. 1044; Carriere, n. 747-752; Ball. P., n. 699-710, ed. 3; Feije, n. 459-470; Gasparri, n. 596-624.

[2] Code, c. 1070, § 1.

It must be carefully noted that in the case it is not a question of any baptized person whatever, even in heresy, as formerly, but of a person baptized in the Catholic Church or converted to the Catholic Church from heresy or schism. And the impediment is present even if the person baptized in the Catholic Church afterwards adhered to heresy or schism, or, having converted to the Church, again relapsed into heresy.

1001. (B) This impediment, considered as diriment, is of ecclesiastical law. In Scripture indeed the nuptials of the faithful with infidels were in some way prohibited: "Bear not the yoke with infidels[3]; for what participation has justice with iniquity? or what fellowship has light with darkness?"; but that prohibition did not dirimently impede such a marriage, since elsewhere it is supposed valid[4]. The Fathers and Councils likewise condemned nuptials of this kind, especially because in the Old Testament it was forbidden to the Jews to marry infidel women; but for many centuries they held them as valid; and most holy women contracted with infidels, as Cecilia with Valerian, Monica with Patricius, Clotildis with Clovis, without the Church condemning them. Gradually, however, from the dangers which flow from nuptials of this kind, the practice prevailed in various parts of the Church of holding them as null; this practice in the course of time became universal; and thus this impediment, insofar as it is diriment, was introduced by custom, and already from the beginning of the twelfth century was received everywhere; wherefore today it is in force even in those regions where the faith is first propagated[1].

[3] *II Cor.*, VI.

[4] *I Cor.*, VII, 12-16.

[1] The historical evolution of this impediment may be read ap. Esmein, t. I, p. 219 sq.; Watkins, *Holy Matrimony*, p. 446 sq. - The reason why such a marriage is prohibited is explained thus by St. Thomas, l. c.: "The principal good of marriage is offspring to be educated for the worship of God. But since education is commonly done by father and mother, each according to his own faith intends to educate the offspring for the worship of God. And therefore if they are of diverse faith, the intention of one will be contrary to the intention of the other." Hence the reasons set forth above concerning mixed marriages, n. 905-907, also hold good, and often *a fortiori*.

1002. 2° When is it incurred? It is certainly incurred when it is morally certain that one party has been validly baptized, and the other either in no way or invalidly baptized. But in a case of

doubt concerning Baptism, an investigation indeed ought to be made, according to the Instruction of the Holy Office of August 1, 1883, but, if the doubt remains, this rule is to be held: "If the party at the time of the contracted marriage was commonly considered as baptized, or his Baptism was doubtful, one must stand, according to the norm of c. 1014[2], for the value of the marriage until it is certainly proved that one party was baptized, and the other not baptized."[3]

[2] Canon 1014 has itself thus: "Marriage enjoys the favor of law; wherefore in doubt one must stand for the value of the marriage until the contrary is proved."

[3] Code, c. 1070, § 2.

1003. 3° On dispensation from this impediment. (A) Only the Roman Pontiff is able to dispense in this impediment by his proper power; but others only through an indult, which is granted in places where there are many infidels.

(B) The conditions required that the dispensation be granted are: (a) that there be absent insult to the Creator, that is, danger to faith or morals for the Catholic party and his offspring; hence the infidel must promise that he will leave full liberty to the Catholic party as regards the exercise of his religion, and that all the offspring will be instructed in the Catholic religion; (b) that the faithful party, according to his powers, take care for the conversion of the infidel, by prayers, good example, and especially by rightly fulfilling the duties of conjugal life; (c) that grave causes be present, which are left to the prudent judgment of the one dispensing, such as, for example, the salvation of the souls of those who have already lived for a long time in such a marriage, or who can scarcely be restrained from contracting it. - A dispensation knowingly granted without grave cause by the Roman Pontiff is illicit, but valid; by a delegate, however, it is not only illicit, but also invalid.

VII. On the Impediment of Abduction.

1004. 1° Origin and notion. (A) The impediment of abduction, insofar as it is universal and diriment, was instituted by Trent. But, already from the earliest centuries, the crime of abduction had been prohibited. (a) By Roman civil law it was punished with most grave penalties, and marriage between the abductor and the abducted woman was forbidden as a penalty of abduction.

[1] *Decret. Gratiani*, c. XXVII, q. 2; c. XXXVI, q. 1-2; *Decretals*, lib. V, tit. 17; Trent, sess. XXIV, cap. 6 *de Reformat. Matrim.*; Reiffenst., lib. IV, tit. 1, n. 372-379; Sanchez, lib. VII, disp. 12-13; St. Alphonsus, n. 1106-1108; Carriere, n. 905-914; Ball. P., n. 692-698, ed. 3; Feije, n. 145-187; De Angelis, lib. IV, tit. 1, n. 20; Gasparri, n. 537-563; De Becker, p. 67-73.

(b) By ecclesiastical law the discipline was not always the same; according to the ancient canons, the abductor was punished with excommunication and other penalties, and was prohibited forever from marrying the abducted woman; indeed in certain provinces such a marriage was considered invalid. But by the new law of the Decretals, the girl could consent to marriage, even when she remained under the power of the abductor; and if the consent was truly free, the nuptials were regarded as valid[2].

[2] Cf. Esmein, I, p. 391-393; II, p. 250-255.

(c) But Trent, wishing better to provide for the liberty of marriages, decreed that there is no marriage between the abductor and the abducted woman as long as she remains in the power of the abductor, even if she has freely consented; and it punished the crime of abduction with various penalties[3]: "The Holy Synod decrees that between the abductor and the abducted woman, as long as she remains in the power of the abductor, no marriage can subsist. But if the abducted woman, separated from the abductor and placed in a safe and free place, has consented to have him as husband, let the abductor have her as wife; and nevertheless the abductor himself and all those who furnish counsel, aid, and favor to him are by the law itself excommunicated, and perpetually infamous, and incapable of all dignities, and if they are clerics, let them fall from their own grade. Moreover let the abductor be bound, whether he has married the abducted woman or has not married her, to dower the abducted woman becomingly, at the judgment of the judge."

[3] Sess. XXIV, cap. 6 *de Reform. Matrim.*

(B) Hence abduction can be defined: the violent carrying away of some person from place to place, where she is detained under the power of the abductor, for the sake of entering marriage[1]. This impediment is distinguished from fear; for, even when fear ceases, the marriage is invalid as long as the abducted woman remains under the power of the abductor. Nor is it a penal impediment, for marriage can be celebrated validly and licitly as soon as the woman is withdrawn from the power of the abductor; therefore it is an impediment *sui generis*, by force of which the abductor is rendered incapable of contracting with the abducted woman, as long as she is retained under his power.

[1] Code, c. 1074: "§ 1. Between a man as abductor and a woman abducted with marriage in view, as long as she remains in the power of the abductor, no marriage can subsist. - § 2. But if the abducted woman, separated from the abductor and placed in a safe and free place, has consented to have him as husband, the impediment ceases."

1005. 2° Conditions required that abduction dirimently impede marriage. (A) That there be an abduction of a woman, but not of a man. This is certain from can. 1074, § 1, by which the impediment is established only between a man as abductor and a woman, and odious things are to be restricted; hence if a fainthearted young man were abducted by an over-powerful woman, the marriage would be held as valid, provided the young man consented freely. - Now it makes no difference whether the woman who is abducted is a virgin or corrupted, honorable or a prostitute; for the words of the Code are altogether general. - Nevertheless, if the woman is ruined in morals, she is presumed to have been abducted for the sake of satisfying lust, not for the sake of marriage; but the presumption would yield to the truth.

1006. (B) That there be a true carrying away from place to place; that is, that the woman be transferred from the place in which she was safe into a morally different place, in which she is less safe, although not far distant. - Now it makes no difference whether the abductor carries away the woman by himself, or through others, provided he himself gave the mandate; but if someone, thinking that he will do something pleasing to a friend, transfers a certain girl into his own house, so that this friend can more easily marry her, the nuptials are valid, because the friend did not mandate the abduction. - Moreover the mandataries who abduct the woman in the name of the principal agent do not contract the impediment with her, unless they afterwards detain her (from § 3).

1007. (C) That the carrying away be violent, that is, with the woman unwilling. It is considered violent: (a) if it is done by force or grave fear unjustly inflicted; (b) by fraud or deceit, for example through hypnotic suggestion, which takes away liberty. - But it is not violent if a girl, whether of her own right or not, freely flees with a man, so that she may avoid the opposition of parents or others; if she is not of her own right, the nuptials indeed can be illicit, on account of the dissent of the parents, but they will be valid. Likewise, if the woman at first indeed was unwilling, but then, drawn by persuasions and flatteries, follows the man with marriage in view, there is indeed an abduction of seduction, but not a violent abduction; yet in the external forum it must be proved that she truly consented to the flight; otherwise the prior dissent is presumed to have persevered.

But if a consenting woman is carried away into another place, not because she herself intends marriage, but on account of another motive; and the abductor, who was thinking about marriage although he had said nothing about it, detains her there and proposes nuptials to her, much more probably the impediment is present; because she is deceitfully carried away by the abductor[1]. "As regards the nullity of marriage, violent retention of the woman is held equal to abduction, namely when a man violently detains a woman with marriage in view in a place where she dwells or to which she freely came."[2]

[1] For understanding the matter better, see the cases resolved by the S. C. of the Council, ap. Gasparri, n. 554-556.

[2] Code, c. 1074, § 3.

When valid betrothals have been contracted, it is controverted whether he who abducts his unwilling betrothed incurs the impediment of abduction. (a) If she has a just cause for withdrawing or delaying, according to all, the impediment is incurred, because her liberty is unjustly and violently harmed; (b) if she does not have a just cause, much more probably it is also incurred, because the betrothed woman cannot be forced by private violence to keep her betrothal pledge.

1008. (D) That the carrying away be done with a view to entering marriage, since the impediment was established for preserving the liberty of matrimonial consent. Hence if a woman is carried away to take money from her, or to satisfy lust, or for another end, the impediment does not arise. But in the external forum abduction is presumed to be done for the sake of marriage, unless the contrary is proved. Besides this, if the woman is first abducted for the sake of lust, but afterwards is detained unwillingly with a view to entering marriage, the impediment is now present, because detention in the case is equated with violent carrying away.

1009. (E) That the abductor detain the woman under his own power, as is clear from Trent and the Code. Therefore when the girl has been separated from the abductor and placed in a safe and free place, the impediment ceases without any dispensation; thus it is, for example, if she is restored to her own home, or placed in the house of a friend or parent of the woman herself, who is not a favorer of the abductor. But the impediment endures if the woman remains in the same house into which she had been transferred, although she could flee; or if she is placed in the house of a friend or parent of the abductor, especially if someone watches over her by mandate of the man; for then she is not placed in a safe and free place.

1010. N. B. The Church generally does not dispense in this impediment[1]. - Let the abductor "be held by the law itself as excluded from legitimate ecclesiastical acts, and moreover be punished with other penalties according to the gravity of the fault."[2]

[1] Formerly the Church never dispensed; but in the Instruction to the Albanian Bishops, February 15, 1901, ap. *Acta S. Sedis* (XXXIII, p. 547-549), the Holy Office declared that, on account of the peculiar circumstances prevailing in Albania, nothing prevents a dispensation from being granted, if it is clear concerning the truly free consent of the abducted woman and if sufficient motives for dispensing are present; but, lest this be done easily, each case must altogether be submitted to the judgment of the Holy See.

[2] Code, c. 2353.

VIII. On the Impediment of Crime.

1011. 1° Notion and origin. (A) Not all crimes dirimently impede marriage, but certain more odious ones committed in relation to marriage, namely: (a) killing of a spouse perpetrated by mutual conspiracy with the intention of contracting marriage between themselves; (b) adultery committed with the other party, with a promise of marriage or attempted marriage; (c) adultery with killing of a spouse perpetrated by one party only[4]. - The reason why crimes of this kind render subsequent nuptials invalid is threefold: (a) because otherwise, under hope of contracting marriage with accomplices, occasion would be given to spouses for perpetrating these crimes, especially the killing of a spouse, which is so unworthily opposed to conjugal love and fidelity; (b) as a penalty for the crime committed; (c) because such nuptials would be publicly dishonorable and scandalous.

[3] *Decret. Gratiani*, Caus. XXXI, q. 1; *Decretals*, lib. IV, tit. 7, *De eo qui duxit in matrimonium quam polluit per adulterium*; Canonists on this title; Sanchez, lib. VII, disp. 78-79; St. Alphonsus, n. 1031-1043; Carriere, II, n. 709-746; Ball. P., n. 666-691, ed. 3; Feije, n. 448-458; Mansella, p. 155-162; Gasparri, n. 641-660; De Becker, p. 162-173; Konings, n. 1594-1596; Noldin, n. 110-124.

[4] Code, c. 1075.

(B) By ancient Roman law nuptials between accomplices in adultery were prohibited, even after the prior marriage had been dissolved; afterwards, in the time of Justinian, they were declared null. Canon law received this law, and St. Leo established: "Let no one take in marriage her whom he previously polluted by adultery"; but it is not certain that adultery as a diriment impediment was universally accepted, especially in the Western Church, before the ninth century; in the time of Gratian, already a twofold species of crime dirimently impeding marriage was acknowledged; finally, in the time of Gregory IX, the threefold impediment of crime set forth above was universally established.

1012. 2° On killing of a spouse perpetrated by mutual conspiracy. Four conditions are required that the impediment from this head be incurred:

(A) Mutual conspiracy between the accomplices for the killing of the spouse of one or other of them; this exists if one party induces the other to the crime by counsel, prayers, or approval; or if each cooperates either physically, for example by supplying poison, or morally, by corrupting a physician so that he may bring on death or not prevent it. Hence it is not enough that one party plans death

while the other is unaware, even if the latter afterwards approved the killing; nor is the silence of the other enough, unless by other supports the silence can be held as consent and truly influences the crime.

(B) That the conspiracy be done from the intention of entering marriage with the accomplice[1], at least on one side; therefore, if it is done for another end, for example hatred, revenge, cupidity, or so that life may be lived more freely, or for more easily marrying another person, the impediment is not incurred.

[1] Concerning this intention the Code is silent.

It was said: at least on one side; because some theologians require this intention from each party; but more probably this is not necessary, provided that the intention of one is externally manifested; for example, if sufficient signs of intention preceded the killing, suppose gifts, familiarities, love letters, and similar things between those who wish to contract; otherwise if the intention remained altogether internal, because the Church cannot punish a homicide done from such an intention if no indication concerning it has preceded. Thus St. Alphonsus, n. 1034.

(C) That death follow by the work of one or other, whether physical or moral, but not from a fortuitous case, or from the fault of another person; hence, if after a non-mortal wound has been inflicted death follows through the inexperience or negligence of the physician, the impediment is not incurred; otherwise, if the physician, by the counsel or mandate of one or other accomplice, has been negligent by design.

(D) That the marriage was valid at the time of the killing; otherwise there will not be killing of a spouse, but homicide; nor is it enough that it was putative; on the other hand it is not necessary that it had been consummated.

1013. 3° On adultery with promise or attempted marriage. Three conditions are required:

(A) True adultery, formal on each side, consummated.

(a) True, insofar as a valid marriage and one still persevering ought to exist at least on the part of one adulterer; hence, if the marriage is invalid, although putative, or if the other spouse is already dead, although his death remains unknown, the impediment is not contracted, because objectively adultery is not committed, but only fornication.

(b) Formal on each side, insofar as each must know that the other is married; nor is it enough that each knows himself to be married, if this is unknown by the other accomplice. Now it is not necessary that both be married, nor therefore that both know each to be married; but it suffices that the conjugal state of one is known to each.

(c) Consummated, that is, of itself apt for generation.

(B) Promise or attempted marriage, made before the death of the innocent spouse. Now this promise ought to be:

(a) true and accepted, and therefore externally manifested, and probably mutual; (b) in order to entering marriage with the accomplice after the death of the spouse; for if marriage to be entered while the other spouse is still living is promised, where polygamy is permitted by civil law, the

impediment is not contracted, because the reason for the impediment ceases, which is lest the promise furnish occasion for killing the other spouse; (c) absolute; hence a conditioned promise does not suffice, unless this has passed into an absolute one by fulfillment of the condition before the death of the spouse; (d) not revoked before the adultery; if it is revoked after the adultery has been committed, the impediment already contracted does not cease; (e) probably made with knowledge of the bond; hence if the promise is made at a time when the bond of the accomplice is unknown, and afterwards adultery is committed once the bond is known, the impediment is doubtful, and therefore in practice none.

Attempted marriage, or civil marriage, takes the place of a promise; hence those who, after a marriage validly entered, obtain a civil divorce and, while the former spouse is living, contract and consummate another marriage, incur the impediment of crime; and therefore, after the former spouse has died, they cannot revalidate the marriage without dispensation[1].

[1] Thus, according to De Angelis, lib. IV, t. IV, n. 11, the S. Penitentiary was accustomed to respond; cf. Gasparri, t. I, n. 738, ed. 3.

(C) The promise of marriage must be made and the adultery committed during the same marriage; namely, if Peter successively has two wives, and while one is living, for example Bertha, he promises to marry Catherine, but afterwards marries Martha, and while she is living commits adultery with Catherine, there is no diriment impediment between Peter and Catherine, provided the same promise of marriage is not renewed; for the promise previously made is considered revoked by the nuptials celebrated with Martha.

Moreover, it makes no difference whether the promise precedes, accompanies, or follows the adultery, or by how much time it is distant from the adultery, provided these two things are done during the same marriage.

1014. 4° On killing of a spouse with adultery. Three conditions are required for contracting this impediment:

(A) True adultery, formal on both sides, consummated, as above, committed before the homicide; for if it is committed after the death of the spouse, it is no longer adultery.

(B) Homicide perpetrated by one, with the intention of entering marriage with the accomplice, externally manifested, although the other does not know that the homicide is to be perpetrated, or even contradicts it. Hence in this case mutual conspiracy is not required, nor a promise. But the intention of entering marriage is presumed in the external forum, unless the contrary is clear from the circumstances. - It is likewise necessary that death in fact follow by the work or machination of one of the adulterers.

(C) That each thing, namely adultery and killing of a spouse, be committed while the same marriage stands.

1015. 5° On the multiple impediment of crime. The impediment of crime can be multiplied both by reason of the delict and by reason of marriage:

(A) By reason of the delict: (a) when the impediment arises from homicide alone, the impediment is double if each spouse is married and each from conspiracy kills his own spouse; (b) when it arises

from adultery alone, a double impediment is incurred if both adulterers are married and both know this; (c) when it arises from homicide with adultery, the impediment is double if each adulterer is married and each kills his own spouse, even without conspiracy; (d) when adultery and homicide separately have their proper conditions, according to what was set forth above, each is likewise an impediment.

(B) By reason of marriage, namely when several marriages have successively been entered, and during each marriage, one or several of the aforesaid crimes have been perpetrated; for example, if Titius successively entered a threefold marriage with Mary, Bertha, and Rosa, and while each marriage stands, carnally knows Caia with a promise of marriage, there is now a threefold impediment; if besides this he kills Rosa, so that he may marry Caia, a fourth impediment arises, etc. - But impediments are not multiplied if adultery is committed several times with the same person while the same marriage stands.

1016. 6° On dispensation in this impediment. (A) Since this impediment is of ecclesiastical law only, infidels do not incur it, and therefore they do not need a dispensation when they are converted. But if the crime is committed by a faithful party with an infidel party, the impediment is present, directly affecting the faithful party and indirectly the infidel.

(B) The Church is always able to dispense in this impediment; but she dispenses with very great difficulty when the killing of a spouse was perpetrated by mutual conspiracy, or by one party only together with formal adultery, especially if the crime is public, on account of the scandal which would follow from it; but a dispensation is granted more easily for adultery with attempted marriage, at least on account of grave reasons; more easily also in the case of adultery with the mere promise of marriage.

(C) The Code, can. 1053, establishes that for the future a dispensation from the impediment arising from adultery with promise or attempted marriage, if any is needed, is considered granted through a dispensation concerning a ratified and non-consummated marriage, or through permission of passage to other nuptials.

(D) It was disputed whether ignorance excused from this impediment. Most denied it; for this impediment is more an incapacity than a penalty; now an incapacity is incurred even by those who are ignorant of it. Yet a few, probably before the promulgation of the Code, affirmed it[1]; for this impediment is a penalty, and indeed medicinal, for deterring men from perpetrating a crime of this kind; and therefore it is not incurred by those who are ignorant.

[1] Krimer, *In Decretal.*, lib. IV, n. 1001; Ball. P., n. 683-690; Gasparri, n. 858.

Today, however, from can. 16 of the Code, this opinion lacks all probability: "No ignorance of invalidating or incapacitating laws excuses from them, unless something else is expressly said." Moreover something else concerning this matter is said in no canon of the Code.

Note. Usually those about to marry do not think about manifesting this impediment; hence, if the confessor has founded suspicions about its existence, he ought discreetly to question the penitent; for example, if a maidservant wishes to marry her recently widowed master, it can be asked whether a promise of marriage preceded, and when, while the wife was living? whether, besides the promise, there were dishonorable conversations, etc.

§ V. On the Impediment Affecting the Form of the Contract, or On Clandestinity.

Notion. From the Tridentine law, namely the decree *Tametsi*, in order that marriage be valid, a certain solemnity is required which consists in the presence of the pastor and of at least two witnesses. Hence a marriage is called solemn which is contracted according to the form of law; on the contrary, clandestine, which is contracted outside the form of law. Since, however, the Tridentine form was notably changed by the decree *Ne temere*[3] and by the Code, we shall speak: 1° of the Tridentine form; 2° of the form of the new law.

[2] For the ancient discipline: *Decret. Gratiani*, C. XXX, q. 5; *Decretals*, lib. IV, tit. 3, *de Clandestina Desponsatione*; Trent, sess. XXIV, cap. 1 *de reformat. Matrim.*; Sanchez, lib. III; St. Alphonsus, n. 1078-1094; Gasparri, n. 871-999; Deshayes, *Questions sur le Mariage*, q. 91-150. - For the form of the new law: De Smet, ed. 3, n. 103-150; Vlaming, ed. 3, n. 561-609; Fourneret, p. 140 sq.

[3] Which began to be in force on April 19, 1908, for the whole world, except the empire of China, in which it is in force from April 11, 1909. - Hence marriages entered before this time must be judged according to the discipline of the decree *Tametsi*.

I. On the Tridentine Form.

Trent had established this law: "Those who shall attempt to contract marriage otherwise than in the presence of the pastor, or of another priest with the permission of the same pastor or of the Ordinary, and of two or three witnesses, the holy Synod renders altogether incapable of so contracting: and it decrees that contracts of this kind are invalid and null, just as by the present decree it makes them invalid and annuls them."

Yet lest that decree (which is called *Tametsi*, because it begins with this word) should affect heretics, who were not going to receive it, the Council willed that the decree not have the force of law except after thirty days from the first publication in each parish; for thus an opportunity was furnished to heretics, who formed separate communities, of evading the law.

Concerning that discipline, now antiquated, we shall hand down only a few things, nevertheless necessary to know for judging the validity of marriages entered before April 19, 1908; if perhaps more difficult cases occur, let the authors cited above be consulted.

1017. 1° On the places in which this decree was in force. (A) From what has been said, the decree was not in force except where it had been promulgated, at least implicitly through immemorial observance.

Hence marriages entered without the Tridentine form were valid: in England, Scotland, several districts of Switzerland, Denmark, Sweden, Norway, the regions of Europe and Asia under Turkish and Persian rule, the Vicariate of Sutchuen, Abyssinia, the island of Madagascar. - The matter remained doubtful for almost the whole of Wallachia, Bulgaria, Syria, the island of Cyprus, Malabar, the Cape of Good Hope, and Upper Canada.

(B) From the constant interpretation of the Roman Congregations, the aforesaid law also bound baptized non-Catholics wherever it had been promulgated.

Nevertheless the places were to be excepted for which the Benedictine declaration[1] was given or to which it was extended. Since there had long been dispute concerning the validity of marriages of heretics in Holland, from the fact that very many Catholics there had fallen away from the Catholic faith, Benedict XIV, wishing to put an end to the dispute, declared and established that clandestine marriages in Holland, whether entered between heretics or between heretics and Catholics, or to be entered in the future, were to be held as valid, provided no other impediment stood in the way. This declaration was afterwards extended to the places which follow:

[1] Constit. *Matrimonia*, November 4, 1741.

The Federated Orders of Belgium, the whole Empire of Germany from April 15, 1906, Constantinople and its suburbs, Pondicherry, Coromandel, Malabar, Bombay, Canada, the Island of the Most Holy Trinity, the dioceses of the United States of America, except the province of Santa Fe.

(C) Moreover mixed marriages were valid not only in the aforesaid regions, but also where derogation had been made from the Tridentine decree with respect to mixed marriages; these are: Hungary, Ireland, the Russian Empire and the part of Poland subject to it, Georgia.

1018. 2° On the subject of the Tridentine law. Principle: The law of clandestinity was at once local and personal.

(A) Insofar as it was local, it directly affected the territory in which it had been promulgated, and indirectly all who were staying there, or were traveling through the territory, even if they had no domicile or quasi-domicile there.

(B) Insofar as it was personal, it directly bound subjects, so that they could not validly contract in an exempt territory (where the law was not in force), if they went to this territory in fraud of the law, that is, for the purpose of marrying, without the intention of acquiring there a domicile or quasi-domicile.

(C) But when those about to marry dwelt in diverse places, a marriage celebrated without the Tridentine form was valid in a place where *Tametsi* was not in force, if one of the betrothed had there his domicile or quasi-domicile; for the privilege of one was communicated to the other.

1019. 3° On the solemnities required by the Tridentine law. - Two things were required: 1° the presence of the proper pastor, or Ordinary, or delegate; 2° the presence of witnesses.

1° On the presence of the pastor. (A) Who is the proper pastor? It is twofold: the pastor of the domicile or quasi-domicile of either of the contracting parties, that is, either of the bridegroom or of the bride; hence the pastor of one is the pastor of each with respect to marriage.

1020. (a) For domicile two things were required at the same time: habitation in the parish where marriage is contracted, and the intention of remaining there perpetually for a notable part of the year. Domicile was acquired as soon as habitation began with the intention of remaining externally manifested; nor was it lost by a long absence, provided there was the intention of returning.

1021. (b) For quasi-domicile two things likewise were required: habitation in the parish, and the intention of remaining there for the greater part of the year or at least for six months. Hence one could have a domicile in one parish, and a quasi-domicile in another.

1022. (c) Vagi, who have neither domicile nor quasi-domicile, can validly and licitly contract before the pastor of the place where they actually dwell; indeed probably, according to some, before any pastor.

1023. (B) Who came under the name of pastor with respect to marriage? All who have care of souls in a parish, with the general permission of administering the sacraments, although they are not pastors in the strict sense, namely:

(a) Not only irremovable pastors, but also removable ones; (b) rectors, or administrators of a vacant parish; (c) pro-pastors, vice-curates, for example, vicars of an absent pastor, or of a pastor present but infirm or worn out by old age, or of a suspended pastor, etc.; or cooperating vicars enjoying full authority of administering all the sacraments; but not those vicars who are deputed to help the pastor in those things which he will commit to them.

(d) Not only the proper pastor, but also the Ordinary of the diocese validly assists at marriages, that is, the Bishop; the Vicar General; or the Capitular Vicar, the see being vacant; the Roman Pontiff for the whole Church; the Apostolic Legate for his own territory.

1024. (C) On delegation for marriage. Not only the pastor, but one delegated by the pastor or Ordinary could validly assist at marriage.

The delegate could subdelegate another priest, if this power had been expressly committed to him, or if he had been delegated for the universality of matrimonial causes, or by the Supreme Pontiff even for a particular case.

1025. (D) What sort of presence of the pastor or delegate was required? There was required and sufficed for validity a moral presence, which the office of an authorized witness requires.

Hence if the pastor had rightly been warned beforehand, no special address was necessary, but it sufficed that he hear the contracting parties. Nor was it required that he had been expressly called to assist at the marriage; whether he was present by chance, or called under some other pretext, it sufficed that he understand what was being done.

Nevertheless a merely physical presence did not suffice, since the pastor ought to notice, as a witness, those things which are being done; hence one unaware, drunk, sleeping, insane, or hypnotized did not validly assist.

The pastor and witnesses had to assist at the marriage together.

1026. 2° On witnesses. Since Trent requires no special qualities in witnesses, those which natural law demands suffice. Therefore all those are qualified who, enjoying the use of reason, can know the fact and give testimony concerning it.

II. On the Form of the New Law.

1027. 1° Extension of the law. (A) The decree *Ne temere* and the Code have now been promulgated for the whole world. But they do not reach, at least directly, Orientals, who, from immemorial custom and with can. 1 approving, are not subject to disciplinary laws unless they are included by express declaration.

1028. (B) But in the Latin Church, can. 1099 declares who are subject to this law, namely:

(a) All baptized in the Catholic Church, when they contract among themselves, even if afterwards they have fallen away from the faith; - that is, all who by Baptism itself are freely enrolled in the Catholic Church, if adults are in question; with parents consenting, if little children are in question; but not those who are baptized by a heretical or schismatic minister by the will of the parents, even if the parents were Catholic; nor, at least more probably, the children of non-Catholics who, with the parents unaware and unwilling, were baptized by a Catholic maidservant. But the doubtfully baptized, with respect to marriage, are presumed validly baptized.

(b) All also who have been converted from heresy or schism and already baptized; but not the children of converts, unless they themselves also embrace the Catholic faith. - This holds good even if afterwards they fall away from the faith, because it is not fitting that this defection profit them.

(c) All likewise the aforesaid Catholics or converts, when they contract with non-Catholics, even after a dispensation has been obtained from the impediment of mixed religion or disparity of cult[1]. Likewise Catholics who contract with Orientals. - Thus the discipline is reformed by which an immune party communicated his immunity to the other, while on the contrary today the bound party communicates his bond to the other.

[1] By the Constitution *Provida* (January 18, 1906), Pius X had exempted any mixed marriages to be contracted in Germany from the decree *Ne temere*. But that exemption is to be considered abrogated according to the mind of can. 6, 1° (*Pontifical Commission*, December 9, 1917).

(d) But non-Catholics, whether baptized or not baptized, are by no means subject to the law of clandestinity when they contract among themselves; therefore under this head the marriages of non-Catholics will not be invalid, which, as regards form, are subject only to natural and civil law. But if a baptized non-Catholic party contracts with an infidel, the marriage will be null from the impediment of disparity of cult, which has by no means been removed (above, n. 924).

1029. 2° Form to be observed in ordinary cases. - The matter must be examined both as regards validity and as regards liceity.

(A) For validity. "Only those marriages are valid which are contracted before the pastor, or the local Ordinary, or a priest delegated by either, and at least two witnesses..." (can. 1094); all these things must be weighed carefully.

(a) Pastor is to be understood in the sense of can. 451, that is, not only he who presides over a canonically erected parish, but also a quasi-pastor, who rules a quasi-parish, and all parochial vicars who are endowed with full parochial power. Now these are: 1. the actual vicar, or curate, who administers a parish united to a chapter or moral person (can. 471); 2. the vicar-economus, who rules a vacant parish (can. 472, 473); 3. the substitute vicar, who supplies for an absent pastor (can. 474); 4. the assistant vicar, who is given to an infirm pastor, if nevertheless he supplies for him in all things

(can. 475). - But the cooperating vicar, who is given on account of the multitude of the people, can in no way be called endowed with full parochial power, according to the mind of can. 451, § 2, 2°, and therefore he cannot assist at marriages by his own right; but he can, as will be said below, as a delegate.

(b) Ordinary is anyone who has ordinary jurisdiction or jurisdiction equivalent to ordinary jurisdiction in the external forum, for example, a Bishop in his own diocese and his vicars general, the Capitular Vicar when the see is vacant, an Abbot nullius, etc. (can. 198).

(c) Delegate. - Those who can assist by their own right can delegate (can. 1095, § 2), and therefore all whom we have just enumerated, but only for marriages to be entered within the boundaries of their territory.

This delegation can be given in any manner, by writing, word, or sign, but expressly, and a presumed delegation does not suffice.

It must be given to a determinate priest for a determinate marriage; otherwise it is invalid. Therefore a delegation given for any priest whom those about to marry might choose would not be valid, nor one given for all marriages perhaps occurring (can. 1096).

Nevertheless a general delegation given to a cooperating vicar for the parish to which he is assigned is valid, as is the custom for the first vicar in the parishes of the diocese of Paris. Indeed, from can. 476, § 6, we think that the cooperating vicar has a general delegation by law, unless something else is expressly provided in the letters of the Ordinary or from the determination of the pastor himself[1].

[1] In this matter it is necessary to remember that the Church supplies jurisdiction both in doubt of law and in common error (can. 209), which must also be applied to the pastor and the Ordinary.

But the delegate can subdelegate according to the general rules fixed by law (can. 199), namely: 1. if he has received permission from the one delegating; 2. if he has been delegated for the universality of causes, and therefore, in our interpretation, the cooperating vicar could subdelegate even without a special concession.

(d) Witnesses must be at least two. Since no special qualities are demanded in them, all those are qualified who, enjoying the use of reason, can know the fact and give testimony concerning it, whether they are of age or not of age, faithful or infidels, seculars or regulars.

These are the persons who must assist at marriage; moreover the Code commands that the assistance be done according to certain rules which we explain (can. 1095, 1096).

1030. (e) The Ordinary or pastor validly assists only from the day of possession obtained or of office begun, up to the day of their cessation from office; these two moments are determined thus for the pastor:

1. From can. 1444, the pastor acquires right over subjects when he is placed in possession of his parish according to the law or custom of the diocese - "unless for a just cause the Ordinary has expressly dispensed him in writing from that manner or rite: in which case this dispensation takes the place of possession taken."

2. The pastor loses jurisdiction in the case of transfer "when he canonically takes possession of another office," unless something else has been prescribed (can. 194), and in the case of resignation, when it has been accepted and the acceptance notified (can. 190).
3. Those assist invalidly who are by sentence excommunicated, interdicted, or suspended from office, or declared such.

(f) The competent pastor and Ordinary are the pastor and Ordinary of the place (of the parish and diocese respectively) within whose boundaries the contract is entered; hence from now on, otherwise than under the Tridentine discipline, a pastor outside the parish and an Ordinary outside the diocese cannot validly assist at the marriage even of subjects; and on the contrary, in his own territory he validly assists at the marriage even of outsiders. - The same must certainly be said if they assist not by themselves but through a delegate.

(g) As regards the manner of assisting, it is necessary that, "constrained neither by force nor by grave fear, they ask and receive the consent of the contracting parties"; therefore, otherwise than under the old discipline, marriages contracted before the pastor silent and unwilling, or deceitfully and unexpectedly (*par surprise*), would be invalid. But the fear which a legitimate threat of recourse to the superior produces, if the pastor does not wish to join the betrothed, would not invalidate the marriage.

1031. (B) For liceity the following things are to be observed (can. 1097):

(a) Before the Ordinary or pastor or their delegate assists at marriage, it is required that he himself be certain of the free state of the contracting parties, as we said above, n. 851.

(b) One of those about to marry must be a subject of the assisting priest, which is done in a fourfold manner: by domicile, quasi-domicile, monthly residence, and, if it is a question of a vagus, by actual presence in the place. - Hence if there are several pastors of this kind, any one of them assists licitly, without any permission. If the marriage is celebrated elsewhere than in the place of domicile, quasi-domicile, or monthly habitation, the pastor of the place where it is celebrated must have permission (not delegation), unless grave necessity intervenes, from one of those whom we have just enumerated.

Vagi can be united in the place where they now dwell, but, from can. 1032, for celebrating their marriages the permission of the Ordinary must be had beforehand.

It remains that we explain the notions of domicile, quasi-domicile, and monthly residence according to the recent discipline (can. 92).

1. Domicile is acquired in two ways: either by actual residence in a parish with the intention of remaining there perpetually, if nothing calls one away from there, - or likewise by actual residence already prolonged for a completed decade. But understand residence not as bodily presence, but as presence resulting from facts which manifest the intention of having one's seat there: for example, by buying a house there and transporting into it one's household goods, or by accepting a permanent office there. Once acquired, domicile is not lost except by a positive intention, externally manifested, of not returning. A minor necessarily retains the domicile of him to whose power he is subject (can. 93).

2. Quasi-domicile likewise is had in two ways: by actual residence with the mind of remaining there at least for the greater part of the year, if nothing calls one away from there, - or likewise by actual residence in fact prolonged for the greater part of the year.

3. Monthly residence, however, does not consist in the intention of staying somewhere, but in the fact itself, whatever the intention may be. A completed month, or at least thirty days, is required. This residence must be morally continuous: an absence of some hours, even daily, does not obstruct this continuity, provided on each day of the month the principal residence in the place of marriage truly was present. Say the same very probably concerning the absence of one day. But if someone is absent for two or three days with the intention of returning, the residence is suspended, but the preceding residence can be joined with the following, for completing thirty days: thus Titius, who had rented a room in parish N. for one or more months, after ten days is called elsewhere for two days on account of urgent business; having returned, after twenty other days, he licitly contracts marriage in parish N. If he had departed without the intention of returning, the time previously elapsed will not be computed.

(c) If the proper priest does not assist, permission is to be had from the proper pastor or Ordinary, unless it is a question of the marriage of vagi, as was said, or necessity urges which excuses from seeking permission. Permission given in any manner is valid, and sometimes can be presumed.

(d) "Let it be held as a rule that marriage be celebrated before the pastor of the bride, unless a just cause excuses," for example, the reasonable desire of the parties or custom (can. 1097, § 2).

1032. 3° Form to be observed in extraordinary cases. Can. 1098 decrees that "if the pastor or Ordinary or delegated priest cannot be had or approached without grave inconvenience," marriage is contracted validly and licitly before witnesses alone in a twofold case: 1) in danger of death; 2) when it is foreseen that this condition of things will endure for a month. - Concerning these things note:

(A) For validity two things are required: (a) that the proper priest or delegate cannot be had; (b) that two witnesses be present.

This impossibility of having or approaching the proper priest is not required to be physical, but moral suffices, which is induced by "grave inconvenience" of any kind, whether on the part of the contracting party, or of his own, or even, as it seems, of the priest himself.

Here it is permitted to observe that in the Code it is not a question of a difficulty which affects some region, or parish, or village, but that a personal difficulty suffices. On this occasion it has been asked whether that case is verified if the pastor cannot assist without grave inconvenience for himself, for example, because the civil marriage cannot be performed within a month, and the law of the region gravely prohibits ministers of worship from assisting at the marriage of those who are not joined civilly? The matter had recently been much agitated, on the occasion of various responses which the Sacred Congregations had given before the promulgation of the Code; but now, with the new law in force, several grave authors judge that can. 1098 is to be applied, and that such a marriage before witnesses alone is valid and licit. Thus De Smet, 3rd ed., n. 135-136; Vlaming, 3rd ed., n. 590. Otherwise Lehmkuhl (*Questions... novo juri adaptatae*, p. 55). Hence the Ordinary should prudently be consulted in so grave a matter, if time permits.

(B) For liceity two things also are to be observed: (a) if there is present another priest, he should be had, who assists with the witnesses. But it is not said that such a priest, lacking delegation, must ask and receive the consent; it suffices that he assist passively.

(b) Let either the assisting priest or the witnesses, or the contracting parties, take care that the marriage entered be noted in the ritual books (can. 1103, § 3). - It is also fitting that, given the opportunity, the spouses receive the nuptial blessing from a sacred minister (can. 1101).

1033. 4° On the registration of marriages. (a) Immediately after the celebrated marriage, or as soon as possible, the pastor or he who takes his place, for example the first vicar, must write in the book of marriages the names of the spouses and witnesses, the place and day of the marriage. Since it is not said by his own hand, the act can be written by another, but the pastor himself or he who takes his place must see to it that all things are written accurately. - In many regions, as in France, the act is signed not only by the pastor or delegated priest, but also by the witnesses, immediately after the marriage has been celebrated.

(b) Besides this, the pastor shall also note in the book of the baptized that the spouse contracted marriage on such a day in his parish. But if the spouse was baptized elsewhere, the pastor of the marriage shall transmit notice of the contract entered to the pastor of Baptism, either by himself or through the episcopal curia, so that the marriage may be entered in the baptismal book[1]. This was wisely provided so that marriages already entered may thus be more easily detected. Wherefore it is expedient to demand from the betrothed a recent document of Baptism, by which it may be more safely known whether they have contracted another marriage.

[1] *Ne temere*, IX, 2; Code, c. 1103. - Cf. Instr. S. Cong. de Sacram., March 6, 1911, *A. A. S.*, III, 102-103; a commentary on which is handed down by *Nouv. Rev. theol.*, 1911, p. 261-276.

1034. 5° Sanctions. Pastors who, without the permission of the proper pastor and outside a case of grave necessity, have assisted at the marriage of non-subjects, must remit the stole fees to the proper pastor of the contracting parties (can. 1097, § 3). - The suspension from priestly office inflicted by Trent on a priest who had dared to join in marriage the betrothed of another parish without the permission of their pastor has been abrogated.

Chapter IV: On Dispensations and the Revalidation of Marriage

On Dispensations.

We shall speak: 1° of dispensations themselves; 2° of the revalidation of a null marriage.

Art. I. On Dispensations Themselves.

Division:

On the notion and species of dispensations.
On the author of dispensations.
On the causes of dispensations.
On the manner of asking for dispensations.
On the manner of executing dispensations.

§ I. On the Notion and Species of Dispensations.

1035. 1° Notion. (A) A matrimonial dispensation is the relaxation of some ecclesiastical impediment, for a particular case, made by him who has power. - Therefore it differs from abrogation of a law, by which an impediment is removed for the whole Church and totally; and from derogation, by which an impediment is removed for the whole Church only in part, for example when consanguinity was reduced from the seventh to the fourth degree.

[1] Sanchez, lib. VIII, disp. 1; Pyrrhus Corradus, *Praxis Dispensationum*, lib. I, c. 1-3; Gasparri, n. 311; De Becker, p. 278-279; Brillaud, *Des Empechements et des Dispenses*, n. 63-65; Esmein, II, p. 316-330; N. Rousseau, *Renseignements pratiques sur la legislation canonique du Mariage*, Paris, 1905, p. 33 sq.

(B) St. Thomas[2] declares as follows the reason why it is sometimes expedient to grant a dispensation: it sometimes happens that some precept, which is for the advantage of the multitude, is not suitable for this person or in this case, because through it something better would be impeded, or even some evil would be induced; therefore it is expedient that in this particular case the law be relaxed; but because it would be dangerous to commit this to the judgment of anyone whatever, except on account of an evident and sudden danger, it is necessary that he who has power to rule the multitude have the power of dispensing in human law, which rests upon his authority.

[2] *Sum. Theolog.*, 1a 2ae, q. 97, a. 4.

(C) In the earlier centuries of the Church no traces appear of dispensations concerning matrimonial impediments. St. Gregory the Great, in the sixth century, granted to the recently converted English that they might remain in marriages entered before conversion in the third degree of consanguinity: but this was not a dispensation strictly taken, but a privilege granted to a certain nation on account of special reasons. But already in the eleventh century examples of dispensation are found, for example in the case of Casimir, who, notwithstanding religious profession, received permission to contract nuptials. From the twelfth century, dispensations were given more frequently by the Roman Pontiff; from the sixteenth century, faculties of dispensing concerning some impediments were granted to Bishops, especially missionaries; and this practice became more common day by day. Leo XIII greatly extended the faculties usually granted, and at the same time abrogated or changed certain clauses

which were accustomed to be added to rescripts, so that dispensations might more easily be committed to execution.

1036. 2° Species of dispensations. (A) Dispensations can be granted with regard to a public or to an occult impediment: this distinction is of the greatest importance, since often the S. Penitentiary dispenses with the clause "provided it is occult."

(a) Now certain impediments are public by their nature, insofar as they can be known without infamy or scandal, and otherwise are easily proved in the external forum, for example legitimate consanguinity, spiritual relationship, licit affinity, bond, disparity of cult, etc.; these, although known to few, are always held as public.

(b) But others are, by their nature, or by law, occult, namely because they cannot be known without infamy or scandal, nor can they so easily be proved in the external forum, such as illegitimate consanguinity, crime, etc.; concerning these it is asked when they are considered occult in fact.

Now up to this time the Roman Congregations distinguished a twofold kind of occult: altogether occult and simply occult. The former was that which is known to no one except the parties and the confessor; indeed, more probably, that which, besides the parties and the confessor, is known to only one discreet person.

The latter, that is, simply or quasi occult, was that which is known only to a few, without probable danger that the matter be proved in the external forum. But can. 1037, which used to be left to canonists to define, itself defines it, by saying simply: "An impediment is considered public which can be proved in the external forum; otherwise it is occult."

Therefore, in order that an impediment occult by its nature be public in fact, it is not required that it be juridically proved; but it suffices that it be known to those persons whose testimony in the external forum would be equivalent to juridical proof. Now such persons are, from can. 1791: 1. one sole qualified witness who gives testimony concerning things done by office; 2. two or three persons, greater than every exception, firmly agreeing among themselves, testifying from their own knowledge.

1037. Corollaries. (a) If an impediment is known in one place, for example in Ireland, and unknown in the place where the contracting parties dwell, for example in America, and knowledge of it is not foreseen as likely to come there easily, it is considered occult; nevertheless it is safer to set forth this circumstance in the petition. - Likewise if it was at one time public, but from then for a long time (for example ten years) remained occult, it can be held as occult.

(b) If an impediment is public materially, that is, insofar as it is a fact, but not formally, insofar as it is criminal (for example if a homicide is held by the community as fortuitous), in practice it is considered occult. But if it is public not only as a fact, but also as a crime, although it is commonly unknown that this is an impediment, the matter is indeed controverted; but the more common opinion, which the Penitentiary follows in practice, holds that the impediment is truly public.

1038. (B) By reason of the forum, a dispensation is granted either for the external forum, or for the internal forum only. (a) When it is granted for the external forum, it is considered to have

force also for the internal forum, except in a case where the judgment was rendered from a presumption which is in reality false. - This dispensation is sought for a public impediment, with the names of the petitioners expressed.

(b) A dispensation is granted in the sacramental internal forum (the names of the petitioners being withheld), or in the non-sacramental internal forum (their names being expressed). From can. 1047 let these things be noted: "Unless the rescript of the S. Penitentiary provides otherwise, a dispensation granted in the non-sacramental internal forum concerning an occult impediment is to be noted in a book diligently kept in the secret archive of the curia... nor is another dispensation for the external forum necessary, even if afterwards the occult impediment becomes public; but it is necessary if the dispensation had been granted only in the sacramental internal forum."

1039. (C) By reason of form, a dispensation can be given (a) in gracious form, when it is granted directly to the petitioner himself and directed to him; which formerly was sometimes done; (b) in commissory form, when it is not granted to the petitioner himself, but is committed to be executed either by the Bishop, or by the confessor or another priest; today dispensations are granted in this way, by command of Leo XIII[1].

[1] Thus he decreed "that all matrimonial dispensations in the future are to be committed either to the Ordinary of the Petitioners or to the Ordinary of the place." (*Collect. P. F.*, n. 1471.)

In either case, the dispensation does not expire by the death of the one granting it, or his cessation from office; nor by the death of the delegated person, unless to this person the faculty of dispensing had been entrusted by reason of personal quality, but not by reason of office. (Code, c. 1055.)

§ II. On the Author of Dispensations.

Since those can dispense who enjoy the power of making laws, the question can be considered with respect to the Supreme Pontiff and Bishops.

[2] Sanchez, l. VIII, disp. 3-15; Reiffenst., Append. ad lib. IV, § 1; Schmalzgr., lib. IV, tit. 16, n. 59-101; St. Alphonsus, n. 1118-1127; Carriere, n. 1063-1110; Ball. P., n. 918-932; Gasparri, n. 312-327; 404-431; Feije, n. 601-648; Zitelli, *De Dispensationibus*, p. 45-62; Brillaud, n. 66-114; Tephany, *Traite des Dispenses*, p. 76-118.

I. On the Power of the Supreme Pontiff with Respect to Dispensations.

1040. 1° On the power itself. The Supreme Pontiff, as the supreme head of the Church, can validly dispense from any ecclesiastical law, and therefore in all impediments of ecclesiastical law. That this may be declared more fully, these things are to be noted:

(A) No dispensation is granted concerning impediments of divine law, whether natural or positive, except in cases determined by divine law itself (for example in the Pauline case, above, n. 729). Nevertheless the Church can do two things with respect to divine law: authentically declare whether an impediment is present or not, for example whether there is sufficient certainty concerning the dissolution of a prior bond; or whether, in such and such a circumstance, divine law obliges or not, for example in the Pauline case whether an interpellation is necessary.

Hence the Supreme Pontiff cannot dispense in the first degree of consanguinity of the direct line; in antecedent and perpetual impotence; in the bond, if it is a question of a marriage of the faithful that is ratified and consummated; in error and fear, insofar as they remove the necessary liberty.

1041. (B) If it is doubted whether some impediment is of divine or ecclesiastical law, the Supreme Pontiff, following the safer way, is not accustomed to dispense in it; thus in every degree of consanguinity in the direct line; in the first degree of consanguinity of the collateral line.

(C) Rarely and only from a most grave cause does the Pontiff dispense in the impediment of age, even insofar as it is merely ecclesiastical; in the second degree of consanguinity touching the first (a niece and maternal uncle); in the first degree of licit affinity in the direct line; in a solemn vow and sacred order; in disparity of cult, outside mission places; in clandestinity.

1042. 2° On the organs through which the Roman Pontiff dispenses. Since the Roman Pontiff cannot personally dispatch all business, he uses various Congregations for granting dispensations.

Today, according to the new economy introduced by the Constitution *Sapienti consilio*, five Congregations are deputed to this office:

1043. (A) For the internal forum only, the S. Penitentiary can dispense, as before, for the forum of conscience:

(a) as regards marriages contracted and to be contracted, concerning all impediments, prohibiting and diriment, which by nature and in fact are occult, and concerning public honesty from occult betrothals (from the old law); (b) in order to convalidate a contracted marriage, concerning the third and fourth degree of consanguinity and of licit affinity occult in fact, and also in the second degree, if "it has remained occult at least for ten years, and the petitioners have at the same time contracted publicly and lived together, and have been reputed as legitimate spouses," likewise concerning spiritual relationship occult in fact[1].

[1] Benedict XIV, Constit. *Pastor bonus*, April 3, 1744; *Normae peculiares*, cap. VIII, art. 1. (*A. A. S.*, I, 101). - Cf. Desmet, *De Sponsalibus et Matrimonio*, 1911, n. 351.

(c) Besides this it belongs to the Penitentiary to sanate dispensations concerning the third and fourth public degrees of consanguinity and affinity, which are null on account of occult subreption or obreption; likewise to sanate marriages null because of consanguinity or affinity of the first with the second degree, or of the second with the third. - Its competence extends to all Latin churches, not excepting those which are subject to the S. C. de Prop. Fide.

All things are dispatched secretly and gratis in this sacred tribunal. Nevertheless postal expenses must be paid, and if the dispensation is obtained through the episcopal Chancery, a small sum of money for the agency.

1044. (B) For the external forum: (a) The Cong. of the Holy Office dispenses in the impediments of disparity of cult and mixed religion. It also retains the faculty of knowing those things which regard the Pauline privilege and mixed marriages (between Catholics and non-Catholics). Its competence extends to all churches of the Latin rite, not excepting those which are subject to the S. Cong. de Prop. Fide. (Code, can. 247, § 3.)

(b) The Congreg. of the discipline of the sacraments, or of the sacraments, dispenses concerning the remaining impediments of the external forum, both for the poor and for the rich. To the same Congregation are attributed sanations in the root, dispensation concerning ratified and non-consummated marriage, separation of spouses, legitimation of offspring. Its competence in those things which regard marriage extends to the whole world of the Latin rite. - Nevertheless, when it is a question of dispensation concerning a ratified marriage, the prior judicial inquiry concerning the fact of non-consummation pertains to the S. Rota. (Code, can. 249, § 3.)

Scholion on taxes to be paid. When a pontifical dispensation for the external forum is granted, from the usage of the Curia, for the rich or quasi-poor, besides postal and agency expenses, a certain tax is imposed for the support of officials and for bearing other burdens of the apostolic curia; and also a composition to be converted to pious uses, when for the rich a dispensation is obtained without cause, or even with cause if it is a question of consanguinity or licit affinity; this is greater the richer the petitioners are. Wherefore in the supplicatory petition the wealth of the petitioners must be set forth. In many regions, by force of indult, the tax and composition are determined according to equity and the good by the Ordinary of the place.

But the poor obtain a dispensation gratis; nevertheless there is inserted in the rescript that a small alms is to be made, to be taxed according to the judgment of the Ordinary; but those called miserable are dispensed from it[1].

[1] The poor are reputed those who both together do not have more than 1500 francs in Italy and, outside Italy, about 3000 francs; the miserable, those who live by the labor of their hands alone; the quasi-poor, those who possess no more than about 5000 francs in Italy and, outside Italy, 10000 francs. In computing fortune, account must be taken of fortune in hope, which is customarily computed for half, and of stable revenues from the office of either of the betrothed.

Today, however, error or fraud concerning the economic condition of the petitioner does not obstruct the validity of the dispensation.

1045. (c) The S. Congreg. set over the Business of Religious Sodalities dispenses concerning the vow of chastity as regards religious of each sex, and all sodales living life in common after the manner of religious, and indeed through the whole world of the Latin rite.

(d) The S. Congreg. for the Business of the Oriental Rites dispenses, as regards regions and persons belonging to the Oriental Rites, in all impediments, except only the Pauline privilege, which is reserved exclusively to the Holy Office.

Note. From the const. *Vacante Sede Apostolica*, December 25, 1904, the ordinary faculties of the Congregations are not extinguished by the death of the Pontiff, but only the extraordinary ones, or those which cannot be dispatched unless the word has been had with the Most Holy. Nevertheless the Pontiff wills that, insofar as it can be done, the Congregations not use these faculties except in matters of lesser moment.

II. On the Power of Dispensing Competent to Bishops.

1046. 1° By proper and original right, Bishops cannot dispense in impediments of marriage, whether diriment or even prohibiting, if exception is made for a prohibition made by the Bishop

himself, or his predecessor, or by a pastor. For a Bishop cannot by his own right dispense from a general law.

1047. 2° By ordinary power, yet vicarious, not proper:

(a) Concerning the proclamation of banns: "The proper local Ordinary, according to his prudent judgment, can for a legitimate cause dispense from publications, even those to be made in another diocese."[1]

[1] Code, c. 1028.

(b) In a doubtful case: "Even invalidating and incapacitating laws do not bind in doubt of law; but in doubt of fact the Ordinary can dispense in them, provided it is a question of laws in which the Roman Pontiff is accustomed to dispense."[2]

[2] Code, c. 15.

1048. (c) "When danger of death urges, local Ordinaries, for consulting conscience and, if the case calls for it, the legitimation of offspring, can dispense their own subjects wherever they dwell, and all those actually staying in their own territory, both concerning the form to be observed in the celebration of marriage and concerning each and all impediments of ecclesiastical law, whether public or occult, even multiple, except impediments arising from the sacred order of the presbyterate and from affinity in the direct line, when the marriage has been consummated, scandal being removed, and, if the dispensation is granted concerning disparity of cult or mixed religion, the customary cautions having been furnished."[3]

[3] Code, c. 1043.

From this canon the power of dispensing also includes affinity in the direct line, if the marriage has not been consummated. Moreover a marriage (whether true or false), "if the spouses have cohabited together, is presumed consummated until the contrary is proved."[4]

[4] Code, c. 1015, § 2.

In the same circumstances and only for cases in which not even the local Ordinary can be approached, the same faculty of dispensing is possessed both by the pastor, and by the priest who assists at marriage... when the pastor or Ordinary or delegated priest cannot be had or approached without grave inconvenience, and also by the confessor, but he only for the internal forum in the act of sacramental confession[5].

[5] Code, c. 1044. But concerning a dispensation of this kind granted for the external forum, the local Ordinary is to be informed immediately, and it is to be noted in the book of marriages. Code, c. 1046.

1049. (d) In an urgent case. - "Local Ordinaries can, under the clauses indicated above, grant dispensation concerning all the impediments of which in the same number, whenever the impediment is detected when now all things are prepared for the nuptials[6], and the marriage, without probable danger of grave evil, cannot be deferred until a dispensation is obtained from the Holy See.

[6] From the decision of the Pontifical Commission, March 1, 1921, these things are to be understood not in a strict sense, namely that the impediment had previously been altogether unknown and then is discovered, but in this sense,

that although previously known, then only it is brought to the knowledge of the pastor or Ordinary.

This faculty also has force for the convalidation of a marriage already contracted, if the same danger is present in delay and time does not suffice for recourse to the Holy See.

In the same circumstances, they enjoy the same faculty, but only for occult cases in which not even the local Ordinary can be approached, or only with danger of violation of the secret."[1]

[1] Code, c. 1045.

Thus now the case which was called perplexed is easily solved.

1050. 3° By delegated power, Bishops can dispense in those impediments for which they have received special faculties[2]; these indeed are various for various regions.

[2] From the Decree of the Congreg. of Sacraments, March 7, 1910, these faculties are not to be used for marriages of kings and of princes of the royal stock. Cf. *Acta Apost. Sedis*, II, p. 147; Code, c. 201, § 3:

As regards common Indults which up to now were granted to Ordinaries petitioning for them (in the Brief called of 25 years, or in formulas for ten years or for three years), these things have been established (*Secret. S. C. Consistorialis*, April 25, 1918):

(a) In all dioceses subject to common law, all faculties for the external forum granted to Ordinaries, and which are contained in the Formulas and Brief enumerated above, will cease from May 18, 1918.

(b) Nevertheless in more remote places and others to which knowledge of the decree has not come, dispensations granted by force of the old faculties will be valid.

(c) But the faculties for the internal forum granted by the S. Penitentiary have not been abolished.

(d) Local Ordinaries in America, in the Philippine Islands, in the East Indies, in Africa outside the coasts of the Mediterranean Sea, and in Russia, for a quinquennium from May 18, 1918, are able to dispense from impediments of a lesser degree (c. 1047); and marriages nullly contracted on account of these impediments they can sanate in the root, according to the rules of the Code; likewise for a quinquennium they can dispense from impediments of a greater degree, whether occult or public, even multiple, yet of ecclesiastical law (except impediments arising from the sacred order of the presbyterate and from affinity in the direct line when the marriage has been consummated), and also from the impedient impediment of mixed religion, if the petition for dispensation has been sent to the Holy See and an urgent necessity of dispensing supervenes while recourse is pending, with those things nevertheless being observed which must be observed by law.

1051. Concerning all these faculties, whether ordinary or delegated, these things are to be noted:

1. When the contracting parties are of diverse dioceses, if the impediment is altogether proper to one, such as a vow, the contracting party so bound must have recourse to his own Bishop, and if both have contracted such an impediment, each must be dispensed by his own Bishop; but if the impediment is common to each, as consanguinity or affinity, it suffices that the dispensation be granted by either Bishop; nevertheless it is fitting that it be sought from the Bishop in whose diocese the marriage is celebrated.
2. Faculties subdelegated by the Bishop can be exercised toward subjects, even if both he himself and the subject are outside the diocese at the time when the dispensation is made; unless, however, the clause has been added, "nor can he use them outside the boundaries of the diocese," or it is otherwise clear from the mind of the Supreme Pontiff, or unless the subject matter requires it; for then the faculties can be exercised only with proper subjects actually

dwelling in the diocese at the time when the favor is granted. Nevertheless it is not necessary that the Bishop himself then be in the diocese[1].

[1] Code, c. 201, § 3: "...one can exercise voluntary or non-judicial power of jurisdiction even for one's own advantage, or while existing outside the territory, or over a subject absent from the territory."

3. "In marriages either contracted or to be contracted, he who enjoys a general indult of dispensing concerning a certain impediment can, unless something else is expressly prescribed in the indult itself, dispense concerning it even if the same impediment is multiple.

He who has a general indult of dispensing concerning several impediments of diverse species, whether diriment or impedient, can dispense concerning the same impediments, even public ones, occurring in one and the same case."[2]

[2] Code, c. 1049.

4. In granting dispensations, Bishops must follow the rules which the Holy See observes with respect to the causes of dispensations.

5. Faculties habitually granted to Ordinaries do not perish, nor are they suspended on account of their death or cessation from office, but pass to the Ordinary successors; likewise those granted to the Bishop also belong to the Vicar General[3].

[3] Code, c. 66, § 2. Besides this, "a granted faculty also carries with it other powers which are necessary for its use; wherefore in the faculty of dispensing there is also included the power of absolving from ecclesiastical penalties, if any perhaps stand in the way, but only for the effect of obtaining the dispensation." Ibid.

6. "Through a dispensation concerning a diriment impediment granted either from ordinary power, or from delegated power by general indult, but not through a rescript in particular cases, there is also by that very fact granted the legitimation of offspring, if any has already been born or conceived from those with whom the dispensation is made, yet adulterine and sacrilegious offspring being excepted."[1]

[1] Code, c. 1051.

§ III. On the Causes of Dispensations.

1052-1061. I. General principles. 1° Dispensations ought not to be granted except when a grave and proportionate cause urges: "In contracting marriages," says Trent[3], "let either no dispensation at all be given, or rarely, and that from cause, and let it be granted gratis." Today, however, on account of the changed conditions of times, the old law has been tempered on account of the common good of souls[4]; nevertheless a grave cause is required, and indeed one graver according as the impediment from which dispensation is sought is graver. - For liceity a just cause is always required; for validity it is also required whenever a Bishop dispenses by tacit or explicit delegation, because the Supreme Pontiff does not grant the faculty of dispensing unless a grave cause is present; but the Pope, as supreme Legislator, validly dispenses even without cause, although he is not accustomed to do this.

[2] Sanchez, lib. VIII, disp. 18-20; P. Corradus, lib. VII-VIII; Vincentius de Justis, *De Dispens. matrim.*, lib. III; St. Alphonsus, n. 1129-1130; Carriere, n. 1112-1123; Ball. P., n. 933-944, ed. 3; Feije, n. 649-685; Gasparri, n. 328-349; Lehmk., n. 800-803; Planchard, n. 51-68; Tephany, n. 77-121; Joder, p. 95-104.

[3] Sess. XXIV, cap. 5 *de Reformat. Matrim.*

[4] Thus the Dataria, ap. *Acta S. Sedis*, XXXIV, p. 83.

1062. 2° Species of causes. (A) Some causes of dispensations are final, or determining by themselves, but others are impelling or impulsive: the former are the reasons why a dispensation is granted, and of themselves suffice that it be granted; the latter are reasons which move the one dispensing so that he may more easily dispense, but of themselves do not suffice for obtaining a dispensation. - Sometimes one cause taken separately is insufficient, but joined to another or to several others is judged sufficient; for things which do not profit singly, help when many.

(B) Some are defaming, which arise from a delict or injure the reputation of the petitioners; others are honorable, which imply neither delict nor defamation. Dispensation is more easily made from defaming causes than from others, on account of the necessity of averting grave evil.

(C) Certain causes are called canonical, because from the style of the Roman Curia they are accustomed to be admitted as having force and efficacy; others non-canonical, whose efficacy is not explicitly admitted. The former especially must be set forth in the supplicatory petition, but others can be added to them, so that the dispensation may be granted more easily; all the more because the Supreme Pontiff can, in a particular case, admit any rational cause approved by him[1].

[1] Thus the Dataria, *Formulae reformatae*, ap. *Act. S. Sedis*, l. c.

1063. II. Principal causes of dispensations. The Dataria formerly admitted only four; but in the *Reformed Formulas*[2] twenty-eight are enumerated:

[2] Ap. *Acta S. Sedis*, XXXIV, p. 34-35.

Narrowness of place; narrowness of places[3]; narrowness with the clause: and if outside, the dowry would not be competent[4]; incompetence of the dowry of the female petitioner; dowry with increase[5], for the undowered woman; when another increases the dowry; on account of enmities (to be avoided); for the confirmation of peace, and on account of treaties between Princes and Kingdoms; on account of lawsuits concerning succession to goods; on account of a dowry involved in lawsuits; on account of lawsuits concerning matters of great moment; for a female petitioner burdened with children, or bereft of parents; for a female petitioner exceeding the twenty-fourth year of age; on account of the difficulty of men going to the place, for contracting with inhabitants of the place; on account of the small number of men, for example by reason of war; on account of the Catholic religion of the contracting party being placed in safety, and the danger of a mixed marriage; on account of the hope of conversion of the other party to the Catholic religion; that goods may be preserved in the family; for the preservation of an illustrious family; for the preservation of the royal stock; on account of excellence of merits; on account of preserving the honor of familiars; on account of infamy and scandal; on account of intercourse; on account of abduction; on account of civil marriage; on account of marriage before a Protestant minister; on account of a marriage nullly contracted; from certain rational causes, namely on account of a more abundant composition in degrees somewhat remote; or in more remote degrees on account of a cause of public good moving the mind of the Pontiff; from certain special rational causes, moving the minds of the Petitioners and set forth to His Holiness, namely on account of intercourse or dishonorable acts, which, on account of the honor of the Petitioners, their quality having been considered, it is not expedient to explain.

[3] That is, both of the place of origin and of the place of domicile.

[4] That is, if she were forced to marry outside the place of domicile, the dowry which she has would not be competent or sufficient.

[5] Namely, the male petitioner intends to increase the insufficient dowry of the female petitioner.

1064. The S. Penitentiary and the other Congregations have already for a long time admitted many canonical reasons, but especially sixteen, which the Instruction of the S. C. de Prop. Fide[1], May 9, 1877, enumerates thus:

[1] Ap. *Collect. P. F.*, n. 1482; Gasparri, n. 333 sq. - These causes do not substantially differ from those which the Dataria recently admitted, and therefore the explanations which we add hold good for each.

"1° Narrowness of place, whether absolute or relative (only by reason of the female petitioner), namely when in the place of origin or even of domicile the kinship of the woman has been so propagated that she cannot find another of equal condition whom she may marry, unless a blood relative or affine; but to leave the fatherland would be hard for her."

Concerning this we observe: according to the S. Congreg. of the Council, December 16, 1876, narrowness of place is not to be taken from the number of hearths of each parish, but from the number of hearths of the whole city or town, or of places which are not distant more than a mile (1500 meters); and, according to the Dataria, August 30, 1847, a place is called narrow when it does not exceed three hundred hearths, that is, about one thousand five hundred inhabitants, heretics, schismatics, and infidels being removed, but not the impious and unbelievers. - The reason why a dispensation is granted is because otherwise the female petitioner would have either to remain unmarried, or to marry a man of unequal condition, or to depart from the fatherland; these three are grave inconveniences. That the cause may be true, the female petitioner must be of an honorable family; otherwise she could find a man of equal condition. The cause is considered present, even if previously certain young men of equal condition had asked for her as wife, provided none can now be found.

1065. "2° The over-adult age of the woman, namely if, having already passed the twenty-fourth year of age, she has not found a man of equal condition whom she can marry. But this cause by no means favors a widow who desires to fly to other nuptials."

A man of equal condition is said, that is, equal in birth, wealth, character, and not unequal in age, religion, or morals, who is acceptable to the woman and her parents. - For the validity of the dispensation it is enough that there be certainty concerning over-adult age, nor is it necessary, in the verification of the cause, to inquire and prove that the woman up to that age did not find a man of equal condition[2].

[2] Thus the S. Penitentiary, April 5, 1902, ap. *Acta S. Sedis*, XXXV, 44.

1066. "3° Deficiency or incompetence of dowry, namely if the woman does not actually have so great a dowry that she can marry, in her own place in which she dwells, an outsider of equal condition, namely one who is neither blood relative nor affine. This cause urges more if the woman is altogether undowered, and a blood relative or affine is prepared to marry her; or even is prepared suitably to dower her entirely."

This reason exists even if the female petitioner is going to have a dowry after the death of her parents, provided these are unwilling or unable to dower her now; indeed even if there is certain hope that someone wishes to dower her, if the female petitioner does not have the right of forcing him to this; or even when she has already renounced the dowry, provided she did not do this for obtaining the dispensation.

"4° Lawsuits concerning succession to goods already arisen, or a grave or imminent danger of the same. If a woman sustains a grave lawsuit concerning succession to goods of great moment, and there is no other who would take upon himself a lawsuit of this kind and prosecute it at his own expense, besides him who desires to take her as wife, a dispensation is usually granted; for it is of interest to the commonwealth that lawsuits be extinguished. - Hence another cause closely approaches, namely a dowry involved in lawsuits, when, that is, the woman is destitute of another man by whose aid she may be able to recover her goods. But a cause of this kind suffices only for the more remote degrees."

"5° Poverty of a widow, who is burdened with numerous offspring, and a man promises to support her. But sometimes by the remedy of dispensation assistance is given to a widow only for this cause, that she is younger and is in danger of incontinence."

1067. "6° The good of peace, under which name come not only treaties between Kingdoms and Princes, but also the extinction of grave enmities, quarrels, and civil hatreds. This cause is adduced either for extinguishing grave enmities which have arisen between the blood relatives or affines of the contracting parties, and which would be entirely settled by the celebration of the marriage, or when grave enmities have prevailed between the blood relatives and affines of the contracting parties, and although peace has already been entered into between them, nevertheless the celebration of the marriage would be of the greatest service for the confirmation of that peace."

This cause is that which is called by the Dataria "on account of enmities," and supposes two things: that the enmities have arisen from some other source than from the cause of the marriage, and that there is a founded hope of extinguishing them by the desired nuptials.

1068. "7° Excessive, suspect, dangerous familiarity, and also cohabitation under the same roof, which cannot easily be prevented."

The reason for this is that scandal may be avoided; hence it is necessary that the familiarity or cohabitation have given origin to a suspicion concerning foul carnal commerce. To this cause can be referred other things which likewise may be able to furnish scandal, such as disordered love and danger of life, when the parents of the girl threaten death to a man unless he marry her whom they suspect him to have known carnally.

"8° Intercourse previously had with a blood relative or affine or another person laboring under an impediment, and pregnancy, and therefore the legitimation of offspring, namely 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 indeed is one of the more urgent causes, on account of which dispensation is usually given even to common people."

Since this cause is admitted on account of avoiding scandals, the intercourse must be notorious or about to be divulged very soon. If it is occult, it can be alleged for confirming the danger of incontinence or of scandal. - Formerly the clause was added: provided the intercourse was not perpetrated under hope of an easier dispensation; but this was removed by decree of the Holy Office[1], June 25, 1885.

[1] Ap. *Collect. P. F.,* n. 1246.

"9° Infamy of the woman arising from the suspicion that she, too familiar with her blood relative or affine, has been known by him, even if the suspicion is false, namely when, unless the marriage is contracted, the woman would remain gravely defamed or unmarried, or would have to marry a man of unequal condition, or grave damages would arise."

"10° Revalidation of a marriage which has been contracted in good faith and publicly, with the Tridentine form preserved: because its dissolution can scarcely be made without public scandal and grave damage especially to the woman, cap. 7 *de consanguin.* But if the spouses entered nuptials in bad faith, they by no means merit the grace of dispensation, as the Council of Trent disposes, sess. XXIV, cap. 5 *de Ref. Matr.*"

Today, however, this last restriction is no longer in force, and, in order to avoid worse evils, dispensation is given even in the case of bad faith on the part of both parties, especially if offspring has already been born, or a civil marriage contracted.

1069. "11° Danger of celebrating a mixed marriage or one before a non-Catholic minister. When there is danger that those wishing to contract marriage in some degree, even one of the greater degrees, because of the denial of dispensation, would approach a non-Catholic minister for celebrating the nuptials, with contempt for the authority of the Church, a just cause of dispensing is found; because there is present not only a very grave scandal of the faithful, but also fear of perversion and defection from the faith in those so acting and contemning the impediments of marriage, especially in regions where heresies rage with impunity... The same must be said concerning the danger that the Catholic party should dare to celebrate marriage with a non-Catholic."

"12° Danger of incestuous concubinage..., lest someone become filthy in concubinage with public scandal and evident peril of eternal salvation..."

"13° Danger of civil marriage. From what has been said it follows that the probable danger that those who seek dispensation, if it is not obtained, are going to celebrate only a civil marriage, as they say, is a legitimate cause of dispensing."

"14° Removal of grave scandals."

"15° Cessation of public concubinage."

"16° Excellence of merits, when someone has deserved exceedingly well of religion, either by battle against the enemies of the Catholic faith, or by liberality toward the Church, or by doctrine, virtue, or in some other way."

1070. There are also other causes on account of which the S. Penitentiary and the S. C. de Prop. Fide grant dispensations, e.g., if the nuptials bring a special utility, such as immunity from military service; or between the petitioners there is a special equality of condition and disposition; or the male petitioner is present at Rome and has made sacramental confession there; or the spouses, ignorant of the impediment, have prepared all things for the nuptials; or through the marriage an illustrious family is preserved; or the parents greatly desire the nuptials. But the Penitentiary does not admit for the external forum the cause without cause, or a more abundant alms, but then refers the petitioners to the competent Congregation.

1071. Corollary. The cause on account of which a dispensation is given must be true at the time when the dispensation is fulminated, or is committed to execution; otherwise it would be granted without cause, and consequently illicitly and invalidly.

(a) But since today Papal dispensations are given only in commissory form, strictly speaking it is not necessary that the cause of dispensation be true[1] at the time when the Supreme Pontiff grants the letters of dispensation, but only at the time of execution; for the Supreme Pontiff does not weigh the truth of the causes, nor does he properly dispense, but constitutes the executor (the Bishop, or confessor) as judge, that he may see whether the causes are true, and, once the truth of the causes has been posited, fulminate the dispensation[1]. - But if the dispensation is granted in gracious form by the Bishop, the cause must be true also at the time of the concession.

[1] Bad faith, however, being excluded, as will be said below.

[1] Thus *Santi*, lib. IV, Append., n. 34, after *Pyr. Corradum*, lib. VII, c. 6, n. 25.

(b) Nor is it required, according to the common and safe opinion, that the cause be true at the time when the marriage is celebrated; e.g., if a woman who obtained a dispensation on account of incompetence of dowry, after the dispensation has been fulminated and before the marriage, has become rich, she contracts validly; for the impediment, already removed by dispensation, does not revive.

§ IV. On the Manner of Seeking Dispensations.

1072. I. To whom does it belong to seek the dispensation? (A) Regularly to the contracting parties themselves who need the dispensation; but since for the most part they are unfit to perform this, generally the petition is made by the pastor or confessor of the petitioners.

[2] P. Corradus, lib. VII-VIII; St. Alphonsus, n. 1131-1141; Carriere, n. 1126-1159; Ball. P., n. 945-954, ed. 3; Feije, n. 686-730; Gasparri, n. 350-362; Santi, lib. IV, Append., n. 33-45; Brillaud, n. 174-199; Planchard, n. 86-149; Zitelli, p. 67-74.

(a) If the impediment is public, the petition is made by the pastor, in the name of the petitioners. If the parties about to marry are of diverse parishes, the dispensation can be requested by the pastor of either one; but it is expedient that it be sought from the pastor of the place where the marriage is celebrated, regularly, namely, from the pastor of the bride. If, however, it is a question of a mixed marriage, the petition must be made by the pastor of the Catholic party.

(b) If the impediment is occult, the petition is made by the confessor. When the impediment affects only one of the contracting parties, one petition suffices; but when it affects two contracting parties

(e.g., spouse-murder with both plotting it), a double petition is to be made by the confessor of each penitent, unless the confessor of both is the same.

(c) If there is a double impediment, one public and the other occult, a double petition must be made: one for the public impediment, with the names of the petitioners; another for the occult one, with the names suppressed, so that thus provision may be made for the seal of the sacrament and the reputation of the parties: the former is to be sent to the Congregation of the Sacraments or the Holy Office, etc.; the latter to the Penitentiary, noting that the petitioners, bound by another public impediment, have obtained or have sought a dispensation concerning it[1].

[1] That provision may be made for the reputation of the petitioners, there ought to be two officials in the Episcopal Curia, one for public impediments, the other for occult impediments; for, if the same official receives each supplicatory petition, he can easily know the names of the petitioners who have sought a dispensation for an occult impediment. Since in most dioceses of North America there is only one official, it is expedient to have recourse, for occult impediments, to the Holy See or to the Apostolic Delegate.

(B) Although the petition can be made orally, it is made better and more safely in writing. In practice the Roman Congregations admit only written petitions. By command of Leo XIII, December 10, 1891, dispensations ordinarily ought not to be sought telegraphically, on account of the inconveniences which can easily occur from this way of acting; the same rule ought to be observed in Episcopal curias.

(C) When a composition or tax is required for obtaining a dispensation, it is expedient that the pastor or confessor not send the supplicatory libellus unless the expenses have first been paid; otherwise he himself could be held to paying them. But if the petitioners are so poor that they can give no money, this should be set forth in the supplicatory libellus itself, so that the dispensation may be granted gratis.

1073. II. From whom must the dispensation be obtained? From the Bishop, or from the Holy See, or from an Apostolic Delegate.

(A) Formerly most Bishops, especially in remote regions, were accustomed to obtain very broad faculties from the Holy See; therefore for many impediments recourse could be had directly to the Bishop or his Chancellor, and indeed by a letter written in the Latin or vernacular idiom.

(B) When it is a question of an impediment in which the Bishop cannot dispense, recourse is to be had to the Roman Congregations, namely the S. Congregation of the Sacraments, the Penitentiary, the Holy Office, etc., according to the principles set forth above (n. 1042 sq.).

1074. When recourse is made to the Congregation of the Sacraments or to the Holy Office, this or a similar formula can be employed: -

Beneventan. (i.e., the name of the diocese of the petitioner)

Most Blessed Father,

It is humbly set forth to Your Holiness, on the part of those devoted petitioners Alphridus Santangelo, man, and Maria Loiacono, woman, of the Beneventan diocese, that, since the said woman, in the place from

which she and the aforesaid Petitioner have arisen, existing in the said diocese, on account of the narrowness of that place, cannot find a man of equal condition whom she can marry, and since the said female Petitioner exists burdened with five children begotten from another man, and the said male Petitioner intends to take her as wife and to support and govern her said children; therefore the aforesaid Petitioners desire to be joined to each other matrimonially. But ... (Here is set forth the special impediment prevailing between the petitioners)

.....
.....
.....

Therefore the aforesaid Petitioners humbly supplicate Your Holiness, that with the same Petitioners, as regards the impediment ..... arising from the premises, and with other things perhaps withheld in good faith, and all other contrary things whatsoever notwithstanding, that they may be able freely and licitly to contract marriage publicly between themselves, the form of the Council of Trent being observed, you may deign to dispense, of special grace, with suitable clauses.

1075. When recourse is had to the S. Penitentiary, the supplication is addressed to the Major Penitentiary[1], and can be written in Latin, or also in the vernacular idiom.

[1] To the Most Eminent Cardinal Major Penitentiary, Palazzo della Cancellaria, Rome, Italy.

Most Eminent Prince,2

Titius ... (Here the impediment is set forth, and afterward the reason on account of which the dispensation is sought)

.....
.....
.....

Wherefore Titius as suppliant asks Your Eminence that you may deign kindly to grant a dispensation in the aforesaid impediment.

May it please Your Eminence to direct the letters to me, the undersigned confessor.

Most humble Servant

N. N.

[2] We take this formula from the work of Zitelli, p. 198.

There should be expressed there the name and surname of the confessor, the name of the town or city, in the common idiom.

Another specimen of the supplicatory libellus is recommended by the Penitentiary itself[3], for a public impediment, when the petitioners are poor; and indeed it is commendable for its brevity and clarity: -

[3] Ap. *Acta S. Sedis*, p. 61.

Most Blessed Father,

N. N., born ..... years .....
and N. N., born ..... years .....
of the diocese N. ....., prostrate at the feet of Your
Holiness, humbly request a dispensation concerning the impediment
.....
.....
that they may be able to contract a legitimate marriage between
themselves.

The causes are: 1. Age of the female petitioner.
2. Defect of dowry.
3. Narrowness of place.
4. Care of offspring received from a previous marriage,
etc.

The petitioners are poor .....

We testify that the things set forth are true and we commend the
petitioners for the grace.

Given .....

1076. The S. C. de Prop. Fide has published printed formulas, with empty spaces in which those things can be written which are special to each case[1]; we subjoin one for the sake of a specimen: -

[1] These formulas are to be found apud Putzer, n. 96. - The petition is directed to the Most Eminent Cardinal Prefect of the S. C. de Prop. Fide, Propaganda, Rome, Italy.

Most Blessed Father,

The petitioners .....
humbly ask from Your Holiness a dispensation concerning the impediment
.2.....
that they may be able to contract marriage between themselves.

The causes are3 .....
and incest had between the same Petitioners .....

[2] For example: concerning the impediment of consanguinity in the second equal degree of the collateral line, by which they are bound, from the fact that both descend from a common stock, as is clear from the following stemma (here let the genealogical tree be given).

[3] E.g., the age of the female petitioner, who has already reached the 25th year, and has found no other man of equal condition who wishes to marry her.

Letters to the S. C. de Prop. Fide can be written directly in the Latin, French, or Italian language.

Sometimes recourse can also be had to Apostolic Delegates, who have obtained from the Holy See the faculty of dispensing[4].

[4] In the United States of America, the Apostolic Delegate enjoys the same Faculties as the Bishops themselves; letters can be directed to him in this way: - His Excellency Most Rev. N. N., 201, I Street, N. W. Washington, D. C.

When a pastor or confessor writes to the Roman Congregations, it is more advisable to send the letters through the Episcopal Chancery, unless there is danger of violating the sacramental seal or of defaming the petitioners: for the petition will be set forth better and more clearly by an official accustomed to these affairs. Besides, for a public impediment petitions are not admitted unless furnished with the Episcopal seal.

1077. III. On those things which must be expressed in the supplicatory libellus. These have been declared in the cited Instr. of the S. C. de Prop. Fide, whose words it is helpful to report and explain: -

"1° The name and surname of the petitioners, each to be written distinctly and neatly and without any abbreviation of letters."

This indeed holds for public impediments; for when writing to the S. Penitentiary for an occult impediment, the names of the petitioners are suppressed, and in their place N. or Titius is put. - If one party is not Catholic, this must be expressed. - A substantial error in the name or surname probably invalidates the dispensation (e.g., Peter in place of Paul); probably, however, according to some, the rescript is not vitiated, provided that there is certainty concerning the identity of the petitioner; in practice, the style of the curia requires revalidation. But if the error is very small (e.g., Antonius for Antoninus), the dispensation is certainly valid.

"2° Diocese of origin or of actual domicile. When the petitioners have domicile outside the diocese of origin, they can, if they wish, ask that the dispensation be sent to the Ordinary of the diocese in which they now dwell."

If it is a question of an occult impediment, no mention is made of the diocese, but the confessor writes his own name and the name of the place to which the response must be directed, in the vernacular language and in clear characters. - Since there are in diverse regions several dioceses which are called by the same or almost similar name, it is expedient to add the name of the kingdom or State to which the diocese belongs. - A substantial error in the name of the diocese, e.g. (Bostoniensis in place of Baltimorensis), would vitiate the rescript, but not an error in the name of the parish, unless the dispensation was given on account of narrowness of place.

1078. "3° Also the lowest species of the impediment, whether it is consanguinity or affinity arising from licit intercourse ... public honesty deriving its origin from a ratified marriage; in the

impediment of crime, whether it has proceeded from spouse-murder with a promise of marriage, or from spouse-murder with adultery, or from adultery alone with a promise of marriage; in spiritual relationship, whether it is between the one lifting and the one lifted."

An error in the species of the impediment renders the dispensation void. If it has been set forth that the impediment is doubtful, while in reality it is certain, some think the dispensation is invalid; but much more probably it is valid, for from the fact that it is given, it carries with itself the tacit condition: if the impediment is present.

1079. "4° The degree of consanguinity or affinity, or of public honesty from a ratified marriage, and whether it is simple or mixed, not only the more remote but also the nearer; and likewise the line, whether it is direct or transverse; likewise whether the petitioners are joined by a double bond of consanguinity, as much on the father's side as on the mother's side."

(a) The degree not only more remote but also nearer; if in a petition for the nearer degree the more remote is put, the dispensation is invalid, since dispensation is made with greater difficulty from the nearer than from the more remote.

But if the degrees are unequal, it does not seem altogether necessary to set forth the nearer, unless it is a question of the nearer degree of the first degree. - Indeed, whenever the first degree is touched, it is necessary to express, for liceity, not for validity, whether a nephew wishes to marry an aunt, or a maternal uncle a niece. Besides, by command of Leo XIII, June 19, 1895[1], for an impediment of the first degree touching the second degree of consanguinity, Bishops are to "explain the reasons in each case in letters written by their own hand." - If someone wishes to marry the widow of his deceased brother, he must set forth whether she had offspring from the deceased man.

[1] Ap. *Acta S. Sedis*, XXXIV, p. 34.

(b) Nevertheless a dispensation granted in some degree is valid, although in the petition, or in the concession, an error concerning the degree has crept in, provided the degree really existing is lower, or although another impediment of the same species in an equal or lower degree has been withheld. (*Codex*, c. 1052.)

(c) As regards the line, it must be expressed whether it is direct or oblique; but if this is omitted in consanguinity, the oblique is understood, since dispensation is not granted in the direct.

1080. "5° Number of impediments, e.g., if there is double or multiple consanguinity or affinity, or if, besides relationship, there is also affinity, or any other impediment whatsoever, whether diriment or impedient."

(a) Therefore, if there is present an impedient impediment of vow, betrothals, mixed religion, etc., it must be expressed at least for liceity; indeed for validity, when the dispensation is sought from the Penitentiary, since it is accustomed to add this clause: provided that between them there exists no other canonical impediment.

(b) If there are several impediments, all must be expressed in the same supplicatory libellus; for when several are found at the same time, dispensation is granted with greater difficulty. Nor is it valid to have recourse to the Bishop for one impediment, but to the Holy See for another; an

exception is given when a public and an occult impediment are found at the same time, as was explained above (n. 1072). - Therefore, if, after a dispensation has been obtained, a new impediment is detected which already existed at the time of the petition, the dispensation is null.

When it is seriously feared lest, besides the impediments expressed, another unknown one be found in the case, it is helpful to set this forth; for recently the Roman Congregations, at the request of Officials, have granted a dispensation not only in impediments explicitly manifested, but in others, if there are any in the case in which the Holy See is accustomed to dispense.

(c) He who has obtained a dispensation concerning the crime of spouse-murder, and afterward, the crime having been repeated, needs a new one, must make mention of the prior crime, since on account of this the dispensation is granted with greater difficulty.

1081. "6° Various circumstances, namely whether the marriage is to be contracted or has been contracted; if already contracted, it must be disclosed whether in good faith, at least on the part of one, or with knowledge of the impediment; likewise whether after the banns had been premised; (or whether under hope of more easily obtaining a dispensation)[1]; finally whether it has been consummated, if there is bad faith at least of one party, or with knowledge of the impediment."

[1] This indeed is no longer required, from the declaration of the Holy Office, June 25, 1885, ap. *Collect. P. F.*, n. 1495.

Trent had indeed prohibited[2] a dispensation from being granted when a marriage had been attempted, and a fortiori consummated, with knowledge of the impediment: today, however, dispensation is granted, but these circumstances must be expressed; otherwise the dispensation would be subreptitious.

[2] Sess. XXIV, cap. 5 *de Reformat. Matrim.*

Formerly likewise incestuous intercourse had between the spouses before the execution of the dispensation had to be expressed, even when the intercourse was not the cause of dispensing; but this obligation was abrogated by the cited decree of the Holy Office, June 25, 1885[1].

[1] If, however, someone wishes to obtain the legitimation of offspring received from incest, intercourse must be declared for this effect.

1082. N. B. When the Bishop dispenses by force of an indult, he must follow the aforesaid rules, because he acts as the delegate of the Pontiff, and therefore cannot dispense except in the way in which the Pontiff dispenses. But if he dispenses by ordinary or quasi-ordinary right, he must indeed observe those things which pertain to the substance of the dispensation, but not necessarily those which regard the style of the Curia.

1083. IV. On the defects of dispensations and their sanation. 1° A dispensation can be invalid on account of extrinsic causes, e.g., defect of power in the one granting it, defect of the customary form, erasure of letters in the dispositive part of the rescript, and other things which are explained by Canonists where they treat of Rescripts; or on account of intrinsic causes, namely obreption and subreption.

Obreption is the expression of what is false in the supplicatory libellus, while subreption is the suppression of what is true and ought to have been set forth. Some, however, take these two words promiscuously.

Now if it is a question of lesser impediments, dispensations, by the new law, will be valid, notwithstanding obreption or subreption (can. 1054). Lesser impediments are: 1) Consanguinity in the third degree of the collateral line; 2) Affinity in the second degree of the collateral line; 3) Public honesty in the second degree; 4) Spiritual relationship; 5) Crime from adultery with promise or attempted marriage, even through only a civil act (can. 1042).

As regards greater impediments, a distinction must be made:

(a) the dispensation is valid if the error turns only upon the impulsive cause, provided the final cause proposed is true; (b) on the contrary it is invalid if the error turns upon the final cause which alone has been alleged; for it is granted under the condition: if the things set forth are true; (c) but if several final causes have been alleged, and only one is found false, the dispensation is valid, because the others are sufficient for moving the Superior; (d) if only impulsive causes have been proposed, and one of them is not true, the dispensation is not valid, if the remaining causes would not have been sufficient for obtaining the rescript; (e) in doubt whether the cause falsely alleged is final or impulsive, the dispensation can be held as valid, because in doubt one must stand for the value of the act; (f) the dispensation is not valid if, in the petition, those things which by the style of the Curia must be expressed for validity have not been expressed. (Can. 42.)

A slight exaggeration does not invalidate the dispensation, although it is much more advisable to set forth the matter candidly as it is. - If in the rescript itself there is read the clause "by our own motion, from certain knowledge," the defect is removed, provided that the error occurs not in the rescript but only in the petition.

1084. 2° The defect of obreption or subreption can be sanated by letters *perinde valere* or by a reforming decree: (a) if it is detected after the rescript has been dispatched, the petitioners in a new supplication must set forth the tenor of the prior concession, detect the defect, and humbly beseech that the Holy See may deign to revalidate the prior grace; then letters *perinde valere* are dispatched, i.e., by which the prior dispensation has the same force as if it had not been vitiated; but if a new defect is detected, a new grace will be needed, which is called *perinde valere super perinde valere*.

(b) When the rescript of dispensation has not been dispatched, the defect can be repaired through a reforming decree; for this it suffices that a new supplication be written, in which what had been omitted is supplied, or what was badly expressed is corrected; whence it is not necessary that the things already set forth be repeated, because the double supplication will be proposed at the same time to the Supreme Pontiff.

§ V. On the Manner of Executing Dispensations.

We shall speak both of the execution itself, and of the clauses of dispensations.

I. On the Execution Itself of Dispensations.

1085. Preliminary notes. One must carefully distinguish between dispensations in gracious form and in commissory form: (a) the former are already granted by the Superior, and therefore are valid without fulmination; it suffices that the dispensation be made known to the petitioners and that the clauses be observed; (b) the latter have not yet been granted, but contain only the faculty of dispensing, so that they are not valid unless first they are fulminated by the executor, after previous information concerning the truth of the petitions and the clauses having been observed.

1086. 1° On a dispensation granted by the Holy See. Today this is always granted in commissory form.

(A) "Dispensations concerning public impediments committed to the Ordinary of the petitioners are to be executed by the Ordinary who gave the testimonial letters or transmitted the petitions to the Apostolic See, even if the spouses, at the time when the dispensation is to be given to execution, having left the domicile or quasi-domicile of that diocese, have departed into another diocese, not to return any more, yet the Ordinary of the place in which they wish to contract marriage having been informed."[1] These things, however, must be observed:

[1] Can. 1055. - Cf. can. 198.

(a) A fulmination made before the original rescript has been received would be invalid, even if by another way it were certainly known that the dispensation had been granted; whence, if this becomes known by telegraph, the same cannot be used validly and licitly, unless the telegraphic notice has been transmitted officially by the authority of the Holy See[2]. Therefore, after the authentic document has been received, a new execution of the dispensation is necessary; if the marriage has already been contracted, it must be revalidated.

[2] Code, c. 53: "The executor of a rescript invalidly performs his office before he has received the letters and recognized their authenticity and integrity, unless previous notice of the same has been transmitted to him by the authority of the one rescripting."

(b) The rescript must be recognized as genuine and authentic.

(c) Afterward it must be investigated whether the petitions rest upon truth, since one of the clauses is "if the things set forth are true." The Ordinary, however, can delegate another, generally the pastor, to carry out this investigation. A judicial form is not required, unless this is expressly prescribed in the rescript, or there is a contradictor; but the investigation can be completed from authentic acts, witnesses, reputation, or examination of the parties.

(d) The executor must attentively read all the clauses inserted in the rescript, and take care that they are faithfully fulfilled. "Clauses which likewise pertain to the substance of the dispensation are expressed in the Formulas by the conditional particle if, or another similar one."[3] The same must be said of the particles provided that, after, not otherwise, if not in another way, otherwise let it be void; or of conditions expressed through the ablative absolute, unless nevertheless it is clear from elsewhere, from the very nature of the matter or from the style of the Curia, that these are required only for liceity.

[3] Dataria, *Acta S. Sedis*, XXXIV, 34.

(e) The fulmination of the dispensation must be made in writing, certainly for liceity, probably also for validity. The Ordinary, namely, must declare that he, having received the rescript, has verified the truth of the petitions, and by apostolic authority dispenses concerning such impediment, so that the spouses may be able to contract validly and licitly, and legitimates offspring received (adulterine offspring excepted) and to be received; then he signs his name. The dispensation is valid at that moment at which the decree is signed, with the acceptance of the petitioners acceding, whether explicit or implicit. - Besides, if the spouses perhaps have incurred censures, let them be absolved from them before they are dispensed, for each forum, and this for validity if it is a question of those bound by a censure through a condemnatory or declaratory sentence. (Can. 2265, 2275, 2283.)

[1] *Normae peculiares*, c. III, n. 6; *Codex*, c. 36, § 2.

(f) Finally, the dispensation is carefully preserved in the diocesan archives, and its fulmination is transmitted to the pastor of the petitioners, who makes this known to them and notes in the registers the acceptance of the dispensation[2].

[2] Code, cc. 1046, 1103.

1087. (B) When a dispensation is granted by the S. Penitentiary for the internal forum, it is transmitted for execution "to a discreet man, a confessor from those approved by the Ordinary." Those things which were said above concerning the reception and recognition of the rescript, and also concerning the clauses, must be observed; but besides:

(a) Generally the Penitentiary prescribes that the dispensation be fulminated in the very act of confession, "his confession having first been heard," or "only in the act of confession"; if this clause is absent, it can be fulminated even outside confession. This or a similar formula can be employed: "By Apostolic authority specially delegated to me[3], I dispense with you concerning the impediment (e.g., of crime from adultery and spouse-murder), so that, the aforesaid impediment notwithstanding, you may be able to contract marriage validly and licitly, and by the same authority I declare offspring received and to be received legitimate."

[3] Code, c. 1057.

(b) The fulmination of the dispensation is completed by living voice; nevertheless the confessor can read the written formula; but he must not hand over the authentic document to the penitent, but must tear it up or burn it, at least within three days, under penalty of excommunication *latae sententiae*.

(c) The investigation concerning the truth of the petitions is required only for liceity: since the penitents themselves must be believed, unless the confessor knows the contrary from elsewhere, by extra-sacramental knowledge.

(d) If the impediment affects only one party, as a vow, or is culpable in only one party, as crime, it suffices to fulminate the dispensation upon that party. But if it is common to both, and each spouse is guilty and conscious of the crime, the fulmination must be made upon each, either by the same confessor or by a different one; in the latter case, the first confessor, after the dispensation has been granted to one, hands over the rescript to the same, that it may be given to the other party: but the latter will present the rescript to his own confessor, who, after the dispensation has been fulminated, will destroy it.

(e) If a double dispensation is necessary, one for a public impediment, the other for an occult one, first that which regards the public impediment must be fulminated.

1088. 2° On a dispensation granted by the Bishop. (A) If it is a question of a public impediment, generally the dispensation is granted in gracious form, and therefore is fulminated by the Bishop or diocesan official; whence the marriage would already be valid from the time of the concession, even if knowledge of it had not reached the ears of the pastor; but it is illicit to contract before notice has been received, lest perchance they contract invalidly before fulmination. If the matter were altogether urgent, notice of the fulmination could be sent telegraphically. - But once the authentic instrument has been received, the pastor makes it known to the spouses, and inserts and preserves it in the Register of marriages.

The Bishop can, however, use faculties which are communicable in commissory form: then the pastor himself is bound to fulminate the dispensation, as is done in Pontifical dispensations.

(B) When it is a question of an occult impediment, generally the Bishop dispenses in commissory form, whenever he can subdelegate: in which case the dispensation must be fulminated by the confessor himself, with the clauses carefully observed. If the question is about impediments for which the Bishop cannot subdelegate an ordinary confessor, he must dispense in gracious form, and therefore fulminate the dispensation; then the confessor, having received the instrument, has nothing further to do except make it known to the parties and commit the clauses to execution. - But the instrument is to be destroyed, as above.

II. On the Principal Clauses Annexed to Dispensations.

1089. That clauses of this kind may be more easily observed, it is helpful to explain them briefly.

1° "Absolving each of them from any ecclesiastical censures whatsoever for the effect of obtaining the present things"; by these words the petitioners are absolved from censures perhaps contracted, but only so that they may validly receive the dispensation; whence they need another absolution so that, for other effects, they may be truly immune from censures.

2° "If the things set forth are true"[1]; according to the declaration of the Dataria, this clause "is referred, as regards validity, to the persons to be dispensed, to the impediment to be dispensed, to the motive cause of the dispensation, to the various clauses, to other things which might perhaps obstruct the marriage."[1]

[1] Formerly this clause was added: "If through the same information you have found that the petitions rest upon truth," and therefore the dispensation was invalid if no information was made, even if the petitions rested upon truth; today, however, from the decree of the Holy Office, August 28, 1888, there is added only "If the things set forth are true," and therefore the dispensation is valid even without any information, provided the things set forth are true.

[1] Apud *Acta S. Sedis*, XXXIV, p. 83.

3° "You shall have presumed in no way to demand anything of gift or reward or to receive what is offered"; or "of dispensing gratis"; that is, let no money, no gift be received, except the tax of the chancery, the composition or alms, and the expenses of the agent.

4° "Decreeing the offspring received legitimate." Hence, if perhaps the dispensation cannot obtain its effect on account of the supervening death of one of the Petitioners, nevertheless the power of legitimating offspring will have force. Wherefore the dispensation and legitimation must be expressed in the decree of the Ordinary; if this has been omitted, legitimation of this kind can be made by another decree. The offspring is decreed legitimate simply, and therefore as regards all the effects of legitimation. - It is also said: "Decreeing offspring received, if there is any, and insofar as there is need, legitimate." If indeed the marriage is invalid but contracted ignorantly, publicly, and in legitimate form, legitimation would not be necessary; whence it is done as a precaution, to remove the murmuring of the ignorant[2].

[2] Ibid., p. 82.

5° "Scandal being removed, insofar as it is present, especially through separation for a time well seen by you, if it can be done." Scandal indeed must be removed, and often the separation of the spouses must be preferred to other ways; nevertheless the manner of repairing the scandal is left to the prudent judgment of the Ordinary[3].

[3] Thus the S. Penitentiary, April 12, 1889, ap. *Acta S. Sedis*, XXVI, p. 509.

6° "A grave salutary penance having been imposed upon them according to the measure of the fault, at your judgment." This penance is distinct from sacramental penance and must be grave, e.g., confession once a month for six months, recitation of the rosary twice or three times in a week for three months, performing the way of the cross once a week for four months; if a grave and long-lasting one is enjoined, it must be carried out for at least one year; if a most grave and perpetual one, even until death. Besides, the S. Penitentiary declared, April 8, 1890, that "neither the limits of severity nor of humanity are to be exceeded, and account must be taken of condition, age, infirmity, office, sex, etc."[4] It likewise rescripted, December 14, 1891, that the omission of a penance imposed for dispensations does not render them invalid[5]; indeed, that they are not invalidated even if the penance was accepted with the intention of not fulfilling it[6].

[4] Ap. *Acta S. Sedis*, XXVI, p. 510.

[5] Ibid., XXXI, p. 556.

[6] Ibid., XXXI, p. 557.

7° "Some alms having been disbursed by them, to be taxed by the judgment of the Ordinary himself." The observance of this clause is not required for validity[1]. Nor is it necessary, for liceity, that the alms be disbursed before the fulmination of the dispensation, but it suffices that the spouses promise to give it; indeed, if they are poor, or are unwilling to pay anything, this can be omitted, according to the prudence of the Ordinary.

[1] S. Penit., June 10, 1876, *Acta S. Sedis*, XXVI, p. 514.

8° "His or their confession having first been heard." This condition is satisfied through confession, even sacrilegious confession, provided it is sacramental. If it is foreseen that one of the parties is unwilling to confess, this should be stated in the supplicatory libellus, so that this clause may not be inserted.

Art. II. On the Revalidation of Marriage.

Division.

[2] St. Alphonsus, n. 1109-1117; Carriere, n. 1379-1464; Ball. P., n. 892-909, ed. 3; Lehmk., n. 823-832; Planchard, n. 553-588; Feije, n. 759-779; Zitelli, p. 113-118; Haine, q. 161-163; Gasparri, II, n. 1120-1161; Genicot, n. 534-542; N. Rousseau, n. 128-138.

On Revalidation in General.

On Simple Revalidation.

On Revalidation through Sanation in the Root.

§ I. On Revalidation in General.

Revalidation is the act by which a marriage hitherto null is rendered valid.

1090. 1° On the manner of acting when a priest notices that a marriage is invalid. There can be four remedies:

(A) The putative spouses can be warned concerning the impediment, and it can be tolerated that they live as brother and sister, if there is no danger of incontinence; which is scarcely possible in practice when they are younger, unless they are impotent, or truly brother and sister, or father and daughter, who contracted from error.

(B) They can be left in good faith, if the impediment is indispensable, and the nullity occult, and otherwise it cannot be manifested without danger of formal fornication, or the parties cannot be separated without infamy or scandal[3].

[3] Gasparri, n. 1121, note 2, relates a case for illustrating the matter. Titius had relations with a mother, unknowingly indeed on the part of Titius, but not on the part of the mother, who bore a daughter: she was educated outside the maternal home, and at the age of 17 was taken as wife by Titius, her father and brother at the same time. The mother discloses all things to the confessor; he, the Bishop having been consulted, left the putative spouses in good faith, lest the mother's foulness be revealed.

(C) When the parties cannot or at least do not wish to cohabit peacefully, or when danger to faith or morals is present, a declaration of nullity can be sought from the ecclesiastical judge, if this can be juridically proved.

(D) Finally the marriage can be revalidated, if the impediment is dispensable; and this generally is more advisable both for avoiding scandals and for providing for the education of the offspring.

1091. 2° On whether the separation of the putative spouses is to be enjoined or not, before the revalidation of the marriage. One must proceed with the greatest prudence, lest scandal be caused, or the putative spouses be exposed to formal danger of sinning.

(A) If the nullity of the marriage is publicly known, e.g., because the marriage was clandestine where *Tametsi* has been promulgated, or because the community knows the spouses to be blood relatives: (a) regularly the parties must be separated, not only as regards bed, but also as regards dwelling, so that scandal may be avoided or repaired. But if separation as regards dwelling is not possible, e.g., on account of the poverty of the parties, scandal is to be removed in the best way in which it can be done; and, if danger of incontinence is feared, the parties are not to be warned unless a dispensation has already been obtained.

(b) But a dispensation is to be sought as quickly as possible, if it is a question of a dispensable impediment; and, if the parties have been unwilling or unable to be separated, this is to be set forth in the supplicatory libellus, so that in the rescript the clause concerning previous separation of the spouses is not placed.

1092. (B) If the nullity of the marriage is occult (e.g., on account of crime), the confessor will proceed thus: (a) both the pastor and the confessor enjoy the faculty of dispensing when there is danger of grave evil in delay and not even the local Ordinary can be approached, or can be approached only with danger of violation of the secret[1].

[1] *Codex*, c. 1045, § 2 and 3.

(b) If one or each party doubts concerning the value of the marriage, the confessor should prudently inquire into the reason for doubting; if, the matter having been weighed more maturely, the nullity is certain, let him act as above; if it remains doubtful, one must stand for the value, and a dispensation is to be sought as a precaution.

§ II. On Simple Convalidation.

There is a threefold case: 1° from defect of consent; 2° from defect of the Tridentine form; 3° from another impediment.

I. On the Convalidation of a Marriage Invalid on Account of Defect of Consent.

1093. When a marriage was null from defect of natural consent, which was given fictitiously, or from error, force, or fear, it cannot be renewed except by a new consent duly furnished, i.e., with the error or fear removed, and with knowledge of the nullity of the prior marriage. Nor in this case is any dispensation required. - But the manner of proceeding for the renewal of consent is diverse according to the diverse cases which occur:

(A) If the nullity of the marriage on account of defect of consent is publicly known, the consent must also be renewed publicly, and indeed in the face of the Church, even if previously the marriage had been celebrated in the prescribed form[1].

[1] *Codex*, c. 1136, § 3.

(B) But when the nullity is occult: (a) if consent was deficient on the part of both, both must renew consent by an external sign, although private and secret[2], and indeed after they have known that the prior consent is null.

[2] *Codex*, c. 1136, § 3.

(b) If the consent was null on the part of one only, that party must freely furnish a new consent, the consent of the other party persevering; but this is judged to persevere provided it has not been revoked by a positive act[3]. - If the defect of consent was merely internal, it is enough that the party who had not consented consent inwardly. If it was also external, it is necessary also to manifest the consent outwardly[4].

[3] *Codex*, c. 1136.

[4] *Codex*, c. 1136.

1094. Some besides used to say that the other party, who truly consented, must be warned concerning the nullity of the marriage, so that he might renew consent with knowledge of the invalidity. Now it is certain from the Code[5] that this is not required; from another side, a moral union between the consent of one and the consent of the other suffices, as in every contract; but such a union exists in the case; for the consent validly furnished by one virtually perseveres, and is manifested through cohabitation and the mutual signs of conjugal love, while the other freely renews his consent. - Nor does the fear stand in the way lest the party who freely consented from the beginning, if warned concerning the nullity of the marriage, perhaps would retract consent; for a hypothetical retraction cannot destroy the force of the consent furnished before.

[5] *Codex*, c. 1136.

II. On the Revalidation of a Marriage on Account of Defect of Form.

1095. A marriage, null from this head, can be revalidated, without dispensation, only by renewing consent before the pastor and witnesses. (a) This indeed regularly must be done publicly when the nullity of the marriage is publicly known, so that scandal may thus be repaired; nevertheless, if on account of special circumstances the parties are unwilling to renew consent publicly, they can be permitted to repeat it secretly, with the Bishop consenting, and scandal removed in another way.

(b) When the nullity is occult, it suffices that the consent be renewed secretly, before the pastor and witnesses, for preventing the infamy of the spouses.

(c) But if either one refuses to contract in church, consent can be renewed in any decent place. If one consents to appear before the pastor, and the other only through a proxy, or if both wish to contract privately before the confessor, this can be done with the Bishop's permission. - If one is unwilling to renew consent in any way, thinking this altogether useless, sanation in the root is to be sought. But if each absolutely refuses to appear before the pastor or confessor, nothing remains except to pray for them that they may turn themselves to better things: for the Church is not accustomed to grant dispensation to those who obstinately despise her laws.

III. On the Revalidation of a Marriage Invalid on Account of Another Impediment.

1096. A marriage contracted invalidly on account of a diriment impediment can sometimes be revalidated without dispensation, namely when the impediment ceases of itself; e.g., the bond ceases when the spouse has died, disparity of cult by the baptism of the infidel party; but if the impediment does not vanish of itself, it is necessary that a dispensation first be obtained[1]. These things being posited, it remains to inquire how consent must be renewed.

[1] *Codex*, c. 1133.

(A) If the impediment is publicly known, consent must be repeated publicly in the form prescribed by law[2], even if this had been observed in the prior marriage: for this is required both for repairing scandal and so that the validity of the marriage may be established. - If, however, the putative

spouses cannot be brought to contract publicly, they can be permitted to renew consent occultly, before the pastor and witnesses; yet afterward this must be published at an opportune time, so that scandal may be removed.

[2] *Codex*, c. 1135, § 1.

1097. (B) But if the impediment is occult, it suffices that the consent be renewed occultly, and indeed without the prescribed form, if this had already been observed the first time.

(a) This indeed will be easy if the impediment is known to each party: for both, conscious of the nullity of the prior marriage, express a new consent, which is altogether independent of the prior one[1].

[1] *Codex*, c. 1135, § 2.

(b) But if the impediment is known to only one party, and cannot be manifested to the other without grave inconvenience, it is not required that the party ignorant of the impediment renew consent; the renewal of consent made by the party conscious of the impediment suffices. Thus the Code[2].

[2] *Codex*, c. 1135, § 3; cf. *Codex*, c. 1133, § 1.

"But this renewal of consent is required by ecclesiastical law for validity, even if in the beginning each party furnished consent and did not afterward revoke it."[3] Which "renewal of consent must be a new act of the will toward a marriage which is established to have been null from the beginning."[4]

[3] *Codex*, c. 1133, § 2.

[4] *Codex*, c. 1134.

§ III. On the Revalidation of Marriage through Sanation in the Root.

1098. 1° Notion. "Sanation in the root of a marriage is its convalidation, carrying with itself, besides dispensation from or cessation of the impediment, dispensation from the law concerning renewing consent, and retrotraction, by fiction of law, concerning canonical effects to the past. - Convalidation is made from the moment of the concession of the grace; but retrotraction is understood to be made to the beginning of the marriage, unless something else is expressly provided. - Dispensation from the law concerning renewing consent can also be granted with only one party or each party unaware."[5]

[5] *Codex*, c. 1138.

This can be declared thus: by force of ecclesiastical law, matrimonial consent was invalid, the marriage null, and the children illegitimate. Now dispensation in the root, by abrogating the law in this particular case, heals the defect by which the consent was invalid; therefore the marriage by that very fact becomes valid, and children born after the dispensation are truly legitimate. But besides, from the fiction of law, the Church has the consent, and therefore the marriage, as valid from the beginning; and she recognizes as legitimate those who were conceived from the beginning of the marriage up to the fulmination of the dispensation. Hence the marriage is truly sanated in the root, i.e., in the consent itself, and from the beginning.

1099. 2° Conditions required for dispensation in the root. Four are required: (A) that the diriment impediment about which it is a question be of merely ecclesiastical law; for in others the Church cannot sanate a vitiated consent.

"But a marriage contracted with an impediment of natural or divine law, even if afterward the impediment has ceased, the Church does not sanate in the root, not even from the moment of the cessation of the impediment."[1]

[1] *Codex*, c. 1139, § 2. - Thus the opinion of certain ones saying that this impediment can be sanated in the root from the moment of the cessation of the impediment is reproved.

1100. (B) That the matrimonial consent was present, or was given with the affection of entering marriage: for he who wishes not to enter marriage, but only to abuse a woman through fornication, lays no foundation for a dispensation in the root[2].

[2] Namely, it is necessary that the marriage have been contracted "with the naturally sufficient consent of each party." (*Codex*, c. 1139.)

Generally the Church also requires that the union of the spouses have had the external appearance of marriage. This exists when the prescribed form was used; and, for heretics, when marriage has been celebrated before a non-Catholic preacher or civil magistrate. But where the canonical form of marriage is required, civil marriage indeed does not have a strict and canonical form, yet it does have the natural figure of marriage[3]; whence the Holy See can sanate it in the root, and sometimes does sanate it on account of an urgent reason, e.g., when one of the contracting parties is unwilling to renew consent.

[3] Namely, the spouses appear sufficiently to wish to enter a matrimonial consortium.

1101. (C) That the consent given perseveres virtually in each party up to the time of the granted dispensation: hence a dispensation can be granted if one of the contracting parties has fallen into insanity; but not if either one has already departed from the living: in which case the marriage could nevertheless be sanated, not indeed in itself, but as regards juridical effects, namely the legitimacy of offspring.

"But if consent was indeed absent from the beginning, but afterward was furnished, sanation can be granted from the moment of the furnished consent."[1]

[1] *Codex*, c. 1140, § 2.

1102. (D) That a grave reason be present, which can especially be threefold: (a) if one party cannot be brought to renew consent, although he wishes to remain in the marriage; (b) if each party is unaware of the nullity and there exists a grave reason for not revealing the impediment, e.g., on account of the great number of marriages which from some error have been contracted invalidly, or on account of avoiding scandal if the nullity arises from an error committed by the pastor or Ordinary; (c) if each party is conscious of the nullity, but cannot be induced to renew consent because of an insuperable prejudice; or if sanation in the root is necessary for the legitimation of offspring. - From another side, "sanation in the root can be granted only by the Apostolic See."[2]

[2] *Codex*, c. 1141.

1103. When the confessor must fulminate a dispensation in the root, he can use this or a similar form: "By Apostolic authority (or by authority received through the Bishop), I sanate and consolidate in the root the marriage contracted nullly by you, and I announce and declare that offspring received and to be received will be legitimate."

Appendix: On Civil Law with Respect to Marriage

On Civil Law with Respect to Marriage.

Division.

Principles on the manner of acting with respect to civil laws concerning Marriage.

Principal civil laws concerning Marriage in England and the United States of America.

Principal civil laws concerning Marriage in France.

Principal civil laws concerning Marriage in Italy.

Principal civil laws concerning Marriage in Germany.

I. Principles on the Manner of Acting with Respect to Civil Laws Concerning Marriage.

1104. Principle I: Those about to marry can faithfully observe, and regularly ought to observe, the prescriptions of civil law concerning the celebration of marriage, which are not opposed to divine or ecclesiastical law, especially if upon them depends the value of the marriage in the civil forum.

[1] De Angelis, lib. IV, tit. 1, n. 13-14; Feije, n. 780-785; Haine, q. 173-175; Gasparri, n. 1210-1231; Aertnys, n. 473.

(A) For this is deservedly inferred from the Instruction of the S. Penitentiary concerning civil marriage, January 15, 1866, where it is said[2]: "Nevertheless, for avoiding vexations and penalties, and on account of the good of offspring, which otherwise would by no means be held as legitimate by the lay power, and also for averting the danger of polygamy, it seems opportune and expedient that the same Faithful, after they have legitimately contracted marriage before the Church, present themselves to perform the act prescribed by law, yet with that intention (as Benedict XIV teaches in the Brief of September 17, 1746, *Redditae sunt Nobis*), that in presenting themselves to the Government Official they do nothing else than perform the civil ceremony."

[2] Apud *Acta S. Sedis*, I, p. 508-512. - This is confirmed from the decree of the Holy Office, January 12, 1881 (*Collect. P. F.*, n. 1550): "Missionaries must take care that those who are going to contract marriage observe even civil prescriptions, which are conducive to conserving the moral order as regards the civil effects of marriage."

(B) For although the State cannot by its own right make laws, for Christian subjects, concerning the matrimonial bond, it can fortify ecclesiastical laws, either all or some, with civil sanction; it can besides, by its own right, establish laws concerning civil effects separable from the bond of marriage. Moreover, if the State has made laws in a matrimonial matter, which require certain solemnities so that marriage may not lack its civil effects, and which otherwise do not stand in the way of divine and ecclesiastical law, certainly spouses may obey these; indeed this seems opportune and expedient, as the S. Penitentiary says: (a) for avoiding vexations and penalties which the State inflicts upon violators of laws; (b) on account of the good of offspring, which otherwise would not be held as legitimate by civil law; (c) for averting the danger of polygamy, since in reality some are deterred from this vice by fear of civil laws.

1105. Corollaries: (a) Where there is had the marriage which they call civil, it is not only licit, but expedient, that the faithful present themselves before the civil magistrate, so that before the law they may be held as true spouses and their children as legitimate; provided, however, that they rightly understand that this is not true marriage, where *Tametsi* is in force, but a merely civil act, by which they show their submission toward the laws.

When the laws permit this, the faithful must first contract before the Church, and afterward complete the civil act. But if the law prescribes the inverse order, as in France, or grave necessity demands it, the spouses can indeed first present themselves before the civil magistrate; but "then all diligence must be used, so that the marriage be contracted before the Church as soon as possible, and meanwhile the contracting parties remain separated."[1]

[1] Instr. S. Penit., l. c., p. 511-512.

In the United States of America, religious marriage is held as valid before civil law; but in most States a license is required from a public official before proceeding licitly to marriage; and besides, the minister before whom the nuptials have been celebrated is bound, within a defined time, in writing, to make known to the official designated by law the marriage entered; which indeed, as consonant with reason, must be carefully observed.

1106. (b) Where there are civil impediments, especially diriment ones, which are not recognized as such by the Church, pastors should not easily admit to contracting marriage those who are held by civil law as incapable: both because these are not considered by the State as legitimate spouses, and because pastors celebrating such unions can be punished by law, not without scandal of the faithful. "In this matter they will have to use much caution and prudence, and to seek the counsel of the Ordinary; and let him not be easy in consenting; but in graver cases let him consult this sacred Tribunal."[1]

[1] Instr. S. Penit., l. c., p. 511. - This rule is practical in some of the United States of America, where marriages between whites and blacks or indigenous persons are most strictly prohibited.

1107. Principle II: If the precepts of civil law are intrinsically repugnant to divine or ecclesiastical right, it is not licit actively to execute them. For this follows from what has been said in the Treatise on Laws. Hence spouses who, after obtaining a civil divorce, fly to new nuptials sin gravely, although by civil law they may be able to do this: for a law of this kind is altogether contrary to the divine law of the indissolubility of marriage. But if divorce is sought without the intention of marrying again, the matter is disputed (above n. 751).

But if someone passively cooperates in the execution of an unjust law, e.g., if a civil magistrate assists at a civil marriage by office, when he certainly knows that the contracting parties do not wish to enter marriage before the Church (where *Tametsi* is in force), or that they are bound by a prior bond, it is disputed whether this manner of acting is gravely illicit, as has already been said, n. 760.

II. Principal Civil Laws Concerning Marriage in England and the United States.

1108. 1° As regards betrothals. (A) In England, these things are to be noted concerning betrothals: "A promise to marry at a future time, which, like other contracts, gives a right of action for damages in case of its violation, is not binding on the defendant unless he or she be of the full age which the law provides for other cases of contract, viz. twenty-one years; and where there are mutual promises to marry made by two persons, one of the age of twenty-one, and the other under that age, the first is bound by the contract so as to be liable to an action if it be broken; but on the part of the minor, it used to be voidable; and it is now void."[2]

[2] Stephen's *Commentaries*, 12th ed. London, 1895, vol. II, p. 252.

1109. (B) In the United States of America: (a) "If an infant below the marriageable age and a competent person agree to intermarry, the contract is void because it is an attempted violation of the law. But after the marriageable age has arrived, a marriage by the infant may sometimes be beneficial to him; therefore, as to him, the agreement to marry with an adult will be, not void, but voidable. And within familiar principles it cannot be enforced against the infant, who may rely on his non-age to avoid it; but the infant's action for its breach by the adult is in no degree impaired by the fact of infancy."[1]

[1] Bishop, *New Comment. on Marriage, Divorce and Separation*, Chicago, 1891, vol. I, § 206.

(b) "Parties in too near consanguinity, being by law incapable of intermarriage, cannot bind themselves by a mutual promise to marry."[2]

[2] Bishop, I, § 203.

(c) "When marriageable persons conduct toward each other as engaged parties commonly do, and as those who are not engaged do not, the reasonable and fair inference is that they are in fact what they thus hold themselves out to be, engaged; and in a breach-of-promise suit the jury is justifiable in so finding."[3]

[3] Bishop, § 197.

(d) "When one party has agreed to marry the other under the presumable inducement of a controlling fact supposed to exist while it did not, or when such a fact existed at the time of the promise but was afterward reversed, or when the other's fraudulent representation of something even less important entrapped him into the promise, he may rescind the agreement, first giving an expressed or implied due notice, where the thing was not within the knowledge of the other."[4] - "Any conduct by one of the parties, amounting to actual fraud, will justify the other, who has been entrapped by it, in withdrawing from the agreement."[5] - If parties to a marriage promise mutually to relinquish it, the release by each is a consideration for that by the other, and neither can afterward maintain a breach-of-promise suit.[6] - "And after the bargain is entered into, ill conduct in one of them, of a nature and to a degree not quite definable, yet far less than would be required for a divorce after marriage, will justify the other in rescinding it. So likewise may either rescind it for any supervening incapacity in himself or in the other to fulfil the special duties of marriage."[7]

[4] Bishop, § 216.

[5] Bishop, § 224.

[6] Bishop, § 225.

[7] Bishop, § 235.

(e) "Damages for the breach are not restricted to such as can be measured by the rule of dollars and cents, but, beyond this, the jury may give what seems reasonable in compensation for wounded feelings, for disgrace and shame, for loss of position in society and other like evils coming as natural and probable consequences of the breach, or of the special circumstances in which the breach was committed."[1]

[1] Bishop, l. c.

1110. 2° On the celebration of marriage. (A) In England many conditions are required for the celebration of marriage, especially as regards Catholics, who do not wish to marry in Anglican churches[2]. (a) "Persons desiring to be married in a Catholic church must obtain the Registrar's certificate; they may also obtain from him a licence permitting the marriage to be solemnized with less delay, for a fee of thirty shillings and ten shillings stamp duty."

[2] We take these rules from the work: *A Manual of the Law specially affecting Catholics*, by W. S. Lilly and J. E. P. Wallis, London, 1893, p. 54-57. Since it is difficult for the poor to follow all these prescriptions, not a few live in concubinage: hence the Catholic Bishops of England earnestly requested that certain of them be abolished or changed, ibid., p. 191-195. - Cf. Stephen, II, p. 252-265.

"In the first place, notice must be given in the form prescribed in the Act by one of the parties to the Superintendent Registrar of the District where they shall have dwelt for the preceding seven days, fifteen days if the marriage is to be by licence; or, if they dwell in different districts, then the Registrar of each District, unless the marriage is to be by licence, when notice to one Superintendent Registrar is sufficient. A copy of the notice is entered by the Registrar in the Marriage Notice Book, which is open, at all reasonable times, without fee to all persons desirous of inspecting it. Either the original notice, or a copy thereof, under the hand of the Superintendent Registrar, must be affixed in a conspicuous place in his office. And for every such notice he is entitled to a fee of one shilling (6 & 7 Will. 4, c. 85, SS. 4, 5; and 19 & 20 Vict. c. 119 S. 3)."

(b) "One whole day after the entry of this notice, if the marriage is to be solemnized by licence, or twenty-one days after, if it is to be solemnized without licence, the Superintendant Registrar, upon the demand of the party by whom notice was given, issues a certificate in the form provided by the Act, showing that the requisite notice has been given, and that the issue of the certificate has not been forbidden by any authorised person, and for this certificate a fee of one shilling is payable (6 & 7 Will. 4, c. 85, S. 7, and 19 & 20 Vict. c. 119, S. 4)."

(c) "The marriage may then be celebrated in the Catholic church duly registered for the solemnization of marriages, which is specified in the notice and which must, as a rule, be in the district of the residence of one of the parties. But it must be celebrated in the presence of a Registrar of the district in which the church is situated, and of two or more credible witnesses, and a fee of five shillings - ten if the marriage is by licence - is payable to the Registrar for his attendance (6 & 7 Will. 4, c. 85, SS. 18, 20, 22.) The Act further provides that in some part of the ceremony, and in the presence of the Registrar, each of the parties shall declare: "I do solemnly declare that I know not of any lawful impediment why I, A. B., may not be joined in matrimony to C. D.," and that each of the parties shall say to the other: "I call upon these persons, here present, to witness that I, A. B., do take thee, C. D., to be my lawful wedded wife (or husband)."

(d) "The celebration of the marriage must take place within three calendar months next after the day of the entry of the notice. Should a certificate of marriage ("The Marriage Lines") be desired, it may be procured from the Registrar-General, or Superintendent Registrar, upon payment of a fee of two shillings and sixpence (6 & 7 Will. 4, c. 85. SS. 35, 36)."

(e) "The clergy should take note that by S. 39 a priest would be guilty of felony if he knowingly solemnized a marriage in England in any other place than the registered building specified in the notice and certificate, or in a registered building in the absence of a Registrar of the district."

(f) It is provided by 19 & 20 Vict. c. 119, S. 12, that "if the parties to any marriage contracted at the registry office of any district shall desire to add the religious ceremony ordained or used by the church or persuasion of which such parties shall be members to the marriage so contracted, it shall be competent for them to present themselves for that purpose to a clergyman or minister of the church or persuasion of which such parties shall be members, having given notice to such clergyman or minister of their intention to do so; and such clergyman or minister, upon the production of their certificate of marriage before the Superintendent Registrar, and upon the payment of the customary fees (if any), may, if he shall see fit, in the church or chapel whereof he is the regular minister, by himself, or by some minister nominated by him, read or celebrate the marriage service of the persuasion to which such minister shall belong."

1111. (B) In the United States of America, by common law no solemnity is required for the validity of matrimonial consent; but by particular law in most States, for liceity, under various penalties, certain conditions are prescribed[1]:

[1] We borrow the summary of American law from Browne, *Elements of the Law of Domestic Relations*, Boston, 1890, p. 9-12. - Cf. Bishop, § 293-449.

(a) "At common law marriage is a civil contract, to which consent alone is essential. It requires no legal forms nor religious solemnities, nor special mode of proof. The common rule is, that in the absence of statutory regulation, consent *per verba de praesenti* with or without consummation, or *per verba de futuro* with consummation, constitutes a valid marriage... In New York, Illinois, and Rhode Island, it is now held that mere *verba de futuro*, although followed by consummation, do not constitute a valid marriage."

(b) "Although in most if not all of the United States there are statutes regulating the celebration of marriage, and inflicting penalties on all who disobey the regulations, yet it is generally considered that in the absence of any positive statute declaring that all marriages not celebrated in the prescribed manner shall be absolutely void, or that none but certain magistrates or ministers shall celebrate a marriage, any marriage regularly made according to the common law, without observing the statutory regulations would be still a valid marriage."

(c) "An assent to a ceremony understood on both sides to be given in jest, even if the clergyman is in earnest, will not constitute a valid marriage; but otherwise, if one of the parties is in earnest; and where one party procures a mock ceremony to be performed by one falsely personating a clergyman, it will bind both if the other assents in good faith."

(d) "Intercourse illicit in its commencement will be presumed always so to continue, and no marriage can be presumed from it. Without express proof of words of consent a valid marriage may be

predicated of cohabitation, acknowledgment of a marriage by the parties, receptions of them by relatives and friends and in society as husband and wife. Even though it may invalidate a subsequent marriage. But not as against a prior ceremonial marriage."

(C) When nuptials are celebrated in a foreign region by English or Americans, they are valid, provided that the rite customarily employed in that region has been observed, and otherwise they are truly capable of contracting, according to English or American laws[1].

[1] Browne, p. 12; Stephen, p. 264-265.

1112. 3° On the mutual rights and offices of husband and wife. These are substantially the same in England as in America[2]. (a) Rights of the husband: "The rights of a husband, in and over his wife, are two: obedience and service. The husband has the legal control of the person of his wife, and may put moderate restraints upon her liberty, if her conduct be such as to require it. If he changes his domicile, it is her duty to follow him. If she elopes and abandons him without cause, he may compel her to return. But he has no right to chastise her or to use physical violence toward her, except so far as is necessary to prevent her from doing violence to himself or others. The services of the wife, and the result thereof, also belong to the husband, at common law; though in some States, by Statute, he is entitled to the result of her service only as a trustee, and holds them for her use."

[2] W. C. Robinson, *Elementary Law*, Boston, 1882, p. 112-113, gives a summary of these.

(b) Rights of the wife: "The rights of the wife, in and from the husband, are also two: protection and support. Whatever he may lawfully do in his own defence he may do, and is naturally obliged to do, in defence of her. It is his duty to provide her with necessaries according to her station in life, and, if he refuses to do so, she may contract for them in his name, and she may still contract debts for her necessaries in his name. This right will be forfeited by the wife if she elopes with an adulterer, or if she abandons her husband without cause and does not repent and offer to return to him. But the husband is not bound to support the wife out of his family, if he provides for her and treats her properly there; and, in all cases, persons supplying a wife with necessaries, without the consent of the husband, are bound to make inquiries, and, even after such inquiries, if they supply her, they do it at their peril."

1113. 4° On semi-full divorce, or separation from bed and board. (A) In England: "A judicial separation (in lieu of the divorce *a mensa et toro*) may now be decreed, on the petition of either husband or wife; and this decree has all the effect that belonged to the old divorce *a mensa et toro*; and judicial separation may be decreed on the ground of adultery, or cruelty; or on the ground of desertion without cause for two years and upwards; and during the continuance of the decree, the wife acquires, as to property and for many other purposes, the condition of a *feme sole*[1]."

[1] Stephen, II, p. 285-286.

1114. (B) In the United States of America, divorce from bed and board is not recognized by common law, but by the Statutes of many States[2]. The causes on account of which it is granted are diverse according to the diverse States[3]. The following are recognized in almost all[4]:

[2] "Limited divorce exists in the following states: Alabama, Arkansas, Delaware, District of Columbia, Georgia, Kentucky, Louisiana, Maryland, Michigan, Minnesota (in favor of wife only), Nebraska, New Jersey, New York, North Carolina, Pennsylvania (in favor of wife only), Rhode Island, Tennessee (in favor of wife only), Virginia, West Virginia, Wisconsin." (*A report on Marriage and Divorce*, by Carroll D. Wright, Washington, 1891, p. 115.)

[3] C. D. Wright enumerates these, op. cit., p. 89-112.

[4] Browne, p. 64-66.

(a) "Cruel and inhuman treatment. This must be such as renders the life or health of the plaintiff unsafe. Words of menace creating a reasonable apprehension of bodily violence will suffice. It need not be personal; unmercifully whipping her child in the wife's presence and in spite of her entreaties will suffice. But mere bad temper, or conduct producing annoyance, discontent, and disgust, is not enough. Nor does mere intoxication, occasional or frequent, constitute cruel or inhuman treatment. Nor an angry expulsion of the wife under suspicion of infidelity. Nor refusal to permit her to attend her own church. A single cruel act does not constitute cruelty of treatment. But when accompanied by circumstances indicative of a probability of repetition, it may warrant a divorce."

(b) "Such conduct as renders it unsafe and improper to cohabit. "Unsafe" means a reasonable apprehension of bodily injury. As subjecting the wife to excessive sexual intercourse."

(c) "Abandonment and refusal or neglect to provide. These must concur. The neglect must be wilful. Denial of sexual intercourse is not utter desertion; nor desertion, nor cruelty. On a suit by a husband for separation for abandonment, the wife may be awarded a separation for cruelty."

(d) As regards the alimony of the wife, these things also are to be noted: "Pending the suit the court may grant the wife a pecuniary provision from the husband to enable her to live separately from him, which is called alimony; and also compel him to pay her counsel fees to enable her to wage or defend the suit. On granting her a divorce the court may also impose alimony, and order the husband to make provision for supporting the children."

1115. 5° On full divorce. (A) In England: (a) "A divorce or dissolution of the marriage... may also now be obtained on the petition of either husband or wife; and where he is the petitioner, it may be on the ground that since the marriage she has been guilty of adultery; but where she is the petitioner, it may only be on the ground that he has since the marriage been guilty of incestuous adultery, or of bigamy with adultery, or of rape, or of unnatural crime, or of adultery coupled with such cruelty as would, without adultery, have formerly entitled her to a divorce *a mensa et toro*; or of adultery coupled with desertion, without reasonable excuse, for two years or upwards. But no divorce can be decreed, if the petitioner (whether husband or wife) has been accessory to, or connived at, or has condoned the adultery; or if the petition is presented or prosecuted by collusion; and the court is not bound to decree the divorce, if the petitioner has been guilty of adultery during the marriage; or of cruelty; or of desertion or wilful separation; or of such wilful neglect or misconduct as has conduced to the adultery; or if there has been undue delay (remaining unexplained) in presenting the petition."[1]

[1] Stephen, p. 286.

(b) "A decree of nullity of marriage may also be obtained on any ground which would formerly have justified a divorce *a vinculo*,"[2] viz. disability; lack of legal age, of mental capacity, etc.

[2] Stephen, p. 288.

1116. (B) In the United States of America, the laws are altogether diverse according to the diverse States; therefore we can hand down only those things which are more common. (a) "Nullity of contract... For this divorce there are generally five causes: lack of legal age, former marriage, lack of mental capacity, force or fraud, and impotence... It may now be said generally, that marriages coming within these prohibitions are usually valid until pronounced void, and the children are legitimate. It has been held, however, that a judgment annulling a marriage contracted by an insane party is unnecessary. The lack of mental capacity and the impotence, to justify a divorce, must have existed at the time of the marriage."[1]

[1] Browne, p. 62-63.

(b) Among the principal causes which in various States suffice for divorce properly so called, the following are enumerated[2]: adultery, a cause in all the states and territories; pregnancy of wife at time of marriage, unknown to husband; abandonment, desertion, wilful absence; disappearance, absence without being heard from; cruelty, actual violence or apprehension thereof, inhuman treatment[3]; failure or neglect of husband to provide for wife; drunkenness (habitual), conviction of felony or infamous crime, sentence to imprisonment.

[2] Cf. C. D. Wright, op. cit., p. 89-115.

[3] How broadly this cause of divorce extends can be understood from the various examples which C. D. Wright reports, p. 172-178: "Defendant does not wash himself, thereby inflicting on plaintiff great mental anguish... Defendant has accused plaintiff's sister of stealing, thereby sorely wounding plaintiff's feelings... Defendant violently upbraided plaintiff and said to him: You are no man at all; thus causing him mental suffering and anguish... Defendant pulled plaintiff out of bed by his whiskers, etc. etc."

(c) In relation to adultery, these things are worthy of note: "But a divorce for this cause will never be granted where the offence was committed by the procurement or connivance of the complainant; or has been forgiven and the parties have voluntarily cohabited with knowledge of its commission, which is called condonation; or the complainant has also been guilty of the like offence, so that the defendant, if innocent, might have a divorce therefor, which is called recrimination."[4]

[4] Browne, p. 63.

(d) "Generally the defendant, on judgment passing against him, is prohibited from remarrying during the plaintiff's life. But this provision has no extra-territorial effect. It is held that a marriage within this State in violation of this injunction subjects the prohibited party to the penalties of bigamy."[5]

[5] Browne, p. 64.

1117. On matrimonial impediments. (A) In England they are reduced to four[6]:

[6] Ap. Stephen, p. 248-252.

(a) "The first of them, namely, a prior marriage still subsisting, wants no particular observation, excepting this, that the second marriage is to all intents and purposes void."

(b) "Insanity, or want of reason, is the second civil disability... and accordingly, by our law, it is established that a marriage contracted under circumstances of duress overpowering the will is void; also, that the marriage of a lunatic, not being in a lucid interval, is absolutely void."

(c) "The third civil incapacity is that in respect of proximity of relationship, - whether of consanguinity or of affinity... The only marriages which are now illegal in respect of proximity of degree (as being either contrary to God's law or within the Levitical degrees), are the following, viz. - those between persons in the ascending and descending line *in infinitum*, - and those between collaterals to the third degree inclusive, according to the mode of computation in the civil law; which reckons the sum of the degrees from, (but exclusively of), one of the persons related, up to the common stock and so down to the other person. Moreover, the prohibitions in the case of collaterals extend not only to *consanguinei*, or those related by blood, but to *affines*, or those related by marriage; e.g. a man can marry neither his sister, nor his deceased wife's sister, for both are related to him in the second degree; nor his sister's daughter, nor his deceased wife's sister's daughter, for both are in the third degree; but he may marry his first cousin, for she is in the fourth degree."

(d) "The want of age... It is not necessary to the contract of marriage that the parties should have attained their full age of twenty-one; for a male person is enabled by law to consent to matrimony at the age of fourteen, and a female at the age of twelve, subject (where subject) to the consent of their parents or guardians; and, indeed, even though the male be under fourteen, or the girl under twelve, the marriage is not absolutely void, but is inchoate only and imperfect; and either of the parties, upon coming to the proper age for his or her consent, may in such latter case disagree to (and so avoid) the marriage; but a marriage between people, either of whom is under the age of seven years, is absolutely void."

1118. (B) In the United States of America, the impediments are various according to the various States; those which are common to almost all are referred to seven heads:

(a) "Law forbids the marriage of near relations. The degrees of consanguinity called the prohibited degrees are defined by the laws of the different States. In Maryland, for instance, a man shall not marry his grandmother, grandfather's wife, wife's grandmother, father's sister, mother's sister, mother, stepmother, wife's mother, daughter, wife's daughter, son's wife, sister, son's daughter, daughter's daughter, son's son's wife, daughter's daughter, or sister's daughter. A woman shall not marry her corresponding relatives."[1]

[1] Cf. C. D. Wright, p. 31-35, where the laws of various States are enumerated.

(b) "Social condition. At common law, and in England, race color, and social rank constitute no impediment to marriage. In this country United States, in many States marriage is by statute forbidden between whites and negroes or Indians."[1]

[1] Browne, p. 3.

(c) "Mental capacity. An intelligent consent is essential to a valid marriage. Hence an idiot or lunatic cannot contract marriage. So of other persons who have not the capacity to understand the duties and obligations of the relation. The test usually applied in the courts is that of fitness for the general transactions of life... Marriage contracted during temporary insanity is void; but marriage contracted during a lucid interval is valid; except when provided, as in England and in some of our States, by statute, that it is void during an unrevoked commission of lunacy. Drunkenness does not incapacitate, unless so great that the party does not know what he is about. Deaf and dumb persons, formerly classed as idiots, may now, it is held, contract a valid marriage."[2]

[2] Browne, p. 3-4.

(d) "Physical capacity. Where impotence exists there can be no valid marriage. But impotence means physical incapacity; not mere coldness, reluctance or unwillingness, or even absolute refusal to consent to sexual connection. Barrenness constitutes no incapacity, nor does any malformation not preventing copulation, nor any curable disability. The impotency must have existed at the time of the marriage."[3]

[3] Browne, p. 5.

(e) "Age. The common law fixes an age of consent for a valid marriage at 14 in males and 12 in females... A marriage, either party to which was under the age of consent, may be ratified, on arriving at that age, by consent implied from continued intercourse or slight circumstances. Consent of parents is not necessary to the marriage of minors. In some States such marriages are forbidden without being declared void, and penalties are denounced for celebrating or contracting them."[4]

[4] Browne, p. 5-6.

(f) "Prior marriage. Polygamy or bigamy is denounced as a crime by all christian communities... At common law the subsequent marriage is void *ab initio*, but statutes have relaxed this rule by declaring that such marriages shall be void only from the time when so pronounced by the decree of a competent court."[5]

[5] Browne, p. 6.

(g) "Force or Fraud. Kent says "a marriage procured by force or fraud is void *ab initio*, and may be treated as void by every court in which its validity may be incidentally drawn in question." So says Schouler. But this has recently been denied, and it has been held that such a marriage can only be avoided by the person defrauded, in his lifetime. Statutes have changed the rule in some States, and attached the invalidity of the time of a decree of nullity.

"Force implies physical restraint; fraud implies deception. The general rule is that the force must be such as would naturally serve to overcome the will. The question of the amount of force depends upon circumstances... A marriage procured by illegal arrest may be avoided, and so where the arrest was legal but malicious. But when a man under legal arrest for seduction reluctantly marries the woman the marriage will not be set aside.

"The fraud which will avoid a marriage must go to the essence of the contract... So fraudulent representations by one party as to birth, age, social position, fortune, health, manners, or character will not suffice... A false personation would undoubtedly avoid the marriage."[1]

[1] Browne, p. 7-8.

III. Principal Civil Laws Concerning Marriage in France.

1119. 1° On betrothals. The civil Code is silent concerning betrothals, and jurists hold that promises of future marriage do not have obligatory force. "Nevertheless, the tribunals every day condemn to damages and interest that one of the betrothed who fails in his promise without legitimate reasons: the judge sovereignly assesses the legitimacy of the reason. Damages and interest are allotted by application of art. 1392. The promise of marriage is without doubt null. But that one of the betrothed who, after having made such a promise, withdraws capriciously,

makes himself guilty of a civil delict or of a quasi-delict: of a civil delict, if there is fraud on his part, of a quasi-delict, if there is only heedlessness; he must be condemned to repair the material or even moral prejudice of which he is the author. The material prejudice will consist in the expenses made by the abandoned betrothed with a view to the conclusion of the marriage; the moral prejudice, in the injury brought to his reputation."[3]

[2] Carriere, II, n. 936-1026; *Theol. Claromont.*, n. 325-335; Gasparri, n. 1211-1220; Allegre, *Code civil commente*, 6th ed., Paris, 1897, I, p. 74-82; Baudry-Lacantinerie, *Precis de Droit Civil*, 7th ed., Paris, 1899, t. I, n. 483-936.

[3] Baud. Lac. n. 484.

1120. 2° On the celebration of marriage. (A) Before the marriage, banns must be promulgated: (a) "Before the celebration of marriage, the officer of the civil state shall make a publication by means of a notice posted at the door of the common house. This publication shall state the given names, names, professions, domiciles, and residence of the future spouses, their quality of being majors or minors, and the given names, names, professions, and domiciles of their fathers and mothers. It shall state, besides, the days, places, and hours when it was made: It shall be inscribed upon a single register, numbered and initialed as is said in article 41, and deposited at the end of each year at the registry of the tribunal of the arrondissement."[1]

[1] *Code civil*, art. 63. We give here the corrections made by the law of June 21, 1907.

(b) "The notice foreseen in the preceding article shall remain posted at the door of the common house for ten days, which must comprise two Sundays. The marriage cannot be celebrated before the tenth day from and not including that of the publication."[2]

[2] Art. 165.

(c) "If the marriage has not been celebrated within the year, counting from the expiration of the time-limit of the publication, it can no longer be celebrated except after a new publication made in the form above."[3]

[3] Art. 64.

1121. (B) As regards the celebration itself of marriage: (a) "Marriage shall be celebrated publicly before the officer of the civil state of the commune where one of the spouses shall have his domicile or his residence on the date of the publication foreseen by art. 63, and, in case of dispensation from publication, on the date of the dispensation foreseen in art. 169 below."[4]

[4] Art. 65.

(b) "Marriage shall be celebrated in the commune where one of the two spouses shall have his domicile, or his residence established by at least one month of continuous habitation on the date of the publication foreseen by the law."[5]

[5] Art. 74.

(c) "On the day designated by the parties after the time-limits of the publications, the officer of the civil state, in the common house, in the presence of four witnesses, relatives or non-relatives, shall read to the parties the above-mentioned documents, relating to their state and to the formalities of marriage, and ch. VI of the title on Marriage concerning the respective rights and duties of the

spouses. He shall receive from each party, one after the other, the declaration that they wish to take each other for husband and wife; he shall pronounce, in the name of the law, that they are united by marriage, and he shall draw up an act of it on the spot."[6]

[6] Art. 76.

(d) "There shall be stated, in the act of marriage: 1° the given names, names, professions, age, places of birth and domicile of the spouses; - 2° whether they are majors or minors; - 3° the given names, names, professions, and domiciles of the fathers and mothers; - 4° the consent of the fathers and mothers, grandfathers and grandmothers, and that of the Family Council, in the cases in which they are required; - 5° the notification prescribed by article 151, if it has been made; - 6° the oppositions, if there have been any; their removal, or the mention that there has been no opposition; - 7° the declaration of the contracting parties to take each other for spouses, and the pronouncement of their union by the public officer; - 8° the given names, names, age, professions, and domiciles of the witnesses, and their declaration, if they are relatives or affines of the parties, on which side and in what degree; - 9° the declaration made upon the interpellation prescribed by the preceding article that a marriage contract has or has not been made, and, insofar as possible, the date of the contract, if it exists, as well as the names and place of residence of the notary who received it; all under penalty against the officer of the fine fixed by art. 50. - Mention shall be made of the celebration of the marriage in the margin of the birth act of the spouses."[1]

[1] Art. 76.

(e) "A marriage contracted in a foreign country between French persons, and between French persons and foreigners, shall be valid, if it has been celebrated in the forms used in the country, provided that it has been preceded by the publication prescribed by article 63, under the title of Acts of the civil state, and that the French person has not contravened the dispositions contained in the preceding chapter. - The same shall hold for a marriage contracted in a foreign country between a French man and a foreign woman, if it has been celebrated by the diplomatic agents or by the consuls of France, conformably to French laws. - Within three months after the return of the French person to the territory of the Republic, the act of celebration of the marriage contracted in a foreign country shall be transcribed upon the public register of marriages of the place of his domicile."[2]

[2] Art. 170-171. - It is disputed among jurists whether a marriage entered without conditions of this kind is valid or not; cf. Baud. Lac. n. 555-557.

(f) These things also are to be noted by priests: "Every minister of a cult who shall proceed to the religious ceremonies of a marriage without its having been justified to him by an act of marriage previously received by the officers of the civil state shall be punished, for the first time, by a fine of 16 francs to 100 francs. - In case of new contraventions of the kind expressed in the preceding article, the minister of the cult who has committed them shall be punished, namely: for the first relapse, by imprisonment from two to five years; and for the second, by detention."[3]

[3] *Code penal*, art. 199-200.

1122. 3° On the mutual rights and offices of spouses. (a) "The spouses owe each other mutually fidelity, aid, assistance. - The husband owes protection to the woman; the woman, obedience to her husband. - The woman is obliged to dwell with the husband, and to follow him

wherever he judges it suitable to reside: the husband is obliged to receive her, and to furnish her everything that is necessary for the needs of life, according to his resources and his state."[4]

[4] *Code civil*, art. 212-214. - The aid in question consists in the furnishing, in kind or in money, of things necessary for life. The obligation of paying alimentary support is imposed, at the cessation of common life, when one of the two spouses is without resources, - when the husband refuses to receive his wife at the conjugal domicile, - when the husband forces his wife to leave the conjugal domicile by the bad treatment which he makes her undergo. Cf. Baud. Lac. n. 715-716.

1123. 4° On matrimonial impediments. (A) Age: "A man before eighteen completed years, a woman before fifteen completed years, cannot contract marriage. - Nevertheless it is permitted to the President of the Republic to grant dispensations from age for grave reasons."[1] - The cause most frequently invoked is the pregnancy of the woman: malice has supplied age.

[1] *Code civil*, art. 144-145.

(B) Defect of consent. (a) "There is no marriage when there is no consent."[2]

[2] Art. 146.

(b) Now error concerning the person invalidates consent: "When there has been error in the person, the marriage can be attacked only by that one of the two spouses who was induced into error. - In the case of the preceding article, the petition for nullity is no longer receivable whenever there has been continued cohabitation for six months after the spouse acquired his full liberty, or after the error was recognized by him."[3]

[3] *Code civil*, art. 180-181.

(c) Likewise perpetual insanity, by force of art. 489: "The major who is in an habitual state of imbecility, dementia, or fury must be interdicted, even when this state presents lucid intervals."

(d) And also force and fear: "Thus a young man surprised in flagrant delict with a young girl promises to marry her, and in fact marries her, under the influence of a threat of death which is made to him by the father of the young girl. The spouse subjected to violence can demand the nullity of the marriage." - "Abduction is no longer today, as formerly, a diriment impediment of marriage. Only the abducted person can cause the nullity of the marriage which she had contracted with her abductor to be pronounced, if she succeeds in demonstrating that her consent was not free."[4]

[4] Baudry-Lac. nn. 588, 590.

(e) Bond: "One cannot contract a second marriage before the dissolution of the first." - "Marriage is dissolved: 1° by the death of one of the two spouses; 2° by divorce legally pronounced." - "A woman cannot contract a new marriage except after 300 completed days from the dissolution of the preceding marriage." - "A divorced woman can remarry immediately after the transcription of the judgment or decree which pronounced the divorce, if nevertheless 300 days have already elapsed since there intervened, in the instance which led to the divorce, the ordinance which authorized the petitioner spouse to have a separate residence." (Law of August 9, 1919.)

[5] *Code civil*, art. 147, 227, 228, 296. - Bond is indeed a diriment impediment, but the prohibition of marrying before ten months from the dissolution of the prior marriage is only impedient. - Besides, bigamy is punished by grave penalties. (*Code penal*, art. 340.)

1124. (C) Defect of the consent of parents: (a) "The son and the daughter who have not attained the age of twenty-one completed years cannot contract marriage without the consent of their father and mother. In case of dissent, the consent of the father suffices. - If one of the two is dead, or if he is in the impossibility of manifesting his will, the consent of the other suffices. - If the father and the mother are dead, or if they are in the impossibility of manifesting their will, the grandfathers and grandmothers replace them. If there is dissent between the two lines, this division shall carry consent."[1]

[1] *Code civil*, art. 148-150.

(b) "Children who have attained the age of twenty-one completed years and up to the age of thirty completed years are bound to justify the consent of their father and mother. In default of this consent, the interested party shall have notified, in the forms foreseen in article 154, the projected union to his father and mother or to that one of the two whose consent has not been obtained. Thirty clear days after justification of this notification, one shall proceed to the celebration of the marriage."[2]

[2] Art. 151.

(c) "If there is dissent between parents divorced or separated from bed and board, the consent of that one of the two spouses in whose favor the divorce or separation shall have been pronounced and who shall have obtained the custody of the child shall suffice. For lack of uniting these two conditions, that one of the father and mother who shall consent to the marriage can cite the other before the Tribunal of first instance sitting in the Chamber of Council; the competent Tribunal shall be that of the person who has the custody of the child; it shall decide in public audience and in last resort."[3]

[3] Art. 152.

(d) "The notification prescribed by article 151 shall be made at the request of the interested party by a notary acting without the concurrence of a second notary or of witnesses. This act, visaed for stamp and registered gratis, shall state the given names, names, professions, domiciles, and residences of the future spouses, of their fathers and mothers, as well as the place where the marriage shall be celebrated. It shall also contain a declaration that this notification is made to them in view of obtaining their consent and that, in default of it, one shall proceed to the celebration of the marriage at the expiration of the period of thirty clear days."[4]

[4] Art. 154.

(e) "The natural child legally recognized who has not attained the age of 21 completed years cannot contract marriage without having the consent of that one of his father and mother who recognized him or of the one and the other if he was recognized by both. - In case of dissent, the consent of the parent who shall exercise paternal power suffices. If one of the two is dead or if he is in the impossibility of manifesting his will, the consent of the other suffices.[5] The dispositions contained in articles 151, 153, 154, and 155 are applicable to the natural child after the age of 21 completed years. - The natural child who has not been recognized, and that one who, after having been recognized, has lost his father and mother, or whose father and mother cannot manifest their will, cannot, before the age of twenty-one completed years, marry except after having obtained the consent of the Family Council."[1]

[5] Art. 158, modified by the law of March 10, 1913.

[1] Art. 159.

(f) "If there is neither father nor mother, nor grandfathers nor grandmothers, or if they all find themselves in the impossibility of manifesting their will, sons or daughters minor of twenty-one years cannot contract marriage without the consent of the Family Council." - The minor of 21 years who would be ignorant of the place of the death or of the domicile of those of his ascendants whose consent is required for his marriage shall swear that the place of the death or that of the last domicile of his ascendants is unknown to him.[2]

[2] Art. 160, modified by the law of 1913.

1125. (D) Kinship and affinity: (a) "In the direct line, marriage is prohibited between all legitimate or natural ascendants and descendants, and affines in the same line."[3]

[3] Art. 161. - Affinity does not cease by the death of the spouse who produced it.

(b) "In the collateral line, marriage is prohibited between brother and sister, legitimate or natural. It is prohibited between affines in the same degree when the marriage which produced the affinity has been dissolved by divorce (Law of July 1, 1914). - Marriage is also prohibited between uncle and niece, aunt and nephew. - Nevertheless it is permitted to the President of the Republic to lift, for grave causes, the prohibitions carried by article 162 concerning marriages between brothers-in-law and sisters-in-law, and by article 163 concerning marriages between uncle and niece, aunt and nephew."[4]

[4] Art. 162-164. - Jurisprudence admits more and more that art. 163 also opposes marriage between the great-uncle and the grand-niece, the great-aunt and the grand-nephew. Cf. Baud. Lac. n. 523. But the Court of Cassation judges that marriage is permitted between an uncle and his natural niece, just as between an aunt and her natural nephew.

(c) "Marriage is prohibited: between the adopter, the adopted, and his descendants; between the adoptive children of the same individual; between the adopted and the children who could come to the adopter later; between the adopted and the spouse of the adopter, and reciprocally between the adopter and the spouse of the adopted."[5]

[5] Art. 348.

(E) Defect of legal solemnity: (a) "The declaration of the parties which establishes their free and voluntary consent; and that of the officer of the civil state, who pronounces in the name of the law that the conjugal union is formed, are substantial formalities without the fulfillment of which there could not be marriage."[6]

[6] Court of Cassation, ap. Baud. Lac., n. 582, 3°.

(b) "Every marriage which has not been contracted publicly, and which has not been celebrated before the competent public officer, can be attacked by the spouses themselves, by the father and mother, by the ascendants, and by all those who have a born and actual interest, as well as by the public ministry."[1]

[1] Art. 191. - "Every contravention of the rules concerning publicity does not necessarily render the marriage null as clandestine. The judge has here a power of appreciation which does not belong to him for the other causes of nullity." (Baud. Lac., n. 627). - "The incompetence of the officer of the civil state who has celebrated a marriage does not necessarily entail its nullity... The judge is invested with a discretionary power to appreciate the gravity of the violation, whether of the rules of competence or of the rules of publicity." (Baud. Lac., n. 630).

1126. From this it follows that there are some canonical impediments which are not acknowledged by civil law; such are impotence, spiritual kinship, public honesty, disparity of cult, vow, order[2], crime, abduction, clandestinity. Yet if impotence is such that the sex of the person cannot be determined, the marriage can be declared null. Likewise, if an abducted person can prove that her consent was extorted by force by the abductor, the marriage is invalidated. But other impediments which are admitted are not understood in the same way by civil law and by canon law; besides, there are civil impediments, such as the consent of parents, which the Church does not have as diriment. To this priests must pay attention, lest a marriage be readily contracted valid in the civil forum and invalid in the ecclesiastical forum, or vice versa.

[2] On February 26, 1878, the Court of Cassation had judged that priesthood is a diriment impediment of marriage; a decree of the same Court, dated January 25, 1888, rendered a contrary decision. Cf. Baud. Lac., n. 529.

1127. 5° On full divorce. (A) The causes of divorce: (a) "The husband can demand divorce on account of adultery of his wife. - The wife can demand divorce on account of adultery of her husband."[3]

[3] Art. 229-230.

(b) "The spouses can reciprocally demand divorce for excesses, acts of cruelty, or grave injuries of one of them toward the other."[4]

[4] Art. 231. - By *exces* one must understand attacks brought by one spouse against the life of his consort or acts placing the life of the latter in danger. By grave injuries one understands only those which are the manifest expression of an evil, deliberate, and permanent sentiment.

(c) "The condemnation of one of the spouses to an afflictive and infamous penalty shall be for the other spouse a cause of divorce."[5]

[5] Art. 232.

(d) "When separation from bed and board shall have lasted three years, the judgment can be converted into a judgment of divorce upon the petition formed by one of the spouses."[6]

[6] Art. 310. Cf. Baud. Lac., 798-893.

(B) The procedure of divorce is clearly indicated in articles 234-252; the effects in articles 295-304. Article 298 is abrogated, which established a kind of diriment impediment: "In the case of divorce admitted in court on account of adultery, the guilty spouse can never marry his accomplice."

1128. 6° On semi-full divorce. (a) "In the case where there is place for a petition for divorce, it shall be free to the spouses to form a petition for separation from bed and board."[1]

[1] Art. 306.

(b) "Separation from bed and board always entails separation of goods. It has besides the effect of restoring to the woman the full exercise of her civil capacity, without her needing to have recourse to the authorization of her husband or of justice."[2]

[2] Art. 311. Law of February 6, 1893, completing this article.

IV. Principal Italian Civil Laws concerning Marriage.

1129. 1° On betrothals. (a) "The mutual promise of future marriage produces no legal obligation to contract it, nor to execute what may have been agreed for the case of non-fulfillment of the same. - (b) If the promise was made by public act or by private writing by one who is of age, or by a minor authorized by the persons whose concurrence is necessary for the celebration of marriage, or if it appears from the publications ordered by the officer of the civil state, the promisor who refuses to execute it without just motive is obliged to compensate the other party for the expenses made on account of the promised marriage. The demand, however, is no longer admissible after one year from the day on which the promise ought to have been executed."[3]

[3] *Cod. civile*, art. 53-54.

1130. 2° On the celebration of marriage. (a) "The celebration of marriage must be preceded by two publications to be made under the care of the officer of the civil state. - The publications must be made in the commune in which each of the spouses has his residence. If the present residence has lasted for less than one year, the publications must also be made in the commune of the preceding residence. The publications are made at the door of the communal house on two successive Sundays. The act shall remain posted in the interval between one publication and the other, and for three following days. - Marriage cannot be celebrated before the fourth day from the last publication. - The publications are considered as not having occurred, if the marriage is not celebrated within the term of the one hundred eighty following days."[4]

[4] Art. 70-72, 76-77.

(b) "Marriage must be celebrated in the communal house and publicly before the officer of the civil state of the commune where one of the spouses has his domicile or residence. - On the day indicated by the parties, the officer of the civil state, in the presence of two witnesses, even relatives, shall read to the spouses articles 130, 131, and 132 of this title; he shall receive from each of the parties personally, one after the other, the declaration that they wish respectively to take each other as husband and wife, and immediately thereafter he shall pronounce in the name of the law that they are united in marriage. - The declaration of the spouses that they take each other respectively as husband and wife cannot be subjected either to a term or to a condition."[1]

[1] Art. 93-95.

(c) "Marriage performed in a foreign country between citizens, or between a citizen and a foreigner, is valid, provided that it is celebrated according to the forms established in that country, and the citizen has not contravened the dispositions contained in the second section of the first chapter of this title. The publications must also be made in the kingdom according to the norm of articles 70 and 71. If the citizen spouse has no residence in the kingdom, the publications shall be made in the commune of the last domicile. - The citizen who has contracted marriage in a foreign country must, within three months from his return into the kingdom, have it inscribed in the registers of the civil state of the commune where he shall have fixed his residence, under penalty of a fine extendable to one hundred lire."[2]

[2] Art. 100-101.

1131. 3° On the mutual rights and offices of spouses. "Marriage imposes upon the spouses the reciprocal obligation of cohabitation, fidelity, and assistance. - The husband is head of the family: the wife follows his civil condition, assumes his surname, and is obliged to accompany him wherever he believes it opportune to fix his residence. - The husband has the duty of protecting the wife, of keeping her with himself, and of supplying her all that is necessary for the needs of life in proportion to his substance. The wife must contribute to the maintenance of the husband, if he does not have sufficient means. - The obligation of the husband to supply aliment to the wife ceases when the wife, having withdrawn without just cause from the conjugal domicile, refuses to return there."[3]

[3] Art. 130-133.

1132. 4° On the impediments of marriage. (a) "A man cannot contract marriage before he has completed eighteen years, nor a woman before she has completed fifteen years."[4]

[4] Art. 55.

(b) "He who is bound by a preceding marriage cannot contract other nuptials."[5]

[5] Art. 56.

(c) "A woman cannot contract a new marriage except after ten months have elapsed from the dissolution or from the annulment of the preceding marriage, excepting the case expressed in article 107 (impotence). This prohibition ceases from the day on which the woman has given birth."[6]

[6] Art. 57.

(d) "In the direct line marriage is forbidden between all legitimate or natural ascendants and descendants and the affines of the same line. - In the collateral line marriage is forbidden 1° between sisters and brothers, legitimate or natural, 2° between affines in the same degree, 3° between uncle and niece, aunt and nephew."[1]

[1] Art. 58-59.

(e) "Marriage is prohibited: between the adopter, the adopted, and his descendants; between the adoptive children of the same person; between the adopted and the children born later to the adopter; between the adopted and the spouse of the adopter, and between the adopter and the spouse of the adopted."[2]

[2] Art. 60.

(f) "Those interdicted on account of infirmity of mind cannot contract marriage."[3]

[3] Art. 61.

(g) "He who in criminal judgment was convicted as guilty party or accomplice of voluntary homicide committed, failed, or attempted upon the person of one of the spouses cannot be united in marriage with the other spouse."[4]

[4] Art. 62.

(h) "The son who has not completed twenty-five years, the daughter who has not completed twenty-one years, cannot contract marriage without the consent of the father and mother. If the parents are discordant, the consent of the father is sufficient. If one of the parents is dead or in the impossibility

of manifesting his own will, the consent of the other is enough. For the marriage of an adoptive son who has not completed twenty-one years, besides the consent of the parents, the consent of the adopter is necessary. - If the father and the mother should be dead or in the impossibility of manifesting their will, minors of twenty-one years cannot contract marriage without the consent of the grandfathers and grandmothers: if the grandfather and grandmother of the same line are discordant, the consent of the grandfather is enough. Disagreement between the two lines is equivalent to consent. - If there exist no parents, nor adopter, nor grandfathers nor grandmothers, or if none of these is in the possibility of manifesting his own will, minors of twenty-one years cannot contract marriage without the consent of the family council."[5]

[5] Art. 63-65.

(i) "A marriage contracted in contravention of articles 55, 56, 58, 59, 60, and 62 can be impugned by the spouses, by the nearest ascendants, by the public minister, and by all those who have a legitimate and actual interest in it. By the same persons the marriage celebrated before an incompetent officer of the civil state or without the presence of the required witnesses can be impugned. After one year has elapsed from the celebration of the marriage, the demand of nullity for incompetence of the officer of the civil state is no longer admitted."[6]

[6] Art. 104.

(j) "Marriage can be impugned by that one of the spouses whose consent was not free. When there was error in the person, the action of nullity can be promoted by that one of the spouses who was induced into error. - The demand of nullity for the causes expressed in the preceding article is no longer admissible if there was continued cohabitation for one month after the spouse recovered his full liberty or knew the error."[1]

[1] Art. 105-106.

(k) "Manifest and perpetual impotence, when it is prior to marriage, can be proposed as a cause of nullity by the other spouse."[2]

[2] Art. 107.

1133. 5° On separation from bed and board. (a) "Separation can be demanded on account of adultery and voluntary abandonment, and on account of excesses, cruelty, threats, and grave injuries. An action for separation on account of the adultery of the husband is not admitted, except when he keeps a concubine in the house or notoriously in another place, or when circumstances concur such that the fact constitutes a grave injury to the wife. - Separation can also be demanded against the spouse who has been condemned to a criminal penalty, except in the case that the sentence is prior to the marriage and the other spouse was aware of it. - The wife can ask separation when the husband, without any just motive, does not fix a residence, or, having the means, refuses to fix it in a manner suitable to her condition."[3]

[3] Art. 150-152.

(b) "Reconciliation extinguishes the right of asking separation; it also induces the abandonment of the demand which had been proposed."[4]

[4] Art. 153.

Up to this time no full divorce is permitted.

V. Principal Civil Laws concerning Marriage in Germany.

N.B. "§ 1588. Ecclesiastical obligations in respect to marriage are not touched by the prescriptions of this section."

[5] A summary of the new civil law concerning matrimonial matters, in force in Germany, is to be read ap. *Pelt, Canoniste,* XXIII, 1900, p. 321-331.

1134. 1° On betrothals. "§ 1297. From a betrothal one cannot sue for entering into marriage. The promise of a penalty for the case that entry into marriage does not take place is null."

1135. 2° On the impediments of marriage. (A) Diriment impediments. (a) Defect of solemnity: "§ 1324. A marriage is null, if at the celebration of marriage the form prescribed in § 1317 has not been observed. If the marriage has been entered in the marriage register and the spouses, after the celebration of marriage, have lived with each other as spouses for ten years, or, if one of them died before, until his death, yet at least three years, then the marriage is to be regarded as valid from the beginning. This prescription finds no application if, at the expiration of the ten years or at the time of the death of one spouse, the action of nullity has been brought."

(b) Defect of capacity: "§ 1325. A marriage is null if one of the spouses at the time of the celebration of marriage was incapable of transacting business or was in a state of unconsciousness or of a passing disturbance of mental activity. - The marriage is to be regarded as valid from the beginning if the spouse confirms it after the removal of the incapacity of transacting business, the unconsciousness, or the disturbance of mental capacity, before it has been declared null or dissolved. The confirmation does not need the form prescribed for the celebration of marriage."

(c) Bond: "§ 1326. A marriage is null if one of the spouses at the time of the celebration of marriage was living with a third party in a valid marriage."

(d) Consanguinity and affinity: "§ 1327. A marriage is null if it has been contracted between relatives or affines contrary to the prohibition of § 1310, paragraph 1."

(e) Crime: "§ 1328. A marriage is null if it was prohibited because of adultery according to § 1312. If afterward liberation from the prescription of § 1312 is granted, then the marriage is to be regarded as valid from the beginning."

(f) Defect of age: "§ 1331. A marriage can be contested by the spouse who, at the time of the celebration of marriage, or in the case of § 1325 at the time of confirmation, was restricted in capacity for transacting business, if the celebration of marriage or the confirmation occurred without the consent of his legal representative."

(g) Error and fraud: "§ 1332. A marriage can be contested by the spouse who, at the celebration of marriage, did not know that it was a matter of a celebration of marriage, or who indeed knew this, but did not wish to give a declaration that he wished to enter marriage. - § 1333. A marriage can be contested by the spouse who at the celebration of marriage erred concerning the person of the other spouse or concerning such personal qualities of the other spouse as, with knowledge of the state of the matter and with an intelligent weighing of the essence of marriage, would have kept him from

entering marriage. - § 1334. A marriage can be contested by the spouse who was determined to enter marriage by fraudulent deception concerning such circumstances as, with knowledge of the state of the matter and with an intelligent weighing of the essence of marriage, would have kept him from entering marriage. If the deception was not perpetrated by the other spouse, then the marriage is contestable only if this one knew the deception at the celebration of marriage. Contestation does not take place on the ground of a deception concerning property relations."

(h) Fear: "§ 1335. A marriage can be contested by the spouse who was unlawfully determined to enter marriage by threat."

N.B. "§ 1343. If a contestable marriage is contested, it is to be regarded as null from the beginning.

"The nullity of a contestable marriage which has been contested by way of action cannot, so long as the marriage has not been declared null or dissolved, be asserted in any other way."

1136. (B) Impedient impediments. (a) Defect of age: "§ 1303. A man may not enter marriage before the entrance of majority, nor a woman before the completion of the 16th year of life. - Liberation from this prescription can be granted to a woman."

(b) Defect of the consent of parents: "§ 1305. A legitimate child, until the completion of the twenty-first year of life, needs the consent of the father for entering marriage; an illegitimate child, until the same age of life, needs the consent of the mother. The mother takes the place of the father if the father is dead or if the rights arising from paternity according to § 1701 do not belong to him. A child declared legitimate does not need the consent of the mother even if the father is dead. - It is equivalent to the death of the father or of the mother if they are permanently incapable of giving a declaration or if their residence is permanently unknown."

(c) Illicit affinity and consanguinity: "§ 1310, 2°. A marriage may not be contracted between persons of whom one has had sexual intercourse with parents, ancestors, or descendants of the other.

"§ 1310, 3°. Relationship in the sense of these prescriptions exists also between an illegitimate child and his descendants on the one side, and the father and his relatives on the other side."

(d) Legal kinship: "§ 1311. He who has adopted another in the place of a child may not enter marriage with him or his descendants so long as the juridical relation founded by the adoption exists."

(e) Certain special matters concerning widows, minors, soldiers, banns: "§ 1313. A woman may enter a new marriage only ten months after the dissolution or declaration of nullity of her former marriage, unless she has meanwhile given birth. Liberation from this prescription can be granted.

"§ 1314. Whoever has a legitimate child who is a minor or who stands under his guardianship may enter a marriage only after the guardianship court has given him a certificate that he has fulfilled the obligations designated in § 1669 or that they are not incumbent upon him. - If, in the case of continued community of goods, a descendant entitled to a share is a minor or under guardianship, the surviving spouse may enter a marriage only after the guardianship court has given him a certificate that he has fulfilled the obligations designated in § 1493, paragraph 2, or that they are not incumbent upon him.

"§ 1315. Military persons or such state officials for whom, according to the laws of the state, a special permission is required for entering marriage, may not enter marriage without the prescribed permission.

"Foreigners for whom, according to the laws of the state, a permission or certificate is required for entering marriage may not enter marriage without this permission or without this certificate.

"§ 1316. The celebration of marriage ought to be preceded by a bann. The bann loses its force if the marriage is not contracted within six months after the execution of the bann.

"The bann may be omitted if the life-threatening illness of one of the betrothed does not permit delay of the celebration of marriage.

"Liberation from the bann can be granted."

1137. 3° On divorce. (a) Adultery, bigamy, and the sin of impurity against nature are a sufficient cause of divorce, provided nevertheless that the other spouse has not consented to or cooperated in these crimes: "§ 1565. A spouse can sue for divorce if the other spouse makes himself guilty of adultery, or of an act punishable according to §§ 171, 175 of the penal code.

"The right of the spouse to divorce is excluded if he consents to the adultery or to the punishable act, or makes himself guilty of participation."

(b) "§ 1566. A spouse can sue for divorce if the other spouse seeks after his life."

(c) "§ 1567. A spouse can sue for divorce if the other spouse has maliciously deserted him. Malicious desertion is present only: 1° if a spouse, after he has been condemned by final judgment to restore domestic community, for one year has not obeyed the judgment, against the will of the other spouse, with malicious intention; 2° if a spouse, for one year, against the will of the other spouse and with malicious intention, has kept himself away from the domestic community and the prerequisites for public service against him have existed for a period of one year. - Divorce is inadmissible in the case of paragraph 2, n. 2, if the prerequisites for public service no longer exist at the close of the oral hearing on which the judgment is issued."

(d) "§ 1568. A spouse can sue for divorce if the other spouse, by grave violation of the duties founded by marriage, or by dishonorable or immoral behavior, has culpably caused so deep a disturbance of the conjugal relation that the continuation of the marriage cannot be expected of the spouse. Gross ill-treatment also counts as a grave violation of duties."

(e) "§ 1569. A spouse can sue for divorce if the other spouse has fallen into mental illness, the illness has lasted at least three years during the marriage and has reached such a degree that the spiritual community between the spouses has been removed, and every prospect of restoration of this community is also excluded.

N.B. "§ 1570. The right to divorce ceases in the cases of §§ 1565 to 1568 by pardon."

"§ 1571. The action for divorce must be brought, in the cases of §§ 1565 to 1568, within six months from the time at which the spouse obtains knowledge of the ground of divorce. The action is excluded if ten years have elapsed since the occurrence of the ground of divorce. The period does not run so long as the domestic community of the spouses is removed. If the spouse entitled to the

action is summoned by the other spouse either to restore the domestic community or to bring the action, then the period runs from the receipt of the summons. The citation to the term of reconciliation is equivalent to bringing the action. The citation loses its effect if the spouse entitled to the action does not appear at the term of reconciliation, or if three months have elapsed after the end of the reconciliation procedure and the action has not previously been brought. To the running of the six-month and the three-month period the prescriptions of §§ 203, 206, applying to prescription, are correspondingly applied."

1138. 4° On separation as to bed and habitation. "§ 1575, 1° The spouse who is entitled to sue for divorce can, instead of divorce, sue for removal of the conjugal community. If the other spouse petitions that the marriage, if the action is founded, be dissolved by divorce, then judgment is to be given for divorce.

"§ 1586. If, according to § 1575, the conjugal community is removed, then the effects connected with divorce enter in, yet the entering of a new marriage is excluded. The prescriptions concerning the nullity and contestability of marriage find application as if the judgment had not been issued.

"§ 1575, 2° For the action for removal of the conjugal community the prescriptions of §§ 1573-1574 hold. - § 1576. If judgment has been given for removal of the conjugal community, then each of the spouses can, on the ground of the judgment, petition for divorce, unless after the issuing of the judgment the conjugal community has been restored. The prescriptions of §§ 1570 to 1574 find no application; if the marriage is dissolved by divorce, then the spouse declared guilty is to be declared guilty also in the judgment of divorce."

1139. We conclude the exposition of civil law and the Treatise on Marriage with these words of Leo XIII[1]: "Since these things are so, all governors and administrators of public affairs, if they had wished to follow reason, wisdom, and the very utility of peoples, ought to have preferred that the sacred laws concerning marriage remain untouched, and to have employed the assistance offered by the Church for the protection of morals and the prosperity of families, rather than to call the Church herself into suspicion of enmity, and into a false and unjust accusation of violated civil right."

[1] Encycl. *Arcanum*.

Supplement to the Treatise on Marriage

Supplement To The Treatise On Marriage.

In this Supplement we shall speak: 1° on the impediment of impotence; 2° on the conjugal debt; 3° on fetuses to be baptized.

Since in some Seminaries questions of this sort are explained to deacons alone, but in others in their own place to all candidates of theology, we have judged it right to discuss them briefly in a Supplement, which can be inserted in this volume or removed from it, at the discretion of the Rectors of Seminaries.

Art. I. On the Impediment of Impotence. — I. Notion of Impotence.

1. 1° Impotence is indeed a natural impediment of marriage; but it belongs to the Church, insofar as she is the interpreter of natural law, to define wherein that impediment consists. Now impotence, insofar as it is a canonical impediment of marriage, is not impotence for begetting or sterility, but impotence for coition, or for having copula of itself apt for the generation of offspring. Hence for valid marriage the power of begetting is not required, but it suffices that there be the power of coiting in such a way that the man can pour forth seed within the vagina of the woman[2], and the virile seed can be mixed with the female ovule.

[1] *Decretals of Gregory IX*, book IV, title XI, *De frigidis et maleficiatis et de impotentia coeundi*; the Canonists on this title; St. Thomas, Supplement, q. 58, a. 1-2; Sanchez, book VII, disp. 92-114; St. Alphonsus, book VI, n. 1095-1105; Lehmkuhl, n. 743-747; Bull. P., n. 864-891, ed. 3, 1900; Gasparri, *De Matrimonio*, n. 510-536; Eschbach, *Disputationes Physiologico-Theologicae*, Rome, 1901, disp. 11; id., *De novo quodam sterilitatis conceptu*, Rome, 1903; Antonelli, *De conceptu impotentiae*, Rome, 1900; id., *Pro conceptu impotentiae*, Rome, 1901; id., *Medicina pastoralis*, Ratisbon, 1905, vol. II, n. 42-293; Capellmann, *Medicina Pastoralis*, p. 162-169; *American Ecclesiastical Review*, Dec. 1902, p. 609; Jan. 1903, p. 57, etc.; Surbled, *La Morale dans ses rapports avec la Medecine*, 6th ed. 1900, vol. II, p. 113 sq.

[2] Indeed, according to some, such as Capellmann (p. 164), Ballerini P., n. 873, and others, impotence does not exist when the man can emit seed at the mouth of the vagina, so that the seed can be drawn into the vagina and uterus.

Indeed, marriage was established primarily for the procreation of offspring, but secondarily as a remedy for concupiscence; and therefore it is judged valid whenever this secondary end is obtained, even if the primary end by accident cannot be attained. Now whenever virile seed can be poured forth within the vagina of the woman, concupiscence is quieted, even if by accident conception cannot take place.

Hence the sterile contract validly, provided they can have copula with each other in the sense explained; but eunuchs who lack both testicles contract invalidly, because, even when they can penetrate the natural vessel of the woman, they cannot pour forth seed[1].

[1] Thus Sixtus V, Motu proprio *Quod frequenter*, June 27, 1587.

2. 2° Impotence is: (a) natural, when it arises from the very constitution of the body; accidental, when it comes from an extrinsic cause, e.g., from disease or wound; (b) antecedent, when it precedes marriage; subsequent, if it occurs after marriage already contracted; (c) perpetual, if it

cannot be removed by licit human means, nor means gravely dangerous; temporary, if it can be healed by licit human means and not otherwise gravely dangerous; (d) absolute, which exists in relation to any person whatever; relative, which exists only with such a determined person, e.g., because of defect of proportion between the sexual organs.

II. Conditions That Impotence Be A Diriment Impediment.

3. 1° Principle: Antecedent and perpetual impotence invalidates marriage as regards all, if it is absolute; but if it is relative, with respect to that person with whom true copula is impossible.

(A) It is explained: (a) antecedent, for if it follows upon a marriage already validly contracted, it does not dissolve it.

(b) Perpetual, for if it can be removed, it does not render someone incapable of copula except for a time; but such a one can validly transfer the right over his own body, to be exercised as soon as the impotence has ceased. - Hence, if after marriage impotence of this sort is detected, much more probably there is an obligation of removing it, if this can be done without danger of life or of grave illness; for, since the right over one's own body has been handed over in order to generation, everything must be furnished which is morally possible lest the other party be defrauded of his or her right. But if the impediment cannot be removed without danger of life or of grave illness, there is no obligation of incurring such danger, because law does not oblige with so great an inconvenience[1].

[1] Today danger of this sort is often lacking, on account of the wondrous advances of surgical art.

4. (B) It is proved. The essence of the matrimonial contract consists in the handing over of the right over one's own body in order to acts of themselves apt for the generation of offspring, as is clear from the very definition of marriage; but one who labors under perpetual impotence for coition cannot give to another the right to copula, of which he is wholly incapable. - From this it follows that this impediment is of the law of nature and therefore indispensable; but if the impediment "is doubtful, whether by a doubt of law or a doubt of fact, marriage is not to be impeded" (*Code*, c. 1068, § 2).

5. 2° Corollaries. Therefore the following labor under impotence: (A) Men (a) lacking both testicles, because they cannot emit seed; (b) whose testicles are so crushed that they cannot perform their function; but if the testicles are hidden, it belongs to physicians in the particular case to discern whether they can produce seed or not; (c) whose virile member cannot be erected[2] (which defect the ancients called frigidity); or is so deformed that seed cannot be introduced into the vagina of the woman[3]; today this defect is easily remedied; (d) more probably those who have undergone vasectomy, namely by which the canal through which seed is carried to the virile member has been cut[4]; (e) those who always emit seed before they can penetrate the natural vessel; this defect, however, can for the most part be healed. - But phimosis, or excessive extension of the foreskin, which impedes the ejaculation of seed, can easily be corrected, and therefore is not an impediment.

[2] Cf. Eschbach, op. cit., p. 146-149; Antonelli, vol. II, n. 220 sq.

[3] This especially occurs when the urethral canal is open in the middle of the penis, or in the lower or upper part; this defect they call epispadias and hypospadias; on which see Capellmann, p. 163-164.

[4] But this operation is illicit, unless for saving the whole body (below, n. 8); therefore it does not seem licit for rendering evil men sterile, since there are other means for protecting society against the multiplication of the evil. - Vermeersch (*De Castitate*, n. 73, 84) thinks this operation does not certainly invalidate marriage.

(B) Women (a) lacking vulva or vagina, because they are wholly incapable of copula; (b) more probably having vulva or vagina so closed or narrow that it cannot sufficiently be opened without danger of death or of grave illness[5]. - But vaginismus, by force of which the woman, from a lighter contact of the man, suffers atrocious pain, is not an impediment, because by its nature it is not incurable.

[5] In this case conception can indeed take place by accident, because seed poured forth at the lips of the vagina is sometimes drawn into the uterus; but, since copula does not take place in the due vessel, not a few say that impotence still subsists; but others, much more probably, think that it ceases by that very fact, as soon as it is proved that conception has taken place: for then the two spouses are truly one flesh, and the marriage can be called consummated. Cf. Eschbach, p. 152; Berardi, n. 5158; Ball. P., n. 1269-1270 (873-874 ed. 3). - Moreover if a woman, laboring under perpetual impotence, undergoes a dangerous operation by which she is rendered potent, she can either pass to other nuptials, or contract again with her prior husband; the latter solution is wholly to be urged.

6. 3° Disputed question. Here, however, it is asked whether a woman whose uterus and ovaries are absent or have been excised[1] must be held truly impotent. (A) The reason for doubting is that, on the one hand, this woman remains apt for copula, since the vagina is left intact; but on the other hand, copula does not seem of itself apt for generation, since ova, absolutely necessary for conception, are wholly lacking. Hence theologians have gone into various opinions: some say this woman is truly impotent, because ovaries in a woman are required for conception no less than testicles in a man[2]. - But others hold that she is indeed sterile, but not impotent: for that which is required and suffices for the essence of marriage is the power of coiting, not of begetting; but this exists, provided the vagina remains intact; if conception becomes impossible, that is related by accident, insofar as ova are lacking, just as they are absent in old women, who indeed are sterile, but not for that reason impotent[3].

[1] Today that operation which is called Porro is performed without great danger, from the physician who first successfully performed it.

[2] Antonelli vigorously defends this opinion, op. cit.

[3] Thus Eschbach, op. cit., p. 197-204; Berardi, *Casus Conscientiae*, year 1892, p. 22 sq., where he illustrates the matter thus by comparison: "An old woman of eighty or ninety years is certainly unfit for generation; and nevertheless her marriage is valid. But what difference is there? An old woman is a vine whose roots are dried up; a woman without ovaries is a vine whose roots have been cut off. Both without fruit, both incapable of generation. Therefore if the marriage of the first is valid, the marriage of the second also ought to be valid."

7. (B) On this matter the Holy Office, in two particular cases, responded thus. On February 3, 1887, to the question: "Whether a woman, rendered sterile by defect of both ovaries having been excised, can and may be permitted to enter marriage or not?"; the response was: "The matter having been maturely and long considered, the marriage of the woman concerning whom in the case is not to be impeded." - But on July 30, 1890, to the question: "Whether woman N. N., to whom by surgical operation the two ovaries and uterus have been removed, can be admitted to contracting marriage?"; the response was: "Marriage is not to be impeded." - Although these decrees do not have the force of a general law, a prudent confessor will follow them in practice, whenever it is not certainly established concerning the perfect and absolute

excision of the uterus and ovaries[1]: for no one ought to be deprived of the natural right of marrying, unless it is canonically established that he or she is bound by some impediment. But if, by the judgment of physicians, the absolute excision were established, recourse would have to be had to the Sacred Congregations.

[1] According to Bucceroni (*Institut. theol. mor.*, vol. II, n. 994), His Eminence Parrocchi, secretary of the Holy Office, declared that the aforesaid responses regard only cases in which, by the judgment of experts, it was not altogether established concerning the perfect and absolute excision or absence of the uterus and ovaries.

8. Notes for practice. Here, however, it is fitting to advert to two things: (A) Excision of the uterus and ovaries is not licit except from a very grave cause. (a) This certainly exists when otherwise the life of the woman cannot be preserved; for, according to St. Thomas[2], since some member is part of the whole body, it must be disposed of according as it is expedient for the whole; therefore if some member is corruptive of the whole body, it is licit to cut off the putrid member for the health of the whole body.

[2] St. Thomas, II-II, q. 65, a. 1.

(b) According to Lehmkuhl (n. 856), this is also licit when danger of death, although not so immediate and certain, but nevertheless actually existing, is notably lessened by this operation; e.g., if, in a Caesarean operation, the danger becomes much less, granted that the uterus is extirpated; or if from an ulcerated uterus or one otherwise badly affected a grave danger of life is justly feared.

9. (c) Can the same thing be said when, from the very narrowness of the woman, without any disease, childbirth is foreseen to be very dangerous both for the woman herself and for the offspring? Most authors deny[3], because it is not licit to cut off a member except for saving the whole body; but this would be done proximately in the case for preventing conception.

[3] Lehmkuhl, n. 856; Capellmann, p. 27; Eschbach, p. 370-373.

(d) Finally it is certain that it is a very grave sin to permit this excision for this end only, that sterility be induced, and copula be able to be had without fear of offspring to be conceived.

10. (B) A woman who has undergone this operation cannot licitly contract marriage unless she makes the man whom she intends to marry more certain concerning this matter; for, since the primary end of marriage is the generation of offspring, she would deceive the spouse in a grave matter if, knowing very well that she is wholly unfit for generation, she manifested nothing to him concerning a matter of such moment.

11. 4° On the manner of acting as regards the impotent. (A) When it is certain that the impotence is antecedent and perpetual, regularly the spouses must be admonished that they separate as regards bed; otherwise they are exposed to danger of sinning against chastity. - It is said regularly, because often it is expedient to leave them in good faith, until the nullity of the marriage is declared by the ecclesiastical judge; for if they are imprudently admonished concerning the obligation of this separation, material sins which they previously committed now become formal. This is especially true when it is not expedient to declare the nullity of the marriage, whether because of scandal, or because of civil law, which does not admit such an

impediment; then they can be permitted to live as brother and sister, provided such cohabitation is not an occasion of sinning[1].

[1] Thus the Sacred Congregation of the Council, Dec. 15, 1877, apud Gasparri, n. 535.

But if no scandal or other grave inconvenience is feared, it is expedient that the matter be referred to the Bishop, so that by a twofold judicial sentence the nullity of the marriage may be pronounced[2]: then the party who does not labor under impotence can enter other nuptials; the other must remain unmarried, unless the impotence is only relative.

[2] The order to be followed is described in the Constitution *Dei Miseratione* of Benedict XIV, and in the Instruction of the Sacred Congregation of the Council, Aug. 22, 1840; and also in the Instruction of the Holy Office for making the process concerning the impotence of the man, and the non-following consummation of marriage; these documents you will find apud Gasparri, vol. II, p. 538-555; but it is set forth at length apud Bassibey, *Le Mariage devant les tribunaux ecclesiast.*, Paris, 1899; Smith, *Marriage Process*, Part III-IV; C. Sagnori, *Exemplar actorum forensium quibus inquirendum est de matrimonii nullitate ex capite impotentiae*, Rome, 1903; more briefly apud Peries, *Code de Procedure canonique dans les Causes matrimoniales*, Paris, 1894.

12. (B) If impotence is only doubtful, it is not licit to contract marriage unless, the matter having been canonically investigated, the doubt has been practically removed; but, with marriage already contracted, the spouses can attempt copula as long as hope remains of accomplishing it, even if by accident seed were poured forth outside the vessel; but when every hope has vanished, one must proceed as above. - By canonical law they can attempt copula in this way for three years; but today recourse is rather had to the Holy See for dispensation from a ratified and non-consummated marriage.

13. (C) Since it is often difficult to prove that impotence is antecedent and perpetual, the easier way for dissolving the bond is namely by seeking a dispensation concerning a ratified and non-consummated marriage. In order that this be granted, the non-consummation of the marriage must be proved; this is demonstrated according to the norm of the Bull *Dei miseratione*, issued by Benedict XIV, Nov. 29, 1741: (a) by the sworn testimony of the spouses; (b) by testimony of the seventh hand, i.e., by the testimony of seven witnesses both on the part of the man and on the part of the woman, who, under the faith of oath, depose that the spouses are worthy of trust, and moreover whether they have heard that the marriage was consummated or not; (c) by inspection of the bodies performed by physicians or surgeons; as regards the man, the physicians examine by decent means whether he is impotent or not; as regards the woman, midwives, first to be instructed by at least two physicians, investigate whether signs of virginity are present, especially whether the hymen is intact or not[1]. All these things having been done, if it is morally certain that the marriage was not consummated, the Supreme Pontiff is accustomed to dispense in it.

[1] Cf. Instruction of the Holy Office, 1858; and Sept. 1890, apud *Acta S. Sedis*, XXVI, p. 37-41; Bassibey, op. cit., book III, n. 230-474; Smith, Part III-IV.

Scholion: On Hermaphrodites.

14. Hermaphrodites are called those who are judged to participate in both sexes, so that they can at will carry out the office of one or the other sex. Today it is certainly established that such do

not exist, if we believe the judgment of experts.

[2] Cf. Eschbach, p. 53-54; Surbled, op. cit., p. 148-155.

But there are men who, besides the complete organs of one sex, have something from the organs of the other; others who are incompletely endowed with the organs of both sexes, so that they are impotent; and finally others concerning whose sex there is doubt, especially as long as they are not pubescent. These things being posited:

(a) Hermaphrodites in whom one sex prevails are to be adjudged to this sex, nor can they carry out the functions of the other: these can marry, since nothing proves them to be impotent.

(b) Those who in tender years are thought to be of the female sex, and afterward are proved to belong to the other sex, must assume male clothing; but before they are admitted to marriage, prudence demands that the judgment of physicians be sought concerning their potency.

(c) Finally those who remain neutral, so that neither sex prevails in them, are to be kept from entering marriage, as being impotent.

Art. II. On The Conjugal Debt.

15. St. Paul sets forth the Christian doctrine on the conjugal debt thus[2]: "Let the husband render the debt to the wife, and likewise also the wife to the husband. The woman does not have power over her own body, but the husband; and likewise also the husband does not have power over his own body, but the woman. Do not defraud one another, except perhaps by consent for a time, that you may be free for prayer; and return again to the same thing, lest Satan tempt you because of your incontinence." - Therefore we shall speak 1° on the liceity; 2° on the obligation of the conjugal debt.

[1] St. Thomas, Supplement, q. 49 and 64; Billuart, disp. IV, art. 2-4; Sanchez, book IX; Lacroix, n. 287-400; St. Alphonsus, n. 900-954; Lehmkuhl, n. 833-850; Ball. P., n. 385-416, ed. 3; Aertnys, n. 480-515; Genicot, n. 543-554; Noldin, *De Sexto*, n. 60-94; Capellmann, p. 136-161; Eschbach, p. 105-120.

[2] I Cor. VII, 3-5.

§ I. On The Liceity Of The Conjugal Debt.

Division:

On the liceity of conjugal copula.

On licit and illicit things between spouses.

On conjugal onanism.

I. On The Liceity Of Conjugal Copula.

16. 1° On the liceity of conjugal copula by reason of the end. That marital copula is in itself an honorable, laudable, and therefore meritorious work has already been proved elsewhere. But here it is asked what end the spouses ought to intend in order that such an act be licit.

(a) It is certain that the conjugal act is licit when it is exercised for the ends on account of which marriage was instituted by God, namely for the generation of offspring, - as a remedy for concupiscence, - or for satisfying the consort legitimately asking; for then the pleasure which the spouses enjoy is ordered to a superior end intended by God Himself.

(b) It is likewise certain that the same act is licit whenever it is performed for any honest end whatever, e.g., for fostering conjugal love, for the health of the body; for an act good of itself, elicited for an honest end, cannot be evil; moreover any honest end ultimately tends toward the ends intended by God in the very institution of marriage.

17. (c) It is also certainly established that that act is illicit, at least venially, when it is so exercised for pleasure alone that all honest ends are positively excluded: for then there is present a perversion of the order of nature, while one wishes to enjoy venereal delight against the order intended by God, by positively excluding every end by which such an act can be rendered honorable. The sin is grave if means are employed for preventing generation, as is said below, n. 40; venial, if means of this sort are not employed.

(d) But if the conjugal act is indeed exercised for pleasure, yet in such a way that honest ends are not excluded, nor even virtually included, certainly mortal sin is not committed; indeed, according to some[1], there is no venial fault, because it is licit to seek delight good in itself, without its being positively referred to an honest end, provided this end is not excluded. Nevertheless, according to the common opinion[2], it is a venial sin to exercise the conjugal act for pleasure alone, not referring it virtually to some honest end; for since delight is a means to an end, and is annexed to the operation so that we may elicit the act more easily and better, it is a disorder to stop in delight as in an end, and in no way refer it to an honest end. - In this sense this ninth proposition was deservedly condemned by Innocent XI, March 2, 1679: "The conjugal work exercised for pleasure alone is entirely free from all fault and venial defect."[3] - But in practice most spouses either virtually refer this act to an honest end, or think themselves guilty of no fault, provided they have copula rightly, and they can be left in good faith[4].

[1] Thus especially Ball. P., n. 323-361, ed. 3, with the authors cited there.

[2] Cf. *Vindiciae Alphons.*, p. 822-840.

[3] Apud Denzinger, n. 1026; cf. Viva, *Thes. damnat.*, in this place.

[4] If someone wishes to instruct penitents concerning right intention and moderation in the conjugal debt, let him refer them to St. Francis de Sales, *Introduction a la Vie devote*, Part III, chap. 38-39.

(e) But if delight is intended secondarily and moderately together with another honest end, there is no sin, even venial, because delight is sought in an ordered way as a means to something good.

18. Corollaries: (a) Spouses sin gravely who exercise copula with an adulterous affection, i.e., thinking of another person as present and desiring to have copula with that person; for then they affectively commit adultery. But if they think of another person, and of that person's beauty, so that they may excite themselves for the conjugal act, without any depraved desire, they do not sin; nevertheless this is dangerous, since the will is easily carried toward the object thought of.

(b) The conjugal act is licit for the sterile, for whom there is no hope of begetting offspring; for, besides the generation of offspring, there are other honest ends, e.g., quieting of concupiscence, by which copula can be rendered honorable. - Nor do those sin even venially who use marriage as a remedy for concupiscence: for this is one of the ends on account of which marriage was instituted; moreover one who wishes to avoid incontinence, by that very fact intends to preserve conjugal chastity.

19. (c) Spouses who, because of poverty or another honest end, internally desire that offspring not be conceived from copula, do not sin, provided they use no illegitimate means for impeding generation.

(d) The conjugal act is licit even if it is foreseen that perhaps the woman is going to suffer abortion or give birth to dead offspring; for such an effect occurs by accident, and therefore can be permitted for an honest end, e.g., the quieting of concupiscence. But the offspring conceived, even if it be deprived of supernatural beatitude, can enjoy a certain natural happiness, as is explained in the Treatise on God the Creator, n. 205.

20. 2° On the liceity of the conjugal act by reason of circumstances. (A) Things to be noted beforehand. (a) That copula be done legitimately, three things are generally required and suffice: penetration of the due vessel, or vagina; effusion of seed within the vagina; and retention of the seed by the woman, so that it can be drawn into the uterus and, at the opportune time, fecundate one of the ova which descend from the ovaries. - The general principle is that those sin gravely who knowingly and willingly do not observe these three things substantially in exercising copula; for then they act against the primary end of marriage.

21. Nevertheless, since today it is established that conception can take place without penetration of the vagina - provided that virile seed is poured forth at the lips of the female organ - the man who, because of some defect, cannot accomplish copula more perfectly can perform it in this imperfect manner, even if by accident part of the seed is lost; for, provided there is hope of begetting offspring, spouses can attempt coitus in the better manner in which it can be done.

(b) When these three things have been substantially observed, disorder concerning the accidentals of copula does not exceed venial sin, provided nevertheless that from the disordered circumstances there does not follow grave scandal or some other spiritual or temporal harm. The reason is that, these things being observed, generation can take place and the primary end of marriage be obtained.

22. (B) On the position of copula. (a) The natural position is that the man be above and the woman beneath, since this mode is generally more apt for the infusion of seed. Nevertheless no position, even unnatural (sitting, standing[1], or with the woman above, etc.), of itself impedes generation, since seed can ascend into the uterus by attraction; hence change of the natural position does not exceed venial sin, provided the danger of pouring forth all the seed outside the vessel is excluded; even if a not small part of the seed is dispersed by accident, it is not mortal sin, because the smallest part of seed suffices for fecundation.

[1] According to experts of the medical art, to exercise copula sitting and especially standing can induce certain diseases. Cf. Vigouroux, *Tr. de Medecine*, vol. IV, p. 65. Hence on this head spouses are to be kept from a position of this sort.

(b) If a change of the natural position is made for a legitimate cause, e.g., because of danger of abortion during the time of pregnancy, or because of difficulty of coming together otherwise, there is no sin, even venial.

Hence in practice spouses must not be questioned concerning the position which they employ in exercising the conjugal act, since this is not necessary for the integrity of confession. If they inquire concerning it, let it be answered that the natural position is to be observed insofar as it can be done. If they accuse themselves of an unnatural position, let it be asked only whether they so act in order to impede generation.

23. (C) On place. (a) Modesty and charity demand that the use of marriage can take place only in a secret place, lest scandal be furnished to others. Therefore those sin gravely who have copula before others, especially younger persons, who can suffer scandal from it. Therefore parents must take care lest children sleeping in the same bedroom acquire knowledge of the marital matter.

(b) In a sacred place the use of marriage is prohibited under penalty of sacrilege, outside a case of necessity, which today will hardly ever occur.

24. (D) On time. (a) By today's discipline the conjugal act is strictly prohibited on no feast days. It is nevertheless more advisable to abstain from asking the debt on feast days, or days of fasting, and on the night preceding Holy Communion; nevertheless it is to be rendered to one legitimately asking, especially if in the other consort danger of incontinence could be feared. Hence those who have had copula in an honorable manner must not be kept from Communion.

(b) During the time of the ordinary menstrual flow, copula is not illicit of itself[1], since conception can then take place, and indeed more easily than at another time[2]. But women, when they suffer the flow, naturally abhor every marital congress; moreover not without danger to health do they render the conjugal debt; the man himself can contract some disease (urethritis), if the blood which remains in the vagina is in some way vitiated[3]; hence it is more advisable at that time to abstain from copula. - During the time of an extraordinary flow, which endures for a longer time, copula is licit, provided the disease under which the woman labors and which causes the flow is not much aggravated by it: concerning this the physician will judge. But the man who cares for the health of his wife will abstain in these circumstances from frequent copula, so that that disease may more easily decrease and be cured.

[1] Under the Old Law it was prohibited, and indeed under penalty of death (*Levit.*, XV, 19-20; XX, 18); perhaps because in warm regions that flow is wont to be more copious, and the part of the blood which remains in the organs is easily corrupted, and can induce very bad diseases in the man coiting.

[2] Hence the sterile can be admonished to have copula at the time of menstruation, if at other times they have not conceived.

[3] Vigouroux, op. cit., p. 64. - It is in no way to be feared that, through copula had at that time, leprosy is contracted or monsters are generated: for this is a fable long since exploded.

25. (c) During the time of pregnancy, copula is not of itself illicit although generation can no longer take place, because there can be other ends for rendering it honorable. But by accident it can be illicit because of danger of abortion. Now that danger in healthy wives is not probable, if copula is had moderately; but unrestrained and often repeated copula can easily induce abortion, especially in the first[4] and last times of pregnancy, and under this respect it is more or less illicit according to the gravity of the danger which it brings.

[4] The state of beginning pregnancy is not easily recognized; nevertheless, if the spouses suspect pregnancy, moderation in copula must be recommended to them.

26. (d) During the time of puerperal purgation, which follows childbirth, copula is illicit not indeed because of itself, but because of the harm which threatens the wife[1], and therefore gravely or lightly, according as the harm brought is grave or not. Now, according to Capellmann (p. 154), generally during the first two weeks after childbirth grave harm can be brought, and light harm during the four following weeks; but account must also be taken of the condition of each person in particular. When the harm which is feared is light, a reasonable cause excuses from every sin.

[1] "Childbed brings many things with it which at any other time would have to be called morbid, although here they are physiological... The things which happen at this time in the organs of generation, the changes and injuries produced by pregnancy, already of themselves dispose to various diseases: to flows of blood, inflammations, aberrant positions of the uterus." (Capellmann, p. 154).

27. (e) During the time of lactation, copula is licit; for the danger of infecting the milk, and therefore of harming the offspring, concerning which older authors speak, does not exist in any way. If a new conception occurs (which rarely happens during the time of lactation), the milk indeed is lessened and soon ceases, but is not corrupted; and the offspring can be nourished by artificial lactation. Hence spouses are not bound to abstain from copula during the whole time of lactation.

28. (f) During the time of illness of either spouse, the use of marriage is illicit when grave danger of life or health can prudently be feared from it; but if the danger is neither proximate nor certain, a grave reason excuses: concerning this a physician is to be consulted.

1. When there is question of syphilitic or venereal disease, copula is gravely illicit, because of the morally certain danger of infecting the consort and the offspring[2]; this danger is so grave and dreadful that, although the older theologians speak more mildly concerning it, moderns with Capellmann (p. 159) deservedly say: "In this matter I judge that not even the danger of incontinence is an honesting cause."

[2] Concerning this Capellmann writes, p. 159: "Infants are syphilitic like the parents, at least for the most part, even when the syphilis of the parents lies hidden; abortion will be very frequent, or an immature infant is brought forth, or the very infants born mature perish most miserably in the first months of life. Hundreds of infants in this way, and often not even baptized, pay for the sins of the parents." How dreadful syphilis is, authors on medical matters describe, e.g., H. Vigouroux, *Traite de Medecine Pratique*, vol. IV, p. 202-304; Duclaux, *L'Hygiene sociale*, Paris, 1902, p. 224-266; Surbled, op. cit., p. 76-99; Stall, *What a Young Man ought to know*, ch. IV-VI.

2. In contagious diseases which can induce death in a short time, copula is not licit, since no one is master of his own life; in others, where such danger is only remote, e.g., in phthisis, it is licit for a grave cause.

3. In non-contagious diseases, copula is illicit if they are joined with fever and great pain, since these ordinarily are much aggravated through copula, and in certain cases danger of death is present. Almost the same must be said of chronic illnesses by which the organs of generation in women are affected; for although they are judged light at the beginning, through the use of copula they are often aggravated, so that afterward they are not easily healed. Hence, if the physician judges that one must abstain from copula for some time, it is fitting to obey his commands. - But if the diseases are lighter and not greatly debilitating, they do not easily become worse through copula; and therefore they do not prohibit the use of marriage.

29. (g) Copula, after much drinking of intoxicating liquors, is not licit, because offspring conceived in drunkenness is in danger lest it be born foolish or deaf-mute or liable to drunkenness. After a copious meal the use of marriage is not free from danger, and even today's physicians assert that "not rarely those passing from table to copula are struck by sudden death"; nevertheless the danger for healthy men is not proximate. In antiquity it was held that copula after a bath or bloodletting was dangerous and therefore illicit; but this is denied by moderns.

II. On Licit And Illicit Things Between Spouses.

30. Besides copula itself there are other acts more or less connected with it, concerning whose liceity one must inquire. Now there are three principles from which the morality of these acts can be judged: (a) whatever is truly useful for the generation of offspring is absolutely licit; (b) whatever is done besides, but not against, generation does not exceed venial sin; (c) whatever works against conception is mortal. This must be explained a little more fully.

31. 1° Whatever is useful for the generation of offspring is absolutely licit. (A) Imperfect venereal acts, whether mutual or solitary, such as looks, touches, embraces, kisses, conversations, etc., are licit for spouses when they wish to accomplish copula, insofar as they conduce to performing the conjugal act more perfectly and easily. For when the end is licit, by that very fact the means naturally ordered to the end are licit; now all those acts are ordered to copula and are as it were its beginning. - Nevertheless spouses ought not to linger too long in acts of this sort, lest perhaps pollution follow before copula; for if they intended effusion of seed outside marital copula, they would sin gravely, since they would seek complete venereal delight against the order of nature. But if sometimes pollution follows besides intention while they occupy themselves with these previous acts, there is no sin.

32. (B) Hence, if the man has emitted seed before the woman emits seed[1] (which not rarely occurs, since many women are colder than men), she can by touches or another mode excite herself to emission; for although the seed of the wife is not necessary for generation, it completes the conjugal act and quiets concupiscence; and if women, after irritation of the organs which arises from copula, were held to restrain nature, they would often be exposed to danger of sinning gravely. Moreover seminal emission of this sort contributes something so

that the virile seed may more easily and more certainly ascend into the uterus and be joined with the ovule, and therefore favors conception.

[1] Here there is not question of true seed, which in women is nothing but the ovum; but of the vulvo-vaginal secretion which is emitted with pleasure.

Some think that this is also licit for the woman when the man, an onanist, withdraws himself before emission[2]; for since, as we suppose, she legitimately began the conjugal act, she can complete the same: otherwise, the genital organs remain irritated. But it is more commonly taught that this is not licit[3]; for since the man has not emitted seed within the vagina, conception cannot take place, and emission on the part of the woman would be pollution.

[2] Capellmann, p. 143-144.

[3] Lehmkuhl, n. 858; Noldin, n. 65.

33. 2° Whatever is done besides, but not against, the generation of offspring, does not exceed venial sin. For venereal delight is licit for spouses when it is referred to some honest end, as was said above (n. 16); but if it is taken on account of itself, it is only venially illicit, provided danger of pollution is absent and nothing is performed against the chief end of marriage; for the disorder which is found in such acts is accidental and light. Hence:

(A) Mutual imperfect acts (touches, kisses, embraces, etc.), even when they are not ordered to copula, nor rendered honorable by any honest end, but are exercised for pleasure alone, are only venially illicit[1], provided proximate danger of pollution is absent, even if sometimes pollution should follow by accident: for then it is neither foreseen nor willed. Indeed, acts of this sort are altogether licit if they are rendered honorable by some honest end, e.g., for fostering mutual love, etc.

[1] Nevertheless those acts which are very obscene are commonly excepted, e.g., to put the genitals into the mouth of the woman, to penetrate the posterior vessel, to lick the genitals, etc. But these acts are gravely illicit, not precisely because obscene, but because for the most part they induce grave danger of pollution; hence, if in fact in certain persons such a danger did not exist, sodomitical affection having been excluded, they would not be gravely sinful. Nevertheless spouses are to be deterred from these, lest, the sense of conjugal modesty having been lost, they fall into worse things.

(B) Solitary imperfect acts, e.g., base touches exercised on one's own body, are indeed venial sins because they are done for pleasure alone; but not mortal, if they are performed without proximate danger of pollution. But those who so indulge themselves at a time when marital copula cannot be had easily expose themselves to the danger of proceeding further; not so if in those circumstances in which legitimate copula can be exercised, since, danger occurring, they can ask the debt.

34. 3° Whatever is against the generation of offspring is gravely illicit, since it is opposed to the primary end intended by God in the institution of marriage. Hence:

(A) Voluntary pollution outside conjugal copula, and whatever can induce proximate danger of pollution, are no less illicit in the married than in the unmarried; indeed they are graver, because besides chastity, the right of the other consort is injured; for, as St. Paul says[2], "the woman does not have power over her own body, but the man; and likewise also the man does not have power over his own body, but the woman." Hence also copula with a strange person is adultery, including two mortal sins, one against chastity, the other against justice; and if adultery is had between two married

persons, there are three sins, one against chastity and two against justice, because the rights of two are injured. This indeed is true even if the other spouse cedes from his or her right; for here there is question of the right which arises from the very unity of marriage, as it has been established by God under the New Law, and therefore it cannot be alienated by the private authority of the spouses.

[2] I Cor., VII, 5.

Even in the wife pollution is a grave sin; for although it is not the effusion of prolific seed, but only the secretion of some humor useful for generation, but not necessary, nevertheless it is joined with complete venereal delight, and therefore ultimately is referred to generation; therefore to induce it, without any order to conjugal copula, is a grave disorder, since it is done against the order intended by nature.

35. (B) Sodomitic copula had between spouses is also a grave sin, i.e., penetration of the posterior vessel with effusion of seed in the same; for it is a grave disorder against nature, since it renders conception impossible; and also against conjugal fidelity, which forbids spouses to use the body of the consort except in a mode apt for generation; it also induces very bad diseases in the woman[1].

[1] See these described apud Surbled, op. cit., vol. II, p. 58-63.

Nevertheless to begin copula in the posterior vessel with the intention of consummating it in the vagina; or to touch the posterior vessel with the genitals, provided the effusion of seed is forestalled, and every sodomitical affection is excluded, are probably not mortal sins: because the former act is done as a preparation for copula in the due vessel, but the latter is only a touch between spouses not prohibited under grave obligation. Nevertheless they are to be exhorted to abstain from these things, as being indecent, and lest perhaps they soon commit sodomy itself.

An act by which spouses come together after the manner of animals, yet so that copula takes place in the due vessel, must be distinguished from the sin of sodomy; in which case some say that they came together in a posterior manner or from behind. Then the confessor ought to ask whether generation was possible in this mode or not; if they answer that it was possible, it is inferred that the act was not sodomitical, but only disordered in position; and this sin indeed does not exceed venial sin.

36. Here it is asked whether a wife can cooperate with sodomitical copula. The Sacred Penitentiary, April 3, 1916[2], responded thus: "But if the husband should wish to commit with her the crime of the Sodomites, since this sodomitical coitus is an act against nature on the part of each spouse thus coiting, and it is gravely evil by the judgment of all Doctors: hence, for no cause at all, not even to avoid death, can the wife licitly comply with her immodest husband in this matter." Therefore the opinion of those who, before this decree, thought that the woman could suffer that concubitus in order to avoid death cannot be admitted; but the common doctrine must be held, namely that that cooperation, even passive, is a sin against nature.

[2] Apud Marc, *Institutiones Morales*, 16th ed., 1920, n. 2116.

(C) Onanistic copula is also gravely prohibited; it must be treated specially because of its frequency and depraved consequences.

37. Corollaries. (A) On artificial fecundation. This occurs when virile seed cannot naturally be retained in the female organs; then, by the aid of a syringe, it is introduced into the uterus itself, often with a happy outcome, i.e., with conception of offspring. This can be done especially in a twofold mode: (a) legitimate copula having first been had between spouses, the seed received in the vagina is drawn out by the aid of a syringe and injected into the uterus; (b) the man pours forth seed by solitary or onanistic pollution, which by syringe is introduced into the organs of the woman. Now the former mode is not illicit, provided fecundation cannot take place naturally, because it is employed only for aiding nature; but the latter is gravely illicit, because the means employed, namely directly voluntary pollution, is something evil in itself. Hence the Holy Office, March 24, 1897, when this doubt was proposed: "Whether artificial fecundation of a woman can be employed?", responded: "It is not licit."[1]

[1] Apud *Acta S. Sedis*, XXIX, p. 704.

38. (B) On the internal sins of spouses. (a) It is a grave sin to wish for copula with a strange person, or to rejoice concerning copula had or to be had with that person: for this is nothing else than internally to consent to adultery.

(b) Venereal delight concerning copula had or to be had with one's own spouse, or the desire of it, the proximate danger of pollution nevertheless being excluded, is not a sin: because it is joy or desire concerning a licit thing. Hence, if one spouse is absent, a vivid thought of this sort is very dangerous, since on the one hand it induces danger of pollution, and on the other this danger cannot be averted through marital copula. In every case spouses are to be exhorted to abstain from these delights, since for the most part they are sought for pleasure alone.

(c) Delight or desire concerning acts between spouses venially illicit is a light sin; concerning things prohibited under grave obligation it is a grave sin; for delight and desire put on the morality of the object sought.

III. On Conjugal Onanism.

39. 1° Notion of onanism. Onanism properly so called, or conjugal onanism, is copula so performed that, although the effusion of human seed is present, the conception of offspring is rendered impossible. This is effected in various modes: (a) on the part of the man, if, copula having begun in the due vessel, he withdraws before emission and pours forth seed outside the vessel[2]; or covers the virile member with some thin covering (in French *capotte anglaise*, in English *French coat*, commonly *condom*) within which the emitted seed is retained; (b) on the part of the woman, when she uses a sponge, or an occlusive covering, by which the entrance of virile seed into the uterus is blocked; or an irrigator, by which seed received in the vagina is washed out; or chemical substances by which the seed is killed.

[1] Besides the authors already cited, cf. Nardi, *De Onanismo*, apud Appendices to Billuart, p. 549 sq.; *Ami du Clerge*, XX, 1898, p. 1073 sq., 1105 sq.; XXI, 1899, p. 328-331; Surbled, op. cit., I, p. 181-204.

[2] This was the crime of Onan (hence the word onanism), who, "going in to the wife of his brother, poured forth seed upon the ground, lest children should be born in the name of his brother" (*Gen.*, XXXVIII, 9). Yet it must be noted that there Onan is especially reprehended because, against the law, he was unwilling to raise up children for his deceased brother. - Onanism is also called Malthusianism from Malthus, who in the work *Essay on the Principles of Population*, 1878,

proposed means of impeding the excessive multiplication of men; yet he himself does not advocate illicit means, but rather voluntary continence as soon as a sufficient number of children has been procreated. - In the broad sense, among physicians, onanism also designates solitary pollution committed.

40. 2° The malice and depraved consequences of onanism. (A) Onanism voluntarily committed is a grave sin against nature. For copula of itself is ordered so that the human species can be propagated, and therefore spouses, while they legitimately occupy themselves with the matrimonial work, are helpers of God and cooperators in the procreation of a most noble creature, which is destined for divine adoption; but onanists, by using illegitimate means for preventing conception, frustrate nature; they abuse the organs given to them against the order intended by God; they become guilty of a certain sacrilege, while they change a most noble thing into a most base act of ignominy of passion, and convert the immaculate marriage bed into a brothel; moreover they show themselves cruel while, for the sake of a most shameful pleasure, they positively refuse to concur with God in procreating infants[1], who could have been citizens of the heavenly fatherland. - Therefore deservedly the Holy Office, May 21, 1851, condemned the following proposition[2]: "It is probable that that use of marriage (onanism) is not prohibited by natural law."

[1] This also the Pagans recognized; hence Martial the poet said concerning pollution (*Epigram.*, book IX, 42): "Believe that nature herself says of things: That which you lose with your fingers, Ponticus, is a man!"

[2] Apud *Ami du Clerge*, XX, p. 1077; there you will find other responses of the Holy See on this matter.

41. (B) Ruinous consequences follow from onanism. (a) The spouses themselves often suffer many evils from it; for just as children are the common good and common bond by which spouses are joined more firmly and closely, so on the other hand those who lack offspring much more easily disagree and separate from one another. - Nor should it be said that one or another child suffices for attaining this end; for the more numerous the offspring, the firmer the union of the spouses; moreover not rarely are onanists punished by the premature death of one or another child whom they had begotten; hence often parents of an only child are pressed by anxieties and fears, lest perhaps this child be taken from the living and the name of the family be blotted out. - Besides, marital copula which, legitimately performed, is a remedy for concupiscence, does not quiet it but inflames it when it is performed onanistically; especially the woman is not completely delighted, nor does she rest unless the uterus is irrigated by virile seed tempering its heat. - Hence also physicians cry out with one voice that onanists are liable to many diseases[3], which arise especially from excitation of the nerves; for the disturbance which intercourse causes is not quieted except by the natural effusion and reception of virile sperm.

[3] Apud Eschbach, p. 573-574; cf. Surbled, op. cit., vol. I, book II, ch. 11-12.

42. (b) Offspring also not rarely suffers some detriment from the onanism of the parents, which the Council of Puy[4] describes thus, 1868: "Very often it happens that that son, brought up too indulgently, either by God's command shortly ends his life, or, having become worse with age, deprived of the sweet love and protection of brothers and sisters, loving himself, not obeying his parents, proud, ungrateful, without affection, afflicts his family with disgrace and grief."

[4] Chap. VI, n. 8, apud *Collect. Lacens.*, vol. IV, p. 830.

43. (c) Nor does onanism harm society less. Indeed, the principal strength and protection of society is placed in the number and virile education of citizens; but onanism, by impeding generation, lessens the number of citizens, so that nations once flourishing gradually decline; it likewise stands in the way of the virile education of boys: for where there is an only son, he is generally brought up more indulgently, is devoted to pleasure rather than to duty, and often becomes wholly useless to the fatherland. - Nor must it be feared that men will multiply beyond measure; for today there are many regions still uncultivated, and new means are discovered by which fields already cultivated can bring forth more abundant fruits; hence trust is to be placed in Him who said: "Increase and multiply, and fill the earth"[1]; for He Himself will provide.

[1] *Gen.*, I, 28.

44. 3° On the cooperation of the wife with onanistic copula. (A) If the cooperation is formal, so that the wife truly consents to it or rejoices in it, or a fortiori herself uses means for preventing conception, she certainly sins gravely. The same must be said if morally and efficaciously she cooperates with this crime, by complaining about numerous offspring, about the pains of childbirth, and at the same time foreseeing that by these complaints the man is induced to onanistic congress.

If the wife rejoices not in the sin itself, but in the pleasure which is experienced in copula of this sort before the man withdraws himself, or in the effects of this sin, e.g., in preservation from the troubles and labors of pregnancy or childbirth, by that very fact she is not guilty of mortal fault; for, strictly speaking, she can rejoice concerning these, provided she detests that sin and seriously tries to impede it. Nevertheless, since it is greatly to be feared lest complacency concerning the effects pass into complacency concerning the sin itself, it is to be advised to her that she quickly turn her mind away from that joy, and before God protest that she does not approve such abuse.

45. (B) If the cooperation is material, i.e., if the wife suffers or permits onanistic copula, without approving it in any way, a distinction must be made: (a) when onanism is performed by the withdrawal of the man alone, the cooperation of the woman is permitted from a grave cause, e.g., for avoiding quarrels, or the adultery of the husband, or her own incontinence; indeed the wife can ask the debt from an onanistic man, because of a grave reason, e.g., because it is grave for her to abstain so long from the use of marriage. For there is question of an act which in itself is licit, and which the man can furnish in a licit mode, if he wishes; and, even if it is foreseen that he will sin from his own malice, this can be permitted, provided there is sufficient reason. Hence in this case the wife can consent to the pleasure arising from this copula, since she herself completes the conjugal act in a legitimate mode.

Nevertheless by prayers, blandishments, admonitions, signs of displeasure, or other means she ought to induce the man to have copula in a legitimate mode; to this she is held, not indeed on each single occasion, but at an opportune time, both by the obligation of fraternal correction, and lest otherwise she seem to consent[1].

[1] "Nevertheless let the petitioner admonish a wife of this sort, that she not cease prudently to warn her husband that he desist from this turpitude." (Sacred Penitentiary, Nov. 5, 1816).

46. (b) But when onanism is performed condomistically, i.e., with the instrument commonly called a condom, within which the virile seed is retained, regularly not even the material cooperation of the wife is licit; for such congress is intrinsically evil already from the beginning, since it renders conception impossible: and to cooperate with it is a grave sin. Therefore the wife ought positively to resist with all her strength. For the man in this case is deservedly equated with an oppressor, and therefore the woman ought to oppose that resistance which a virgin opposes to an invader, as the Sacred Penitentiary declared, June 3, 1916[2]. Nevertheless, just as a woman oppressed by a man is not bound to resist him even to death: then she does not permit, but only suffers the abuse of marriage, every affection toward evil delight having been excluded.

[2] Apud Marc, n. 2117.

This doctrine is confirmed by the response of the Holy Office, April 6, 1853: "1° Whether the imperfect use of marriage, whether it be done onanistically or condomistically, according as in the case, is licit? - Negatively; for it is intrinsically evil. 2° Whether a wife, knowing, in condomistic congress can passively offer herself? - Negatively; for she would give assistance to a thing intrinsically illicit."[1]

[1] Apud *Ami du Clerge*, loc. cit., p. 1077.

47. 4° On certain acts approaching onanism. (A) If marital copula is interrupted because of some necessity, e.g., to avoid scandal which would be suffered by a person fortuitously arriving, there is no sin, even if seed is poured forth outside the vagina; for this is done besides intention, to avoid a greater moral evil, and therefore is no more culpable than involuntary pollution.

48. (B) If two spouses, exercising the conjugal act, by mutual consent break off copula before emission, without there being danger of pouring forth seed outside the vessel, strictly speaking they probably do not sin gravely, especially if there is a grave reason for acting thus, e.g., to avoid very dangerous childbirth, or lest offspring be excessively multiplied; for copula in this case is only an immodest touch which, between spouses, danger of pollution being excluded, is not gravely illicit. Nevertheless ordinarily spouses are to be kept from such a manner of acting; for often there is present danger of pouring forth seed outside the vessel; and moreover those who act in this way are commonly led by pleasure alone, and easily fall into onanism[2].

[2] You will find this question set forth more fully apud *N. Rev. Theol.*, XXXII, 1900, p. 579-635; *Collat. Brug.*, VI, 1901, p. 466-478.

Hence if the man began copula with the intention of emitting seed within the vessel, but, because of weariness or weakness or spasm or another reason of this sort, foresees that effusion of seed very probably will not follow even if copula is prolonged further, he can cease from copula, even if the wife has already emitted seed; for no one is held to the impossible.

49. (C) The practice of having copula only at those times at which conception rarely occurs differs altogether from onanism. Namely, according to the laws of physiology, generation of offspring happens much more easily three or four days before and fourteen days after the beginning of menstruation; while it occurs only rarely from the fifteenth day to the few days which precede the recurrence of the menses; therefore if copula is had only at this time, which is called the

time of agenesis, conception is indeed possible, but not very probable. Moreover, such a manner of acting is not sinful, since spouses can contain themselves as long as they wish, and moreover they do nothing against the end of marriage at the time when they come together. Deservedly therefore the Sacred Penitentiary, June 16, 1889, responded[1]: "Spouses using marriage in the aforesaid mode are not to be disturbed, and the confessor can insinuate the opinion concerning which there is question, cautiously nevertheless, to those spouses whom he has tried in vain to lead away in another way from the detestable crime of onanism."

[1] Apud Bucceroni, *Enchirid.*, n. 913.

50. (D) Wives who, while they exercise the conjugal act, try to avoid emission, and because of this turn the mind to other things or procure sensible pain for themselves, objectively do not sin, because feminine distillation is not necessary for generation; but sometimes they sin subjectively, because they do it for the end of impeding conception; hence they are to be admonished that all efforts of this sort are altogether useless. - The same must be said of those who, immediately after copula, rise or urinate; for thus conception is not impeded, because the uterus soon draws the seed and, once it has been received, is immediately closed; but the very intention of expelling seed is a mortal sin.

51. (E) If, because of an organic defect, the wife cannot retain virile seed, nevertheless she licitly exercises copula, because she does nothing against the order of nature, and if the seed is cast out, this cannot be imputed to her. But every act by which the received seed is voluntarily expelled or killed is a grave sin. Hence women ought not to irrigate the vagina immediately, but only several hours after copula (according to certain experts of the medical art, ten or twelve)[2].

[2] Surbled, op. cit., vol. I, p. 202.

52. 5° On the manner of acting of confessors as regards onanists. (A) According to the Sacred Penitentiary, March 10, 1886[3], since this unspeakable vice is widely prevalent, confessors ought to try to uproot it; for accomplishing this: (a) when there is founded suspicion that penitents who are wholly silent about onanism are addicted to this crime, the confessor is regularly held prudently and discreetly to question them, asking, e.g., whether they have sinned against the sanctity of marriage, - or whether there is anything which bites the conscience concerning the use of marriage. If they answer negatively, generally it is not expedient to proceed further. - Therefore those are not to be approved who abstain from every interrogation in this matter, lest they disturb some from good faith.

[3] Apud *Ami du Clerge*, loc. cit., p. 1078-1079.

53. (b) When the confessor, whether from spontaneous confession or from prudent interrogation, knows that the penitent is an onanist, regularly he is held to admonish him concerning the gravity of this sin, just as concerning other mortal sins, and to rebuke him with paternal charity, and to impart absolution to him only then, when it is established from sufficient signs that the same person grieves concerning the past and has a purpose of no longer acting

onanistically. - If he has fallen back several times into the same sin, without amendment, let the rules handed down above concerning recidivists, in the Treatise on Penance, be applied.

Nevertheless if the onanist is in good faith, and no good fruit seems able to be hoped for from admonition, the admonition can be omitted until he is better disposed; meanwhile the confessor should gradually prepare him to accept and follow the rules of Christian ethics concerning this matter.

54. (B) The Holy Office, March 30, 1889, wrote to a certain French Archbishop[1]: "That you never cease with all care and zeal to extirpate, or certainly to restrain, a pestilence of this sort so calamitous, and to refute the pernicious and immodest doctrines which concerning this matter are circulated by many, especially by cultivators of the medical art. - Therefore in whatever better and more prudent manner you judge can be done, you will take care that the faithful be efficaciously taught that heavenly blessings certainly await the parents of more numerous offspring, and at the same time you will give effort that confessors know the norms handed down on this matter by approved Doctors and especially the decisions issued several times by the Holy See." - Wherefore, - (a) those about to marry are to be admonished that the primary office incumbent upon them is the procreation of children, and that the greatest crime of conjugal life is to impede the conception of offspring. (b) Spouses are to be persuaded that, as regards children to be procreated, they trust in God, who cares for all things, the birds of heaven, the lilies and the grass of the field, and a fortiori men: "Therefore do not be anxious, saying: What shall we eat, or what shall we drink, or with what shall we be clothed?... For your Father knows that you need all these things. Seek therefore first the kingdom of God, and His justice, and all these things shall be added to you."[2] (c) Since the chief cause of onanism is unrestrained libido, to the married and unmarried are to be recommended those natural and supernatural means by which pleasure can be tamed, such as hard and diligent labor; moderate chastisements of the body; temperance in food and drink; avoidance of occasions which excite libido; vigilance of mind and heart, by at once driving out slippery thoughts and depraved desires; assiduous prayer; frequent thought of the last things: for brief is whatever delights here, eternal what torments!

[1] Apud *Ami du Clerge*, XX, 1898, p. 1079.

[2] *Matt.*, VI, 31-33.

§ II. On The Obligation Of The Conjugal Act.

55. 1° Spouses from justice are held of themselves under grave obligation to render the debt mutually to one another, whenever one party asks seriously and legitimately, whether expressly or tacitly.

It is proved: For by force of the matrimonial contract a strict right over the body of the other is acquired in order to acts of themselves apt for generation; but to the strict right of one there responds a strict obligation on the part of the other; and since there is question of a grave matter, namely of the generation of offspring, of avoiding incontinence, and of preserving peace between

spouses, such an obligation is of itself grave. - Hence deservedly St. Paul says[1]: "Let the husband render the debt to the wife, and likewise also the wife to the husband."

[1] I Cor., VII, 3.

56. It is explained: (A) This obligation is grave of itself, but by accident can be light from various circumstances; if the debt is denied only rarely, e.g., if to one asking often it is denied only once in a month; if it is deferred for a brief time; if the other asks only weakly, not insistently, and easily acquiesces to the one denying; provided nevertheless that in these circumstances danger of pollution is absent. - But in practice wives who make themselves difficult and morose in rendering the debt sin mortally, since thus they expose their husbands to danger of incontinence and adultery. Men also sin gravely who, whether for avoiding offspring or from malevolence, rarely know their wives, even if these do not ask expressly, but only interpretatively. Indeed, even once to deny the debt to one asking seriously and legitimately, when this brings danger of incontinence or grave trouble to the other, is not free from mortal fault.

57. Hence also it is not licit for spouses to render themselves incapable of copula by excessive labors, vigils, austerities, or a fortiori by pollutions, adulteries, or other illicit acts. - Nor is it licit for one, without necessity or the consent of the other, to be absent for a notable time: for this is equivalent to denial of the debt.

Certain women, already burdened with offspring or of more advanced age, sometimes think that by denying the debt they do not sin gravely; if this is not done often, and the man is not exposed to danger of sinning, nor any fruit is hoped for from admonition, they can be left in good faith; but they must be admonished not by acting thus to expose the man to danger of incontinence.

Spouses are excused from rendering the debt within the first two months from the celebrated nuptials, certainly indeed if they are thinking of entering religion; probably even if they do not have this in mind. But that privilege ceases, even within the two months, as soon as the marriage has been consummated. Besides, most do not use that privilege because they are ignorant of it.

58. (B) In order that someone be held to render the debt, the other must ask legitimately; for if this one has lost the right of exacting the debt, the obligation of rendering ceases. Now either spouse loses the right of exacting:

(a) Through formal, certain, consummated, not permitted, and not condoned adultery; for then the innocent spouse has the right of departing from the adulterer.

(b) Through affinity or some other impediment contracted after the nuptials by force of which it is prohibited to ask the debt; for then the other party can indeed, but strictly is not held to, render the debt[1], although often it is better to furnish it, for avoiding incontinence. - Nevertheless a woman oppressed by a blood-relative of the husband does not lose the right of asking, because a penalty is not incurred without fault. - Moreover, when the lost right has been restored by dispensation, the obligation of rendering the debt revives on the other side, unless it was lost through adultery: for then it is not restored unless the condonation of the innocent party accedes.

[1] Yet some think that she is held, because the other party, although acting illicitly, preserves his right in relation to the consort: but in practice, since the obligation is doubtful, it cannot be urged.

(c) Through the loss of reason; namely if one of the spouses becomes insane or drunk, the other is not held to render the debt; for one who lacks the use of reason does not ask in a reasonable and human mode. Nevertheless it is licit in this case to render the debt, especially if the insane or drunk person is in danger of incontinence; indeed, according to some, this is truly prescribed, if the danger is proximate; but since this obligation is not established, it must not be urged. - But when the insane or drunk person has recovered the use of reason, he or she can now enjoy his or her right.

59. (d) By asking the debt in an illicit mode, e.g., in an onanistic or sodomitical mode, or in such circumstances in which scandal can be furnished; for no one can exact an illicit act. - Nevertheless if the act is illicit not in itself, or in the mode in which it is performed, but by reason of the one asking, because, e.g., he or she is bound by a vow of chastity, or acts for pleasure alone, many with Sanchez say more probably that the other spouse can and ought to render the debt; for although the one asking acts illicitly, he or she has not lost the right over the body of the other. Hence in practice it is more advisable in this case to render the debt.

60. (e) By asking the debt in an immoderate mode, so that from it the other spouse prudently fears grave harm to self or to offspring. Here there is question of harm or inconvenience which is not annexed to the matrimonial condition. Therefore the ordinary inconveniences of pregnancy or childbirth do not excuse from rendering the debt, nor some debilitation of health, nor moderate pains even long-lasting, such as headaches, etc., because all these are annexed to marriage itself.

But grave danger of life or health excuses, which from the judgment of a prudent physician is to be feared; thus in the case of contagious disease or not, when grave harm threatens, as was said above, n. 28: likewise if the woman cannot give birth without danger of death, but not if in a first childbirth she suffered danger or extraordinary pains (for in a first childbirth the labors are greater than in the following ones). Hence also if the man asks the debt too often, e.g., twice or three times on the same night, there is no obligation of rendering, since copula repeated so often harms both, and commonly even more the man than the wife. Besides, spouses of weak or infirm constitution cannot, without grave harm, exercise copula daily; hence let them consult a prudent physician concerning this matter and follow his counsel.

Likewise grave harm threatening offspring already conceived excuses, e.g., danger of abortion. If there is question of offspring to be conceived, the fear that it may be born infirm or dead, or live in poverty, does not excuse; for it is better for it to labor under these infirmities, or even to die infected with original sin, than not to be.

If the man culpably has no care for the offspring, and the burden of feeding herself and the offspring falls upon the wife, she is not held to render the debt to him, even if he were living in danger of incontinence, unless at last he comes to his senses and promises to have care for the family; for she is not held to be as a servant addicted to the mere will of the man.

But if, without fault of the man, the wife and numerous offspring labor under the greatest poverty, and no other children can be fed, according to some, danger of incontinence being excluded, the debt

can be denied. But such danger will hardly be absent; hence rather trust must be placed in Divine Providence, which, while it imparts fecundity, is also wont to provide food. Nevertheless to these spouses it can be discreetly advised that they come together only in the time of agenesis (above n. 64).

61. (C) In order that someone be held to render the debt, it is not necessary that the other party ask explicitly; it suffices that he or she implicitly or interpretatively signify his or her will. For often wives, because of innate modesty, do not dare to ask expressly, but express their desire by interpretative signs; if the husband notices these, he is held to render the debt.

62. 2° Neither spouse of himself or herself is held to ask the debt; but by accident, from charity, each can be held, but especially the man. - The reason for the former is that no one is held to use his or her own right. The reason for the latter is that the man can judge that the consort is exposed to danger of incontinence and, because of modesty, does not dare to ask: then charity demands that he himself ask the debt, lest she fall into sin; likewise, in certain circumstances, this is necessary for fostering mutual love, or for averting jealousy and disagreements.

Art. III. On Fetuses To Be Baptized.

Division:

[1] Besides the theologians who discuss baptism, cf. Cangiamilla, *Sacra Embryologia*; Capellmann, op. cit., p. 104-119; Eschbach, op. cit., p. 287-378; Antonelli, *Medicina Pastor.*, vol. II, n. 10-41; Barry, *Medico-Christian Embryology*, Louisville, 1846; Surbled, vol. II, p. 266-279.

On aborted fetuses.

On children in danger in the mother's uterus.

On the Caesarean operation.

On abortion and craniotomy.

63. I. On aborted fetuses. Since today it is morally certain that the human fetus is informed by a rational soul already from the beginning of conception, and since moreover baptism is necessary for salvation for all, even infants, all aborted fetuses, even the smallest, are to be baptized, unless they are already dead.

1° When aborted fetuses seem fully formed, they are to be baptized absolutely, provided even the very slightest movement is apprehended in them; because such movement is a sufficient sign of life. - But if they seem without movement, and nevertheless are not corrupted or putrid, let them be baptized without delay under condition: if you are living... For life can exist without apparent movement, and putrefaction alone is a certain sign of death, so that infants who exteriorly were judged to be dead, after several attempts, were finally apprehended to be living.

64. 2° Aborted fetuses, even if not yet fully formed, in whom vital movement is apprehended, are to be baptized absolutely; but those who appear without movement, yet are distinguished from a mole or fleshy mass[1], are to be baptized under condition: if you are living. The reason for the

former is that, where vital movement is present in a human fetus, there is a rational soul; the reason for the latter is that where it is lacking, it is doubtful whether the fetus is still living.

[1] To understand this, it must be known that aborted ova which are emitted sometimes lack a fetus or embryo, which has already perished, and therefore are only a fleshy mole. Moreover, after the first month from conception, the embryo does not exceed the length of one centimeter and is bent in the ovum, not extended, so that some attention is necessary for recognizing it.

3° When immature fetuses are emitted, they are still wrapped in the secundines, i.e., especially in two membranes or little skins, the former of which is called amnios, the other chorion. But it is disputed whether baptism conferred on an infant wrapped in the secundines is valid or not; some affirm, because these wrappings are judged to be part of the infant's body; others deny, because these do not belong to its body, but are like garments by which it is covered. - Hence in practice, when an embryo enclosed in the secundines is emitted, immediately, lest it perish, let it be baptized under condition: if you are capable; then, the wrappings having been broken or cut, let it again be washed under condition: if you are not baptized[2].

[2] This can be done thus, according to Capellmann, p. 115, note 2: let the fetus be immersed in warm water (lest it be killed by cold water); with thumb and index finger of each hand let some fold of the covering be grasped and broken, so that the matter of the ovum may flow out and the baptismal water directly wash the fetus; and at the same time let the form be pronounced.

65. 4° Monsters, or deformed fetuses which bear before themselves the appearance of a beast rather than a human, if it is established that they were born from a woman, are to be baptized absolutely, provided they certainly live; conditionally, if it is doubted whether they still live.

It is indeed said in the Roman Ritual[3]: "A monster which does not bear before itself the human appearance ought not to be baptized"; but this was written at a time when monsters were thought able to arise from the intercourse of a woman with beasts. But today it is discovered that the matter is not so, but that monsters arise from this, that the form of the human fetus, while it is still soft and flexible, can be so deformed and changed, from some vehement imagination or terror of the mother, that it assumes the form of a beast. Hence monsters of this sort, if they certainly live, ought to be baptized absolutely.

[3] On the Sacrament of Baptism, n. 19.

66. If infants have two heads or two distinct breasts, it is presumed that there are as many distinct men, and each is to be baptized separately; unless danger of death threatens: for then the heads of both are to be washed at the same time, saying: I baptize you... If it is doubted whether there are two persons, because the two heads or breasts are not distinct, let one first be baptized absolutely, and the other under condition.

67. II. On infants in danger in the maternal uterus. Although many older theologians doubted concerning the validity of baptism conferred on infants in the uterus, nevertheless today it is commonly taught that such baptism is valid. (a) Wherefore, if danger of death threatens, the infant in the uterus will have to be baptized under condition: "if you are capable"[1]; and if afterward it is born alive, it is to be rebaptized under condition: "if you are not baptized." The reason is that some doubt remains concerning the validity of baptism of this sort, until the

Church has rendered judgment on this matter[2]. Besides, before an infant is baptized in the uterus, whether by syringe, or sponge, or hand, care must be taken that the secundines be broken, so that the water touches the very body of the infant.

[1] The Ritual indeed teaches the contrary, n. 16: "No one enclosed in the mother's uterus ought to be baptized"; but this was written when such baptism was falsely thought to be invalid.

[2] Moreover the Sacred Congregation of the Council responded thus not only July 12, 1794, but also March 16, 1897, apud Eschbach, p. 335-336.

(b) If the infant has emitted the head and danger of death threatens, let it be baptized on the head, nor afterward, if it escapes alive, will it have to be baptized again; because then the baptism is certainly valid, according to the *Roman Ritual*, n. 16. But if it has emitted another member, which indicates vital movement, let it be baptized conditionally on that member; and then, if having been born it lives, let it again be baptized under condition. Thus the Ritual, loc. cit.

68. III. On the Caesarean operation. This operation consists in this, that the membranes which cover the uterus and the uterus itself are cut, so that from it may be brought forth the infant who cannot be brought to the light by the natural way; it is called Caesarean, because by this method Julius was born, and on that account called Caesar (from the word *caesus*); physicians call the same thing hysterotomy.

(A) When this operation is done on a living mother, if she is robust and the physician skilled, and moreover antiseptics and other means very well known to surgeons are employed, generally both the mother and the infant are saved[1]; nevertheless some danger of death remains for each. - This being posited, it is asked whether the mother is held to suffer Caesarean section, so that her offspring can receive baptism. (a) First, all confess that she is not held if the infant can be baptized in the uterus; for even if there is hope of saving the life of the mother and of the child, this is not so certain that therefore the mother is strictly held to undergo a dangerous operation; hence such an obligation is not to be urged.

[1] Eschbach demonstrates this, p. 340-344, by the testimony of physicians. - Another operation, which is called symphysiotomy, consists in the cutting of the symphysis of the pubic bones, by which the opening of the pelvis is made broader, so that the offspring can more easily pass through it; this is not free from danger, but, if in a particular case it is judged safer by a prudent physician than Caesarean section, nothing prevents its being permitted.

(b) But if the infant cannot be baptized in the uterus and Caesarean section is the only means of procuring the salvation of the infant (which today at least rarely happens), not a few teach that the mother is held to permit the operation, provided she is sufficiently robust, the physician skilled, and precautions can be employed which remove probable danger of death; for, by the law of charity, we ought to prefer the salvation of our neighbor to our own temporal good. But many say that there is no strict obligation of undergoing this, for, that we may be held to expose life for the salvation of our neighbor, it is necessary that there be certain hope of saving him; but in the case such certainty is not present, since, notwithstanding the aforesaid precautions, some danger of death remains not only for the mother, but also for her offspring. - Hence in practice the Caesarean operation can be advised, but not strictly urged[2].

[2] Sometimes the danger for the mother and her offspring can also be removed by acceleration of childbirth, which can be done without grave danger for the infant after seven months have already elapsed after conception. Concerning its

liceity the Holy Office on May 4, 1898 wrote back: "Acceleration of childbirth is not illicit of itself, provided it is performed from just causes and at that time and in those modes, by which from ordinary contingencies the lives of the mother and fetus are cared for." (*Acta S. Sedis*, XXX, p. 704).

69. (B) But when a pregnant mother has died, there is present a grave obligation, from charity, of performing Caesarean section, whenever it is probable that the fetus has not perished, so that the offspring can be baptized and perhaps its life preserved. This obligation falls first upon physicians and surgeons; but if these are lacking, also upon others who can furnish this without danger to the infant. But it is not licit for a priest, not indeed because such an operation of itself is repugnant to priestly honor, since there is question of a soul to be saved by a legitimate means; but because of the danger of scandal which many would suffer from it; for it is a lesser evil that an infant die without baptism than that scandal be given to many adults. Hence in this sense the Holy See responded several times[1], especially December 13, 1899. But the priest ought prudently to take care with all his strength that the operation be performed by others, especially by a physician[2]. - That the life of the infant in the uterus of the dead mother may more easily be preserved, when Caesarean section is not performed at once, the uterus is to be covered with cloths, so that it may retain heat; but it is useless to keep the mouth of the mother open, since this does not in the least help the respiration of the infant.

[1] Thus the Holy Office, Feb. 15, 1780 and Dec. 13, 1899, apud *Acta S. Sedis*, XXXII, p. 502-503.

[2] In some States no one except a physician can licitly perform such an operation.

70. Corollaries. (A) If the confessor, from the confession of a sick girl, knows that she is illegitimately pregnant, no one knowing it, he ought to admonish her that nothing is to be done which could injure the life of the infant. But if she is in proximate danger of death, he ought to induce her to disclose the matter to a discreet person, so that, after her death, the Caesarean operation can be done and the infant baptized. This the girl can furnish: (a) by writing letters, in which she declares that she wills that after death the uterus be opened and the offspring baptized; these letters, signed and closed, she will hand to a trustworthy person, to be opened only after death: for thus she will provide, insofar as can be done, for her reputation and for the salvation of the offspring; (b) if she cannot write, let her manifest the matter by living voice to a wholly discreet person, who will reveal the fact only after her death. - If nevertheless she is in good faith, and it is prudently feared that she may not acquiesce, the confessor can be silent.

71. (B) Since the eternal salvation of many infants depends on the way in which physicians and midwives put into execution the aforesaid rules concerning fetuses to be baptized, it is the office of the pastor to instruct them diligently both on the necessity and on the manner of baptizing aborted fetuses and infants in danger, whether in the mother's uterus or after birth; for thus he will perform an excellent work of charity, and will assign to the heavenly fatherland not a few of those little ones concerning whom Christ was accustomed to say: "Suffer the little children to come to me, and do not forbid them; for of such is the kingdom of God."[1]

[1] *Mark*, X, 14.

72. IV. On abortion and craniotomy[2]. It is known that voluntary destruction of the fetus flourished among the Pagans; but the Christian religion, zealous for human life and the salvation of infants, strictly prohibited it as true homicide. Yet in our days not a few physicians have attempted to make honorable abortion and embryotomy or craniotomy (i.e., the destruction of a living fetus)[3], at least in the case in which the life of the mother otherwise cannot be saved. Now as regards abortion, the violent ejection of an immature fetus, at the time when it cannot live outside the uterus, must be distinguished from acceleration of childbirth, which takes place when the fetus, already conceived for seven months, can live outside the uterus. - These things being posited, we set forth the responses of the Congregations on this matter:

[2] Eschbach, op. cit., pp. 273-286; 381-476; Surbled, op. cit., vol. II, p. 184-258; Dissez, *Craniotomy from the theological point of view*.

[3] Embryotomy etymologically means the cutting of the embryo, craniotomy the cutting of the skull or head.

73. (A) On craniotomy. In the year 1884, on May 28, the Holy Office recalled for examination the doubt proposed by Cardinal Caverot: "Whether it can safely be taught in Catholic schools that the surgical operation which they call craniotomy is licit, namely when, it being omitted, the mother and son would perish, but on the contrary, it being admitted, the mother would be saved, the infant perishing"; it judged that it must be answered: that it cannot safely be taught[4]. But when there was dispute concerning the sense and extension of this decree, especially in the Catholic Faculty of Lille, the Archbishop of Cambrai proposed new doubts concerning certain surgical operations akin to craniotomy; after three years, the Holy Office, on August 14, 1889, confirmed the first response, and declared that it cannot safely be taught that "any surgical operation directly killing the fetus or the pregnant mother" is licit[5].

[4] Apud Eschbach, op. cit., p. 461-462; *Acta S. Sedis*, XVII, p. 556.

[5] Eschbach, p. 464-467; *Acta S. Sedis*, XXII, p. 748.

74. (B) On abortion of the immature fetus. Since procurement of abortion differs from craniotomy, some thought, even after the aforesaid decrees, that abortion was licit for saving the mother.

Therefore a new case was proposed to the Holy See: "Titius, a physician, when he was called to a pregnant woman lying gravely ill, everywhere observed that there was no other cause underlying the lethal disease except the pregnancy itself, that is, the presence of the fetus in the uterus. Therefore there was one way at hand for him, that he might save the mother from certain and imminent death, namely of procuring abortion or ejection of the fetus. He was accustomed to enter upon this way, having employed means and operations nevertheless not indeed tending of themselves and immediately to this, that they should kill the fetus in the maternal womb, but only that it should be brought to light alive, if it could be done, although it would soon die, as being still altogether immature." Now the Holy Office, on July 24, 1895, decreed that this could not be done[1].

[1] Eschbach, p. 468-469.

75. (C) On acceleration of childbirth. Wherefore nothing remained except to inquire concerning acceleration of childbirth; therefore the following doubts were proposed by the Bishop of Sinaloa (Sinaloa, in the Mexican region): "1. Will acceleration of childbirth be licit whenever

from the narrowness of the woman the exit of the fetus at its natural time would become impossible? - 2. And if the narrowness of the woman is such that not even premature childbirth is judged possible, will it be licit to provoke abortion or to perform the Caesarean operation at its own time? - 3. Is laparotomy (i.e., section of the abdomen) licit when there is question of extra-uterine pregnancy, or of ectopic conceptions?"

Moreover the Holy Office on May 4, 1898 responded: "To 1. Acceleration of childbirth is not illicit of itself, provided it is performed from just causes and at that time and in those modes by which, from ordinary contingencies, care is taken for the life of the mother and fetus. - To 2. As regards the first part, negatively... But as regards the second, nothing prevents the woman concerning whom there is question from being subjected to the Caesarean operation at its own time. - To 3. Necessity compelling, laparotomy is licit for extracting ectopic conceptions from the womb of the mother, provided that for the lives of both fetus and mother, insofar as can be done, serious and opportune provision is made."[2]

[2] Eschbach, p. 470-471; *Acta S. Sedis*, XXX, p. 704.

The Holy Office again confirmed this response on March 5, 1902, renewing the prior decrees[3].

[3] *Ami du Clerge*, XXIV, 1902, p. 478.

76. From the aforesaid decrees it is permitted to infer a threefold rule: (A) It is not licit directly to procure immature abortion[4] or to perform craniotomy; for each action is directly killing of an innocent. Therefore the following sin gravely: (a) pregnant girls who procure abortion lest they lose reputation or suffer some other grave evil; or women who, fearing lest they are pregnant, take potions or employ other means in order to induce abortion; (b) physicians who directly procure abortion, even for saving the mother; for evils are not to be done that goods may come[1]; moreover there are other suitable means for helping the mother, namely acceleration of childbirth and the Caesarean operation, which today, especially in great cities, where skilled surgeons are found, is performed easily and safely[2].

[4] This indeed is true even if it were admitted that the fetus, although living, is not yet informed by a rational soul; for by Innocent XI, March 2, 1679, this proposition 34 was condemned (apud Denzinger, n. 1051): "It is licit to procure abortion before animation of the fetus, lest a girl found pregnant be killed or defamed." - The excommunication imposed against those procuring abortion is set forth in the Treatise on Censures.

[1] Nor can it be said that the fetus is an unjust aggressor; for, as Cangiamilla already said in his time, the infant is not an unjust invader, but compelled by nature, whose author is God; indeed compelled by the mother herself, as D. Huber says. Cf. Eschbach, op. cit., p. 424.

[2] Hence today many physicians, even non-Catholics, reject immature abortion and craniotomy as something scientifically antiquated: "To kill the fetus, under pretext of favoring delivery, is to misunderstand the certain resources of modern obstetrical surgery; it is to be behind the times." Thus Dr. Guerinoprez, apud Eschbach, op. cit., p. 389.

77. (B) It is licit indirectly to procure abortion from a proportionately grave cause; e.g., if the mother labors under a lethal disease which cannot be cured unless a remedy is furnished from which abortion will follow by accident; provided these conditions concur: (a) that the disease be truly lethal; (b) that the remedy be directly employed for curing the disease, not for expelling the fetus; (c) that in the best way possible provision be made for the baptism and salvation of the animated fetus.

(C) It is licit directly to procure acceleration of childbirth, when it is foreseen that the infant can live, provided there is a grave cause; for by such a manner of acting the life of the infant is not taken away, but only exposed to danger; and this indeed is licit whenever it is required for averting a greater danger of the infant itself or of death.

78. Note for practice. Since in some Schools of physicians it is taught that craniotomy is licit and expedient for saving the life of the mother, certain surgeons in good faith perform it when from various circumstances the Caesarean operation seems less opportune; in which case, as regards the past, they are indeed excused from sin, but they are prudently to be instructed as regards the future, according to the rules handed down in the Treatise on Penance.

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On Holy Orders (Volume I)

On Holy Orders

On Order.

1140. To complete those things which we have said in the dogmatic Treatise *On Order*, there remain to be set forth the practical questions concerning the minister and subject of Order, and also concerning irregularities.

Concerning the Minister:

On the proper Bishop as regards ordination.

On the rules to be observed for licit ordination.

Concerning the Subject:

On vocation to the priestly state.

On dimissorial and testimonial letters.

On the age of those to be ordained.

On the title of ordination.

On the obligations imposed in ordination.

Concerning Irregularities:

On irregularities in general.

On irregularities from defect.

On irregularities from delict.

On the cessation of irregularities.

Art. I. On the Legitimate Minister of Order.

1141. For the validity of ordination: a) the ordinary minister is every and only consecrated bishop; b) the extraordinary minister is he who, although he lacks episcopal character, has received from law or from the Apostolic See, by indult, the power of conferring some orders[1].

[1] *Codex*, c. 951, 957.

For the liceity of ordination: a) for the Episcopate, the only minister is the Roman Pontiff, or a bishop by pontifical mandate[2]; b) for the other orders: 1) as regards a cleric ordained by the Roman Pontiff, the minister is he who obtained from the Holy See the faculty of ordaining[3]; 2) as regards seculars, it is the proper bishop by himself, or through another who has obtained legitimate dimissorial letters[4]; 3) as regards privileged religious, regularly it is the bishop of the diocese in which is situated the religious house to whose family the one to be ordained belongs[5].

[2] *Codex*, c. 953.

[3] *Codex*, c. 952.

[4] *Codex*, c. 955.

[5] *Codex*, c. 965.

That an ordination may be licit, 1° it must be conferred by the proper Bishop, or with his license; 2° and indeed with the canonical rules observed.

I. On The Proper Bishop.

1142. The Supreme Pontiff is the proper Bishop of the whole Church, and therefore he can confer orders not only validly but also licitly everywhere on earth, whether by himself or through a delegate. - But a Bishop cannot by proper right confer orders except upon his subjects: "Let each one be ordained by his proper Bishop or with legitimate dimissorial letters of the same."[1]

[1] *Codex*, c. 955, § 1.

Now "the proper Bishop, with respect to the ordination of seculars, is only the Bishop of the diocese in which the one to be promoted has domicile together with origin, or simple domicile without origin; but in this latter case the one to be promoted must confirm by oath his intention of remaining perpetually in the diocese, unless it is a question of promoting to orders a cleric who by first tonsure has already been incardinated in the diocese, or of promoting an alumnus who is destined to the service of another diocese... or of promoting a professed religious."[2]

[2] *Codex*, c. 956. - *Codex*, c. 90, § 1.

1143. From this canon the proper Bishop, as regards ordination, is he in whose diocese the one to be ordained has canonical domicile, which is acquired by residence in the diocese either joined with the intention of remaining there perpetually, if nothing calls one away from there, or prolonged to a completed decade.

1144. If domicile is joined with origin, it is plainly sufficient; but if without origin, an oath is required by which the one to be promoted manifests the intention of remaining perpetually in the diocese. From canon 93, § 1, a minor retains the domicile of him to whose power he is subject, e.g., of his parents. But if these lack canonical domicile, whether familial or acquired, because, e.g., they have resided nowhere for ten years or with the intention of remaining, minors in age cannot receive even first tonsure until, having become majors, they establish for themselves a domicile in some diocese; for this two things are required: residence in some diocese, and the intention of remaining there perpetually. - Therefore they can enter the seminary of the diocese into which they intend to be incorporated, and reside there with the intention of remaining perpetually in the diocese, and emit the oath with the license and approbation of the Bishop of this diocese.

1145. Moreover, by reason of incardination, he becomes a subject of the Bishop who, duly dismissed from his own diocese, has been canonically incardinated in the diocese of this Bishop[1]. But when first tonsure has been received, a cleric is so incardinated in the diocese to which he belongs that he cannot depart except according to the norm of Law. (Can. 111-117.)

[1] *Codex*, c. 956, 969.

1146. "A Vicar and Prefect Apostolic, an Abbot or Prelate *nullius*, if they possess episcopal character, are equated with a diocesan Bishop in what pertains to ordination. If they lack episcopal character, they can nevertheless in their own territory confer first tonsure and minor orders both upon their own secular subjects... and upon others who exhibit the dimissorial letters required by law; ordination performed by the same persons outside these limits is invalid."[2]

[2] *Codex*, c. 957.

1147. "A regular Abbot of government, even without *nullius* territory, can confer first tonsure and minor orders, provided that the one to be promoted is subject to him by force of profession at least simple, and that he himself is a priest and has legitimately received the abbatial blessing."[3]

[3] *Codex*, c. 964.

II. On The Canonical Rules Established For Licit Ordination.

1148. Orders must be conferred: 1° by grades, not by leap; 2° with the interstices observed; 3° in the proper time and place; 4° after a previous examination.

1149. 1° On ordination through the several grades[4]. (a) According to the sacred canons, the one to be ordained must not receive a superior order with an inferior order passed over, or he cannot be ordained by leap: "Orders are to be conferred by grades in such wise that ordinations by leap are altogether prohibited."[5] For it is altogether fitting that no one ascend to higher things unless first he has been exercised in lower things. Although tonsure is not an order, nevertheless it is permitted to no one to receive orders unless first he has been initiated by first tonsure, because this is the preamble and preparation for orders.

[4] *Decretal.*, lib. V, tit. XXIV, cap. unic.; *Codex*, c. 977; Canonists on this title; Icard, II, n. 325-326; Gasparri, n. 495-499.

[5] *Codex*, c. 977.

(b) Yet orders received by leap are valid, except perhaps the episcopate. For the several orders are complete in themselves, and produce their effects independently of the others; indeed the presbyterate eminently contains in itself and confers all the faculties and graces conferred in the diaconate, subdiaconate, and minor orders. - It was said except the episcopate, about which there is controversy among theologians; some contend that the episcopate is not an order distinct from the presbyterate, but only its complement, and therefore is not validly received unless the presbyterate has first been received; but others hold that the episcopate is a distinct order, in which the sacerdotal order is eminently contained, and that it is established from ancient documents that sometimes this order was conferred while the other orders were passed over. In practice, however, every order passed over must be conferred.

(c) A Bishop gravely sins knowingly conferring a superior order while an inferior one has been passed over. A cleric knowingly promoted by leap not only sins gravely, but is prohibited from ministering in the order irregularly received and from ascending to a higher one. (*Codex*, c. 2374.)

1150. 2° On interstices. According to Trent[1], interstices between the various orders must be observed, so that "those promoted may exercise themselves in the orders received, according to

the prescription of the Bishop,"[2] and, while they ascend from grade to grade, merit of life and greater doctrine may increase in them with age. "The interstices between first tonsure and the ostiariate, or between the several minor orders, are entrusted to the prudent judgment of the Bishop; but the acolyte is not to be promoted to the subdiaconate, the subdeacon to the diaconate, the deacon to the presbyterate, before the acolyte has spent at least one year, the subdeacon and deacon at least three months, each in his own order, unless the necessity or utility of the Church, in the judgment of the Bishop, requires otherwise.

[1] *Trident.*, sess. XXIII, cap. 11, 13, 14, *de Reformat*.

[2] *Codex*, c. 978, § 1.

"Never, however, unless by peculiar license of the Roman Pontiff, are minor orders to be conferred with the subdiaconate, or two sacred orders on one and the same day, any contrary custom being reprobated; indeed neither is it permitted to confer first tonsure together with any one of the minor orders, nor all minor orders at the same time."[3]

[3] *Codex*, c. 978, § 2, 3.

1151. 3° On the time and place of ordination. (A) On the time: "Episcopal consecration must be conferred within the solemnities of Masses, on the Lord's day or on the natal day of the Apostles. Ordinations in sacred orders are to be celebrated within the solemnities of Masses on the Saturdays of the Four Times, on the Saturday before Passion Sunday, and on Holy Saturday. Nevertheless, if a grave cause intervenes, the Bishop can have them also on any Lord's day or feast of precept. First tonsure can be conferred on any day and hour; minor orders on individual Lord's days and double feasts, yet in the morning."[1]

[1] *Codex*, c. 1006.

1152. (B) On the place of ordination: (a) "A Bishop outside his own territory, without the license of the Ordinary, cannot confer Orders in the conferral of which pontificals are exercised,"[2] saving nevertheless the privilege of Cardinals who have the faculty "of performing pontificals with throne and baldachin in all churches outside the City, the Ordinary having been forewarned, if the church is cathedral."[3]

[2] *Codex*, c. 1008.

[3] *Codex*, c. 239, 15°.

1153. (b) "General ordinations are to be celebrated publicly in the Cathedral church, with the canons of the church having been called and present; but if in another place of the diocese, the clergy of the place being present, the more worthy church, as far as can be done, is to be approached. However, the Bishop is not prohibited, when a just cause persuades, from having particular ordinations also in other churches and likewise in the oratory of the episcopal house or of the Seminary or of a religious house. First tonsure and minor orders can be conferred also in private oratories."[4]

[4] *Codex*, c. 1009.

1154. 4° On the previous examination. (a) Anyone to be promoted, whether secular or religious, must undergo a previous and diligent examination concerning the very order to be received. (b) One to be promoted to sacred orders is to be examined also in other tractations of sacred theology designated by the Bishop. (c) Regularly, the local Ordinary who ordains by his own right or gives dimissorial letters receives this examination. (d) The names of those to be promoted to the several sacred orders are to be publicly announced in the parochial church of each candidate, and indeed on a feast day of precept during the solemnities of Masses or on another day and hour at which a greater frequency of people is had in the church. (e) All the faithful are held by the obligation of revealing to the Ordinary or pastor before the sacred ordination any impediments to sacred orders, if they know any. (f) But the Ordinary can prescribe other inquiries, according to his prudence and conscience[1].

[1] *Codex*, can. 996-1000.

1155. Corollary. From this it follows that a Bishop is held to repel the unworthy from sacred orders. So that he may be able to do this more efficaciously, the *Codex* permits the Bishop (or religious Superior) "to forbid his clerics, for any cause whatever, even an occult one, even extrajudicially, ascent to orders, saving the right of recourse..."[2]

[2] *Codex*, c. 970.

Art. II. On The Subject of Ordination.

1156. Preliminary notes. (A) For receiving orders validly, it is required that one be: (a) of the male sex, since women have always been prohibited from sacred orders in the Church; (b) baptized, since baptism is the gate of all the sacraments; (c) that in adults there be at least a habitual expressed intention of receiving order, since no adult can contract the grave obligations of priesthood without an explicit will.

From the *Codex*, c. 214, "A cleric who, compelled by grave fear, received a sacred order and afterward, when the fear had been removed, did not ratify the same ordination at least tacitly by exercise of the order, willing nevertheless by such an act to subject himself to clerical obligations, is to be reduced to the lay state, the coercion and defect of ratification having been legitimately proved, by sentence of the judge, without any obligations of celibacy and of the canonical hours. - But coercion and defect of ratification must be proved according to the norm of cc. 1993-1998."

As regards him, however, who received sacred orders before the legitimate age, these things seem to be said: if he does not have the age of discretion when a major order is conferred upon him, and afterward, when he has arrived at the suitable age so that according to the laws of the Church he can emit a solemn vow, namely at the twenty-first year, he has not ratified the ordination, he is reduced to the lay state without the obligation of celibacy by the Sacred Congregation of the Sacraments; this can be extended to those who after the use of reason, but before puberty, received a sacred order, indeed perhaps to those who in good faith were ordained before the canonical age[3].

[3] Maroto, *Institutiones Juris Canonici*, 1921, I, n. 736.

(B) But for the licit reception of orders, many conditions are required: (a) the state of grace, since Order is a sacrament of the living; (b) the reception of Confirmation: "Let those who have not

received the sacrament of Confirmation not be initiated with first tonsure,"[1] more probably under only a light obligation, according to St. Alphonsus (n. 786); (c) immunity from censures and irregularities; (d) congruent morals; (e) due knowledge. There are other conditions concerning which one must speak a little more fully: 1° divine vocation; 2° dimissorial and testimonial letters; 3° canonical age; 4° title of ordination. 5° We shall add a few things on the obligations imposed in ordination itself.

[1] *Trident.*, sess. XXIII, cap. 4 *de Reformat*.

I. On Vocation To The Clerical State.

1157. 1° Its notion and necessity. (A) Priestly vocation can be considered on the part of God, and on the part of the Church. - On the part of God it can be defined: an act of supernatural Providence, by which God disposes some before others to be called to the priesthood through the Church and adorns them with congruent gifts for laudably undertaking the offices of the priesthood.

[2] Hallier, op. cit., col. 357-396; Habert, *De Ordine*, IIIa Pars, cap. 1; St. Alphons., n. 802-803; Icard, II, n. 316-319; Gasparri, n. 110-119; Tronson, *Meditations ecclesiastiques*, 3rd Medit.

(a) It is an act of supernatural Providence; for if God directs all beings, but especially rational creatures, to their proper end, He cares maximally and especially for those whom He foreknows will be future ministers of the Church, since on their manner of acting depend not only their own salvation, but also the good of the Church and of souls. And indeed, since the priestly state is a supernatural dignity and tends to a supernatural end, clerical vocation pertains to supernatural Providence.

(b) By which God disposes some before others to be called through the Church; for not all are destined to the priesthood, but only those whom God from eternity, out of His goodness and free will, without any foreseen merit, selects in His mind for this priestly office.

(c) And adorns them with congruent gifts... For since God is wise and provident, for those whom He chooses for the sublime and arduous offices of the priesthood, He prepared from eternity all the gifts necessary for undertaking these offices worthily and laudably, whether natural, such as an apt body and mind, or supernatural, such as the gift of continence, zeal for souls, and other virtues, without which one called would not be suitable for the sacred ministries. - Yet this vocation does not take away human liberty, but only helps and perfects it; just as therefore man can resist divine grace, so likewise he is able to reject the divine vocation and the means divinely prepared for following it, by so acting that he renders himself unworthy or incapable for priestly offices: then he is said to lose his vocation, not indeed in the sense that God revokes the eternal decree by which he had been pre-elected to the priesthood, but because He deservedly repels from clerical dignity those who now are neither worthy nor suitable. Hence also those who by acting badly have lost their vocation can often recover it by sincere conversion and perseverance in the practice of virtues.

But on the part of the Church, vocation is an act of supernatural jurisdiction, by which ecclesiastical Superiors select and assume those whom they judge suitable and divinely called to the clerical state. For since they bear the place of God on earth, they are able to investigate and authentically interpret His decrees in relation to the vocation of ministers of the Church.

1158. (B) Divine vocation is necessary for licitly receiving orders and for duly undertaking their offices.

It is established by Scripture: (a) by Christ's manner of acting: for He Himself with special care called to Himself disciples whom He destined for the special office of sanctifying men: "Come after me, and I will make you become fishers of men"[1]; then among the disciples He chose certain ones whom He also named apostles[2]; and at the Last Supper He openly declared His mind to the twelve apostles, saying: "You have not chosen me, but I have chosen you, and appointed you that you should go and bring forth fruit, and that your fruit should remain."[3] From this it is inferred that those who are deputed to the office of preaching the Gospel are to be chosen not by themselves, but by Christ Himself; for they themselves must be sent by Christ, just as Christ also was sent by the Father[4].

[1] Matt., IV, 19.

[2] Luc., VI, 13; Matt., X, 2-4; Marc., III, 13-19.

[3] Joan., XV, 16.

[4] Joan., XX, 21.

(b) By the manner of acting and speaking of the Apostles: for when they wished to choose one from the disciples in place of Judas, they appointed two, Joseph and Matthias, and praying they said: "Thou, Lord, who knowest the hearts of all, show which one of these two Thou hast chosen, to receive the place of this ministry and apostleship."[5] Likewise, when Saul and Barnabas were consecrated to the apostolic ministry, they were designated by the Holy Spirit Himself: "And as they were ministering to the Lord and fasting, the Holy Spirit said to them: Separate me Saul and Barnabas, for the work unto which I have taken them."[6]

[5] Act., I, 24-25.

[6] Act., XIII, 2.

(c) By the open declaration of the author of the Epistle to the Hebrews: for he, treating expressly of the priesthood of the New Law, says: "Neither doth any man take the honor to himself, but he that is called by God, as Aaron was. So also Christ did not glorify himself, that he might be made a high priest; but he that said unto him: Thou art my Son, this day have I begotten thee."[1] This proposition, since it denies universally, suffers no exception. In truth, if any exception could be admitted, surely it would be for Christ, who was full of grace and truth, and in whom all the treasures of wisdom and knowledge were hidden; but now, with the Apostle as witness, Christ did not glorify Himself, i.e., He did not ambitiously seek or usurp the dignity and glory of the priesthood, but was raised to it by the Father. Therefore divine vocation is required.

[1] Hebr., V, 4-5.

(d) From the *Codex*, cc. 1353 and 1363, it is established implicitly, but clearly: "and let them foster in them the seed of divine vocation."

1159. It is confirmed by theological reason. (a) In the Treatise *On the Church* it has been proved that no one has the power of teaching and ruling in spiritual matters, unless he has been sent by God, through the mediation of those who are successors of the Apostles: for they, and indeed they alone, rejoice in the power of teaching and ruling. But those who, not called by God nor

chosen by ecclesiastical Superiors, thrust themselves into the sacred ministry, surely cannot be said to be sent by God; they have not entered the sheepfold through the door, but elsewhere; since Christ Himself is the door, and if anyone has not entered through Him, i.e., not having been called by Him, he is a thief and a robber. But a thief comes only to steal and to slaughter and to destroy[2]; or, in other words, he who is not called by God is not only guilty of usurpation, like a thief and robber, but also becomes for others a cause of spiritual ruin.

[2] Read the whole parable of the good shepherd, Joan., X, 1-18.

(b) Divine Providence governs and moderates all things sweetly and strongly, especially in the supernatural order, and distributes offices, dignities, and grades of honors according to the counsel of His wisdom; yet in such a way that to whomever some office is given, to the same likewise are conferred graces, virtues, and gifts so that he may be able duly to fulfill the offices of the state. If therefore someone is divinely chosen for the priesthood, by that very fact there are prepared for him graces and gifts by which he can laudably undertake clerical offices. But if he is in no way called by God, on the one hand he must fulfill many offices, and indeed much more arduous than those which are incumbent upon the faithful, under penalty of mortal sin; and on the other hand, he lacks those special graces which are morally necessary for duly exercising offices of this kind, and which are conferred, by God's general law, only upon those who are legitimately called.

(c) This is more easily understood if the principal offices of a priest are briefly reviewed: for he is a mediator between God and men, offering prayers and sacrifices to God for the Christian people, and dispensing the divine sacraments; but no one can assume the parts of a mediator unless he is admitted by the parties whose interest is involved; no one can be a mediator before God unless first he is made acceptable to Him; no one can dispense divine mysteries unless he has been divinely chosen. - Moreover, the priest is as it were a divine herald, and performs an embassy for Christ, as though God were exhorting through him[1]; but no one can announce the word of God as having power unless he receives authority from God, no one can be a divine legate unless he is deputed by Christ Himself. And so concerning the other offices.

[1] II Cor., V, 20.

1160. 2° Signs of divine vocation. Here there is no question of extraordinary signs, by which God manifests His will in a preternatural way; but of ordinary signs, by which the divine decree can become known to a prudent man. Now these are three: suitability for the sacred ministry; right intention, or a supernatural desire of receiving the priesthood for that end for which it was instituted by Christ; election by ecclesiastical superiors regularly made. The reason is that, when God chooses a man for some office, He makes him suitable so that he can fulfill the offices attached to it; and at the same time by grace He moves him to embrace this office for the end instituted by Christ; and when there is question of the clerical state, for which election is required, He so bends the minds of superiors that they choose those called.

1161. (A) Suitability consists in this, that one, both on the part of body and on the part of soul, be immune from vices which render him incapable for ecclesiastical offices, and at the same time furnished with those gifts which are necessary for duly undertaking them.

Now among vices, some are congenital or so deeply rooted that they can scarcely be corrected, and therefore render someone unfit for priestly offices. Such are: (a) a dull and leaden mind, in no way suitable for acquiring ecclesiastical knowledge; or a lack of rectitude of judgment, which often harms more than ignorance; (b) a rustic and fierce disposition, given to contentions and quarrels, which will drive away rather than attract the sheep of the flock, and will sow discords; (c) a light and unstable disposition, which, by the very fact that it turns with every breeze, will not be able for long to bear the burdens of the priesthood, which are perpetual and require constancy; (d) a soft and idle disposition, which lacks the fortitude and patience necessary for overcoming difficulties often occurring in the sacred ministry; (e) an irascible and drunken disposition; for, as Habert says[1], "irascibility and fondness for wine must sometimes be referred in part to vices of nature, and can scarcely be completely scraped away."

[1] Habert, l. cit., § III.

But there are other vices which indeed render someone unworthy of sacred orders as long as they persevere, but, because they can be corrected, as being voluntary, they do not bar him perpetually from the priesthood; such are sins against chastity and the other virtues; namely, those who have committed them must be tested for so long as is necessary that there be a founded hope that they are not going to relapse into the same vices; but the length and nature of the probation depend on many circumstances, which it would be too long to explain[2].

[2] Cf. St. Alphons., lib. VI, n. 63-77; *Vindic. Alphons.*, p. 778-785.

Nor does immunity from vices suffice, but sanctity of life is required; according to St. Thomas, for the ministry of the altar[3] "greater interior sanctity is required than even the religious state requires"; according to St. Alphonsus (n. 803), the Bishop, before he confers sacred orders, must become certain "not only that the one to be initiated has not been evil, namely, that he has not been quarrelsome, has not given scandal by frequenting games, depraved conversations, etc., but also that he leads a spiritual life, is assiduous in churches, frequents the sacraments and prayer, lives separated from seculars, associates with well-mannered companions, applies himself to study, uses modest dress, etc." - Nor let it be said that clerics adorned with such virtues are not found in sufficient number; for "God never so deserts His Church that suitable ministers sufficient for the necessity of the people are not found, if the worthy were promoted and the unworthy repelled"[4]; besides, "it is better to have fewer ministers, but good and useful, than more who are going to avail for nothing."[5]

[3] St. Thom., 2. 2., q. 184, a. 8.

[4] St. Thom., *Supplem.*, q. 36, a. 4 ad 2.

[5] Benedict XIV, Bull *Ubi primum*.

1162. (B) Moreover, RIGHT INTENTION is required, which does not necessarily consist in a certain sensible aspiration of the subject, but in a supernatural and deliberate will of receiving the priesthood as it was instituted by Christ[1].

[1] This intention, although sincere and deliberate, does not exclude a certain reluctance arising from humility, from the burdens of the priesthood, or from another cause, which besides will often be overcome by divine grace and by the pious exhortations of a confessor.

This intention must be supernatural:

(a) By reason of the object, i.e., it must be concerned with the offices of the priesthood insofar as they can promote the glory of God and the salvation of souls. Hence those who desire to receive sacred orders because they ambit temporal advantages, gain, honors, a quiet life, etc., in no way show that they are called by God. On the contrary, if someone approaches sacred orders because he desires to offer the sacrifice of the Mass, to minister the sacraments, to catechize little ones, to visit the sick, etc., insofar as all these things tend to the glory of God and the sanctification of the faithful, he exhibits signs of divine vocation.

(b) By reason of the motive, which primarily and principally must be a serious and efficacious will of praying, laboring, and spending oneself for God and the salvation of souls, according to that saying of the Apostle: "For I seek not the things that are yours, but you... But I most gladly will spend and be spent myself for your souls, although loving you more, I be loved less."[2] Therefore those lack divine vocation who receive the priesthood for this end alone, that they may live more richly and conveniently; or that they may be esteemed more highly, or be able to preside. - But if someone ambits the priestly state both on account of the sanctification of souls and on account of temporal advantages, the vocation will be divine if the former intention prevails; but the one to be ordained must strive gradually to shake off ignoble ends; and surely his vocation will be the more certain the freer he is from every thought of earthly things. - But the zeal for souls by which he is moved must be efficacious, i.e., not exist in imagination alone, but be manifested by works, namely by prayers, labors, and acts of the virtues offered to God for the sanctification of the neighbor, the conversion of sinners, heretics, and infidels.

[2] II Cor., XII, 14-15.

(c) By reason of the mode; since God is accustomed to work sweetly and strongly at the same time, this intention of receiving the priesthood must be sweet, disturbing the peace of the soul in no way, prepared to obey Superiors, and therefore free from vain anxieties; and strong, i.e., efficaciously moving the one to be ordained to acquire ecclesiastical virtues and assiduously to cultivate theological knowledge; and also constant; for if it is only fleeting, it seems to be a sign of passing fervor rather than of divine vocation, which of itself is permanent.

Let the candidate not deceive himself; it is necessary that he seek counsel from a wise confessor, to whom he will open the hidden things of his heart concerning his internal aptitude and intention, and who will judge the matter according to the laws concerning the discernment of spirits; for he would act imprudently who received orders by his own judgment.

1163. (C) Election by ecclesiastical Superiors regularly made. For no one has any right to ordination antecedently to the free election of the bishop, who, whether by himself or through delegates, such as the directors of a Seminary, authentically judges concerning the suitability of candidates, whether absolute or relative to his own diocese, and chooses those whom he judges will be useful to his diocese. But this canonical election does not create divine vocation, nor aptitude or right intention, but supposes all these things already to be in the candidate[1].

[1] This doctrine is thus proposed by the special Commission of Cardinals in the decree of June 20, 1912, approved by Pius X (*A. A. S.*, IV, 485), where it is declared that "no one ever has any right to ordination antecedently to the free election of the bishop... nothing more is required in the ordinand, in order that he be duly called by the bishop, than right intention together with suitability, placed in those gifts of grace and nature, and proved by that probity of life and

sufficiency of doctrine, which give founded hope that he will be able rightly to undertake the offices of the priesthood and holily to observe its obligations..."

But what if the spiritual moderator and the Bishop doubt concerning someone's vocation? Since for first tonsure and minor orders a probable vocation suffices, the one to be ordained can receive these, and meanwhile scrutinize the will of God better. But when there is question of sacred orders, "let the bishop confer sacred orders on no one unless from positive arguments he is morally certain of his canonical suitability..."[2] - Moreover, so that he may more efficaciously be able to remove the unworthy from sacred orders, he can for any cause whatever, even an occult one, even extrajudicially, forbid ascent to orders, saving the right of recourse[3].

[2] *Codex*, c. 973, § 3.

[3] *Codex*, c. 970.

1164. 3° Obligation of following a clerical vocation. (A) When extraordinary signs of vocation are present, and indeed certain ones, or when there intervenes a positive precept of the Supreme Pontiff, after mature consideration of the matter, there is an obligation under grave sin of embracing the priestly state: for in this case the will of God is so certainly manifested that it is truly imperative. St. Thomas teaches this[1] in relation to the episcopate, and the reason which he brings forth also holds as regards the presbyterate: "Just as it pertains to an inordination of the will that someone by his own movement be borne toward this, that he be placed over the governance of others, so also it pertains to an inordination of the will that someone, wholly against the injunction of a superior, finally refuse the aforesaid office of governance, on account of two things: first indeed, because this is repugnant to charity toward neighbors, to whose utility someone ought to expose himself according to place and time...; secondly, because this is repugnant to humility, by which someone subjects himself to the commands of superiors." - But a Bishop ought to command the reception of orders absolutely to no one, unless a grave necessity of the Church urges, for which he cannot provide otherwise.

[1] St. Thom., 2. 2. q. 185, a. 2.

(B) When there are only common signs of vocation, and no mandate of Superiors is had, Christian prudence indeed counsels that one obey the judgment of superiors, but no strict obligation under grave sin is given. For the Sacred Penitentiary[2], August 27, 1829, declared that a cleric was not to be compelled to receive sacred orders who, although chosen by his superiors and judged by his confessor worthy of the sacred ministry, refused to obey their admonitions, because of humility or fear of dangers. The reason is that no one is held under grave sin to embrace a state to which the practice of the evangelical counsels is annexed, unless the will of God imposing this obligation is clearly established; but, when only the ordinary signs of divine vocation are posited, the absolute will of God is indeed prudently, but not certainly, established.

[2] Ap. Icard, n. 319; Gasparri, n. 114.

(C) He sins gravely who receives sacred orders when he is conscious that he is not divinely called, or approaches rashly without due investigation, or with grave doubt concerning vocation: for he does injury to God and to the Church, and exposes himself and the souls to be committed to him to the danger of spiritual ruin, as is established from what has been said concerning the necessity of vocation. Yet he must not despair of his own salvation; but, penance for his sins having been

performed, by prayers and by the exercise of clerical virtues let him ceaselessly ask from God further helps of grace; let him strive with all his strength duly to satisfy his obligations; and God, who wills that no one perish, even one guilty of the gravest sin, provided he is penitent, will supply to him graces by which, helped, he can fulfill his offices and make himself saved.

II. On Dimissorial And Testimonial Letters.

1165. 1° Dimissorial letters are those by which the proper Ordinary[1] delegates another to ordain his subjects. Once given, they do not expire by the death of the one granting them; but while the matter is still intact, they can be revoked or limited not only by the one granting them, but also by his successor[2].

[1] Cf. *Codex*, c. 958.

[2] *Codex*, c. 963.

1166. 2° On testimonial letters. (A) Notion. Testimonial letters properly so called regard canonical impediments[3]. Letters of this kind must be given by the Ordinary himself or by the religious Superior; hence, if a cleric has completed studies outside the diocese, the testimony of the rector of the Seminary, or of the priest to whom the candidate had been commended outside the seminary, concerning the good morals of the same candidate, does not suffice, nor the testimony of baptism and confirmation for one to be promoted to first tonsure, nor the testimony of the last ordination, nor the testimony concerning completed studies[4].

[3] *Codex*, c. 993, 4°.

[4] *Codex*, c. 993.

1167. (B) Necessity. (a) The general rule is that testimonial letters must be obtained from the Ordinary of that place in which the one to be ordained has resided for so much time that he could have contracted a canonical impediment there. Now the time "in which the one to be promoted could have contracted a canonical impediment is, regularly, for soldiers three months, for others six months after puberty; but the ordaining Bishop according to his prudence can require testimonial letters even on account of a shorter time of residence, and on account of time which preceded puberty."[5]

[5] *Codex*, c. 994.

1168. (b) "If the local Ordinary, neither by himself nor by others, does not know the one to be promoted sufficiently, so that he can testify that during the time in which he resided in his territory he contracted no canonical impediment, or if the one to be promoted has wandered through so many dioceses that it becomes impossible or too difficult to seek all testimonial letters, let the Ordinary provide at least through a supplementary oath to be furnished by the one to be promoted."[6]

[6] *Codex*, c. 994, § 2.

From the *Codex*: those incur by the law itself suspension for one year from the conferral of orders, reserved to the Apostolic See, 1° who have ordained an alien subject without dimissorial letters of the

Ordinary himself; 2° who have ordained their own subject without testimonials in the cases enumerated above[1].

[1] *Codex*, c. 2373.

III. On The Age Of Those To Be Ordained.

1169. (A) According to the *Codex*, (a) let no one be promoted to first tonsure before the theological course has been begun[2].

[2] *Codex*, c. 976.

(b) As regards sacred orders, these things are established in the *Codex*: "Let the subdiaconate not be conferred before the twenty-first year has been completed; the diaconate before the twenty-second has been completed; the presbyterate before the twenty-fourth has been completed."[3]

[3] *Codex*, c. 975.

(c) That someone may be held suitable for the Episcopate, he must, among other qualities, have been born at least thirty years[4].

[4] *Codex*, c. 331.

1170. (B) The Roman Pontiff alone can by his own power dispense from a defect of age. For the subdiaconate a dispensation is never granted; for the diaconate, rarely; for the presbyterate, easily, if only thirteen months are lacking; rarely, and not unless for a grave cause, if eighteen or twenty months are lacking to the legitimate age.

IV. On The Title Required For Ordination.

1171. 1° Notion and origin. The title required for ordination is called the caution by which provision is made for a cleric concerning sufficient and perpetual support; lest otherwise, with disgrace of the order, he be forced to beg or to exercise sordid gain.

In the earliest times no one was ordained unless he was ascribed to a certain church, to which he would be perpetually attached, so that from it he might have that from which he could honestly sustain life; whence clerics were said to be of the title of such or such a church, just as today Cardinals also are named to the title of some church. Yet sometimes clerics were ordained who were ascribed to no church, and they were called wandering or acephalous. But when these increased to the disgrace of the ecclesiastical state, the Third Lateran Council established that priests or deacons ordained without title should be supported at the expense of the Bishops, until they were ascribed to some church; Innocent III extended this to subdeacons. - But Trent determined the matter more explicitly, establishing that the ordinary title of ordination was a benefice, and that from the title of patrimony or pension there were not to be admitted except those whom the Bishop judged necessary or useful to his church. Title is required for sacred orders, but not for minor orders.

1172. 2° The various titles of ordination[1]. A double title is distinguished: ecclesiastical and patrimonial.

[1] We take the exposition of titles of this kind principally from the cited instruction of the Sacred Congregation de Propaganda Fide.

(A) The ecclesiastical title is manifold: of benefice, of poverty, of common table, of service of the church, of mission.

(a) The title of benefice is the perpetual right of perceiving fruits from goods of the Church on account of some spiritual office constituted by ecclesiastical authority. That someone may be ordained under this title, he must actually and peacefully possess the benefice, and from the same perceive income sufficient for honest support, according to the rate determined in each diocese. But he cannot resign this benefice unless mention has been made that he was promoted under the title of that benefice; nor must that resignation be admitted unless it is established that he can live conveniently from elsewhere, so that a resignation otherwise made is null[2].

[2] *Trident.*, sess. XXI, cap. 2 *de Reformat.* - *Codex*, c. 979.

(b) The title of poverty is placed in religious profession, by force of which those who have emitted solemn vows in an approved Religion have in common, either from the income of goods, if the Religion itself possesses any, or from the pious largesses of the faithful, all things which they need for sustaining life[3]. Therefore that title does not belong to those who have emitted simple vows, except the Jesuits, who by force of a special privilege, after three simple vows have been emitted, can be promoted to sacred orders. Indeed "he incurs by the law itself suspension for a year from the conferral of orders, who has promoted someone to major orders without a canonical title..."[4]

[3] *Codex*, c. 982, § 1.

[4] *Codex*, c. 2373, 3°.

(c) The title of common table belongs to religious who have emitted perpetual simple vows[5].

[5] *Codex*, c. 982, § 2.

(d) The title of service of the church, and in places subject to the Sacred Congregation de Propaganda Fide, the title of mission, by which the above-mentioned titles can be supplied, in such a way, however, that the one to be ordained, an oath having been interposed, devotes himself perpetually to the service of the diocese or mission[6].

[6] *Codex*, c. 981.

1173. The title of mission cannot be used except by special indult of the Holy See, "and only in favor of those who, by disposition of soul and docility, rectitude of intention, aptitude of mind, progress in sacred studies, integrity of morals, and contempt of worldly things, give hope that they will be vigorous heralds of the Gospel; concerning which the conscience of their superiors is strictly burdened."[1]

[1] Cited Instruction of the Sacred Congregation de Propaganda Fide, n. 7.

All those who wish to be ordained under title of mission are held first to emit an oath, by which they pledge that they will give perpetual work to the mission to which they have been or will be destined. Hence those who have emitted this oath cannot pass from one diocese to another without license of the Holy See; this, however, for England and the United States of America has been so moderated that it is permitted, within the same ecclesiastical province, to pass into another diocese, with the

consent of each Ordinary[2]. - Likewise, without license of the Holy See, they cannot enter any Religion or regular Congregation[3].

[2] Sacred Congregation de Propaganda Fide, August 18, 1885 and November 30, 1885, ap. *Collect. P. F.*, n. 1181-1182.

[3] This is the formula of the oath to be furnished by those who are ordained under title of mission: - I N., son of N. and N., of the diocese N., promise, and swear, that after I shall have been promoted to Sacred Orders, I will enter no Religion, Society, or regular Congregation, without special license of the Apostolic See or of the Sacred Congregation de Propaganda Fide, nor will I emit profession in any of them.

I likewise vow and swear that in this diocese or vicariate, or in the mission to which it shall please the Holy See or the Sacred Congregation de Propaganda Fide that I be destined, I will perpetually spend my labor and work in administering divine things, under the whole direction and jurisdiction of the Right Reverend Lord Ordinary for the time being, for the salvation of souls; which I will also furnish if, with the license of the aforesaid Apostolic See, I shall have entered a Religion, Society, or regular Congregation, and shall have emitted profession in any of them.

Likewise I vow and swear that I understand the aforesaid oath and its obligation, and that I will observe it. So help me God and these Holy Gospels of God.

N.B. Those who emit this oath can gain a plenary indulgence applicable to the departed not only the first time, but in individual years if they renew it on the anniversary day of the furnished oath.

1174. (B) The patrimonial title is that which consists in goods certain, stable, and fruitful, yet not ecclesiastical, which in the judgment of the Bishop suffice for the congruent support of the cleric[4]. Similar to this is the title of pension, i.e., the right to an income, to be paid by some lay or ecclesiastical person or by a community, and founded upon stable goods, which suffices for honest support.

[4] *Codex*, c. 979.

(a) It is not necessary that the goods from which a patrimony or pension is constituted be immovable, provided that as regards certainty of fruits they are equated with immovables; hence, according to Gasparri, n. 606, the title of ordination can be constituted from public funds (*rente publique*, State bonds). These goods can be situated in another diocese. - But something uncertain does not suffice, such as hope of a future succession, a facultative pension, movable goods which can easily perish, or goods burdened by mortgages.

(b) Trent forbids (l. cit.) that a patrimony or pension can be alienated, extinguished, or remitted without the license of the Bishop, until the clerics ordained under this title have obtained a sufficient ecclesiastical benefice, or have from elsewhere that from which they can live.

(c) Those who obtain a patrimony or pension cannot be ordained unless, in the judgment of the Bishop, the necessity or utility of the Church requires it.

V. On The Obligations Imposed In Ordination Itself.

1175. In the Treatise *On The Obligations Of The Various States* we treat of the offices of clerics; here, however, it is helpful to set forth the obligations imposed by the Bishop in ordination itself.

[1] *Pontif. Rom., De ordinat. presbyteri*, near the end; St. Alphons., n. 829; Hilar. Sexten, p. 620; *Ephemerides Liturgicae*, Rome, XI, 1897, pp. 313, 370 sq.

Before the last Gospel, the Ordaining Bishop addresses those ordained with these words: "Let each of those promoted to first tonsure, or to the four minor orders, say once the seven penitential psalms, with the litanies, versicles, and prayers."[2] - For the subdiaconate or diaconate, the nocturn of such a day. - But those ordained to the presbyterate, after your first Mass, say three other Masses, namely one of the Holy Spirit, another of Blessed Mary ever Virgin, a third for the Faithful Departed, and pray also for me to almighty God."

[2] Here there is question of the litanies of the Saints, with the versicles and prayers which follow them.

(a) It is not established that the obligation of reciting those prayers is under sin; some hold that it binds under grave sin, because the matter is grave; others under light sin; others say that this is an obligation of decency, but not under sin. Whatever the case, those ordained who are not wholly lacking in a sense of gratitude and religion will never omit these prayers.

(b) "For the Nocturn of such a day is to be understood the ferial nocturn, or the first of the Feast, or of the Sunday in the Psalter, according as the ordination was held on a feria, feast, or Sunday."[3] Nevertheless the ordaining Bishop has the right of enjoining another besides the nocturn of the day which the Pontifical designates[1]. Under the name of nocturn come the antiphons and psalms, but not the invitatory *Venite*, nor, more probably, the lessons[2]. - If the Bishop has recited only the words of the Pontifical "the nocturn of such a day," those ordained cannot choose the nocturn which pleases them, but are held to the ferial nocturn of the day of ordination.

[3] Sacred Congregation of Rites, June 27, 1899, n. 4042 ed. nov.

[1] *Ibid.* ad 2. - More distinctly also in the decree of August 11, 1860 it is said: "The words of the Pontifical, *the nocturn of such a day*, are understood of the single ferial nocturn, or of the first of Sunday, as in the Psalter, i.e., of twelve psalms with their antiphons of the time, which the ordaining Bishop can designate, either of the day itself on which he has ordination, or of another according to his judgment."

[2] *Ephem. Liturg.*, l. c., p. 318.

(c) New priests are not held to apply the three prescribed Masses to the intention of the Bishop; therefore they can receive a stipend for them. Nor are they to be said before the rubrics permit the celebration of a votive Mass; indeed, for a just cause, it is permitted to defer them further.

Art. III. On Irregularities.

1176. Candidates can be barred from orders both on account of censures[3] and on account of irregularities, concerning which one must now treat.

[3] *Codex*, cc. 2260, 2175, 2279, § 2, n. 5.

I. On Irregularities In General.

1177. 1° Notion. (a) In the *Codex* irregularities properly so called, which of themselves are perpetual, are distinguished from simple impediments which are not perpetual and do not bar from orders except as long as they endure.

(b) Irregularity properly so called is an impediment of itself perpetual, or an incapacity prohibiting someone from receiving or exercising orders[4], established by canonical law on account of reverence for the divine ministry.

[4] *Codex*, c. 968.

1178. 2° Species. (a) By reason of the cause, irregularity is either from defect or from delict: the former arises from some natural vice by which someone is incapable of receiving or exercising orders; the latter arises from personal fault, which is unbecoming to the priestly ministry. Hence the former is not a penalty, nor does it suppose a proper delict, and therefore it is incurred even by the unknowing; the latter, although it is not a penalty, is contracted after the manner of a penalty, and supposes fault.

(b) By reason of effects, irregularity is total, when it excludes from every order and office of order; partial, when it prohibits only from some order or from some function of the sacred ministry: thus a priest who without fault lacks a thumb is excluded from the celebration of Mass, but not from hearing confessions.

1179. 3° On the subject of irregularity and impediment. (A) All those males who are subject to ecclesiastical law can contract irregularity or impediment. Hence those not yet baptized, and boys before the completed seventh year[1], are not the subject of irregularity, because they are not bound by the laws of the Church.

[1] *Codex*, c. 986.

(B) Irregularities and impediments can be multiplied "from diverse causes of the same, but not from repetition of the same cause, unless it is a question of irregularity from voluntary homicide."[2] When dispensation is sought, each is to be indicated[3].

[2] *Codex*, c. 989.

[3] *Codex*, c. 991.

(C) That irregularities and impediments be contracted, certain conditions are required: (a) that they be certain; for if there is grave and prudent doubt concerning their existence, strictly speaking they are not incurred, whether it is a question of a doubt of law or of a doubt of fact; for odious things are to be restricted. - Yet in practice it is better to seek a dispensation for caution.

(b) That the action on account of which they are contracted be external and consummated in its species; and besides gravely culpable, if it arises from delict: for although they are not penalties, they are incurred after the manner of a penalty *latae sententiae*.

1180. (D) It is asked whether ignorance excuses from irregularity and impediment? "Ignorance of irregularities, whether from delict or from defect, and of impediments, does not excuse from the same."[4]

[4] *Codex*, c. 988.

II. On Irregularities From Defect.

1181. 1° From defect of birth: "Illegitimate persons, whether the illegitimacy is public or occult, unless they have been legitimated or have professed solemn vows."

[5] *Codex*, c. 984.

The reason on account of which this irregularity was established is especially brought forward as threefold: (a) the reverence due to clerical dignity; for, as St. Thomas says[1], "because the brightness of a man is obscured from a vicious origin, therefore also those born of an illegitimate bed are repelled from the reception of orders, unless dispensation is granted to them, and the more base their origin, the more difficult is the dispensation"; (b) the danger lest the sons imitate the paternal incontinence; (c) that the paternal incontinence may be punished in some way. - Hence it is not expedient to grant dispensation unless illegitimate sons shine forth with special gifts.

[1] *Supplem.*, q. 39, a. 5.

1182. 2° From defect of body: "Those vitiated in body who cannot safely, on account of weakness, or decently, on account of deformity, discharge the ministry of the altar. Yet for impeding the exercise of an order legitimately received, a graver defect is required, nor on account of this defect are there prohibited acts which can be duly placed; - those who are or have been epileptic or insane or possessed by a demon; but if after orders have been received they have become such and it is certainly established that they are now free, the Ordinary can permit his subjects again the exercise of the orders received."

1183. Wherefore they are irregular:

(A) On account of impotence or weakness: (a) those laboring under a grave and incurable disease, by which they are incapable of duly undertaking certain ecclesiastical offices: such are paralytics, who cannot hold the sacred vessels or break the sacred species; those who, on account of stiffness of the elbow, cannot bend the arm[2]; epileptics, or those laboring under the falling sickness, at least as long as there is probable danger of relapse; abstemious persons, who cannot drink wine without danger of vomiting; those possessed or obsessed by the devil.

[2] Sacred Congregation of the Council in Brixin., January 26, 1867.

(b) The mutilated, who lack a foot, arm, hand, or the last three fingers on either hand; or the index finger or thumb, so that they cannot break the host; the lame who cannot approach the altar and stand without a staff; those limping too much, even if they do not need a staff, who have a clubfoot, or one inclined toward the other foot; those who have an amputated foot, although they use an artificial foot; today, however, since artificial feet are so aptly arranged that those using them can decently undertake sacred functions, after orders have been received this irregularity no longer seems to be urged[3].

[3] To a professed cleric of the Order of Friars Minor, who walked with a mechanical foot, it was permitted by the Sacred Congregation of the Council, May 5, 1865, to be ordained; ap. Gasparri, n. 265.

(c) The blind, who lack the faculty of sight in both eyes; indeed the dim-sighted, who cannot decently read in the missal; those lacking one eye, especially the left, which is called the eye of the canon, if they cannot read the canon of the Mass without deformity; but if the left eye is good, and its visual power sufficient for reading decently in the missal, there is no irregularity, unless, in the judgment of a physician, the visual power, although sufficient here and now, is going to fail after some time.

(d) The deaf in each ear, who in no way hear the voice of the responding minister; but if deafness supervenes after the priesthood has been received, it does not impede the celebration of Mass.

(e) The mute or stammering, who cannot pronounce whole words, or can do so only in an unintelligible or ridiculous manner.

1184. (B) On account of deformity, all generally are irregular who are so deformed, especially in face, that without disgrace, or the laughter or horror of the faithful, they cannot exercise the sacred ministry; e.g., (a) those who have the face burned or very much stained; those whose lips, nose, or ears have been cut off, unless this last defect can be covered by hair; (b) lepers, or those laboring under another too repugnant disease; (c) the monstrous, the enormously hunchbacked, pygmies, or those who have legs so distorted that not even by the cassock can this defect be covered; those whose one eye has been torn out, unless the deformity is covered by lowered eyelids or by a glass eye, which today is very easy.

In all these cases, when it is doubted whether someone is irregular, the matter is left to the judgment of the Bishop, who will give sentence after the Master of ceremonies has carefully considered and reported how the candidate can exercise clerical functions.

1185. 3° From defect of sacrament: "Bigamists, namely those who successively contracted two or more valid marriages."

Wherefore interpretative or similitudinary bigamy is no longer an irregularity.

1186. 4° From defect of fame: "those who are marked by infamy of law." Now infamy of law is a vindicative penalty[1] which is established in cases expressed by law[2].

[1] *Codex*, c. 2291, n. 4.

[2] *Codex*, c. 2293, § 2.

But this penalty in the *Codex*, and indeed by the fact itself, is decreed against: (a) those who have cast away the consecrated species or have carried them away or retained them for an evil end[3]; (b) those who have violated corpses or tombs of the dead for theft or another evil end[4]; (c) those who have laid violent hands upon the person of the Roman Pontiff, of a Cardinal of the Holy Roman Church, or of a Legate of the Roman Pontiff[1]; (d) duelists and their seconds[2]; (e) bigamists, i.e., those who, notwithstanding a conjugal bond, attempted another marriage, even only civil[3]; (f) laymen legitimately condemned on account of delicts against the sixth commandment committed with minors below the age of sixteen years, or on account of rape, sodomy, incest, pandering[4].

[3] *Codex*, c. 2320.

[4] *Codex*, c. 2328.

[1] *Codex*, c. 2343.

[2] *Codex*, c. 2351, § 2.

[3] *Codex*, c. 2356.

[4] *Codex*, c. 2357.

1187. Besides, from the *Codex*, the following must be declared infamous: obstinate apostates, heretics, and schismatics[5]; and also clerics in sacred orders who commit enormous delicts against chastity[6].

[5] *Codex*, c. 2314, § 1, n. 2, c. 2315.

[6] *Codex*, c. 2359.

Those truly cooperating in either delict are also irregular (in the sense of canon 2209), and therefore those commanding or furnishing proximate assistance so that the crime be committed, unjust judges and witnesses, and those counseling the crime or the manner of perpetrating it.

1188. 5° From defect of mildness: "A judge who has issued a sentence of death; those who have undertaken the office of executioner, and their voluntary and immediate ministers in the execution of a capital sentence."[7] Therefore witnesses, accusers, the procurator general who requests a sentence of death, the judge of instruction, or jurors do not incur irregularity.

[7] *Codex*, c. 984, 6° and 7°.

III. On Irregularities From Delict.

1189. Delicts which beget irregularity must be grave, perpetrated after baptism (except the delict of baptism illicitly received from non-Catholics outside the case of extreme necessity), and external, whether public or occult.

1190. But the following are irregular from delict[8]: "1° Apostates from the faith, heretics, schismatics." Under the name of heretics come not only those who were baptized in heresy, but Catholics who have fallen away from the true faith, even after their conversion.

[8] *Codex*, c. 985.

"2° Those who, except in the case of extreme necessity, have permitted baptism to be conferred upon themselves in any way by non-Catholics"; therefore even illicit repetition of baptism no longer constitutes an irregularity.

1191. "3° Those who have dared to attempt marriage or to place only the civil act, either themselves bound by the matrimonial bond or by sacred order or by religious vows, even simple and temporary, or with a woman bound by the same vows or joined in a valid marriage";

"4° Those who have perpetrated voluntary homicide or procured the abortion of a human fetus, the effect having followed, and all cooperators"; therefore today a distinction is no longer made between an animated and an inanimate fetus.

1192. "5° Those who have mutilated themselves or others or have attempted to take their own life."

But mutilation is properly called the cutting off of some member which has its own office distinct from the others. Thus the hand, arm, foot, eye, tongue, both testicles in a man, the virile member, etc., are so many members; but not one or two fingers, a part of the tongue, etc., because, when these have been removed, the faculty of grasping things or speaking is not taken away. But the Church is stricter as regards those who mutilate themselves than as regards those who mutilate others, - so that even the cutting off of a joint of a finger renders one irregular.

1193. "6° Clerics exercising the medical or surgical art forbidden to them (without apostolic indult), if death follows from it"; there is question of clerics already from first tonsure.

1194. "7° Those who place an act of order reserved to clerics in sacred order, either lacking that order, or prohibited from its exercise by a canonical penalty, whether personal, medicinal or vindicative, or local." Thus irregular are, e.g., subdeacons singing the Gospel at Mass with a stole, priests consecrating the chalice without special delegation.

IV. On Simple Impediments.

From the *Codex* the following are simply impeded[1]:

[1] *Codex*, c. 987.

1195. "1° Sons of non-Catholics, as long as the parents remain in their error[2];

[2] This must be understood also of him whose father or mother only is non-Catholic, even if the mixed marriage was celebrated with dispensation (*A. A. S.*, XI, 478).

2° Men having a wife;

3° Those who hold an office or administration forbidden to clerics, of which they must render accounts, until, the office and administration having been laid down and the accounts rendered, they have become free;

4° Slaves in servitude properly so called before liberty has been received;

5° Those who are bound by civil law to ordinary military service, before they have completed it[1];

[1] They are called impeded, even as regards tonsure, from the Commission for interpreting the Code, June 3, 1918, who perhaps will be called to military service, but in fact have not been called, either because they are unequal in age, or because, the examination having been duly performed, they are declared incapable for a time. Wherefore, in regions in which it has been found by experience that adolescents are greatly helped to persevere in their vocation by the reception of tonsure and minor orders, indults are to be earnestly sought from the Holy See.

6° Neophytes (i.e., newly converted persons) until, in the judgment of the Ordinary, they have been sufficiently proved;

7° Those who labor under infamy of fact, while it endures, in the judgment of the Ordinary."

V. On The Cessation Of Irregularities And Impediments.

1196. 1° Irregularities can cease in a threefold way: (a) by cessation of the cause as regards simple impediments; (b) by religious profession as regards irregularity from defect of birth; (c) by dispensation as regards irregularities and impediments.

1197. 2° Who can dispense? (A) The Supreme Pontiff can dispense in every irregularity. Yet there are certain ones in which he rarely dispenses, namely: (a) irregularities from bigamy, (b) from voluntary homicide, unless it is wholly occult, (c) from a very notable defect of body.

1198. (B) The Ordinary by himself or through another can dispense: 1) in all irregularities arising from occult delict, except that which arises from voluntary homicide, and excepting others brought to the contentious forum[2]; 2) in doubtful irregularities, with a doubt of law or of fact,

whether they arise from delict or from defect; and if afterward it is established that the irregularity was certainly contracted, there will not be need of another dispensation.

[2] *Codex*, c. 990.

By delegated power, or by force of Indults, Bishops are accustomed to obtain broader faculties.

1199. From the *Codex*[1], every confessor can dispense from all irregularities arising from occult delict, except homicide and any irregularity brought to the judicial forum, in more urgent occult cases in which the Ordinary cannot be approached and danger of grave harm or infamy threatens, but only for this, that the penitent may be able licitly to exercise orders already received.

[1] *Codex*, c. 990, § 2.

1200. On the manner of seeking dispensation. In petitions for dispensation from irregularities and impediments, all irregularities and impediments are to be indicated; otherwise a general dispensation will indeed be valid even for things omitted in good faith (except homicide or another irregularity brought to the judicial forum), but not for things omitted in bad faith. If it is a question of irregularity from voluntary homicide, even the number of delicts must be expressed under penalty of nullity of the dispensation to be granted[2].

[2] *Codex*, c. 991, § 1, 2.

"A dispensation granted in the non-sacramental internal forum is to be committed to writing; and concerning it there must be record in the secret book of the Curia."[3]

[3] *Ibid.*, § 4.

Addenda

Addenda.

The Pontifical Commission for authentically interpreting the Canons of the Code, October 16, 1919, confirmed our interpretation of canons 199 and 874, declaring that parish priests, vicars of parishes, or other priests delegated for the universality of cases cannot delegate to secular or regular priests jurisdiction for receiving confessions, nor extend jurisdiction already approved for the same beyond the circumscribed limits, but for this need a special faculty or mandate of the Ordinary of the place.

The same Commission decreed that among the impeded is to be counted him whose father or mother only is non-Catholic, the other parent being Catholic, even in that case in which a mixed marriage - the cautions having been given - was contracted with dispensation in this prohibition.

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