THEOLOGIA MORALIS

Principles — Responses — Counsels

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VOLUME III

On Persons, the Sacraments, and the Precepts and Censures of the Church (1922-23)
with Tomus IV, On Chastity and the Opposed Vices

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Things To Be Observed

1. On account of the usefulness of the matter, here and there in the work itself we have indicated with what peculiar faculties Nuncios or Apostolic Delegates and many local Ordinaries are furnished. Nevertheless the formulae of those faculties are not so stable that no accession or diminution of power is to be foreseen. We wish the Reader to have been forewarned concerning that accidental mutability.
2. Page 102, n. 116, line 15: the things said concerning testimonial letters for entrance into a religion of men must be completed with these words: and of the Ordinaries in whose diocese or quasi-diocese, "after the completed 14th year of age, they have stayed beyond a morally continuous year, with every contrary privilege removed" (c. 544, §2).
3. The bibliography, even that which concerns the historical appendices, is reserved to be inserted in Tome IV.
4. At n. 656, Summary, line 22, after "lateral," add: "the mouth, with the lips compressed, or if the mouth cannot be compressed, the lower or upper lip"...
5. At n. 708, concerning irregularity from homicide. Soldiers who, in a probably just war, kill enemies, become irregular neither from delict nor from defect of lenity. Wherefore clerics compelled to military service seem to contract no irregularity on account of legitimate acts of war. It must be said otherwise concerning those who voluntarily, and therefore illicitly, fought in the battle-line.

Rome, June 21, 1923, on the feast of St. Aloysius.

Plan and Division of the Volume

Moral theology, such as today is customarily taught, also undertakes arguments to be treated, or rather briefly and summarily described, which, at least principally, must be called canonical and liturgical. Those chiefly are canonical which treat of persons in the Church, of the sacraments, of the precepts of the Church, and of censures. Those, however, are liturgical which are concerned with the sacraments. Yet this is not to be understood as though, apart from liturgy, nothing else were treated in them. For the liturgical treatment of the canonical Hours is set forth among the offices of clerics; and every liturgy is penetrated by canon law. Everywhere, however, moral conclusions are inserted, since everywhere obligations of conscience must be weighed.

How much those things which were formerly done illustrate present laws and usages, everyone will understand who recalls that institutions, insofar as they are human, do not at once arise perfect all together, nor persevere long immobile, but gradually are born from deeper roots, flourish, and are increased by continual increments. But since the dogmatic exposition of the sacraments claims for itself doctrinal history, we almost entirely pass this over. Usually most brief, where it occurs, will be our regard for canonical evolution, because, as to what ecclesiastical discipline prevailed in any age, we are sufficiently instructed by works on canon law. But the lesser frequency of liturgical exposition, and the growing honor which is given to the science of public worship, have led us to subjoin certain historical notes concerning the liturgy chiefly to the chapters on the divine office and the administration of the individual sacraments.

We were able to provide this by using the kindly work of Rev. Fr. Hanssens, S.J., professor of liturgy in the Gregorian University and in the Oriental Institute, and of Rev. Fr. de Moreau, S.J., professor of ecclesiastical history in the Louvain philosophical and theological College of the Society of Jesus. What each has contributed will be indicated by the name appended.

To them and to many others who, in preparing the present work, were of no slight help to us, we willingly repay in this place due thanks for their kindly disposition and beneficent action.

Therefore, in this volume, we shall speak in order:

I. On Persons in the Church.

II. On the Sacraments.

III. On the Precepts and Censures of the Church.

Thus there are three Books of this Volume.

First Book: On Persons in the Church

Introduction

Why Persons Are Treated Distinctly and in This Place

— Doubt can be raised both concerning the usefulness and concerning the place of this argument on Persons.

Concerning the usefulness. For not without elegance Fr. Lehmkuhl, in his celebrated moral theology, omitted the special treatment *On Persons*, and joined the treatise *On Religious* to the treatise on Religion, but the treatise on Clerics to the treatise on the sacrament of Order. For through the various religious Institutes the Church in a peculiar way worships God collectively; but by the sacrament of Order the gradation of clerics is constituted; indeed, through first tonsure, which imitates Order, clerics are made.

Concerning the place. For since through the exercise of virtues and the fruitful use of the sacraments all persons are called to sanctity, but clerics both command acts of virtues and administer sacraments, the special treatment on persons could logically precede or follow the other treatises. In the former order, a step would be made from persons to their offices and sacraments; in the latter arrangement, from offices and sacraments to their subjects or ministers.

Indeed, not rarely the treatment on persons lies as though in the middle between precepts and sacraments. For in it the discourse is chiefly about clerics; but clerics confect and administer sacraments, so that by the treatise on clerics the treatise on the sacraments is, as it were, prepared.

The Code of Canon Law removed the doubt, especially since we are entering into matter chiefly canonical. For in the Code there exists a special book *On Persons*. This is followed by the book on things, in which first the sacraments are treated, then sacred times, then the censorship and prohibition of books. But Book V is assigned to ecclesiastical censures and penalties.

Therefore there must be in our moral work a special part on Persons, and this part must be placed before the sacraments, the precepts of the Church, and Censures.

And because, except for the fundamental treatise on Laws, it seemed good to enclose canonical matters in a single volume, lest strictly moral parts, such as the virtues, should follow the canonical aspects of persons and sever them from the other canonical matters, we had to treat of persons after the completed exposition on the offices of the virtues, or immediately before the sacraments.

Thus, however, we were led by our own proper formal respect to choose for the book on persons the same place which it occupies in many commentaries.

— Division of the book. Furthermore, three states of persons are distinguished in the Church. For, as we are taught by canon 107 itself: "By divine institution there are in the Church clerics distinct from laymen, although not all clerics are of divine institution; but both can be religious."

Therefore in three treatises we shall speak of clerics, of religious, and of laymen.

Treatise I: On Clerics

Usefulness. - A distinct knowledge of the state of clerics and of their rights and obligations reveals to very many readers or hearers of moral theology their own rights and offices, which is altogether required for honesty of life; but to others it supplies a just estimation of that state, by which not a few practical errors, for example unjust violations of rights or privileges, are forestalled.

Order of speaking. - Although we must be content with a summary proposition of the argument, we shall make the order of the Code of Canon Law itself rather constantly our own; yet in such a way that at the same time we shall treat of offices and benefices, which in the Code are separated in distinct books.

Title I: On Clerics in Common

Chapter I: Notions Concerning Clerics, Concerning Hierarchy, Concerning Incardination

I. Who are Clerics?. "Those who have been assigned to the divine ministries by at least first tonsure are called clerics" (c. 108, §1).

The Greek word *ho kleros* designates a lot, that which falls to someone, an inheritance. Wherefore 1 Pet. 5, 3, *med' hos katakyrieuontes ton kleron*, bears this verbal translation: "nor as dominating your portions," which portions were a certain part of the Church. Thence perhaps, and because of the Vulgate version, "nor as dominating in the clerics," already from the first century the word clerics began to name those who were peculiarly devoted to the Church or to divine worship. Sometimes, as in the Council of Laodicea of the middle of the fourth century, can. 30, they distinguish *hieratikous*, or those occupied in sacred things (bishops, presbyters, and deacons), and *klerikous*, inferior clerics. Likewise in the so-called Apostolic Canons there is found *katalogos hieratikos* and *katalogos ton klerikon*. Thus the less ancient distinction of major and minor orders is prepared.

But the explanation of St. Jerome prevailed [1], by which they are called clerics either because they are of the lot of the Lord, or because the Lord is the lot, that is, the portion of clerics, rather than the explanation of St. Augustine: "because Matthias was chosen by lot" [2].

[1] *Ep.* 52, to Nepotianus, *P. L.* 22, 531.

[2] *Enarr. in Ps.* 67, 10, *P. L.* 36, 824.

— Since they are of unequal grade, there is in the Church a Hierarchy. Hierarchy, etymologically and in the abstract, is the same as sacred power. In the concrete it means a series of persons who participate sacred power in some grade.

2. The hierarchy is twofold: of order and of jurisdiction; each has some grades of divine institution, others of ecclesiastical institution.

"By divine institution, the sacred hierarchy, by reason of order, consists of bishops, presbyters, and ministers; by reason of jurisdiction, of the supreme pontificate and the subordinate episcopate; but from the institution of the Church other grades also have acceded" (c. 108, §3).

In the divinely constituted hierarchy of Order, under the name of ministers there come at least deacons; whether also subdeacons and clerics of minor orders, some affirm, others deny, according to their opinions concerning the sacrament of order.

You will observe that, in the hierarchy of jurisdiction, only the Supreme Pontiff and bishops are placed in grades of divine institution; but the Church, from the supreme authority of the Pontiff, has added others: abbots and prelates *nullius*, Superiors of exempt clerical religions. Pastors are not named, because only jurisdiction of the external forum, which the pastor lacks, gives a place in the hierarchy of jurisdiction.

— Some orders are major or sacred: such, in the Latin Church, are the presbyterate, together with the episcopate, the diaconate, and the subdiaconate; others are minor: the acolythate, exorcistate, lectorate, and ostiariate (c. 949).

The subdiaconate, with which already in the fifth and sixth centuries in the Western Church the law of celibacy began to be joined, was gradually numbered among the sacred and major orders; this discipline was firm at the close of the twelfth century and the beginning of the thirteenth, from which time subdeacons could be enrolled among bishops. Cf. Peter Cantor, *De verbo mirifico*, c. 57, about the year 1197, and c. 9, X, I, 14, and 7, X, I, 18; Wernz, *Ius Decretalium*, II, 20, note 54.

1. Jurisdiction, or the public power of ruling subjects, is one kind ordinary, which by the law itself is annexed to an office; another, delegated, which is committed to a person. Ordinary jurisdiction again can be either proper or vicarious (c. 197): the former is possessed by one's own title and in one's own name; the latter is had by him who supplies the place of another, whether absent, impeded, or also detained by too many affairs. Think of a bishop and vicar general, the Supreme Pontiff and an Apostolic Vicar. Concerning the notion, cf. Wernz, l. c., n. 3.

Ordinary jurisdiction can of itself be delegated to another; delegated jurisdiction cannot, unless this be expressly conceded. Nevertheless there can be subdelegated, unless something else is established, power delegated by the Holy See and power delegated for a universality of causes or business (c. 199). A universality of one genus, as for example of marriages, suffices.

"No subdelegated power can be subdelegated again, unless this has been expressly conceded" (c. 199, §5). This concession must be made by the delegating one, or by the one having ordinary power.

2. Jurisdiction is also divided into jurisdiction of the external forum and jurisdiction of the internal forum. The former is the power of the proper forum of a perfect society, by which subjects are efficaciously directed toward the common end of the society by laws, or precepts, judgments, and sanctions; the latter, which is not had except in the Church, reaches to the very forum of God, not indeed for making laws, but, principally, for loosing obligations which, by reason of divine law, on account of their own acts, whether good, as vows, or evil, as sins, are contracted by the faithful. I say principally for loosing, because, in that forum, the obligations themselves, of returning to the confessor, of doing penance, are imposed from the intention of loosing the bonds of sin or of penalties. The former jurisdiction is immediately for the common good; the latter, immediately for the good of a private person. This latter is instrumental; it becomes known to us not at all from the nature of society, but from Scripture and the usage of the Church. This more explicit notion of the internal forum, which we borrow from C. Billot, *De Ecclesia Christi*, thesis XI, manifests to us why that power is of a public character, as reaching to the Forum of God; in what way it is in the Church; and by what acts it is contained, so that we can easily discern acts of each forum.

The power of the internal forum is both of the sacramental forum, whose use therefore supposes at least sacramental accusation, and of the extra-sacramental forum, which also outside the tribunal of Penance has valid and licit use. Cf. cc. 196, 202.

Acts of jurisdiction of the external forum have force also for the internal forum, but not conversely (c. 202).

Yet he who in the internal forum has been absolved from a censure can also, scandal having been removed, conduct himself in acts of the external forum as absolved; with the right of the Superior

reserved of urging the censure in the external forum, unless the concession of absolution is proved or at least legitimately presumed in this external forum (c. 2251).

What likewise a dispensation effects in the internal forum is explained in its own place.

3. Finally, judicial power cannot of itself be exercised for one's own advantage or outside the territory; but voluntary or non-judicial jurisdiction can, such as jurisdiction of dispensing (c. 201).

II. Who is a Prelate, an Ordinary?. Ordinary jurisdiction in the external forum gives the true quality of Prelate to a cleric, whether secular or religious; although the title of Prelate is also conferred by the Holy See by reason of honor (c. 110).

Yet not every Prelate is an Ordinary. For by this name there come, "besides the Roman Pontiff, each for his own territory, the residential bishop, abbot or prelate *nullius* and their vicar general, administrator, Apostolic vicar and prefect, and likewise those who, when the aforesaid are lacking, in the interim succeed in governance by prescription of law or by approved Constitutions; but for their own subjects, major Superiors in exempt clerical religions" (c. 198, §1).

The same, except religious Superiors as such, are also called Ordinaries of the place or of places (c. 198, §2).

III. Incardination. Vagrant clerics are in no way admitted. Every cleric must be ascribed either to some diocese or to some religion (c. 111).

Wherefore in canons 648 and 669, §2, provision is made that a cleric dismissed from religion, if he is constituted in minor orders, is by that very fact reduced to the lay state.

Formerly, ascription was made to individual churches, and clerics who were ascribed to no church were distinguished from clerics who, ascribed to the order or catalogue of some church, were nourished by its revenues; these clerics were called canons. Cf. Wernz, *Ius Decretalium*, II, 767, note 4.

Ascription to a diocese, or incardination, is made by reception of first tonsure; once this has been received, by formal excardination and incardination (cc. 111-117).

Ascription to a religion is made by profession; and indeed fully by perpetual profession, which effects excardination (cc. 115, 585).

By reception of first tonsure a cleric is incardinated in that diocese for whose service he was promoted. But it is not on that account lawful for a bishop, by conferring first tonsure, to enroll any secular at all in his own diocese. For from c. 956 it is necessary that a secular have domicile together with origin, or at least domicile. The notion of domicile was given in I, 235. But someone has origin where, when he was born, the father or, if he was illegitimate, the mother possessed domicile or, domicile being lacking, quasi-domicile. Moreover, for a bishop legitimately to confer tonsure, as proper bishop, upon a secular who in his diocese has only domicile, it is necessary that the one to be promoted confirm by oath his intention of remaining perpetually in the diocese (c. 956).

Furthermore, letters of excardination and incardination must be perpetual and absolute, not conditioned.

Yet any bishop can receive, not purely and simply but for experiment for a three-year period, a dismissed religious who has lost his diocese (c. 641).

Summary

I. Clerics are all who have received first tonsure. On account of their unequal grade they compose the Hierarchy, which, taken concretely, means the series of persons who participate sacred power in some grade, while abstractly it signifies sacred power itself.

II. A twofold hierarchy is distinguished: of order and of jurisdiction. Orders are some major and sacred, others minor; jurisdiction, public power of ruling, is distinguished as ordinary, which, whether proper or vicarious, is annexed by the law itself to an office, and delegated, which is committed to a person.

Ordinary jurisdiction can of itself be delegated; delegated jurisdiction cannot of itself be subdelegated, unless it is for a universality of causes, or proceeds from the Holy See. Subdelegated jurisdiction, without the express concession of the one having ordinary power, cannot be subdelegated again.

Jurisdiction is also distinguished as of the external forum, immediately for the good of the Church; and of the internal forum, to be exercised immediately for the good of a private person, either in the sacrament of penance alone, sacramental jurisdiction, or also outside it.

Acts of the external forum have force also for the internal forum, but not conversely, with those things being preserved which are to be said concerning absolution from censures and various dispensations.

A Prelate is one who has ordinary jurisdiction in the external forum; an Ordinary, one who, in his own name or by vicarious reason, has episcopal or quasi-episcopal power: thus an Apostolic Prefect, a vicar general, and a major Superior of an exempt clerical religion. This latter, however, contrary to the others, is not an Ordinary of a place.

III. Every cleric must be ascribed to a diocese or to a religion. To a diocese, by first tonsure legitimately conferred; once this has been received, by letters of excardination and incardination, which must be perpetual and cannot be given conditionally. Yet a bishop can try for three years a religious who has lost his diocese through perpetual profession. Ascription to a religion is made by religious profession; and fully, by perpetual profession.

Chapter II: On the Rights and Privileges of Clerics

— Clerics ought already to consider it no small honor that they have been enrolled among those who, by divine institution, are distinct from laymen. Cf. c. 107, already cited at n. 2.

Moreover, the state of clerics brings with it rights and privileges. Rights are goods or useful things which, from the very character of the clerical state, inviolably belong to clerics; but privileges are goods or useful things which, by the positive benefit of the legislator, have been added in order better to protect the dignity of the state.

I. Rights. 1. Therefore, because it is the state of those who preside, the clerical state makes clerics fit for legitimately participating in the power either of order or of ecclesiastical jurisdiction, and for obtaining ecclesiastical benefices and pensions (c. 118).

This state is required as a condition of validity when there is question of jurisdiction, benefices, and pensions, unless by apostolic good pleasure the defect has been healed.

2. Hence the person of clerics acquires a certain sanctity, which is so violated by every real injury that the author of the injury is guilty of sacrilege (c. 119).

But real injury embraces all exterior actions which by deeds, not words, are injurious against the body, liberty, or dignity. Cf. Wernz, *Ius Decretalium*, t. 2, n. 163.

3. And in a general way reverence is owed to clerics by the faithful, which is different according to the different grade and office.

II. Privileges. Common privileges are the privilege of the canon, by which the sanctity of the state is protected; the privilege of the forum; the privilege of immunity from services; the privilege or benefit of competence.

1. The privilege of the canon punishes with penalties those who are guilty of real injury toward clerics. It is called "of the canon" because of canon 15, *Si quis, suadente diabolo*, of Lateran Council II, 1139, in which it was contained. This canon afterwards became c. 29, C. XVII, q. 4.

Besides other penalties, whether *latae* or *ferendae sententiae*, he who has laid violent hands upon the person of the Roman Pontiff contracts excommunication most specially reserved to the Apostolic See, and is *ipso facto* to be avoided; he who has done so upon the person of a Cardinal, Legate of the Roman Pontiff, Patriarch, Archbishop, or Bishop, even titular, incurs excommunication *latae sententiae* reserved in a special manner to the Apostolic See; he who has done so upon the person of clerics or other religious of either sex is punished with excommunication *latae sententiae* reserved to his proper Ordinary (c. 2343).

2. By the privilege of the forum, clerics are exempted from lay jurisdiction, so that even in their temporal cause they cannot be convened, at least as defendants, before the tribunal of laymen, "unless for particular places something else has been legitimately provided" (c. 120), or unless the permission of the competent ecclesiastical Superior has been obtained.

Permission is reserved to the Holy See when there are to be convened Fathers Cardinals, Legates of the Apostolic See, bishops even titular, abbots or prelates *nullius*, supreme Superiors of religions of pontifical right, and major Officials of the Roman Curia on account of business pertaining to their office; others can be convened by permission of the Ordinary of the place in which the cause is conducted; and he is admonished not to refuse permission without a just and grave cause (c. 120, §2).

Those convened, nevertheless, can appear, the Superior "from whom permission had not been obtained" having been notified (c. 120, §3).

Derogation is made from this privilege by concordats, and also by custom, at least centenary custom. The Secretariat of State acknowledged this for Belgium, Germany, and Holland in the year 1911. Cf. *Periodica*, I, 190. Elsewhere also the Church is accustomed to be silent concerning this often violated privilege of the forum, and generally tries to obtain this, that without the permission of the Holy See a bishop, especially in a criminal cause, not be dragged before a lay judge.

Therefore we shall advise that due permissions be sought; but generally we shall not disturb the good faith of the parties or magistrates. Yet we shall opportunely admonish the faithful that the divine natural law always remains in force, which forbids scandals and diminutions of ecclesiastical authority to be permitted without a proportionate cause. Concerning this privilege, cf. Wernz, op. cit., V, n. 291 ff.

3. The privilege of immunity or exemption looks to this: that clerics be considered immune from services which the Church judges can scarcely be reconciled with their state. These services are chiefly military service and certain public offices, for example that they not be assumed as jurors in criminal causes.

It belongs to the Church, as a Society indirectly superior, to estimate what duties and civil offices are alien to the clerical state. Yet the Church by no means refuses to arrange the matter amicably with civil governments.

Historically, personal immunity was first sanctioned by Constantine the Great on October 31, 313 [1].

Since, however, not a few civil laws boldly violate the rights of the Church, clerics, with the permission of their Ordinary, will be able voluntarily to undertake secular military service so that they may sooner become free (c. 141): sooner, that is, that they may serve for a shorter time, or be liberated earlier.

But on July 15, 1919, the Sacred Congregation of Religious declared that the decree *Inter reliquas*, January 1, 1911, concerning religious bound to military service, was still in force, and besides established certain things by way of corollary. *A.A.S.*, XI, 321.

4. By the benefit of competence or of suitable support, a cleric who is not solvent is permitted to retain those things which, by the prudent judgment of an ecclesiastical judge, are necessary for his honest support (c. 122).

This benefit drew its origin from the way in which c. *Odoardus*, I, X, III, 23, was understood. Cf. Wernz, op. cit., II, 170.

Since, in present-day civil law, it has been made common to all debtors, it will not be denied to clerics, except that civil laws wish the matter to be determined by the decision of a civil judge.

[1] Its history in Roman law is narrated in *Archiv f. k. Kirchenrecht*, 37, p. 356 ff.

Loss of privileges. These privileges, granted on account of the decorum of the clerical state, cannot cease through renunciation by clerics (c. 72). Indeed clerics of themselves must use them; yet prudently: wherefore c. 120 positively indulges them, when summoned before a lay judge, that, in order to avoid greater evils, they may appear, the Superior from whom permission had to be obtained having been made aware.

But they are lost by a cleric who is reduced to the lay state, or is deprived in perpetuity of the right of wearing ecclesiastical habit. When the state or the right of wearing the habit has been restored, they are recovered (c. 123). And by the law itself minor clerics fall from the clerical state if they have entered marriage, or on their own authority, without a legitimate cause, have put aside ecclesiastical habit and tonsure, or have enrolled for military service (cc. 132, §2; 136, §3; 141, §2).

Therefore, by the clear disposition of the law, we are today dispensed from the solicitude of defining the conditions under which clerics can use these privileges. Cf., for example, d'Annibale, *Summula*, I, 100. The privileges belong to all who have not fallen from the clerical state or have not been legitimately stripped of clerical habit.

Summary

I. Rights belong inviolably to clerics from the very character of their state: fitness for participating in the power either of order or of ecclesiastical jurisdiction, and for obtaining ecclesiastical benefices and pensions; protection of sanctity; a title of reverence.

II. Privileges have been added by the positive benefit of the legislator for protecting the dignity of the state. They are the privilege of the canon, by which penalties, graver according to the more noble quality of clerics, are brought against those who, by deeds, are injurious against their body or dignity or liberty; the privilege of the forum, by which, even in a temporal cause, before a tribunal of laymen, they cannot be convened at least as defendants unless for particular places something else has been legitimately provided. Legitimate derogation is made by concordats; and also by custom, at least centenary. The privilege of immunity from services which are scarcely compatible with the dignity of clerics; the privilege of competence, by which a cleric who is not solvent is permitted to keep those things which are necessary for his honest support.

These privileges are not lost by renunciation, but by reduction to the lay state.

Chapter III: On the Common Obligations of Clerics

Article I: On the Negative Obligations of Clerics

§ 1. On These Obligations in General

Principle and general rule. Clerics must flee secular business and amusements, and all things which can scarcely be reconciled with the sanctity, modesty, decorum, and dignity of the clerical state.

Most prohibitions, as far as substance is concerned, are already repeated from ancient memory, that is, especially from the fourth century. Recommendations are read among the Holy Fathers of that age, for example St. Jerome in *Ep.* 52, to Nepotianus (*P. L.*, 22, 527 ff.); and St. Augustine in sermon 355, in which he describes the life which he was leading with clerics (*P. L.*, 39, 1569 ff.); but the discipline is confirmed and completed by canons of the Council of Nicaea (325) and of many particular councils, for example Laodicea, about the middle of the fourth century, Sardica (343), and those of later centuries. Thus, on account of the customs of invading barbarians, it was necessary to prohibit hunting, at least noisy hunting; because monks and regular canons were deserting monasteries in order to betake themselves to public schools and there were learning temporal laws and medicine, in the twelfth and thirteenth centuries studies of this sort were forbidden to them and afterwards to clerics; and in the Decretals the practice itself of medicine, at least dangerous practice, was prohibited.

These canons were collected by Gratian in his Decree; the ordinances were perfected in the Decretals of Gregory IX and in Book VI of the Decretals, chiefly in the titles *De vita et honestate clericorum* (III, 1); *Ne clerici vel monachi saecularibus negotiis se immisceant* (III, 50).

The Council of Trent renewed all these things in its decrees on Reformation (sess. XXII, c. 1, Ref.; sess. XXIV, c. 12, Ref.). These decrees were in force until the present Code of Canon Law.

Corollaries. The following must be fled: 1. things which are dangerous to the virtue and name of clerics. Wherefore:

a) they cannot keep with themselves, or in any way frequent, women concerning whom there can be suspicion;

b) they can cohabit only with women closely related, that is, blood-relations of the first and second degree or those to whom reverence is owed, and affines of the first degree, or with those from whom tried honesty of morals, joined with more advanced age, removes every suspicion.

The Ordinary of the place is accustomed to define these things more by synodal statutes, just as he can also in a particular case prohibit clerics from keeping or frequenting a related woman with whom by accident there is danger of scandal or incontinence (c. 133).

This is to be understood when the cleric himself is head of the house. But, scandal or particular danger always being excluded, cohabitation with women who belong to the family of related persons with whom clerics dwell is also judged honest. Cf. Palmieri, *Op. theol.*, tom. 4, tr. 9, n. 455;

c) on the contrary, common life of itself brings a protection of virtue and fervor. Wherefore in c. 134 this is called to be commended and observed.

2. Things which are dangerous to peace of soul and honest support. Wherefore, without the local Ordinary having been consulted, a cleric is prohibited from becoming surety, even concerning his own goods (c. 137).

He becomes surety who undertakes to fulfill the obligation in the place of an impotent principal debtor.

3. Things which are unbecoming either in themselves or with the clerical state considered. Once the principle has been stated, c. 138 brings forward these examples:

a) "let them not exercise unbecoming arts." Such are the arts of butcher, tavern-keeper;

b) "let them not devote themselves to games of chance, money having been exposed." To devote oneself is to indulge in a thing often and for a long time. A game of chance is one which is founded more on fortune than on skill.

Therefore common law does not prohibit moderate play, for a short time or for the sake of recreation. Indeed it expressly mentions only play where money is staked. Synodal definitions must be attended to.

The gravity of the sin will depend on scandal, time, money, and the quality of the person. Received customs influence scandal. Already to watch certain public games can be grave;

c) "let them not carry arms, unless when a just cause of fearing is present." It is especially prohibited that they walk publicly armed.

Hidden carrying will not be grave and will easily be excused by some reason of defense. Nor are they prohibited from keeping defensive arms at home.

d) "let them not indulge in hunting; but noisy hunting let them never exercise."

Therefore, by common law, hunting that is not noisy is not prohibited unless for too much time; but frequent noisy hunting was thought already before to be forbidden under grave sin. Synodal statutes can prohibit these things more severely;

e) "let them not enter taverns and other similar places without necessity or another just cause approved by the Ordinary of the place."

A tavern, with attention to common law, is to be understood as a common inn or eating-house where wine, beer, and liquors are openly and indiscriminately sold retail to any who come. Cf. *Periodica*, XI, p. 19. Those places which are principally destined for refreshment or lodging are by no means such: *trattoria, albergo*. Nor are a decorous cafe or restaurant of themselves comprehended under this name. But the particular law and usages of certain regions have introduced a stricter discipline, which keeps clerics from going to any cafe. Even then, however, there must be excepted houses which, with the Ordinary not objecting, are commonly frequented by clerics.

Necessity can be had on a journey. Another just cause can arise for a cleric who accompanies parents, or young men committed to his care, or who by reason of relationship visits an innkeeper. But it

suffices that the cause be tacitly approved by the Ordinary, or that he be presumed to be about to admit the cause.

Synodal statutes are accustomed to define these things more. And pilgrims must obey these laws, although they escape the attached penalties or censures;

f) "let them not be present at spectacles, dances, and pageants which disgrace them or in which it would be a scandal for clerics to take part, especially in public theaters" (c. 140).

Therefore these things are not prohibited absolutely, but insofar as the reason of decorum or the reason of scandal has opposed the presence of clerics. Thus nothing prevents a cleric from hearing a public concert, or watching an honest dance which is part of a classical tragedy exhibited before select persons, or participating in some way in a solemn pageant on account of a religious or patriotic cause. While, on the contrary, it is of itself unbecoming that he be present at bullfighting, that he lead dances, that he take part in a worldly or too profane pageant. But twice, on March 31, 1916, and December 10, 1917, the Sacred Consistorial Congregation forbade that in North America priests promote and favor dances which were held for sustaining pious works, or be present at them, if perhaps they were promoted by laymen. Cf. *A.A.S.*, VIII, 147, and X, 17; or *Periodica*, VIII, 161, and IX, 43.

If these spectacles are exhibited in public theaters, the prohibition is urged more severely on account of the place itself, suspect of itself, and which clerics are almost everywhere simply forbidden to approach. As regards private theaters, the circumstances must be prudently weighed.

"Cinematographic" spectacles are akin to theatrical spectacles. Yet the usages of places must be observed. In the City, by a decree of May 15, 1918, each clergy is absolutely prohibited from access to public cinematographic exhibitions (*A.A.S.*, X, 300).

4. Things which are alien to the clerical state. Wherefore:

a) "without an apostolic indult let them not exercise medicine or surgery" (c. 139, §2).

Missionaries are accustomed to obtain such an indult, in which incision or cauterization is excepted, that is, such things as bring danger of life or mutilation [1]. Before the Code, the more benign opinion indulged practice without incision or cauterization. The Code prohibited every practice. Practice means frequent use, so that an accidental intervention is not prohibited.

Nor does there seem to be prohibited a practice circumscribed to relatives, to one's own community. Partial and non-lucrative use by which only certain easy and safe remedies are applied can also be excused. Although while they think of healing the body, clerics must avoid harming souls, whether on account of the envy of physicians or on account of the loss of time which is owed to sacred ministries.

Besides, as is clear, in true necessity the law of charity always prevails, by which we are ordered to bring help to a neighbor in need.

Clerics who, exercising the medical or surgical art forbidden to them, have sinned gravely, become irregular from delict if death follows from it (c. 985, 6);

b) "let them not act as tabellions or public notaries, except in the ecclesiastical Curia" (c. 139, §2).

A public notary draws up juridical instruments, such as testaments and contracts, and gives them public faith, especially as to the date or day on which they are said to have been made;

c) "let them not assume public offices which carry with them the exercise of lay jurisdiction or administration" (c. 139, §2).

A king or judge exercises lay jurisdiction; but the prefect of a province, or mayor, exercises administration.

Jurisdiction or administration is understood in this place as singular, not that which is exercised collectively by several. For by this canon it is by no means prohibited that someone exercise the office of deputy to a municipal council or parliament;

d) without the permission of his Ordinary, therefore, for religious of an exempt clerical religion, of the major Superior, the management of goods belonging to laymen, and secular offices which carry with them the burden of rendering accounts, are prohibited (c. 139, §3).

The private usefulness of the family to which a cleric belongs and the usefulness of the social order can recommend these managements. Pius X of happy memory had this in mind, when in the decree *Docente Apostolo*, November 18, 1910 (*A.A.S.*, II, 910; *Periodica*, V, 261), he so prohibited clerics in "social" works from assuming temporal administrations that at the same time he foresaw the necessity of making an exception. But the exception which he had then reserved to himself is now permitted to the judgment of the Ordinary, as the Commission of the Code declared in plenary meetings, June 2-3, 1918 (*A.A.S.*, 1918, 344).

Secular clerics are prohibited from being tutors of strangers, but not of related persons. Synodal statutes not rarely require the assent of the bishop.

But there are not a few secular offices which oblige to accounts: for example, the office of those directing postal services, railways, or keeping mortgages;

e) "let them not exercise the office of procurator or advocate, except in an ecclesiastical tribunal, or in a civil one, when there is question of their own cause or the cause of their church."

The procurator here is the one whom in French they call *avoué*, who, representing the litigating parties, acts for them in civil causes; but the advocate is the patron of causes. Before the Code, they permitted clerics also to be able in the forum of laymen to advocate for causes of related persons up to the fourth canonical degree, and of miserable persons. Therefore the disposition of the Code is stricter. The severity is explained because today even in the civil forum there are not lacking those who are ordered to undertake the patronage of the poor gratis, for God. Perhaps, however, under the name of one's own cause the cause also of blood-relations can be understood, as Rev. Fr. Maroto insinuates, *Institutiones canonicae*, n. 568. The cause of his church is, for a cleric, the cause of the church or monastery or religion to which he is ascribed;

f) "in a lay criminal trial, pursuing a grave personal penalty, let them have no part, not even bearing testimony without necessity" (c. 139, §3).

Before the Code, clerics were prohibited from being witnesses in a cause of blood, that is, where the penalty of death or mutilation is decreed, unless permission of the bishop had been obtained and a protestation made that they in no way intended the penalty of blood. Can. 139, §2 seems to extend

the prohibition to every criminal trial by which a grave personal penalty will be pronounced; but at the same time an excuse of necessity is admitted.

A personal penalty is one which directly affects the person either in his body, as capital penalty, or in his liberty, for example prison beyond six months. An excuse of necessity can be the defense of the accused, the vindication of an innocent person, public harm to be averted, or the very coercion of public power. It is sometimes provided by particular laws that clerics not bear testimony without the permission of the bishop;

g) in order to solicit or accept the office of senator or deputy to Parliament, clerics need the permission both of their own Ordinary and of the Ordinary of the place in which the election is to be made. In granting this permission the Ordinaries ought rather to show themselves difficult. Cf. response of the Pontifical Commission, April 25, 1922, *A.A.S.*, 1922, XIV, 313, or *Periodica*, XI, p. 127.

If any pontifical prohibition has intervened, such as long was in force in Italy, the faculty of the Holy See is necessary (c. 139, §4).

But Cardinals and bishops themselves need the permission of the Holy See, unless by the law of the state they are senators, and the Holy See has approved this in some way. Cf. the response of the Commission just cited;

h) they are forbidden voluntarily to undertake secular military service, except in the case mentioned above, n. 13, 3; and they are ordered to abstain from internal wars and disturbances of public order (c. 141, §1).

[1] On account of just causes, the exception itself is sometimes prudently moderated.

§ 2. On Business Dealing Prohibited to Clerics

I. Historical. Already in Book I of the *Politics*, Aristotle distinguished the study of acquiring and increasing goods, which pertained to domestic and political economy, or the right governance of a household and city, from business dealing whose end was formally nothing except making money. By the former kind of business dealing a supply of necessary things is procured for the household or the city, from which end its honesty already appears and the appetite itself is moderated; by the other kind, things useless to the buyer are sought so that, from exchange or sale, profit may be captured; and because the desire of the end is of itself without measure, it seems to carry with itself an appetite never satisfied. According to Aristotle's opinion, this latter is deservedly blamed, as not consonant with nature, and because in it one lies in wait for profit made from another.

Hence a distinction was made between business dealing which is called economic, because it is a part of economy or administration, and gainful business dealing, by which profit is intended.

This latter, as savoring of greed for profit, was already in the fourth century judged unworthy of clerics: "Flee a cleric who is a merchant," said St. Jerome [1], "as a certain pest."

The frequent vices of merchants and excessive distraction from spiritual cares are other reasons why clerics ought to abstain from business dealing, to whom the passage of the Apostle is applied (2 Tim. 2, 4): "No one serving God entangles himself in secular business." Thus St. Thomas, 2, 2, q. 77, art. 4, ad 4. Concerning avocation from higher studies, cf. also Schmalzgrueber, in l. 3, t. 50, n. 6, and Cicero, *De officiis*, 1, 42.

Gratian in DD. 86 and 88; C. XIV, q. 4, and XXI, q. 3, reported the more ancient reprobations either of particular Councils or of the Holy Fathers; then the Decretals of Gregory IX and Book VI of the Decretals confirmed the severity. The common law, in this matter, was afterwards handed down to us by the Council of Trent, in sess. XXII, c. 1, Ref., where it established "that those things which otherwise have been copiously and salutarily sanctioned by the Supreme Pontiffs and by sacred Councils concerning the life, honesty, dress, and doctrine of clerics to be retained, and at the same time concerning luxury, banquets, dances, dice, games, and any crimes whatsoever, as well as secular business to be fled, are to be observed for the future under the same penalties, or greater ones to be imposed at the judgment of the Ordinary; nor shall an appeal suspend this execution, which pertains to the correction of morals."

But by the Constitution *Decens*, November 5, 1560, Pius IV assigned to the Apostolic Camera the profits illicitly made by clerical merchants. Concerning this right of its own, the Camera not rarely had to contend with the heirs of clerics. Thence, especially in the seventeenth century, in its earlier part, many cases were proposed to the Sacred Congregation of the Council, from whose responses most of the distinctions received today had their origin.

Business dealing through others, which some had admitted (1), Benedict XIV excluded by the Constitution *Apostolicae servitutis*, February 25, 1741; but Clement XIII, by the Constitution *Cum primum*, September 1, 1759, forbade clerics to act as money-changers.

Since no schemata on this matter were approved by the Vatican Council, that law persevered until the Code. The Code, silent concerning the special law of Missionaries, is content with the brief canon 142, which must be interpreted from the prior law: "Clerics are prohibited from exercising business dealing or commerce, through themselves or through others, whether for their own utility or for that of others."

[1] *Ep.* 52, to Nepotianus (*P. L.* 22, 531), which passage, assumed by Gratian, became c. 9, D. 88.

[2] For example, Schmalzgrueber, III, 50.

II. Interpretation of the present law. 1. Notions. Business dealing, in generic use, is every commutation of things estimable by price, made for an immediately temporal end, especially by purchase and sale. It differs from commerce, with which it is not rarely confused, insofar as commerce seeks profit from goods sold, while business dealing rather seeks profit by other arts on the occasion of goods, as for example "when someone does not carry goods either by sea or by land, but assists merchants by communication of money or things" [3].

Business dealing is distinguished as economic or simple, which is part of a rightly administered family estate, and is had when fruits gathered from one's own field are sold, or those things which are left over from things which had been purchased even broadly for one's own use, or which, bought for one's own use, are sold because the plan has changed, on account of a good opportunity of profit; or when an honest stipend for one's own labor is sought. When done for providing for the city, it is said to pertain to political science, whence some, for example Schmalzgrueber [4] and Wernz [5], designate by the name of political business dealing the purchase by which provision is made for an army or community.

Lucrative business dealing is commanded by the intention of profit. And it is strictly so called when things are bought with the plan that, morally unchanged, they afterwards be sold at a higher price.

This business dealing is called gainful. Therefore it supposes an intention existing at the moment of purchase of not changing the things but selling them at a higher price; and an intention which is the cause of the purchase. Less properly so called, or artificial, is that of those who buy things for this end, that, reduced by art or industry into a more useful form, they be sold at a higher price. For example, wool is bought so that cloth made from it, barley so that beer fabricated from it, grapes so that wine pressed from them, may be sold with profit. Cf. concerning these notions St. Thomas, 2, 2, q. 77 throughout.

2. What things are forbidden. a) Every mode of any business dealing whatsoever which disgraces clerics;

b) the exercise of gainful business dealing, whether for one's own utility or another's, whether through oneself or through others. Business dealing is exercised through others when, in the name and at the risk of the cleric, it is conducted by mandataries;

c) the exercise of active exchange, by which someone gathers money for this end, that he may profit from its exchange: for it is a genus of gainful business dealing;

d) artificial business dealing exercised through others concerning purchased things.

Another's work is especially the work of workers who are hired for this end. But the work of members of a religious community is not another's, whether they are professed, novices, or postulants. Nor is the work strictly another's of those who by some title belong to the family, as are pupils who are received under the same roof for the sake of instruction or for learning an art, or who frequent the schools. Besides, the fact that a few hired workers are added to domestics will not prevent the industry from being judged morally proper to clerics.

3. What things are not forbidden. a) Economic business dealing;

b) artificial business dealing of an honest and decorous character, to which one's own industry is applied; or which, even through others, is exercised concerning the fruits, broadly accepted, of one's own field;

c) business dealing which, if separate and principal, could not indeed licitly be exercised by clerics, but which is morally honested by the principal business with which it coheres as part or accessory. Cf. examples below.

4. What must be said about political business dealing?

He who, from an intention of profit, should plan to procure things for seculars in great quantity, would certainly administer secular business; indeed, by selling things lucratively, he would truly devote himself to gainful business dealing. By this twofold reason Wernz, n. 219, can represent political business dealing as of itself forbidden. Nor do the places of ancient law which he alleges demonstrate anything else (c. 3, D. 88; c. *Iss.*, C. XXI, q. 3). But if an end different from profit supplies a reasonable explanation, and one not alien to the clerical state, especially if it is of a higher order, procurements of this sort can easily be made honest. Thus a pastor will not be reprehended who brings it about that to the poor or to persons of slight condition certain foods or things of daily use are offered at a milder price; nor the bursar of a college who procures school furnishings for

pupils; nor the rector of a place of pilgrimage who offers devotional objects for the faithful to buy; but a missionary will be praised who, supplying for the negligence of the people, by grain bought together in season, strives to meet a foreseen famine. But in the price of things, both an honest remuneration of labor, interest on the money expended, and a certain danger of loss can be computed.

Thus it happens that a sufficiently general usage has prevailed among clerics and religious of selling with some profit devotional objects set out at the entrance of the church. By that profit are compensated labor, danger of loss from things not sold, and interest on the money with which they were bought.

That from the very commutation a proper profit of the one doing business, or a commercial profit, be perceived, is of itself at least greatly to be dissuaded, on account of the danger of fraud and self-deception, lest gainful business dealing be exercised disguised under a more honest pretext.

And diligent care must be taken that clerics avoid sordid arts and beware of every mode of acting which savors of avarice or disgraces the clerical state. Wherefore, where proof of custom is lacking, approval of the Ordinary seems to be required. Wernz, l. c., demands it, and from the mind of c. 139, §3 it can be called necessary.

5. Applications or examples: a) It is not forbidden that clerics make wine from their own vineyards through hired workers and sell it; that they buy cattle to be fattened on their pastures; that they themselves, for a price, print others' books, or publish their own works through hired typographers. And again the proverb holds here: The accessory follows the principal. Wherefore they are not prevented from increasing their own pastures by a certain useful, not excessive, hired portion and fattening bought animals on them thus increased and selling them with profit; or, to improve wine, mixing purchased grapes of another with their own and thence, through hired workers, making wine for sale; erecting a workshop next to their own pastures for making cheeses, through hired workers, from the milk of their own flock; or, by buying fruitful titles, whether bank titles or of this sort, principally intending a prudent placement of money, but at the same time foreseeing and intending profit from a future sale;

b) to buy a field for working, *exploiter*, a metallic or coal vein is lawful; but it is not lawful for clerics to hire others' fields for selling the fruits which will be born thence, or for fattening cattle, at least if these works are performed by another's labor. Using a similar distinction, Lugo [6], with Molina resisting [7], permits beasts of burden to be bought for this end, that they be hired out. Since not the beasts themselves but only their use is ceded for a price, in reality nothing was bought for this purpose, that it be sold at a higher price.

[3] St. Thomas, on Book I of the *Politics*, lecture VIII.

[4] *Ius can.*, III, 50, n. 9.

[5] *Ius Decretalium*, II, n. 17.

[6] *De Iustitia*, d. 25, n. 84.

[7] *De Iustitia*, d. 83, and following.

6. A question of no small moment is raised concerning "titles" or securities by which someone juridically becomes a creditor or partner of an industrial or mercantile company. And by a so-called action or share someone becomes a partner, so that he comes in for a part of the profit or loss, at least for the value of the share, while by an obligation or bond he is a mere creditor of money under interest.

Can clerics acquire titles of this sort with their own money? With their own money, I say; for that which belongs to the church or to ecclesiastical patrimony must be prudently and safely placed according to the norms prescribed by the Holy See.

No one prohibits a cleric from possessing bonds; no one permits a cleric those business dealings, true or fictitious, which are accustomed to be frequent in the "Bourse," speculative dealings.

The rest is less settled. And there are those who, looking to the juridical character, permit clerics to possess no shares other than those of companies which either work coal or metallic veins, or railways, or in some way fruitfully cultivate their own lands. For all shareholders together are owners of the fields or lands from which fruits are sought, so that not even through others do they devote themselves to gainful business dealing or illicit artificial business dealing. But if the companies are commercial, or if they change bought things for the sake of profit through hired workers, then the shareholders participate in business dealing prohibited to clerics, or then they do business through others, which is prohibited by the canons.

Thus severely d'Annibale, III, 157; Wernz, t. 2, n. 219, Scholion. But already before the Roman responses of 1875 and 1885, which incline toward the milder side, several authors, such as Bouix, *Revue des sciences ecclés.*, 1860, II, p. 430 ff.; Icard, *Praelectiones iuris can.*, n. 325; Lauwers, *De liceitate emptionis actionum industrialium et commercialium*; Sanguineti, S.J., *Instit. iur. eccl.*, n. 220, thought that under this respect no distinction had to be made either between shares and bonds, or between commercial and merely industrial companies. This opinion today has become more common. For it stand Bucceroni (II, 41); Ferreres (II, 105); Aertnys (l. 5, n. 99); Génicot (II, 49); Arregui (n. 483), among moralists; Bargilliat (I, 391); Mocchegiani (I, 1585); Maroto, *Inst.*, n. 572, among canonists.

And these reasons persuade us of the same: a) today persons very alien to business dealings buy and sell titles of this sort and are thence held by no one to be merchants. But common estimation must be made of the greatest importance in these matters. And since shares of a company which extracts coal and of a workshop which makes paper are possessed by entirely the same genus of possession, common sense would wonder much more at that cleverness by which the one possession is proclaimed licit, the other illicit. What of the fact that companies which work coal or metals very often at the same time are accustomed to fabricate many things? b) by possession of those shares clerics are neither less esteemed, nor do they give scandal, nor are they called away from the offices of their state: therefore the reasons for the prohibition simply and commonly cease; c) and if it pleases to examine the matter subtly, Benedict XIV condemned business dealing which clerics personally known exercised through others, while here clerics as such never appear, but are possessors according to custom, or bearers, of "anonymous" titles. What of the fact that, as Rev. Fr. Maroto reports in the cited place, a prepared and already approved schema of the canon explicitly conceded to clerics that they buy "bonds or shares of industrial or commercial companies or of shares serving public utility"? Hence the solid probability at least of this opinion is remarkably confirmed, and the silence can be held for tacit approval.

The solution of itself does not vary because there is question of a company to be constituted rather than one constituted. Yet this must be permitted with more difficulty, lest there be danger of suspicion of cupidity, of base profit, or of excessive temporal solicitude.

Therefore a cleric truly exercises business dealing through others when the matter is conducted by his personal mandate, or when, as a partner infinitely bound, he is burdened *in solidum* with all debts; but not when by a mere transaction he commits the value represented by an anonymous title.

And when we prohibit business dealings or "speculations" concerning these titles, we by no means forbid those exchanges of titles made for seizing an opportunity of profit, or for avoiding danger of loss, which are part of the prudent management of such a patrimony.

But clerics ought to remain alien from the administration of commercial companies. In the meeting of shareholders they ought to be present and act not by themselves in person, but through upright mandataries.

On the other hand, it is also necessary that the company propose to itself no illicit or suspect end.

7. Exceptions. The prohibition itself of doing business is circumscribed by certain exceptions.

1. As d'Annibale, III, 156 (12), bears witness, "from received customs, if a cleric has succeeded his father in business of this sort together with his brothers, he is permitted to exercise it through others." If from another succession a business has fallen to a cleric which cannot be put aside without detriment, he needs permission, which within Italy and the adjacent islands the Sacred Congregation of the Council, and outside Italy the Ordinary, will be able to give.
2. When he is actually suffering want of things, honest business dealing is tolerated for his own support as much as is enough for constituting an honest patrimony. If the necessity is not present but is probably foreseen as future; or if the necessity is not his own but that of blood-relations; or if the necessity is not of life but of state, a dispensation either of the Holy See in Italy, or of the Ordinary, is required. The Ordinary can dispense, provided that: a) no other way is available; b) the genus of business dealing not disgrace the clerical state: wherefore in letters of dispensation the more honest modes are to be prescribed; c) the faculties be revocable and be considered revoked as soon as the necessity has ceased or another reason for providing for the same has appeared.

The exceptions themselves which have been made already intimate what the vicissitudes of the historical prohibition demonstrate: that the prohibition is urged more strictly when otherwise, by benefices, provision is easily made for the support of the cleric; but that it is tempered when ecclesiastical revenues are slight. Wherefore today, where the Church has been despoiled of so many temporal goods that not a few clerics of either order and religious are almost reduced to want, at the same time we must decline from excessive severity, and provision must be made cautiously that nothing suspect, nothing indecorous, nothing which edifies less, be admitted. A certain simple mode of business dealing can be more honest than a clever observance of the law which savors of greater avarice.

8. Gravity and limitation of the obligation. The prohibition made to clerics of exercising business dealing or commerce is of itself grave. And clerics or religious who exercise commerce or business

dealing through themselves or through others against the prescription of c. 142 are to be restrained by the Ordinary with congruous penalties according to the gravity of the fault (c. 2380).

By the Code the special excommunication was taken away which, from the Constitution of Clement IX, *Sollicitudo*, June 17, 1669, confirming the Constitution of Urban VIII, punished missionaries.

Already before the Code, clerics, not missionaries, were excused from sin at least grave who only once or again, even in a great quantity, or at morally separated times, did business. Cf. d'Annibale, III, 156.

This will have to be said much more today, since the strict prohibition is only concerning business dealing not to be exercised. "But to exercise ... signifies a plurality of acts which are united morally, that is, by purpose" (Palmieri, *Opus theologicum*, t. IV, tr. 9, n. 463).

N.B. - From c. 542, the obligations reviewed thus far, except residence in the diocese, are, with the necessary changes, common to all religious, even those who are not tonsured.

Article II: Positive Obligations

§ 1. Obligations Common to All

1. An interior and exterior life holier than that of laymen (c. 124).

This obligation can now be urged more, since the Church reserves clericate to those who, with the intention of receiving priesthood, have begun to devote themselves to theological studies.

Wherefore Ordinaries of places must take care "that all clerics frequently wash the stains of conscience by the sacrament of penance"; that "daily for some time they apply themselves to mental prayer, visit the Most Holy Sacrament, honor the Mother of God by the Marian rosary, and examine their conscience." By this c. 125 at the same time power is conferred on Ordinaries to define these things more and to urge them efficaciously.

2. Reverence and obedience to one's proper Ordinary.

Wherefore, "whenever and for as long as, in the judgment of the proper Ordinary, the necessity of the Church requires it, and unless a legitimate impediment excuses, the office which has been committed to clerics by the bishop must be undertaken and faithfully fulfilled" (c. 128).

The debt of reverence looks to this: that, according to received custom, they render honor and offer services to Superiors.

The form of obedience is this, that clerics be ready to obey the laws, precepts, and admonitions of their Superiors. The matter is ecclesiastical things. The title of obligation is jurisdiction alone. The Ordinary does not have dominative power over secular clerics. The limits are defined by the nature of the state, by usages, and by the office undertaken. This must especially be guarded against: that they not abuse the ecclesiastical offices which they bear, by teaching, preaching, instructing youth, governing a parish, for fostering party interests, but that they administer them according to the intention and mandates of the Church, and not against the direction of Superiors. Cf. Wernz, II, n. 190-192.

3. Reception and faithful fulfillment of an office committed by one's proper Ordinary (c. 128).

That docility for accepting and executing an office is among the duties conjoined with the clerical state: our canon 128 demonstrates this. A twofold condition indeed is set down: a positive one, whenever and for as long as the necessity of the Church requires it; a negative one, unless a legitimate impediment excuses. But the judgment concerning each condition is in the power of the Ordinary; concerning the former, c. 128 expressly establishes this; concerning the latter, it is established from the general rule by which the knowledge of impediments belongs to the Superior to whom the right of commanding belongs. Cf. moreover the discussion and resolution of the Sacred Congregation, August 6-7, 1910, in the cause of St. Jean de Maurienne, care of souls (*A.A.S.*, II, 911; *Periodica*, V, 290).

4. Studies, especially sacred studies, with care for solid doctrine, alien from rash novelties (c. 125).

5. Wearing of decent ecclesiastical habit; simple care of the hair; and, of itself, tonsure or the clerical crown (c. 136, §1).

During the earlier times of the Church, clerics were distinguished from laymen by modesty of clothing, indeed, but by no peculiar color or form. "We must be distinguished from the common people or the rest by doctrine, not by clothing; by conduct, not by habit; by purity of mind, not by dress." Thus in the fifth century St. Caelestine I, ep. 4 (*P. L.*, 50, 431). Not even in sacred functions did they use vestments of a peculiar form. They took care only that they be of better quality or cleaner. Cf. the deed narrated by Sulpicius Severus, *Dialog.* II, I (*P. L.*, 20, 201). From the civil Roman habit of the fourth century those vestments were taken. Cf. Batiffol, *Études de liturgie et d'archéologie chrétienne*, p. 83. But in the sixth century, after the barbarians invading Italy brought in shorter clothing, clerics, preserving the longer clothing of the Romans, began to be distinguished from laymen. The distinction was confirmed by c. 16 of Lateran IV (1215), which became c. 15, X, III, 1. A long and closed garment became customary for clerics. A black or at least darkish color was prescribed by particular decrees from the end of the fifteenth century and much more in the sixteenth century. Sixtus V, by the Constitution *Cum sacrosanctum*, June 9, 1589, wished to impose the talar habit under severe penalties. Yet the more tempered norm of the Council of Trent prevailed, sess. XIV, c. 6, Ref., that they wear an honest clerical habit, congruent with their order and dignity, and according to the ordinance and mandate of the bishop himself: which norm has been confirmed by the Code.

As regards tonsure, penitents were shorn for greater humiliation. Monks imitated this for contempt of the world. Some, neglecting their hair, cut the hair shorter; others, using a razor, shaved the head completely [1]. The clerics themselves followed this custom, yet with a crown of hair preserved around the head, at least in Africa from the end of the fourth century, because of which in the fifth century they were called "crowned." By this crown, the "tonsure of St. Peter" was distinguished from the complete "tonsure of St. Paul." This seems to be the origin of the distinction between tonsure, which earlier signified the laying aside of hair and sometimes even the shaving of hair, and the crown, which was the sign of dignity. Thus the cited c. 15 prescribes to clerics that they wear tonsure and crown. Canon 41 of the Fourth Council of Toledo (633) reproved that small form of tonsure which now everywhere is used by secular clerics for the crown.

As regards the beard, the custom of shaving the beard prevailed in the Western Church in the fourth and fifth centuries. Chapters 4, 5, 7, III, 1, of the Decretals forbid clerics to nourish hair or beard.

In the sixteenth century a moderate beard was tolerated. But at the end of the seventeenth century, when men, after the example of Louis XIV, laid aside the beard, clerics did the same. But after laymen returned to the beard, they themselves now departed from laymen, and thus the custom was introduced by which in the Western Church the beard is commonly put away by clerics.

What habit is to be worn is defined more by the custom and prescriptions of the Ordinary of the place.

Every affected care of elegance must also be excluded from the care of the hair.

The clerical crown, which for priests is laudably increased so that it correspond to the host of communion, is imposed of itself, unless "the received customs of peoples bear otherwise." Yet a grave obligation of conscience is not established.

If clerics of major Orders or beneficiaries have put aside clerical habit for a long time, that is, according to d'Annibale, III, 146 (7), for five or six days, this is reputed grave. A grave obligation for clerics of minor Orders, setting aside a precept of the bishop or synodal statute, does not seem to be demonstrated. Yet it would be grave for all to put aside the habit from contempt and with scandal. Just fear and, according to the custom of the place, the reason of a journey can excuse from wearing the habit. The Ordinary will opportunely reserve to himself judgment concerning the necessity of a journey. Moreover, the more the habit differs from the ecclesiastical habit so that it is confused with lay habit, the graver reason is required that a cleric wear this instead of that.

By canon 136 nothing is prescribed or permitted concerning the beard. Therefore one must not recede from the custom of the diocese, which can constitute particular law in no way contrary to common law. The things said are confirmed by a response of the Sacred Congregation of the Council.

For to the question of the Most Eminent Bishop of Breslau: "Whether by the Code of Canon Law freedom of wearing a beard has been given to any secular clerics whatsoever, and, respectively, whether it belongs to bishops to sustain in its force the prohibition hitherto in force for their dioceses," the Sacred Congregation of the Council, on June 10, 1920, replied: "Negative to the first part; affirmative to the second."

The use of a ring is positively forbidden to clerics to whom a ring has not been conceded by law or apostolic privilege (c. 136, §1).

There is question of that ring which has the character of an ornament, or is an insignia of privilege or dignity.

[1] Martene, *De antiquis Ecclesiae ritibus*, l. I, c. 6, art. 4, n. VII. Among monks, the same doctor writes, tonsure varied in form and manner. *De antiquis monachorum ritibus*, l. 5, c. 7, n. 4, 5.

— The law of residence, which strictly urges those clerics who have a residential benefice or office, is extended in some way to others, insofar as permission, at least presumed, of their proper Ordinary is called necessary for clerics to be absent from their diocese for a notable time, for example beyond three months. And one who, with permission of his Ordinary given not in perpetuity but for a time, has passed into another diocese, since he remains ascribed to his own diocese, can be recalled for a just cause and with natural equity preserved. It is also intact to the Ordinary of the other diocese to deny him permission of further dwelling in his own territory, unless he has conferred a benefice upon him (cc. 143, 144).

§ 2. Obligations Common to Clerics of Major Orders

Two things must be recalled: perfect chastity and the divine office (cc. 132 and 135).

I. On the Obligation of Chastity

— As pertaining to the sanctity with which the Church wishes ministers of divine things to shine, she imposes on clerics of major orders the observance of perfect chastity, so that those sinning against it are also guilty of sacrilege (c. 132, §1). Consequently she keeps the same from marriage, ibid., or from its use, if, being married, they have received major orders with apostolic dispensation. Cf. c. 132, §3.

The Church wishes, besides, that this chastity be confirmed by a true vow. Cf. Wernz, *Ius Decretalium*, II, 196.

Whether the immediate title of the obligation is the vow or ecclesiastical law: this controversy is not solved by the Code. But the vow cannot be denied, as Ballerini lucidly shows (*Op. theol.*, t. 4, tr. 9, n. 235-240). And these things are morally certain:

a) by positive law of the Church, a vow is imposed in the Latin Church on those about to receive the subdiaconate. For this vow is supposed in c. *Cum olim*, 6, *De Clericis coniugatis* (l. 3, t. 3), by the words: "We, attending to the fact that the Eastern Church has not admitted the vow of chastity"; it is supposed in c. un. *Quod votum*, *De voto*, in VI (l. 3, t. 15), by which the vow is said to be solemnized by the reception of sacred order; and it is formally taught in the Constitution *Inter praeteritos*, December 3, 1749, §41, of Benedict XIV. Besides, without a vow it cannot be explained how a cleric in sacred orders becomes guilty of sacrilege by merely internal lust: which nevertheless is commonly handed down;

b) those also who have been unwilling to vow chastity must observe chastity by force of ecclesiastical law, from religion, so that contrary sins are sacrileges. Yet because then they are bound by the title of ecclesiastical law alone, they would be immune from the guilt of sacrilege in an internal fault. But these clerics are held by a grave and perpetual obligation of changing this will and of emitting the vow;

c) the nullity of marriage attempted by a cleric in sacred orders proceeds immediately from ecclesiastical law, which wished that sacred order be a diriment impediment and therefore solemnized the annexed vow.

N.B. - In order that a cleric be bound by the vow itself, it suffices that he willed to receive sacred order with the burdens which are annexed by the Church to ordination, although perhaps he was ignorant of the necessity of the vow. Therefore it is in no way essential to the vow that, after hearing the invitation of the ordaining bishop, the one to be ordained physically approached with the customary step.

3. "A married man who without apostolic dispensation has received major orders, even in good faith, is prohibited from the exercise of those orders." Therefore for a married man who desires to receive sacred order there is need of a dispensation of the Holy See.

— Upon a cleric who, coerced by grave fear, has received sacred order, the Church does not impose the obligation of chastity or of reciting the divine office. Wherefore c. 214 orders that this cleric be reduced to the lay state by the judge, without any obligation either of chastity or of the divine office.

Except if, the fear having been removed, he has ratified his ordination. Ratification can be express or tacit, by the exercise of the order done in these circumstances, so that it seems reasonably to contain a will of subjecting himself to clerical obligations. Wherefore to one acting before a judge both these things will have to be proved: coercion and defect of ratification (c. 214).

But one whose ordination is to be attributed to some exterior force, if grave reasons accede, is not necessarily destitute of all hope of obtaining a dispensation from the obligations, even if the proof of grave fear or of defect of ratification is only incomplete.

— With the obligation of preserving chastity there is connected the grave question concerning the sanctity required so that someone can with a safe conscience be admitted to sacred orders or ascend to them.

In order we shall speak of the office of the Prelate of the external forum, who admits the candidate; of the obligation of the candidate who petitions sacred ordination; finally of the office and prudent manner of acting of the confessor who sacramentally hears a candidate as penitent.

I. On the Office of the Prelate. The Apostle himself, 1 Tim. 5, 22, already commended this: "Impose hands quickly on no one, nor communicate in others' sins." C. *Nullus*, 2, D. 24; Trent, sess. XXIII, Ref. c. 5 ff., order bishops diligently to investigate and prove the morals of clerics. St. Thomas, *Suppl.*, q. 36, art. 4, ad 3, demands in the one ordaining certainty concerning the quality of those to be promoted; the same, 2, 2, q. 189, art. 1, ad 3, writes these things: "Sacred orders pre-require sanctity... whence the weight of orders must be imposed on walls already dried by sanctity from the moisture of vices." Benedict XIV, in the Constitution *Obi primum*, December 3, 1740, hands down similar things, and also inculcates these words of Lateran IV (1215), c. 27: "It is holier in ordination, especially of priests, to have few good ministers than many bad ones." The words are cited in c. *Cum sit*, 14, *De aetate et qualitate praeficiendorum* (I, 14).

Wherefore they not only can repel candidates whom they know secretly to be unworthy, but must be strong in taking away clerical dress from those whom it is established will not be sufficiently useful to the diocese, and in deferring orders for those who have not yet sufficiently amended even an occult vice, unless, with attention to the quantity and quality of the delict and the hope of amendment, the necessity or utility of their Church, for which they themselves must provide, should demand greater indulgence. Cf. St. Alphonsus, l. 6, n. 67 and 803.

II. On Candidates. The candidate himself who is not conscious that he can, without excessive difficulty, avoid every scandal and, to say the least, habitually observe perfect chastity, sins gravely if, before he has been made stronger, he has petitioned sacred ordination.

The reason is that interior and exterior sanctity must be said to pertain, partly of itself, partly from the positive will of the Church, to the obligation of the state of those who are in sacred orders. Now the perpetual natural law forbids that you undertake a state unless you know yourself morally fit for fulfilling its obligations. But these things hold the more strongly because there is question of a more

sublime state, and because the perfect probity of the ministers of the Church is of such great importance for faith and morals either to be preserved, restored, or spread.

That sanctity or outstanding probity is to be placed among the obligations of the state is brought about by not a few texts. Already the Apostle himself, 1 Tim. 3, wishes deacons to be "modest (*semnous*), not double-tongued, not given to much wine, not pursuing base gain, having the mystery of faith in a pure conscience. And let these also first be proved, and so let them minister, having no crime." C. *A multis*, 9, *De aetate et qualitate ordinandorum* (I, 11): "Let the impious blush and understand by the judgment of the Holy Spirit that those who have been placed in sacred orders, presbyterate, diaconate, subdiaconate, if they have not lived chastely, are to be excluded from all dignity of the same grades." Decree of Urban II: "Let no one be permitted to approach sacred order unless he be either a virgin or of proved chastity." Council of Trent, sess. XXIII, c. 13, Ref.: "Let subdeacons and deacons be ordained, having good testimony and proved in minor orders... who hope, with God as author, that they can contain themselves." Perfect conversion from morals is inculcated by the very exhortation of the Roman Pontifical to subdeacons: "If until now you have been drunk, from now on be sober; if until now unchaste, from now on chaste."

III. On Confessors. 1. By way of corollary, this rule can be proposed, not as universal but as general: that before sacred ordination sufficient proof of virtue be required, and therefore that purposes of virtue be confirmed by an acquired habit of chastity.

For since from the beginning one must live chastely in sacred order, and the common sense of men generally finds no other demonstration of capacity than experience, he who lacks an acquired habit of chastity could only rashly profess perfect chastity, which is wrong. Cf. the Dissertation of St. Alphonsus, *Whether absolution is to be denied to a cleric habituated in occult sins of lust, who wishes to ascend to sacred orders, without a preceding experiment of continence*. "That changes of this sort from a bad habit into the contrary good ordinarily happen not immediately, but gradually, after many struggles, unless an extraordinary change of heart by a peculiar grace of God should happen, experience itself, as we have already admonished, sufficiently shows; and he who knows the proneness of the human heart to evil does not doubt about this matter. For although man is free, nevertheless this is his ordinary way of acting, that he freely chooses what pleases him more; and although the least grace of itself is able to resist any temptation, the habituated man is not accustomed always and thoroughly to follow attracting grace; nor is God accustomed to amend men of this sort immediately, but gradually by degrees." Thus to the matter Ballerini-Palmieri, t. 2, tr. 9, n. 231; whom nevertheless we approve less when, with St. Alphonsus and not a few others, they allege the dangers of many sins which would be graver, and exclusion from marriage or from the state which brings the remedy of concupiscence. For those dangers and sins are compensated by not a few spiritual advantages of the better state. Cf. Lugo, *Resp. mor.*, l. 1, dub. 18. Nor are all helped by marriage. But the requisites of the state must be invoked directly.

Nor, as is clear, do we appeal to some special law by which the Church would require previous probation. For such a law does not exist. The cited words themselves of the Pontifical suppose that it can happen that someone ascend immediately from a sinful life to sacred orders. But we rely on the natural obligation which follows the requisites for the clerical state.

2. The greater the danger of relapse and scandal is; the less the remaining aptitude and quality of the candidate is; the more easily he can withdraw from embracing the priestly state, the more firmly the preceding rule must be held.

Now a propensity to sodomy creates a graver danger of relapse and scandal than a propensity to fornication; and this is more dangerous than solitary lapse; but he can withdraw more easily who has not yet put on clerical dress, who possesses other means of support, than he who studies theology, who is close to sacred ordination, or has already received sacred order, or is poor: since all these outside the clerical state are almost destitute of counsel.

On the contrary, extraordinary signs of penitence and conversion, especially when secular life is first put aside, can give sufficient security even without previous experience. Cf. St. Alphonsus, cited dissertation.

3. When, on account of a native or acquired propensity, future lapses are foreseen from fragility, although outside a properly so-called habit, clerical life is regularly to be dissuaded. For that maimed and interrupted chastity in no way agrees with the desires of the Church; in him who has made a vow and embraced a more noble state it is accustomed to depress the soul: whence the man is rendered less strong for action; for a priest it easily prepares occasions of fatal sacrileges or of Masses celebrated without sacramental reconciliation with God: which diminishes reverence and esteem for the Most Holy Eucharist. Is it not better to be a fervent layman than a languid priest?
4. From these principles prudently weighed, the Confessor will adapt his manner of acting to individual cases. But already Benedict XIV, *De Synodo*, l. XI, c. 2, n. 18, taught that "no general rule is available which can be used by him, the Director, in cases of this kind. Wherefore we judge that no other counsel can be given to him than that he diligently inspect and maturely weigh all the circumstances of person, things, and cases; that he also remember that the parts not only of judge but also of physician have been imposed on him."

The confessor will forbid ascent to sacred orders, even with absolution denied, to him who joins a lukewarm life with a true habit of sin, or who is probably foreseen as about to sin scandalously. If accidental non-scandalous faults are foreseen, he generally will not advise ascent, although then he cannot strictly prohibit it. Indeed, unless the faults seem likely to be altogether rare and to be redeemed by the gifts of the priest, he will rather turn the penitent away from ascent. Nor should he trust too much even an experience of several months, if after entrance into the seminary the habit was not broken. For it happens that from the desire of proximate ordination the soul makes extraordinary efforts which after ordination it will not long bear, so that the bad habit afterward revives.

In his counsels let the confessor recall these things: a) that he easily becomes cruel toward the Church who in this matter shows himself too benign toward a private man; b) that the fruit of greater experience leads most to incline more toward severity.

But a practical near-perplexity is accustomed to beget itself: a) the often temporally wretched and spiritually dangerous lot to which the youth is exposed outside the seminary; b) the imminent

reception of sacred order, especially priesthood, so that the candidate who then changes his plan can scarcely escape some mark.

Yet to him who desires more definite indications, these seem able to be handed down concerning the way in which the Confessor in a Seminary can fulfill his office. But, as Lehmkuhl, II, 760, rightly observes, "of most grave moment in the seminary is the office both of director and of confessor, that they direct the pupils in due time, form their souls, and disclose defect of aptitude."

Therefore: a) with a lay youth let him see what the purpose of priestly life effects. If little, let him turn the habituated one away from entrance into the seminary. He can more easily favor entrance into religion, if the vocation otherwise appears serious and the libidinous propensity is not rooted in the very temperament of the body. For there are those who are moved to embrace religious life by the very plan of breaking off sins. A good hope of amendment is founded upon such a thought; b) let the habitual confessor of a seminarian first propose remedies, admonish concerning consequences, threaten; in the second or at most third year, unless the habit is shown to have been conquered, let him require departure; c) to a religious, after medicine has been tried in vain, already before theology, let the confessor clearly manifest the difficulty which will stand in the way of receiving sacred orders, so that he himself, with prudent men, such as the moderator of spirit or religious Superior, may maturely deliberate what is better to be established concerning his lot: whether faith and morals seem sufficiently safe in secular life that this is honestly to be desired, or whether to remain in religion without sacred orders is more expedient for him. With a religious in theology one must act as with a seminarian.

Let an extraordinary confessor urge departure of a penitent on the threshold of diaconate or priesthood: let him not require it, unless the propensity was toward sins more than weekly, or toward scandalous sins.

N.B. - The habit of solitary vice among some suddenly and fully ceases on some occasion; among others it is, as it were, gradually killed. Therefore it can sometimes be the fruit of patience that it lead by degrees to moral health.

Corollary. The prudent selection of seminarians is seen to be of the greatest moment. The seminary ought to be open to no one whose entrance has not been fully free, truly supported by supernatural motives; whose temperament seems too prone to venereal things.

Therefore these things must be diligently examined in candidates. Supernatural motives will be known from questioning. That the election of state is entirely free will be seen partly from questioning, partly from the circumstances. Two things can obstruct this liberty: if parents of slight condition have greatly desired that the son embrace the ecclesiastical state, especially if they have lived laboriously and sparingly so that they might make a supply of humanities studies for the son; if the son has been educated by another's money or in an ecclesiastical college, an apostolic school, a small novitiate, gratuitously. Wherefore, although certain ones can abuse this facility, with all things weighed, I would consider it opportune that the directors of a college of this kind help those who are seen to be little fervent to procure for themselves an honest secular state. Surely religion will receive less detriment from the fiction and fraud of some than from the morally coerced entrance of those who enter the seminary or novitiate because they know every other way is cut off from them. Finally, a libidinous propensity can be diagnosed by expert physicians. For which reason, if from the physical

appearance of the candidate or from his origin some such thing is feared, a medical examination should be requested. And what prevents the adolescent from being asked, indeed ordered, to disclose secretly to some most approved priest if he experiences any difficulties in preserving chastity? The utility is common to the candidate and the diocese; there is no danger of infamy. And he who is unwilling to disclose the matter has the option of not petitioning entrance.

II. On the Canonical Hours

— *Appendix I belongs to this section.* **I. Preliminary Notions.** The divine office is called the complex of chants, prayers, and readings by which public or liturgical worship is daily rendered to God in the Church. Cf. what has been said elsewhere concerning the nature and modes of liturgical worship. *Cursus* was also the name both of the whole office and of the individual hours.

2. Choral celebration is distinguished, whether solemn or not solemn, and private celebration by one or by several. The matter and order of each celebration are the same; but the rubrics of the office are rightly understood only from choral celebration. If Terce is excepted, when it is connected with a pontifical Mass, the lesser hours and Compline are never solemnly celebrated.

II. Historical Evolution of the Office. Cf. Appendix I.

— **III. The Obligation of the Office.** 1. In c. 135 we have the first written law which formally imposes the daily recitation of the canonical hours upon clerics of major orders.

The progress of this obligation can be described approximately in this way. The obligation of the office was first, in some measure, that of all the faithful. The necessity, for clerics, of ministering at the hours at which the faithful assisted created for them a proper title of obligation, arising from custom and sanctioned by various decrees of councils or synods. Therefore the obligation was first restricted to daily Vespers and Lauds, and affected clerics both of major and minor orders whose ministry was necessary. After the faithful deserted the daily offices, the obligation nevertheless remained for clerics and was extended also to the other offices, so that a cleric impeded from choir was obliged by private recitation. Finally the principle of the obligation, which previously was the office of ministering, became sacred order itself.

Monks at the beginning seem to have been bound by no special obligation. But since they professed the most perfect observance of the Christian life, they were assiduous in common prayer; afterward, however, when, with the cenobitic life, a proper institute of prayer arose among monks and was confirmed by their own rules, they were admitted by the Church into a part of the public ministry of prayer, especially in its very head, or in the city of Rome.

2. The obligation of beneficiaries is recalled and sanctioned in c. 1475.

3. The choral obligation of a chapter is promulgated in cc. 413 and 414.

4. The obligation either of choir or of the divine office is no longer recalled among the common obligations of religious. But what religions in which there is an obligation of choir must perform is explained in c. 610.

Lest we have to go over the argument again, we shall set forth together the obligations of clerics who are in sacred orders, of canons, and of many religious. First we shall treat of the private and solitary recitation of the hours, then of recitation with a companion and of the obligation of choir.

A. On the Private and Solitary Recitation of the Canonical Hours

— The persons obliged are:

1. All clerics constituted in major orders, unless they have been legitimately reduced to the lay state. The immediate title of the obligation is sacred order; wherefore the beginning of the obligation is from the moment of received subdiaconate, so that the cleric must recite the hours corresponding to that moment, but not those which are prior in time. Now Prime corresponds to the sixth hour of the morning; Terce to the ninth hour; Sext to midday.

Can the one to be ordained satisfy the law by reciting, before ordination, the part which, after sacred order has been received, he will have to recite? This seems to be answered affirmatively, because, although he does not yet recite the office in the name of the Church, which the patrons of the stricter, probable opinion object, the one to be ordained offers an anticipated payment which the Church is judged to accept, especially since ordination is often so prolonged that the delayed hour cannot be recited in its own time.

Today, where the private recitation of the office is much more separated from the choral, the opinion of La Croix, *Theol. mor.*, l. 4, n. 1187, no longer seems probable, which obliged one ordained subdeacon to recite the hour which then had to be said in choir. Wherefore, if one was ordained at the eleventh hour, he himself obliged him only to Vespers, since at the eleventh hour all the little hours usually had already been paid in choir. Already St. Alphonsus, l. 4, n. 140, called the opinion which we have set forth above the truer one;

2. All beneficiaries, not legitimately impeded. These are bound from the day of accepted possession of the benefice, if they perceive or will perceive the fruits. Wherefore they must recite the entire office of the day.

He who has not satisfied that obligation does not make the fruits his own in proportion to the omission, "and let him hand them over to the fabric of the church or to the diocesan seminary, or distribute them among the poor" (c. 1475, §2).

Therefore the Church obliges from justice[(1)] the beneficiary who with grave fault has omitted the canonical hours to restore the fruits in proportion. A threefold mode of restitution is permitted to him. By the Constitution *Ex proximo*, September 22, 1571, St. Pius V so declared that "in proportion to the omission," that one who on one day has omitted the entire office must restore all the fruits corresponding to that day, that is, the 365th part of the annual revenue; but one who has omitted only Matins with Lauds, half the fruits of one day; one who has omitted the remaining hours, also half; and one who has omitted one of those, the twelfth part of the same sum. Cf. *Epitome I. C.*, II, 800.

From the very words of the Constitution *Supernae dispositionis* of Leo X, in the Lateran Council, §38, and from the received interpretation, the fruits perceived in the first semester are condoned. And

although he has sinned gravely, a beneficiary who on the next day supplies the omitted office is probably excused from restitution (the Salmanticenses and others).

Moreover, according to the common opinion, he who perceives the fruits of a benefice also on account of other burdens does not owe all the fruits. Wherefore, on account of the whole office omitted, bishops and pastors are not judged to have to restore beyond the third or fourth, indeed probably the fifth, part of the fruits; canons, not beyond half, indeed the fourth part; chaplains, not beyond half or the third part. Cf. St. Alphonsus, l. 3, n. 673; l. 4, n. 415; *Epitome I. C.*, II, 800.

Finally, since today even benefices with care of souls are accustomed to be so slight that they scarcely suffice for the support of the beneficiary, and since the negligent beneficiary is not prohibited from keeping as a poor man what as blameworthy he has lost, almost never today will there be place for this penalty. Cf. Palmieri, *Op. th.*, t. 4, tr. 9, n. 342.

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(1) D'Annibale, however, III, 65, thinks that this restitution is owed by way of a conventional penalty rather than from justice.

3. Those solemnly professed in religions in which there is an obligation of choir (c. 610).

By these clear words: 1. on account of the many more recent institutes which have been approved without choir, there is no longer any common obligation of the divine office for religious; 2. those solemnly professed in religions in which there is an obligation of choir are held to private recitation of the office if, being destined for choir, they have been absent from choir. Therefore a question can no longer be raised today about their grave obligation. On the controversy before the Code, cf. Palmieri, *Op. theolog.*, t. 2, tr. 9, nn. 333-334; 3. those simply professed, or nuns who now do not have solemn vows, are not held, unless perhaps from their own Constitutions, although they belong to institutes with solemn vows. Cf. response of the Sacred Penitentiary, November 24, 1852.

And even where they have solemn vows, nuns of the Visitation, and any others who must recite only the Office of the Blessed Virgin Mary, are judged to be held by only a light obligation.

The professed are held from the moment of profession, just as the ordained are held from ordination.

— By one recitation of the breviary he satisfies this obligation, both he who has several benefices and he who is held by several titles, for example as subdeacon and professed. And the omission of that office is judged to be one single sin against religion. Yet the beneficiary who is unwilling to restore the fruits, when he owes them, must also accuse a sin against justice. Cf. Palmieri, l. c., n. 355.

— The substance of the obligation is this: that the canonical hours be recited entire daily "according to the proper and approved liturgical books" (c. 135).

Approved liturgical books are the Roman Breviary, reformed by St. Pius V, with the new order of the psalter introduced by Pius X and prescribed for validity, Constitution *Divino afflatu*, November 1, 1911 (*A. A. S.*, 3, 633; *Per.*, t. 6, p. 125).

Yet churches or religions which in 1568 were using another breviary approved by custom of at least two hundred years were able to preserve that one. Yet if they use the faculty of taking the Roman breviary, they are then prohibited from returning to their former one.

The obligation of reciting the breviary includes the obligation of having it such as it has been imposed, and therefore of acquiring for oneself new approved offices. Yet the mind of the Holy See is not to oblige clerics who recite the breviary according to an already existing edition to assume new or reformed lessons of the office (S. R. C., December 14, 1883).

The proper liturgical books must be used. Wherefore he will not have satisfied who, alone or with a companion, has recited the office of another breviary too different from his own. Cf. S. R. C., January 27, 1899; *Decr. auth.*, n. 4011. Yet others think otherwise (St. Alphonsus, n. 161; Ferreres, II, n. 85).

— Besides the customary office, the litanies of All Saints must be recited, even privately, on the very feast of St. Mark and on the three Rogation days. Those litanies cannot be anticipated on the previous day. Today this obligation of private recitation is certain; but the gravity of that obligation is less certain, on account of the less severe words of the rubric: "Let them say those litanies privately." Cf. Palmieri, l. c., n. 382.

Before the reform of Pius X, the Office of the Dead, which now is the proper office of that day, had to be added on the day of the commemoration of all the faithful departed to the office of the octave of All Saints.

— **The Mode of Recitation.** There is prescribed:

1. **Vocal recitation.** It pertains to the substance that words be formed, which supposes at least some breath, however slight: voice of itself is audible. But he who is conscious to himself that through the proper organs, the tongue and lips, he forms syllables, and does not merely produce some motion in the throat or deliberately suppress the breath, effects vocal recitation. Wherefore the question whether or not it is required that someone be able of himself to hear himself can be omitted, and is better omitted, as being scrupulous. Cf. Ballerini-Palmieri, l. c., nn. 394-396.
2. **Entire recitation,** "without syncopation and abbreviation of words and syllables," and without precipitation.

A defect in this matter, since it is accustomed to affect the final syllables of words, will generally be venial; for this does not take away every signification. Someone can be excused by stammering, and even by a custom which, reprehensible in the beginning, has actually become invincible, provided efforts are applied to laying it aside. And because anxiety itself can impede correct pronunciation, it is sometimes better to obtain a dispensation until healing has been obtained with peace;

3. **Devout recitation.** Therefore an intention of worshiping God by the recitation is required. For an act of religion is prescribed, to which such an intention is essential. But that intention demands the use of no formula; and it is present in reality as soon as you take up the breviary to pay the accustomed task.

All also require attention which they call external, and which looks to this: that exterior actions be excluded which cannot be composed with interior attention. This is required by c. *Dolentes*, 9, *De celebratione missarum* (III, 41).

Sufficient diligence also is of itself required so that an accurate recitation be made.

Attention which they call internal they distinguish into superficial, or to correct pronunciation; literal, or to the signification of the words; spiritual, or to God or divine things. And although this notion, which belongs to acts of the will, is little suited to acts of the intellect, nevertheless they distinguish further formal attention, which is truly present, and virtual attention, which in moral estimation is judged to be present because the will of attending has not been retracted.

There have been not a few controversies concerning the necessity of so-called interior attention.

But if the matter is considered more closely, just as external attention is defined by the exclusion of exterior actions which would occupy the mind, so internal attention is defined by the exclusion of wandering of the mind morally diverting it elsewhere.

Now, when we intend to pray expressly, the reverence due to God demands that morally we place ourselves wholly present to God. Wherefore voluntary distraction of mind is at least lightly sinful. Yet that irreverence does not take away the essence of prayer: for this it is enough that, from the intention of worshiping God, you use words containing His praise or beseeching Him. Cf. Lugo, *Euch.*, d. 22, n. 15 ff. But no argument proves that more is prescribed by the Church. Indeed now, since c. 135, adding nothing, prescribes merely the entire recitation of the canonical hours, the very probability now seems to us to be absent from the stricter opinion.

Nor is the substance of the obligation necessarily lacking in him who recites the hours in the state of mortal sin; indeed, even with actual complacency in sin or with the will of sinning. For the will of praying and praising God can stand together with a present affection toward a sin of another kind. Cf. Palmieri, l. c., n. 429. Yet venial irreverence is committed in the latter case;

4. **Continued recitation,** at least so that the individual hours be recited in one morally continuous course, unless a just cause prevents it. Yet a culpable interruption does not exceed venial fault, and what has been said does not have to be repeated; for the individual verses of the psalms have a complete signification and through the intention of completing the hour are sufficiently joined together among themselves. St. Alphonsus, l. 4, n. 168.

Matins, however, can be separated from Lauds; nor does he seem to sin who interposes three hours between the individual nocturns, since several say, although undeservedly, that this was the ancient custom.

Just causes for interrupting an hour or psalm are furnished by every utility, one's own or another's, which would be inconveniently delayed: civility, devotion, obedience to be furnished, etc. St. Alphonsus, l. 4, n. 168.

A pious priest, as is clear, will strive to avoid the very occasions of interruptions;

5. **Ordered recitation,** so that you recite in their order: a. the individual offices; b. the individual hours; c. the individual parts of the hours. Nevertheless:

As to a. The substitution of another office from the Roman Breviary is of itself venial; and for a reasonable cause, for example to recite with a companion of the same rite, or on account of making a journey, the change will be lawful.

Yet it would be grave to choose an office which would at the same time be notably shorter and of a plainly different rite, as if on Palm Sunday you recited the office of Easter. Cf. proposition 34 among those reproved at least as scandalous by Alexander VII, Denzinger, n. 1134. Likewise the deformity, and therefore the fault, would be grave if for the whole year you recited the same office at will.

He who through error has recited one office for another satisfies the obligation. But if it was notably shorter, an equitable compensation from the psalms of the omitted office is to be advised; yet it cannot be imposed strictly, since in that addition the form of the breviary is not preserved. Cf. Palmieri, *Op. theol.*, t. 4, tr. 9, nn. 283-290.

If while praying you notice the error, you have the option either of continuing, in order to preserve unity, or of changing, so that you may accord more with the precept of the Church. This reason seems the stronger, so that it is better to use the principle: "An error is corrected where it is discovered."

Likewise, if you have recited concerning a Saint before the day, it will be better, when the day arrives, to recite again concerning the same Saint than to restore the omitted office.

These conclusions bring this corollary with themselves: that for him to whom the proper office of some saint is lacking, the common office of saints of the same class is to be recited; and if this is lacking, another office must be taken which you have from your own breviary, not from the breviary of another rite.

As to b. A change of order among the hours is venial; and it is excused by a lighter cause than a change of office.

But he who has recited the same hour twice is excused from reciting no other hour, because, by acting otherwise, he would corrupt the prescribed form.

Right order also demands that, unless a just cause excuses, you complete the office of the day before you begin the office of the following day. Wherefore the most recent formulae of the Sacred Congregation of Propaganda Fide grant anticipation in this way: "That, when the divine office of the day has been completed, with a legitimate cause concurring, Matins with Lauds of the following day may be recited privately immediately after noon."

Yet he who, after anticipated recitation of Matins, from devotion, so that the recitation may agree more with the nature of that hour, defers Compline of the day to the evening time, seems in no way to be reprehended. In this opinion we have been confirmed by the opinion of officials of the Sacred Congregation of Rites.

As to c. Nor is it judged grave of itself that in the same hour you invert the order of the parts; as, for example, if delay would be inconvenient, you recite all the psalms of the morning hour, and then the lessons which were not at hand. Yet here one must beware lest he change the form too much. Cf. St. Alphonsus, l. 4, n. 170, and Palmieri, l. c., n. 404.

6. **Timely recitation.** Here it is useful to distinguish the primary, secondary, and privileged determination of time. The primary is to be observed under grave obligation, and it holds even if the secondary cannot be observed, almost as the obligation of annual Communion remains for him who is impeded from communicating in Paschal time. By that primary determination,

the office of one day is to be recited within the twenty-four hours from midnight to midnight, or it is the burden of the day. The secondary determination induces a light obligation which ceases on account of a reasonable cause. By this determination, Matins with Lauds and the first two little hours are to be recited before noon; Sext and None can be paid before or after noon; the afternoon time is assigned to Vespers and Compline. Yet within Lent, that is, from the Saturday before the first Sunday, with Sunday excepted, Vespers, from a rubric which does not oblige under sin, are recited before the meal, from about the eleventh hour. Therefore he who has foreseen that he will be impeded after the meal can and must recite Vespers and Compline in the morning and as in their own time. Cf. Arendt: "Whether the opinion is probable which frees a cleric in sacred orders from the obligation of anticipating in the morning the evening canonical hours when he foresees that he will be absolutely impeded from reciting them in the afternoon" (*Monitore*, 1916, fasc. VI-VII). Yet the extrinsic probability of the more benign opinion, which then excuses from the obligation of anticipating, is not to be denied. Cf. Ballerini-Palmieri, l. c., n. 370; Lehmkuhl, II, 795 f.

Finally, by the determination of time which is called privileged, Matins, Lauds included, can be anticipated on the preceding day.

This, contrary to what Palmieri thought, *Op. theol.*, t. IV, tr. 9, in the note added under number 415, is in no way to be attributed to the regular recitation of the two parts of Matins in the first watches of the night. For all Matins, even when it comprised eighteen psalms, had regularly to be recited after midnight, so that Lauds, which properly were called the morning hour, would be completed at sunrise. The very Invitatory of Lent testifies this to us: "Let it not be vain for you to rise before light." The matter seems to us to be explained in this other way.

In the ancient age, since they opposed day rather to night, they were not accustomed to derive the beginning of the day from midnight. Wherefore night could be ascribed rather indifferently to either of the days between which it was placed. The Jews, however, reckoned the Sabbath to have begun from the evening of Friday. Therefore, since Matins had to be recited in the night time, rather than rise before light, it seemed more convenient, and therefore was sufficiently natural, to satisfy the obligation of chanting Matins in the same night time but before lying down. Moreover, on feasts of a double office, one was paid in the evening, the other before light. Add that, on account of preachings, all the hours, except Compline, were anticipated. Thus the custom of anticipating Matins gained strength, and it persevered even after midnight was judged to be the beginning of the day of twenty-four hours. Lauds, moreover, were anticipated with Matins, which they had been accustomed immediately to follow.

By successive enlargements it came to this, that, the long controversy having been removed by the response of May 12, 1905, in the Placentina,[1] it was simply lawful for all to begin Matins from the second hour. Thereafter the Sacred Congregation of Rites quite easily grants the faculty of beginning from the first hour; indeed, anticipation from the first hour is permitted after the manner of a privilege to priests of various associations; from the twelfth hour it can be granted by Legates of the Roman Pontiff to individual clerics and religious; the same is contained in the faculties of Propaganda Fide.

But the foresight of an impediment compels no one to use the faculty of anticipating Matins on the preceding day. At least the most approved usage has interpreted the faculty thus. For, after the whole Sabbath was separated from Sunday, anticipation made on the preceding day could now be nothing but a privilege which each one could use, but no one had to use.

As has already been said elsewhere (*Theol. fund.*, n. 371), from the express concession of c. 33, in the private recitation of the hours the option is given of local time, true or mean, and of legal time, whether regional or extraordinary.

Matins with Lauds, by the rubric, must be recited before the sacred rite. The night of the Nativity of the Lord is excepted, in which Lauds after the first Mass are recited even in choir. Although some urge this rubric under grave sin and others under light sin, the obligation under sin is not established. Cf. Ballerini-Palmieri, l. c., nn. 405-406. And since today the private office is joined with Mass by a lesser connection, for so often a priest must read a Mass differing from the office, that obligation seems to be denied by a stronger argument.

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(1) In the year 1905, to doubt 1, "Whether in private recitation Matins for the following day can begin at the second afternoon hour, or whether the table of the diocesan directory must be followed at all times?" the Sacred Congregation of Rites had responded: "Let approved authors be consulted." Cf. *Per.*, 3, 107. But in the authentic edition, n. 4158, the response was rendered in these other words: affirmative to the first part, negative to the second. Cf. *Per.*, 7, 80. On the controversy concerning the second hour, see Ballerini-Palmieri, l. c., nn. 407-416.

— **Gravity of the Obligation.** The obligation of reciting the canonical hours, by the consent of all, is grave.

The opinion, not indeed of all,(1) but very common and confirmed by the authority of St. Alphonsus, judges grave the omission of any hour, even a little hour, and, in a longer hour, of a quantity somewhat greater. And even after the reform of the Psalter carried out by Pius X, by which most of the little hours were abbreviated, we know that this strict opinion alone is approved by the Sacred Congregation of the Holy Office.

That gravity is gathered especially from the common estimation of experts and the usage of the timorous: these are among the signs by which a grave obligation is discerned.(2) "For an intrinsic argument, I think, is difficult to find." Thus Palmieri, *Opus Theol.*, t. IV, tr. 9, n. 357. Yet he himself adds this: by the omission even of one little hour, the intention of the Church is gravely injured, namely that all the hours of day and night, and thus all time, be dedicated to God through the service of certain prayers. But a grave injury to that intention effects a grave deformity.

Since lessons are not properly prayers, they say that the quantity required for grave sin must be increased. Wherefore the omission of three lessons with responsories is judged light.

And what is admitted concerning petty thefts holds here also. If you take away something from the individual hours, the grave quantity must be increased. Cf. Ballerini-Palmieri, l. c., n. 358.

The office of one day falls under one precept. Wherefore, unless the acts of will are multiplied from elsewhere, by cessation or interruption, he who has omitted the office of one day commits one sin.

But he who by one act of will removes from himself the availability of the breviary is more truly, according to the principles concerning the numerical distinction of sins, guilty of one sin. Cf. I, n. 437.

On the contrary, if he has determined that he will omit the breviary for several days, but has preserved the availability of reciting it, they wish there to be as many sins as there are days on which the breviary is omitted. We have tried to give the difficult reason for this opinion in *Theol. fund.*, l. c.

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(1) Cf. Dominic Soto, *De Iust.*, l. 10, q. 5, art. c., conclusion 4, e.

(2) *Theol. mor.*, I, 233, p. 214.

— **Causes Excusing from the Recitation of the Breviary** are:

1. Impotence from lack of the breviary, blindness, etc. Yet except notable parts which, morally as a whole and according to the obligatory form, you already hold from memory. There is no obligation of learning the Hours by memory. A notable part would be some hour, even a little hour, of which you are ignorant only of the prayer, chapter, or hymn; an entire nocturn of Matins. Indeed more probably, though the probability of the contrary opinion is not denied, if you are ignorant only of the lessons, but can recite several psalms in the order of the Breviary, you are held to these.

But he who, being obliged to the Roman Breviary, has available only the Benedictine or Ambrosian is not held to recite this. For the obligation is of reciting from one's own liturgical book;

2. Grave inconvenience, which, for example, dim eyes, great scruples, grave illness, or even light illness joined with notable heaviness of the head, weariness of strength, or probable danger or fear of great inconvenience of this kind, produce.

In doubt concerning sufficient infirmity, one can stand by the judgment of a physician or prudent man, especially of a Superior, who then, by dispensing, can remove every scruple. If the doubt perseveres after inquiry, there is no obligation of reciting. And lest he be disturbed by troublesome anxieties, an infirm person who is certain that he cannot recite the whole office, and doubts about a part, is probably held to nothing. Convalescents also, for some days, are excused by the judgment of prudent persons, even if meanwhile they celebrate Mass or have conversations. Nor if someone, for the sake of recreation, can read for several hours, must he now certainly recite the office. For, according to the disposition of the convalescent, the one perhaps first refreshes, while the other can be troublesome and very laborious.

Grave inconvenience can also arise from external danger, for example during a raging persecution, or from dishonor of the ecclesiastical order, as if, in prison for an infamous cause, a cleric in sacred orders would betray himself.

He who can easily have a companion and recite with him must use such a means, which is very consonant with the primitive institution. But a companion is not to be sought with difficulty; nor is he to be hired for a price: the use of a companion would then be an extraordinary means;

3. A graver occupation, especially a sudden one, such as of preparing a lesson or sermon; works of charity to be furnished, which you cannot combine with reciting the breviary, as if you are morally occupied the whole day with confessions, are called toward night to one dying, etc. Sudden, I say, and accidental occupation; for the recitation of the Breviary must be combined with ordinary duties, unless you prefer to dismiss certain labors or petition a dispensation;
4. Dispensation, which only the Supreme Pontiff validly concedes without cause. The Ordinary of the place cannot dispense from common law, but universal custom, by which one can stand, permits that for a brief time, for a just cause, he dispense, unless he has obtained a greater faculty. D'Annibale, III, 153. He can provide for an urgent case from the Code itself. A Legate of the Roman Pontiff can commute the obligation.

And regulars have their own privileges.

— **What Office Is To Be Recited?** Each one, in reciting the office, must follow his own calendar.

A bishop, even a regular, must recite the office of the Church over which he is placed. If he governs two dioceses, he recites the office of the diocese in which he habitually resides, or even in which he is actually staying. S. R. C., June 11, 1605; January 17, 1880; May 28, 1898, Decrees nn. 181, 3508, 3993 ad 1.

Priests recite the office of the church to which they are attached, even as vicars. S. R. C., February 4, 1898, Decree n. 3979 ad 7.

Outside their proper domicile, bishops and beneficiaries must always recite the office of their proper church.

Concerning an absent bishop who governs two dioceses, nothing has been defined. Let him recite his habitual office; or, if it varies according to the diocese in which he actually resides, he seems to have the option of either office. Simple priests can conform themselves to the office of the place where they are staying.

In transit through various places, it is more advisable that they use the calendar of their proper diocese. S. R. C., November 12, 1781, Decree n. 2680. But if, for example as seminarians, they have acquired quasi-domicile in some place, they more probably must recite the office of that place rather than the office of their domicile.

Regulars who are obliged to choir, in another house, must follow the calendar of that house, at least in choir. Otherwise, those who are staying for a brief time, as below a month, in another house should keep the order of their own house. S. R. C., September 25, 1852; June 27, 1896 ad XIII, Decrees nn. 3001 and 3919. In a longer stay they can follow the calendar of the house in which they are staying. On a journey let them keep the calendar of their own house. But if they live for a longer time outside monasteries, for example Lenten preachers, let them follow the common calendar of the Province, without attending to the proper offices of houses. S. C. R., August 31, 1839, Decree n. 1801.

In foreign missions, sometimes there is no calendar except that of the religious who labor there. If a twofold calendar is had, the bishop recites the office of the diocese; regular pastors, which we think holds concerning religious, keep the proper calendar of their religion, with the exception of the

offices of the Titulars of the Churches over which they preside. S. C. R., May 13, 1892, Decree n. 3772 ad 1 and 2.

— **What in Doubt Concerning the Recited Office or a Part of It?** In negative doubt, the office must be paid. But in positive or probable doubt, the Church, in accordance with her humanity, is not judged to oblige one perhaps to recite twice.[1] Various presumptions can confer this probability: as if you remember that you began, and, without voluntary interruption, find yourself at the end of a psalm, lesson, or hour. And in these matters it is often expedient not to repeat, in order to avoid habitual anxieties and scruples by which the task of the Divine Office gradually becomes an unbearable burden, rather than spiritually feeding and refreshing the soul.

The scrupulous, however, must be prohibited from repeating anything, in doubt whether they have recited or satisfied. St. Alphonsus, l. 4, n. 175, 1.

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[1] There are those who wish to appeal here to the principle of probabilism. But they sin by confusion of doubt of law and doubt of fact. Cf. *Theol. mor.*, I, 365 and 369.

— **N.B.** The rite by which the breviary must be recited is defined for all by the Sacred Congregation of Rites; but the very force of the precept is declared and urged by the Sacred Congregation of the Council for secular clergy and by the Sacred Congregation of Religious for religious. Dispensations also are conceded by each of the latter Congregations according to the secular or religious quality of the person.

— **Counsels.** Although the breviary is recited validly in a place where noise is made by others, a pious priest nevertheless will try to recite the canonical hours in that place where the recitation can be devout and edifies those standing by. Therefore public ways seem to be excluded, at least in inhabited places, and, if another option is had, public carriages which, on account of noise or conversations, are inconvenient, while the most fitting place is a church or chapel where the Most Holy is reserved. Let a fitting time also be chosen, anticipating rather than delaying: he gives twice who gives quickly, and he also gives more willingly who gives early. But so that the breviary may be recited more sweetly, let all scrupulosity be avoided, and let a sincere will of praying as the Church prescribes be fostered, so that the task may be offered to God as if spontaneously.

B. On Choral Recitation and Recitation with a Companion

— **Object of the Choral Obligation.** 1. From c. 413, §2, the Divine Office to which the chapter of a cathedral or collegiate church is bound "comprehends the psalmody of the canonical hours and the celebration with chant of the conventual Mass, besides other Masses to be celebrated either according to the rubrics of the Missal or from pious foundations." And from c. 414, "All and each who obtain a choral benefice are bound to pay the divine offices in the choir itself on individual days, unless service by turn has been granted by the Apostolic See or by the laws of the foundation."

These things are from common law. But in mission places and also elsewhere, from various indults, that obligation is sufficiently moderated.

2. From c. 610, in religions which have choir, "where there are at least four obliged to choir," therefore not novices or lay brothers, "and actually not legitimately impeded," by infirmity or occupations, "and even fewer if the constitutions so bear, the divine office must be paid in

common daily according to the norm of the constitutions. A Mass also corresponding to the office of the day must be celebrated daily according to the rubrics in religions of men and also, insofar as can be done, in religions of women."

That obligation is grave in religious Orders. In other religions the constitutions must be considered.

Yet the omission of one little hour in choir is not judged grave by many. Palmieri, *Op. theol.*, l. c., n. 335.

A notable inversion of order is held by some as lethal; but the matter is not demonstrated.

But the time must be reckoned according to the common usage of the place (c. 33, §1).

The grave obligation of taking care that choir be had rightly presses Superiors, that is, bishops with respect to canons and domestic Superiors with respect to religious. In religions the obligation of choir can also be satisfied through novices.

— **Mode of Recitation.** One reciting with a companion or in choir:

1. Must himself, if he is the one held, recite his proper part suitably. Moreover, even if they are more than two, they must arrange themselves for the psalms in only two choirs, equal or unequal in number, so that all recite alternate verses. This is established from the usage of the Church. A greater option is permitted for lessons, responsories, chapters, antiphons, and prayers, which can either be distributed among all so that each has his own part to be recited, or all be said by one, so that the rest merely hear. Indeed, from St. Alphonsus, l. 4, n. 162, he probably satisfies who alone recites the psalms and hears the lessons from another; but he would not satisfy who merely recited the lessons;
2. Must try so that he himself attends to those things which are recited by the companion or in choir, and this so that in the part which he does not recite he may formally communicate. Yet the precept is human. Wherefore only he is judged not to have satisfied who has had a reflexively voluntary distraction for a notable time; that is, who not only has been voluntarily distracted but has also noticed that he is being wholly carried away in mind and yet has not collected himself. Cf. Lehmkuhl, II, 806.

Similarly, one who does not perceive distinctly, but only confusedly, whether because he is somewhat deaf, or on account of noise, or on account of a defect of choir or of a companion who nevertheless recites substantially well, is judged to have satisfied, especially if with his eyes he reviews what he does not recite. St. Alphonsus, l. 4, n. 163.

There is greater doubt concerning a deaf man who chants his parts in choir. More probably he indeed gains distributions (Suarez, l. c., l. 4, c. 28, nn. 17-18), but he does not fulfill the task of the office unless he recites in a low voice those things which he does not chant. Yet some respond more benignly. Thus d'Annibale, II, 51 (38).

On the contrary, he who in choir recites his own part in a low voice and hears the other probably satisfies the obligation of the office, because through the others with whom he is joined he sufficiently communicates with the other part; yet a canon does not gain distributions unless he sings, or chants like the others.

— **I. On the Part of the Companion:**

1. No quality of person, or obligation to the office, or attention is required.
2. It suffices that the companion substantially pronounce his own part, by taking up the other. For the things which he inserts into the recitation of the other are virtually reputed omitted, so that if they were many, they must be repeated by the other.

II. You do not have to repeat what in choir you neither recited nor heard while you were occupied in incensing at the *Magnificat* or *Benedictus*, or in carrying around necessary books, or in foreseeing the lesson soon to be sung, or in performing other things necessary in choir, because the whole choir supplies these things and recites or sings these not only in its own name but also in the name of the ministers. Cf. Laymann, 4.1, 5, 7.

But that he who for the whole time merely plays the organ can satisfy, not a few have affirmed; St. Alphonsus, l. 4, n. 143, denies it. And unless custom interprets the matter thus, we judge that the response must be made with St. Alphonsus. Palmieri, however, l. c., n. 335, inclines to the more benign side.

§ 3. Obligations Common to Priests

— By canons 126-131 these things are imposed on priests:

1. At least every third year, spiritual exercises, in some pious or religious house. To the proper Ordinary pertain: the designation of the house; the determination of the time; the faculty of exempting a priest in a particular case. Express permission is required (c. 126).

Although c. 592 carries over to religious all obligations contained in cc. 125-142, c. 126 affects only seculars. For it expressly names secular priests; and, from the nature of the matter, the proper constitutions of religious will define what they themselves must perform in this matter.

Because the word "at least" is used, it remains entire for the Ordinary of the place to prescribe more frequent exercises;

2. A peculiar obligation of reverence and obedience (c. 127).

For they are held by a formal promise of obedience; a more frequent useful occasion of obedience is offered to them; with greater harm to the Church and to souls they refuse obedience. The scope of the obligation is defined from the nature of the state and from custom; the promise adds an obligation of fidelity. The bishop can command them from jurisdiction alone;

3. Continuation of sacred studies and, for three years, an annual examination (cc. 129, 130).

The obligation of examination also affects pastors and canons, "unless they have been exempted by the Ordinary of the place for a just cause." The ordering of the examinations belongs to the Ordinary of the place. In conferring offices, account is to be had of those who have stood out more in the remembered tests (c. 130, §2);

4. The obligation of assisting at collations or conferences concerning moral and liturgical matters, and at other exercises which the Ordinary has added as opportune for promoting the knowledge and piety of clerics. These collations are to be instituted in the episcopal city and in the individual vicariates forane or deaneries (c. 131).

These collations must be had more often in the year. How often? This is left to the judgment of the Ordinary. He also establishes norms for sending written responses, if it is difficult for the meeting to be held; and he grants a dispensation, which must be express.

The obligation holds all secular priests; but religious also, even exempt, if they have care of souls, or, being approved for confessions by the Ordinary of the place, lack collations in their own houses. A pastor or quasi-pastor has care of souls, but not a cooperating vicar. Those who contumaciously refuse to be present at collations must be punished; religious confessors who do not exercise care of souls must be suspended from the confessions of seculars.

N.B. - Concerning vocation and the required qualities, we shall treat more conveniently where we treat of the sacrament of Order.

Summary

— **I. Negative Obligations.** 1. On account of danger to virtue and reputation, clerics must keep from themselves women easily suspected; nor can they cohabit except with near relatives or their family, or with women of such probity and age as, in the judgment of the Ordinary, removes every suspicion. Common life, however, is commended to clerics.

2. For protecting peace of soul and honest support, clerics illicitly become sureties without consulting the Ordinary.

3. On account of the decorum of their state, they are prohibited: a. to exercise unbecoming arts; b. to spend time on games of chance, money being exposed, or to indulge in them notably; c. to carry arms, especially publicly, without a just cause; d. to indulge in hunting or to exercise noisy hunting; e. to enter taverns without necessity or a cause approved by the Ordinary. A tavern, from common law, is a common eating-house; but the stricter discipline of certain places must be observed; f. to go to public theaters or, when it is unbecoming, to be present at spectacles, dances, and pageants: concerning cinematographic spectacles the usages of places must be attended to.

4. On account of discrepancy between their proper offices and these other things, they are prohibited: a. without apostolic indult, to exercise medicine or surgery. In the indult which, for example, is granted to missionaries, an incision or cauterization such as may bring danger of life or mutilation is of itself excepted; b. to act as public notaries, unless in the ecclesiastical Curia; c. to assume public offices which bring with them the exercise of lay jurisdiction or administration, such as those of judge or prefect of a province; d. without the permission of their own Ordinary, to manage the goods of laymen or to fulfill secular offices which oblige them to render accounts. Secular clerics, however, can be tutors of related persons; e. to be procurators or advocates outside an ecclesiastical tribunal, unless there is question of their own cause, and perhaps that of relatives, or of their church; f. in a lay criminal trial pursuing a grave personal penalty, to intervene, even as witnesses, without necessity; g. without the

consent both of their own Ordinary and of the Ordinary of the place of election, to solicit or accept the office of senator or deputy. Bishops and Ordinaries need at least the tacit assent of the Holy See; h. voluntarily to undertake military service, unless, with the consent of their own Ordinary acceding, they do so that they may more quickly be freed from the burden (c. 141); i. to exercise commerce or business by themselves or through others, for their own utility or for the utility of others. The prohibition first comprehends every gainful business, that is, by which things are bought with the intention that, morally unchanged, they be sold at a higher price; it also touches artificial business, by which things are bought so that, by industry or art, having been reduced into a more useful form, they may be sold more dearly, unless clerics apply their own industry, or there is question of the fruits of their own field. Thus it is lawful, even through hired workers, to fatten animals in one's own pastures and to sell them fattened with profit. The buying together of things which are then retailed to others (*negotiatio politica*) must also be avoided, unless the end of charity or mercy prudently commands it. But economic dealing is not prohibited, by which fruits collected from one's own field are sold, or things which remain over from goods broadly bought for one's own use; or things which, bought for one's own use, are then, with a plan changed, sold even with profit. Yet every mode which may be unbecoming to clerics must be avoided.

Forbidden business is permitted to be exercised neither by oneself nor through others, whether for one's own utility or for that of others.

But, with stock-exchange dealings and the administration of companies excluded, clerics today do not seem to be prohibited from peacefully possessing securities, even shares, of companies, even commercial ones, and, when the occasion is given, profitably exchanging them: because in common estimation these things neither are unbecoming to clerics nor make anyone a merchant or businessman. Yet there are those who think more strictly.

A cleric will have sinned gravely who has exercised forbidden business, and is said to have to be restrained by suitable penalties; he is excused at least from grave sin who has done this once or again, or on occasions morally separated. It is also tolerated that a cleric who has succeeded to his father carry on the paternal business through others, namely connected co-heirs; or that he provide for his own poverty by honest business. In other successions or necessities, permission or dispensation of the Holy See in Italy, or, with the conditions observed, of the Ordinary outside Italy, will have to be obtained.

II. Positive Obligations. - 1. All clerics must: a. lead an interior and exterior life holier than laymen; b. show their proper Ordinary reverence, according to received custom, and obedience, so that they are prompt in obeying the laws, precepts, and admonitions of competent Superiors. Therefore clerics, not legitimately impeded, must accept and faithfully fulfill the very office which, for the necessity of the Church, has been committed to them by the bishop (c. 128); c. acquire for themselves solid doctrine; d. show a simple care of the hair; e. wear decent ecclesiastical dress, such as is defined by the custom and prescriptions of the Ordinary of the place: to put aside that dress for five or six days without cause is reputed grave if it is done by a beneficed cleric or by a cleric of major orders; f. wear the clerical crown, unless the received customs of peoples bear otherwise: yet this obligation is not judged grave. As to the beard, one must not depart from the custom of the diocese; g. reside in their

own diocese in such a way that, without permission, at least presumed, of the Ordinary, they are not long absent from the diocese.

2. All clerics of major orders: a. are kept from marriage by a diriment impediment, and are held by the obligation of preserving perfect chastity, so that those sinning are guilty of sacrilege. And in the Latin Church, they must emit a vow of chastity. Since this is an obligation of state, the candidate himself will have sinned gravely who petitions sacred ordination while he could not prudently judge himself morally fit for fulfilling it; that is, if it would be too difficult for him to avoid every scandal and to preserve perfect chastity, at least habitually. Therefore, regularly, sufficient proof of virtue is to be required before sacred ordination; and that proof is to be the more certain the greater the danger of relapse and scandal is, the less the remaining capacity is, and the easier withdrawal from the priestly state is. And even outside a custom properly so called, clerical life is regularly to be dissuaded for those whose future chastity is foreseen as only maimed and interrupted; b. they are held to daily recitation of the canonical hours from the very moment of received subdiaconate, in such a way nevertheless that even before ordination they seem able validly to recite the hours following it.

Beneficiaries, however, are held from the day of accepted possession of the benefice, if they perceive or will perceive the fruits. Those gravely negligent, at least after the first six months, do not make the fruits their own pro rata, so that from justice they must distribute them either to the fabric of the church, or to the diocesan seminary, or among the poor. With attention to the slightness of benefices, almost never, at least in many regions, will there be place for paying this penalty.

Those solemnly professed, in religions in which there is an obligation of choir, must recite the Breviary at least privately from the moment of profession.

One obliged by several titles nevertheless satisfies the debt by one recitation.

The substantial obligation is that the canonical hours be recited entirely every day "according to the proper and approved liturgical books" (c. 135). Today the obligation of reciting the litanies of All Saints on the very feast of St. Mark and on the Rogation days is certain, but less certainly grave. Those litanies cannot be anticipated on the previous day.

As to the mode of recitation, vocal recitation is prescribed, so that words be formed; without syncopation or abbreviation of words and syllables: the defect will generally be venial, or even excused by stammering or by invincible custom against which one acts; devout, from the intention of worshiping God, and with at least that attention which is called external, and which looks to this: that exterior actions be excluded which cannot be composed with internal attention. Internal attention is distinguished into superficial, or to correct pronunciation; literal, or to the sense of the words; spiritual, or to God and divine things. A different mortal sin does not obstruct the substance of the obligation. Recitation is prescribed, under venial sin, as continuous, so that, excepting a just cause, in one morally continuous course you recite those things which are not permitted to be separated. The individual offices must be recited in their own order: yet the substitution of another office from the same breviary is of itself venial; and, if done from error, satisfies the obligation. A change of order among the hours is venial; nor is it judged grave if in the same hour you invert the order of the parts, provided that you do not change the form too much.

As to time: the office is the burden of the day, so that the whole must be recited under grave obligation from midnight to midnight; the obligation is light of reciting before noon Matins with Lauds and the first two little hours; after noon, however, Vespers and Compline. On the ferias of Lent, after the first Sunday, Vespers, from the rubric, not under fault, are recited before the meal, just as in any part of the year Matins with Lauds are recited before the sacred rite: nor is the obligation of this under fault established. Matins with Lauds can already be anticipated on the preceding day from the second hour; and a greater anticipation is granted quite easily. Foresight of an impediment does not oblige you to anticipate on the preceding day; but a sufficiently certain opinion obliges you to recite Vespers and Compline in the morning if you foresee an afternoon impediment.

The obligation of the divine office is grave. And from the common opinion, which is demonstrated by general persuasion rather than by speculative arguments, the omission of one little hour must be reputed grave, if you except Vespers of Holy Saturday. But, unless acts of will are multiplied by cessation or inconstancy, he commits one sin who has omitted the whole office of one day.

The excusing causes are impotence, from lack of one's proper liturgical book, blindness, etc.; but a notable part which you can recite from memory, you will have to recite; grave inconvenience from external danger, or from dim eyes or from great scruples, from grave illness, or even light illness if it is joined with notable heaviness of the head, weariness of strength, or probable danger or fear of such inconvenience. In doubt there is no obligation; and convalescents, for some days, are excused by the judgment of prudent persons. A graver extraordinary occupation also excuses; for, unless you are dispensed, the obligation of the breviary must be combined with ordinary occupations. Without cause only the Supreme Pontiff can dispense from the breviary; for a just cause a Legate of the Roman Pontiff commutes the breviary, and for a brief time, from universal custom, but not from the Code, the Ordinary of the place does so. In negative doubt concerning the recited breviary, but not in positive probable doubt, the office must be paid. Pious recitation is to be procured in a suitable place. In the recitation of the breviary all scrupulosity must be guarded against. A cathedral and collegiate chapter, and religions which have choir, if four obliged to choir and actually not impeded are present, are held, with indults saved, to the psalmody of the hours and to the conventual Mass. The obligation is grave, in such a way nevertheless that the omission in choir of one little hour is not judged grave by many. The time must be estimated according to the common usage of the place.

One reciting with a companion or in choir must himself recite his proper part. And the psalms, but not the lessons and hymns, must be recited in alternate verses by all. He must also try in a human way to attend to those things which are recited by the companion, by abstaining from reflexively voluntary distraction. Distinct perception which is impeded by some cause does not obstruct validity. Any companion can be chosen. And for one reciting with a companion it is enough that the companion substantially recite his own part.

3. All priests must: a. at least every third year perform spiritual exercises according to the prescriptions of the Ordinary; b. particularly show reverence and obedience to their Ordinary: the promise made in ordination adds an obligation of fidelity; c. for three years undergo an annual examination concerning sacred studies; d. be present at collations concerning moral and liturgical matters, and at other exercises which the Ordinary has prudently commanded; e. celebrate Mass several times in the year.

III. The obligation of celibacy and of the canonical hours is not contracted by a cleric who, coerced by grave fear, has received sacred order, unless afterward, the fear having been removed, he has ratified the same ordination, at least tacitly through the exercise of the order by which he has signified that he subjects himself to the obligations of clerics. Wherefore, coercion and defect of ratification having been legitimately proved, he is reduced to the lay state by judicial sentence. This he can also obtain without judicial form from the Sacred Congregation of the Sacraments.

Therefore the prudent selection of seminarians is commended also for this reason, lest afterward they be able to allege pretexts for petitioning relaxation of obligations: which harms virtue and zeal not a little. The seminary should be open to no one who would wish to enter not fully free, not led by supernatural motives, or with a temperament too prone to venery or loves.

Chapter IV: On Ecclesiastical Offices and Benefices

Order of Speaking. - In the very section in which it proposes the law of clerics in general, the Code assigns the three later titles to ecclesiastical offices, ordinary and delegated power, and the reduction of clerics to the lay state: which titles are thus placed between clerics in general and clerics in species. But it reserves the title concerning benefices to the fifth Part of the third book.

Omitting here the notions concerning ordinary and delegated power, which generally in moral theology have been accustomed to be suggested rather than formally handed down, and also passing over the canonical argument concerning reduction to the lay state, it has seemed to us, on account of the connection of the matters, to treat conjointly of offices and benefices insofar as will be sufficient for our end.

Article I: On Ecclesiastical Offices (cc. 145-195)

§ 1. The Notion and Provision of an Office

— An ecclesiastical office, taken broadly, "is any function which is exercised unto a spiritual end; but in the strict sense, it is a function stably constituted by either divine or ecclesiastical ordinance, to be conferred according to the norm of the sacred canons, bearing with itself at least some participation of ecclesiastical power, whether of order or of jurisdiction" (c. 145, §1). "In law, it is taken strictly, unless something else appears from the context of the discourse" (c. 145, §2).

Therefore a stable, not temporary, constitution of the function; a conferral to be made according to the rules of law, not at the discretion of the Superior; and participation of some spiritual power pertain to the essence of an office properly so called. Therefore, only in the broad sense do these have an office: an apostolic administrator, of whom c. 312 ff. treats, even a perpetual one, or a simple confessor, for stability of office is lacking; the secretary of a bishop, the spiritual director of a monastery, for the conferral is made at the discretion of the Superior; a lay custodian of a church, for he participates in the power neither of order nor of jurisdiction. On the contrary, a residential bishop, a canon, a pastor, a regular Superior exercise an office properly so called.

— **Provision of an Office in General.** 1. Without canonical provision, that is, without a legitimately made grant of the office, an ecclesiastical office cannot be obtained validly.

2. Provision or promise of an office which is not vacant produces no effect (c. 150).
3. By a Superior below the Roman Pontiff, provision is forbidden to be made to a person whom his proper Ordinary has not found suitable.
4. The modes of providing are:

Free conferral by a legitimate Superior;

Institution of a presented person;

Confirmation of an elected person or admission of one postulated;

Election and acceptance of the elected person, if the election does not need confirmation.

— **Free Conferral.** 1. The right of conferring offices of itself belongs to the Ordinary of the place, in his own territory.

2. Ecclesiastical offices can be validly conferred only on clerics; offices with care of souls only on priests (cc. 153, 154).

Nor are two incompatible offices to be conferred on the same person, that is, offices which cannot be fulfilled at the same time by the same person (c. 156).

3. Conferral cannot of itself be deferred beyond six useful months from notice of the vacancy having been had. Except if, in the prudent judgment of the Ordinary, the circumstances of places and persons demand further delay (cc. 155 and 458).
4. "The provision of any office whatsoever is to be committed to writing" (c. 159).

— **Institution of a Presented Person** is had when the right of patronage or an apostolic indult gives someone the faculty of presenting or nominating. Cf. below, concerning Benefices.

— **Confirmation of an Elected or Postulated Person.**

Election is the collegial calling of a suitable person to a vacant office.

From the general rule, it is not to be deferred beyond a useful trimester from notice of the vacancy having been had. Electors are said to have active voice; those eligible, passive voice. All electors must be convoked. With a special constitution or custom saved, convocation is made by the president of the college; the absent cannot send a vote or constitute a procurator; several titles do not confer several votes. No one can give his vote to himself. The ordinary mode of election is scrutiny, through secret votes. The extraordinary mode is quasi-inspiration, when without a prior agreement, all, to a man, pronounce someone elected; and compromise, when electors, by unanimous and written consent, transfer the right of electing for that turn to one or several suitable persons, whether from the body of the college or from outsiders. The election must be proclaimed by the president and immediately intimated to the elected person, who, at least within a useful octiduum from the received intimation, must manifest whether he consents to the election or renounces it. From the election an acquired right arises for the elected person, subordinated to his consent. The election having been accepted, the elected person must within eight days, from the competent Superior, by himself or through another, petition confirmation, which he cannot deny if he has found the elected person suitable and the election was legitimately carried out. Confirmation is to be given in writing, and of itself confers full right.

The election of the Supreme Pontiff is governed solely by the peculiar law of the Constitution *Vacante Sede*, December 25, 1904 (cc. 160-178).

Postulation is a petition presented to the competent Superior, by which those electing ask that the office be conferred upon a person who labors under a dispensable impediment, for example defect of age.

Postulation must be sent within an octiduum to the Superior who can confirm the election and dispense from the impediment. That Superior can freely reject the postulation. Wherefore, before the

postulation is admitted, the one postulated has acquired no right. The postulation having been admitted, the one postulated, within a useful octiduum from the signified admission, must accept or refuse the office. By acceptance he has acquired full right (cc. 179-182).

— **Election and Acceptance of the Elected Person.** If the election does not need confirmation, the elected person obtains full right by the simple acceptance of his election.

Thus the elected Supreme Pontiff; thus, of itself, the elected Superior General of a religious institute.

— You will ask by what obligation offices and benefices must be conferred on worthy and more worthy persons. Cf. Lehmkuhl, I, 1159 with note.

1. Election or presentation of an unworthy or unsuitable person, whatever office is in question, is always to be charged as grave sin. For it contains a grave abuse concerning a sacred thing. And the provision is null, or at least can be invalidated by sentence of the legitimate Superior.
2. The conferral of an office with care of souls made to one less worthy in preference to one notably more worthy is grave sin, on account of the spiritual utility of which it deprives the faithful. Cf. c. 459, by which the conscience of the Ordinary of the place is gravely burdened, and, concerning bishops, proposition 47 condemned by Innocent XI (Denzinger, 1197). The very presentation of one less worthy to a benefice with care of souls is similarly blameworthy: yet the Superior will of itself be able to confirm one presented who is absolutely worthy, since, below the Pope, no one can take away an acquired right and therefore repel such a person.
3. Concerning a grave obligation of not omitting the more worthy in the conferral of a simple benefice or presentation to such a benefice, it is not established, at least if this acceptance of persons is not too frequent. Compare c. 153, §2 and c. 459, §1.
4. If at any time clerics are called to a benefice through a competition, a much graver reason imposes the election of the more worthy.

For most ascribe a strict right to the more worthy person that he be preferred, so that his being passed over is injurious to him. Yet this does not seem to be established, since a competition is principally instituted not for the utility of the contenders but for the utility of the Church, so that it may have good ministers and pastors. Commutative justice also intervenes less toward the more worthy person when the competition is made not specially for some benefice, but generally for benefices now or later vacant.

5. But who is to be held more worthy is established from many elements. For the estimation of worthiness is made not absolute but relative. Therefore the more worthy is he who, with all things weighed, even what advantage birth and riches can bring, is judged to suit a certain church more. Indeed, in general the utility of the Church must not be neglected. Wherefore in conferring some benefice the collator can omit the more worthy person for whom he reserves another benefice of greater moment for the good of the Church. Cf. c. 459, §2; Prummer, *Manuale*, q. 77.

§ 2. Loss of an Ecclesiastical Office

— 1. An ecclesiastical office is lost by resignation freely made and accepted by the legitimate Superior.

With a special prohibition saved, it is lawful for a just cause to resign an office; Superiors are admonished not to accept resignations without a just and proportionate cause. The office is vacant from the moment at which the acceptance has been signified to the one resigning.

The resignation of the Supreme Pontiff, without anyone's acceptance, is of itself valid (c. 221).

Besides express resignation, which, for validity, must be made in writing or before two witnesses, there are cases of tacit resignation introduced or admitted by the law itself. They are numbered in c. 188.

2. An office is lost by privation, whether by the law itself or from a decree of the legitimate Superior. The cause can be delict, incapacity, or reason of the common good. Process is required when there is question of an irremovable office or of a parish; no mode of proceeding is necessary in other cases. From the decree of the Ordinary, recourse to the Holy See is given in devolutive effect.
3. An office is also lost by transfer, which only he can carry out who has the right of accepting resignation or of removing from the prior office and promoting to the other. The transfer of a consenting cleric can be made for any just cause; the transfer of an unwilling cleric requires the causes and mode of privation; and the transfer of a pastor is governed by the special law of cc. 2162-2167.

"In transfer, the prior office is vacant when the cleric canonically takes possession of the other, unless something else has been provided by law or prescribed by the legitimate Superior" (c. 194).

Article II: On Ecclesiastical Benefices (cc. 1409-1488)

§ 1. The Notion and Division of Benefices

— "An ecclesiastical benefice is a juridic entity constituted or erected in perpetuity by competent ecclesiastical authority, consisting of a sacred office and the right of perceiving revenues from the endowment annexed to the office." Thus c. 1409.

A juridic entity is the same as a moral person, or a subject of law, which is such not on account of its physical nature, but on account of law, natural or positive, which recognizes or effects its moral unity.

Competent ecclesiastical authority is the Supreme Pontiff for dioceses and quasi-dioceses and dignities of a chapter; for canonries, at least if emoluments are annexed, parishes and quasi-parishes, it is also the Ordinary of the place (cc. 393, 394). The Cardinal himself, in his own title or diaconia, unless it is a church of an exempt clerical religion, can erect a benefice not having care of souls (c. 1414).

The constitution or erection must be perpetual; but now it is not required that it be conferred upon someone in perpetuity: objective, not subjective, perpetuity is necessary.

What a sacred office is, cf. n. 51.

The endowment of a benefice, by today's law (c. 1410), can consist not only in goods possessed by the juridic entity, but also in prestations of the faithful, whether owed or voluntary, provided they are certain as taxed and pertain to the rector of the benefice: thus stole fees, but not Mass stipends, which can be acquired by every celebrant. The choral distributions themselves, if all revenues of the benefice consist in these distributions, can constitute the endowment of a canon, with the third part of them excepted, however, since that third part, from c. 395, is reserved for daily distributions among those present.

By the right of perceiving revenues the definition of a benefice is now completed. Before the Code, it had been customary for it to be defined by the same right, with the word "perpetual" added. And the office was called the foundation of the benefice. Cf. d'Annibale, *Summula*, III, 18 and note 5.

— Ecclesiastical benefices are distinguished as: consistorial, which have been accustomed to be conferred in consistory, thus episcopates, and non-consistorial; secular or religious, according as they belong only to secular clerics or only to religious clerics, benefices erected outside churches or houses of religious being presumed secular in doubt; double or residential, or simple or non-residential, according as they have annexed or do not have annexed the obligation of residing; with care of souls or without care of souls, according as they have or do not have care of souls joined to them; manual, temporary or removable, or perpetual or irremovable, according as they are conferred revocably or in perpetuity (c. 1411).

— Besides the erection of a benefice, the canons also foresee various unions, divisions, dismemberments, conversions, suppressions of benefices and translations of sees, concerning which canonists are to be consulted. Cf. cc. 1419-1430 and *Epitome I. C.*, II, p. 408 or n. 747 ff.

§ 2. Conferral of Benefices

— 1. **Who may confer them.** The Supreme Pontiff can confer all benefices; he reserves to himself the conferral of certain benefices (c. 1435).

The conferral of vacant benefices of itself belongs to the Cardinal in his own title or diaconia; to the Ordinary of the place in his own territory.

2. **The mode to be observed.** With the limited faculty of imposing pensions saved (c. 1429), a collator lower than the Pope cannot confer benefices with diminution (c. 1440).
3. **On whom they are to be conferred.** Secular benefices are to be conferred only on seculars, religious benefices only on members of the religion to which the benefices belong (c. 1442).
4. **Beginning of possession.** No one can take possession of a benefice by his own authority; but legitimate sending into possession is required (cc. 1443, 1444).
5. Two incompatible benefices cannot validly be accepted or retained by the same cleric. Such are those whose burdens he cannot fulfill at the same time, or of which either one suffices for his honest support (c. 1439).

— Some benefices are conferred freely, others are subject to the servitude of the right of patronage.

The right of patronage designates the sum of privileges, with certain burdens, which belong by concession of the Church to Catholic founders of a church, chapel, or benefice, or to their successors. Besides the family coat of arms, a distinct place in the church, and precedence before laymen in processions or similar functions, the chief right of the patron is that he can present a cleric to the vacant church or vacant benefice. One legitimately presented and found suitable, the presentation having been accepted, has a right to canonical institution, which only the Ordinary of the place grants (cc. 1448-1471).

In the future, however, no right of patronage can be validly constituted. In its place spiritual suffrages will be offered to founders, with the faculty of stipulating that the benefice be conferred the first time upon the cleric founder or another cleric whom the founder has designated. And Ordinaries are ordered to strive that, at least in place of the right of presenting, patrons be willing to be content with spiritual suffrages. Cf. cc. 1450, 1451.

Distinct from the right of patronage is an apostolic indult of presenting to a vacant church or to a vacant benefice: we are admonished by canon 1471 that this privilege is of strict interpretation.

§ 3. Rights and Obligations of Beneficiaries

— **Rights.** Legitimate possession having been taken, the beneficiary enjoys all the spiritual and temporal rights of his benefice; and he perceives its revenues, which he can expend for his own honest support. He must destine superfluous revenues to the poor or to pious causes by that obligation which has been explained in the treatise on justice.

Cardinals are immune from this obligation, from c. 239, §1, n. 19. For by the very fact that ecclesiastical goods are attributed to ministers of the Church by title of just remuneration, they serve ecclesiastical ends, and satisfaction has been made to the intention of those offering them. Therefore it remains entire for the Supreme Pontiff that, from a just cause, he relieve certain clerics from the burden which the will of the Church alone imposed. Cf. Lehmkuhl, I, 1072, note.

— **Obligations.** With special obligations of many beneficiaries omitted, such as receiving a certain order and residing, every beneficiary must recite the canonical hours and prudently administer the goods of his benefice, with expenses and lesser repairs made in due time which fall upon him. Cf. cc. 1474-1478. How the annual revenues of a benefice are to be distributed between the successor and the predecessor or his heirs; to whom the fruits of a vacant benefice yield; what must be held concerning the half-annate, is said in cc. 1480-1482, concerning which consult the canonists. Cf. *Epitome I. C.*, II, 801 ff.

Moreover they must bear moderate taxes, such as the *cathedraticum* (c. 1504), which is paid as a sign of subjection; a tax in favor of the seminary (cc. 1355, 1356); an exaction imposed on account of an extraordinary necessity of the diocese (c. 1505).

§ 4. Resignation and Exchange of Benefices

— 1. "After a year from any religious profession emitted, parochial benefices are vacant; after three years, the rest" (c. 584).

2. They are vacant through voluntary and accepted resignation. This must be simple and absolute. The Ordinary cannot admit one made for the advantage of others or under a condition which touches the provision of the benefice or the distribution of revenues, unless the benefice is litigated and the resignation is made by one of the litigants for the advantage of the other (c. 1486).

It is required besides that a cleric in sacred orders have elsewhere the things necessary for honest support; and if the benefice was his title of ordination, express mention of this matter and of the substitution of another title of ordination is required (cc. 1484, 1485).

— The exchange of two benefices cannot validly be made unless for a just cause, without detriment to others, with the patron consenting, if there was one, and with the Ordinary of the place consenting.

But an exchange of benefices of which both or either one is reserved to the Holy See cannot be admitted by the Ordinary (c. 1487).

If they are unequal, they cannot be compensated by reservation of fruits or by the furnishing of a thing estimable by price (c. 1488, §1).

Nor can it be made among more than two beneficiaries (c. 1488, §2).

Summary

— **I.** An ecclesiastical office, taken broadly, is any function exercised unto a spiritual end; but strictly, and thus it is of itself taken in law, it is a function: a. stably constituted by divine or human ordinance; b. to be conferred in the mode defined by the canons; c. attributing some power of order or jurisdiction.

Canonical provision or nomination is essential; nor is it validly made or promised before the office is vacant. But it is made through free conferral, with a competition sometimes acceding for discerning suitable persons, which of itself belongs to the Ordinary of the place in his own territory; or through institution of a person presented by a patron or by him to whom a similar faculty has been conferred from indult; or through confirmation of an elected or postulated person. He is elected who, being suitable, is called collegially to a vacant office, whether through secret votes of scrutiny, or through quasi-inspiration, immediately by unanimous consent, or through compromise, when the electors by unanimous and written consent transfer the right of electing to one or several. He is postulated whom the electors, although laboring under a dispensable impediment, wish to have the office conferred upon, a dispensation having been granted. The election having been accepted, the elected person must, within eight days, petition confirmation from the competent Superior, which cannot be denied to one suitable and legitimately elected. Yet the election of the Supreme Pontiff cannot be confirmed; that of a Superior General of a religion of itself does not have to be confirmed: then by the very acceptance full right is acquired. But after the postulation has been freely accepted by the Superior who can confirm the election and dispense from the impediment, the one postulated acquires right by acceptance.

Offices are of themselves to be conferred on him who, with all things considered, is judged more worthy or to be preferred. And he will have sinned gravely who has called an unworthy person.

Passing over the more worthy person is not proved grave in conferral or presentation to an office not having care of souls.

An office is lost by accepted resignation, by privation legitimately carried out, and by transfer, which, if the cleric is unwilling, requires the causes and mode of privation.

II. An ecclesiastical benefice is a juridic entity, a moral person, erected in perpetuity by competent ecclesiastical authority, and consisting of a sacred office and the right of perceiving revenues from the endowment annexed to the office.

Benefices are erected by: the Supreme Pontiff; a Cardinal in his own title or diaconia, when they do not belong to an exempt clerical religion; and Ordinaries of places. The endowment can now be contained not only in goods possessed by the church, but also in taxed prestations of the faithful, whether owed or voluntary. A benefice is distinguished as consistorial, which is conferred in consistory, and non-consistorial; secular and religious, according as it belongs only to secular or religious clerics; double or residential, and simple, without the obligation of residing; with care of souls or with the care of souls, or not having care of souls; manual, temporary or removable, and perpetual or not removable.

All benefices can be conferred by the Supreme Pontiff; and some are reserved to him; those not reserved are conferred by the Cardinal in his own title or diaconia, and by the Ordinary of the place in his own territory. Some are conferred freely; others are subject to the right of patronage, which now cannot be constituted in the future, and which attributes certain privileges, with a burden, especially that of presenting a candidate. The beneficiary enjoys the spiritual and temporal rights of his benefice and perceives its revenues, with the burden, from which Cardinals are exempted, of destining superfluous revenues to the poor or to pious causes.

A benefice is vacant after three years from religious profession; indeed after one year, if it was parochial; it is also vacant through accepted resignation, which must be absolute. The very exchange of benefices is subject to various rules to be observed.

Title II: On Clerics in Species

Canonical Introduction

Utility. In order that moral solutions may be better understood, it seems useful to sketch in a few words how, in the Latin Church, ecclesiastical governance is ordered under the Roman Pontiff. Therefore:

I. On Ordinary Governance

— **I. On the Supreme Pontiff.**

The Supreme Pontiff, from accepted legitimate election, obtains the full power of supreme jurisdiction; from the same moment, if he is a bishop, but if not, from received episcopal consecration, he acquires the fullest power of order as to use. His power "is truly episcopal, ordinary, and immediate, both over all and individual churches and over all and individual pastors and faithful, independent of any human authority" (c. 218). To him has been committed the office of preaching the Catholic faith for the universal Church (c. 1327); and, outside constituted dioceses and parishes, the whole care of missions among non-Catholics is reserved solely to the Apostolic See (c. 1350, §2).

Affairs of graver moment which are reserved to the Roman Pontiff alone are called major causes (c. 220).

Concerning the full power of making laws and dispensing which belongs to the Supreme Pontiff, and concerning the mode by which he himself is held by his own laws, it has been treated in fundamental theology.

Concerning his titles and honorific insignia, canonists are to be consulted.

In the same fundamental part, we have sufficiently sketched what the Roman Curia is, and what province falls to the Sacred Roman Congregations.

There also, as much as suffices in moral theology, we have treated of Councils.

Therefore it is permissible to come at once to indicating the rights and obligations of bishops.

— **II. Bishops,** successors of the Apostles, are freely nominated by the Supreme Pontiff. Yet he sometimes grants by indult or concordat that either a prince or a college present or elect a bishop, with the inalienable right of the Pontiff of providing for the common good of the Church always intact.

All bishops possess the fullness of the priesthood, and as such they have rights and enjoy privileges.

Rights: of having a deliberative voice in Councils to which they are called, unless in the letters of convocation it has been established otherwise concerning non-diocesans (cc. 223, 282, 286); of ordaining, as ordinary ministers of the sacrament of Order, those to whom they can give dimissorial letters (cc. 951, 959); of performing consecrations and conferring several reserved blessings (c. 1147); of preceding non-bishops even in choir (c. 408, §1), and of preserving episcopal dress there; of wearing episcopal insignia. They participate in several privileges of Cardinals. Cf. cc. 239 and 349.

These privileges they obtain from accepted authentic notice of canonical provision, even before consecration itself or possession taken.

From divine institution there must be bishops who, under the Supreme Pontiff, are immediate Pastors of parts of the flock committed to St. Peter and his successors. And therefore, besides merely titular bishops, others, residential or diocesan, are placed over particular churches, which they govern with ordinary power, in spiritual and temporal matters, under the authority of the Roman Pontiff (c. 329, §1).

That ordinary power comprehends: 1. legislative power, explained in I, 277, 278; 2. judicial power: they are, by themselves or through delegates, judges of first instance; indeed of appeal if they are Metropolitans, or if they are suffragans of a Metropolitan who, with the Holy See approving, has chosen them for causes which the Metropolitan has treated in first instance; 3. coercive power, by which bishops can sanction laws and precepts with penalties.

They have the power of dispensing which is explained in I, n. 295.

Besides, from possession taken, they enjoy the right of perceiving the revenues of the episcopal benefice, or mensa; of conceding indulgences of fifty days, for the living alone; of raising in all churches of their diocese a throne with baldachin (c. 349); of exercising pontificals in every place of their diocese; of preceding the rest, with Cardinals, Legates of the Pontiff, and their own Metropolitan excepted.

— **III.** Several dioceses constitute an ecclesiastical Province, over which a Metropolitan or Archbishop presides. In his own diocese he is a bishop; he presides over the Provincial Council; he supplies the negligence of suffragans; he makes the Pontiff more certain concerning abuses; but, outside canonical visitation, he possesses no immediate jurisdiction over the subjects of suffragans. The insignia of archiepiscopal power is the pallium.

— **IV.** In a diocese there are usually one or several Vicars General, who themselves are also called Ordinaries of the place.

With the bishop they are one juridic person, so that, when the jurisdiction of the bishop ceases or is suspended, the very jurisdiction of the Vicar General ceases or is suspended. By the nomination itself they obtain every power which belongs to the bishop by ordinary law, with those things excepted which the bishop has reserved to himself, or which by law demand a special mandate. With express exception saved, the Vicar General can execute rescripts remitted to the bishop, and habitual faculties granted to the bishop by the Holy See generally pertain also to him. He precedes all clerics of the diocese, not bishops. Cf. cc. 366-371.

The Vicar General of the Pope, insofar as he bears the person of the Bishop of Rome, is the one who is called the Cardinal Vicar of the City.

— **V.** The cathedral chapter, while the see is full, is the senate of the bishop, who, in several matters, especially in alienations of a certain value, must seek its consent or its counsel for the validity or liceity of the act.

When the see is impeded in such a way that the bishop cannot communicate with the diocesans even by letter, the administration in the first place is in the hands of the Vicar General or another ecclesiastical man delegated by the bishop. But if these are lacking, the cathedral chapter constitutes

its own vicar who, with the power of a capitular Vicar, assumes the governance of the diocese (c. 429).

When the see is vacant, unless the Holy See has provided otherwise, the governance of the diocese passes to the cathedral chapter with all the ordinary power of the bishop, and with the use of habitual faculties granted to the same, unless the personal industry of the bishop was chosen. But the chapter must, within eight days from accepted notice of the vacancy, elect one single capitular vicar, and transfer all its power to him (c. 431 ff.).

— **VI.** The Capitular Vicar governs the diocese by the same power by which the chapter possessed it, also keeping the rule: "When the see is vacant, let nothing be innovated" (c. 436). He is removed unwilling only by the Holy See; but his resignation is valid without acceptance of the chapter, which nevertheless constitutes a new one. The office of itself ceases through possession entered upon by the new bishop or quasi-bishop, to whom the Capitular Vicar is held to render an account.

— **VII. Canons,** of whom the chapter consists, are called selected clerics, ascribed to a definite church so that in it they may form a college deputed to singing divine praises and celebrating sacred offices. That church is cathedral, which possesses the chair of the bishop; otherwise it is collegiate. The erection of each is reserved to the Holy See.

Some canons are titular, who have a prebend or benefice and a voice in chapter; others are honorary, who participate only in the honorific rights of canons. Among titular canons are dignitaries, who in order precede other non-bishops or Vicars General; and officials, who have a certain function to fulfill. The chief offices are those of the canon theologian, who must explain lessons on sacred Scripture or on another part of Catholic doctrine in the church, and not rarely today rather teaches the sacred disciplines in the seminary; of the canon penitentiary, who is furnished with peculiar faculties so that in the capitular church he may receive the confessions of the faithful. He is endowed with ordinary jurisdiction, by which he can absolve his own diocesans even outside the diocese, yet can grant no delegation. Cf. cc. 873, 401; of the canon curate, who, when the habitual care of souls is in the hands of the chapter, administers the parish as vicar of the chapter.

With dignities excepted, whose designation is reserved to the Holy See, it pertains of itself to the bishop, the chapter having been heard, to confer all benefices and canonries (c. 403). In order to name as honorary canon a cleric who belongs to another diocese, the bishop needs the assent of the Ordinary to whom the one to be named is subject; nor can he bestow that honor on so many outsiders that they equal a third part of the titular canons in number (c. 406). Observe that capitular insignia cannot be used except in the diocese in which the chapter is; and a contrary custom is reproved.

— **VIII. On Diocesan Consultors** (cc. 423-428). In dioceses which lack a cathedral chapter, a group of consultors is to be constituted by the bishop, which "supplies the place of the cathedral chapter as the senate of the bishop," so that whatever the canons attribute to the cathedral chapter in administering the diocese, whether the see is full, impeded, or vacant, is to be understood of the group of consultors (c. 427). Consultors must be at least six in number, or four if there are few priests in the diocese.

— **IX.** "A pastor is a priest or moral person to whom a parish has been conferred in title, with the care of souls to be exercised under the authority of the Ordinary of the place" (c. 451).

But a parish is a distinct part of a diocese, to which there is a particular church and a particular rector as the proper pastor of a determined people. Cf. c. 216, §1 and 3, which orders that such a division of dioceses be made, and §4 forbids that, without a special Apostolic indult, parishes be constituted for diversity of language or nation of the faithful, or merely familial or personal parishes.

Moral persons which sometimes hold a parish are monasteries, chapters, or similar institutes. But they keep only habitual care; actual care they must hand over to some vicar (cc. 452, 471).

The conferral of a parish which is not of the right of patronage belongs by ordinary law to the bishop or quasi-bishop. When the see is vacant, it belongs to the Capitular Vicar after the episcopal see has been vacant for a year. If it is of the right of patronage, the patron presents a suitable candidate to be instituted by the bishop, as was said above. Likewise a religious Superior presents a priest of his religion so that he may be instituted by the Ordinary of the place as pastor of a religious parish. Where the form of special or general competition is in force, it is said to be observed until the Apostolic See decrees otherwise. His own pastor must be placed over each parish, and he must be one (cc. 455-460).

Besides the care of souls with ordinary power in the internal forum, by which their office is defined, the rights of pastors are referred to a twofold genus: functions which are reserved to them, and prestations which they can demand.

1. From c. 462, there are reserved to the pastor: solemn baptism; public carrying of the Most Holy Eucharist to the sick in his own parish; administration of Viaticum and Extreme Unction; banns; assistance at marriages, the nuptial blessing; just funeral rites of parishioners, "unless the deceased has legitimately chosen another church of burial" (c. 1216, §1); blessing of houses on Holy Saturday, or on another day according to the custom of places; blessing of the baptismal font on Holy Saturday; public procession outside any church; blessings outside the church, with pomp and solemnity, "unless there is question of a capitular church, and the chapter performs these functions." These functions, that is, the three just numbered or some of them.
2. He has a right to the prestations which approved custom or legitimate taxation attributes to him. He keeps this right even if some parochial office has been fulfilled by another, "unless the contrary will of those offering is certainly established concerning the sum which exceeds the tax" (c. 463, §3). At the same time, in c. 463, these two things are provided: "One demanding preferable prestations is held to restitution"; "Let the pastor not deny gratuitous ministry to those who are not able to pay."

Not only to the pastor, but to every priest who assists the sick, there has been granted the faculty of conceding the apostolic blessing in the article of death (c. 468, §2).

— **X. Parochial Vicars** bear actual parochial care when parochial care is in the hands of a moral person, such as a chapter or monastery.

Churches which are neither parochial nor capitular, nor annexed to the house of a religious community which celebrates offices in the same church, are committed to a Rector, whom the Ordinary of the place names or at least approves, and removes for a just cause, even if the church belongs to an exempt religion.

With parochial functions excepted, that rector can celebrate divine offices, even solemn ones, provided they do not harm the parochial ministry; and if parishioners cannot without grave inconvenience go to the parochial church, the Ordinary has the right of imposing, under grave penalties, certain parochial ministries on the rector of a church which is of easier access. Cf. cc. 479-486.

— **XI. Cooperating Vicars** are named by the bishop so that they may supply the place of the pastor and help him in the whole parochial ministry, with the application of Mass for the people excepted, by which they themselves are in no way held. A cooperator from the secular clergy is named after the pastor has been heard. A vicar from the regular clergy is approved by the Ordinary, having been presented by the Superior, after the pastor has been heard.

— **XII. Vicars Forane.** The territory of a diocese of itself must be divided into districts consisting of several parishes. Over these is placed a vicar forane, or dean, or archpriest, etc., to whom a function chiefly of vigilance and inspection is committed.

He is freely named and removed by the Ordinary of the place. He presides over the collations of the clergy; he also takes care that gravely sick pastors not lack spiritual aids, and, if they depart from the living, an honorable funeral, and then he must at the same time take care lest documents and furnishings which pertain to the church perish or be carried away.

Besides, he is accustomed to be furnished with certain faculties. Cf. cc. 445-450.

II. On Less Ordinary Governance Outside Mission Places

In places where, on account of perpetual or accidental circumstances, bishops are lacking, quasi-bishops are constituted, that is, an Abbot or Prelate nullius, understand: of a diocese; an Apostolic Administrator; an Apostolic Vicar and Prefect. Here we must treat only of the first two.

— **I.** An Abbot or Prelate nullius governs a territory, in the very regions of the faithful, separated from every diocese.

That territory contains parishes; and if there are at least three in number, the Abbot or Prelate is to be equated altogether with a bishop. He governs the territory as his own: he names a Vicar General; he convokes a diocesan synod; he grants indulgences of fifty days. Yet if he lacks episcopal character, he will not be able to perform major ordinations and bless sacred oils. But within the bounds of the territory he confers tonsure and minor orders; imparts all blessings reserved to bishops; consecrates chalices, patens, portable altars, indeed immovable altars, with oils blessed by bishops, and churches; and administers confirmation.

He who administers fewer than three parishes is governed by special law.

— **II.** An Apostolic Administrator, on account of grave and special causes, is placed over a diocese in perpetuity or for a time. Constituted permanently, as now in the free city of Danzig, he is assimilated to a residential bishop; given for a time, he is like a Capitular Vicar. He does not have a Vicar General.

III. On the Governance of Missions

There are mission places, for example the Indies, in which the episcopal hierarchy has been restored; but parishes, at least many, and especially chapters, are lacking. These are then supplied by diocesan

Consultors. Therefore:

— **I.** An Apostolic Vicar and Prefect administer territory which is not strictly their own, but that of the Supreme Pontiff.

Wherefore, even if bishops, they do not use a throne with baldachin, nor, without indult, which is granted quite easily to Apostolic Vicars, is their name pronounced in the canon, or prayer made for them in the ferial prayers of the breviary. As to power, they are assimilated to bishops, indeed they obtain broader faculties; and if they are adorned with episcopal character, they participate in other rights and privileges of bishops. Lacking that character, they have the honorific privileges of Apostolic Protonotaries of the number of participants; and besides they can do in their territory those things which are granted to a Prelate nullius (cf. n. 70), with the consecration of a church and of an immovable altar excepted. They cannot name a Vicar General properly so called.

— **II.** One or several delegated Vicars are permitted to be named in place of a Vicar General. The delegate can do all things which a Vicar General can; but since he is properly delegated, when the right of the Apostolic Vicar or Prefect ceases or is suspended, he does not of himself fall from his power. Cf. circular letters of the Sacred Congregation of Propaganda Fide, December 8, 1919.

— **III.** A Pro-vicar or Pro-prefect must be named by the Apostolic Vicar or Apostolic Prefect if there is no coadjutor with future succession. He, when the Vicar or Prefect is lacking, assumes the governance of the vicariate or prefecture. If no one has been designated, the senior, that is, he who is present in the territory and in the same territory has earlier shown the letters of his destination, is judged delegated by the Holy See to assume governance.

— **IV.** Quasi-pastors govern quasi-parishes, that is, distinct territorial parts into which, at the exhortation of c. 216, the Apostolic Vicar or Prefect has divided his territories.

The Sacred Congregation of Propaganda Fide, by instruction of July 25, 1920, advised that they try to divide the territory also into districts over which one like a vicar forane would be placed.

Where the territory is not divided, all missionaries who are assigned to the care of souls are to be considered as cooperating Vicars of the Ordinary of the place.

One Chapter: Special Obligations of Various Clerics

I. Obligations of Bishops

Because the Supreme Pontiff is superior to every human law, and "the First See is judged by no one" (c. 1556), we can begin the discussion from the obligations of bishops.

— **I. All bishops:** 1. Before their canonical institution or provision, besides the profession of faith, must emit an oath of fidelity toward the Holy See according to the formula approved by the Apostolic See (c. 332, §2);

2. Those promoted, if not impeded, must receive consecration within three months from received apostolic letters.

II. Diocesan bishops: 1. must canonically take possession of the diocese, the apostolic letters having been shown to the chapter, without which solemnity they can in no way intrude themselves into the governance of the diocese; yet they can retain and exercise the office of capitular vicar, official, or oeconomus which they obtained before their designation (c. 334);

2. must urge the observance of ecclesiastical laws, watching lest abuses creep into ecclesiastical discipline (c. 336);

3. the office of preaching the Catholic faith has been committed chiefly to bishops for their dioceses; wherefore, unless they are legitimately impeded, they must preach the Gospel themselves in person (c. 1327). Yet more easily than pastors they can fulfill that office through others, so that their grave obligation is at least that of providing the people with sufficient instruction. Cf. Lehmkuhl, II, 816;

4. they must reside personally in the diocese, even if they have a coadjutor.

Yet they can be absent on account of the visitation of the sacred thresholds, councils at which they must be present, a civil office legitimately joined to their church, or for another equitable cause; but then not beyond two or three months within the year, taking care lest from their absence the diocese receive detriment. That time cannot be joined with the time conceded to bishops on the occasion of their promotion, visitation of the sacred thresholds, assistance at a council, or with the time of vacations of the following year (c. 338, §2).

Residence in the diocese suffices. Yet in the time of Advent and Lent, on the days of Nativity, Easter, Pentecost, and Corpus Christi, his presence near the cathedral is required, unless a grave and urgent cause prevents it (c. 338, §3).

He who has been illegitimately absent beyond six months must be denounced to the Apostolic See by the Metropolitan, or if the Metropolitan is to be blamed, by the more ancient resident suffragan (c. 338, §4);

5. they must apply Mass for the people on all Sundays and feasts of precept, even suppressed ones (c. 339).

After the declaration of February 17, 1918 (*A. A. S.*, X [1918], p. 170), we know that those feasts are to be estimated from the catalogue of Urban VIII, which is thus restored. Therefore it was promulgated anew by decree of the Sacred Congregation of the Council, December 28, 1919 (*A. A. S.*, XII [1920], p. 42).

On the feast of the Nativity of the Lord, and if some feast of precept falls on a Sunday, only one Mass is to be applied. Even if a feast is transferred, the obligation remains on the day from which it is transferred, unless on the day to which it is transferred, together with the celebration of the office and Mass, the obligations of hearing Mass and abstaining from servile works are to be observed. A bishop who, by some title, governs two or several dioceses satisfies the obligation by one celebration for the whole people committed to him.

Yet if episcopal cities have distinct patrons, the bishop seems bound on the feasts of each to offer sacrifice for the people.

That obligation is personal: the bishop himself in person must celebrate Mass; it is real and to be executed on fixed days, so that if he himself is impeded, he should apply on the fixed days through another rather than defer the celebration, although a different option will easily be excused. Nevertheless the obligation is not ended by the fixed time: wherefore, if he could not celebrate on the fixed day even through another, as soon as possible, either by himself or through another, let him apply on another day; but let him supply neglected Masses as soon as possible.

But must he, with money paid, apply through another if he is prohibited from personal celebration by infirmity or another impediment? We shall say that he must or deny that he must according as the bishop receives from his mensa or by another reason moneys by which the burdens of his administration are compensated, or receives no stipend or quasi-stipend.

"It is fitting from charity, yet without obligation, that titular bishops sometimes apply the sacrifice of the Mass for their diocese" (c. 348, §2);

6. every five years, they must make a report to the Supreme Pontiff concerning the state of the diocese committed to them, according to the formula given by the Apostolic See (c. 340).

The quinquennia are fixed and common, and are computed from January 1, 1911, so that for the bishops of Italy and the adjacent islands the years of report are 1911, 1916, 1921, 1926; for the bishops of Spain, Portugal, France, Belgium, Holland, England, Scotland, and Ireland with the adjacent islands, 1912, 1917, 1922, 1927; for the other bishops of Europe with adjacent islands, 1913, 1918, 1923, 1928; for the bishops of the whole of America and adjacent islands, 1914, 1919, 1924, 1929; for the bishops of Africa, Asia, Australia, and islands adjacent to these parts of the world, 1915, 1920, 1925, 1930.

Yet if the year of the report, in whole or in part, falls in the first biennium from the governance of the diocese begun, the bishop for that turn can abstain from preparing and presenting the report. It will fall in part in the first biennium, for the bishop of Italy who, for example, in the month of July 1924, entered into possession of his see.

The more recent formula was given through the Sacred Consistorial Congregation on November 4, 1918 (*A. A. S.*, X [1918], p. 487 ff.), for bishops who must report to it; and, for bishops of missions,

by the Sacred Congregation of Propaganda Fide, April 16, 1922 (*A. A. S.*, XIV [1922], p. 287, or *Periodica*, XI, p. 46);

7. in the year in which they must present the report, they must also, by themselves or through a Coadjutor, or, for just causes approved by the Holy See, through a priest who resides in their diocese, visit the sacred thresholds. Yet to bishops who are outside Europe it is permitted that they seek the City only every ten years (cc. 341, 342).

That visitation comprises, besides the report just mentioned, the pious visitation of the Basilicas of St. Peter and St. Paul, and the visitation of the Supreme Pontiff;

8. they must visit at least part of their diocese every year, so that certainly every five years the whole diocese has been visited (cc. 343-346).

A visitation which they themselves in person are prohibited by a legitimate impediment from making must be made through the Vicar General or another delegate. Exemption from jurisdiction does not bring exemption from visitation unless this is prohibited, as for exempt clerical religions, from c. 344, §2 itself; a paternal form is prescribed; useless delays and superfluous expenses are to be avoided; concerning food to be furnished to the bishop and two clerics whom the bishop can take to himself, or procurations and expenses of the journey, the legitimate custom of places is said to be observed. From precepts and decrees which regard the object and end of the visitation, recourse is given only in devolutive effect. Moreover persons, things, and pious places are visited; but the end is preservation of faith and morals, correction of depraved morals, promotion of innocence, peace, and discipline in clergy and people, and the utility of religion to be procured. If the bishop has been gravely negligent in this matter, let the Metropolitan make the Roman Pontiff more certain, and, with the Holy See approving, let him himself visit the diocese of the suffragan.

II. Obligations of Archbishops

— Residential archbishops: 1. within three months from consecration or, if consecrated, from canonical provision, must petition from the Roman Pontiff, in consistory, by themselves or through a procurator, the pallium, or insignia of archiepiscopal power, which is strictly personal and given for one see, so that those promoted to another church must petition another pallium. Before the imposition of the pallium, they would illicitly, of themselves, place acts of archiepiscopal jurisdiction and acts of episcopal order which, like sacred ordinations, require the use of the pallium. Use outside the province is strictly prohibited;

2. if they are Metropolitans, they must be solicitous concerning morals and discipline in their province and opportunely admonish the Holy See concerning abuses.

III. Obligations of Quasi-Bishops

— **I.** An Abbot or Prelate nullius is held by the same obligations by which a bishop is held.

— **II.** A Capitular Vicar must, before the office begun, profess the faith; he is held by the law of residence and of applying Mass for the people just as a bishop is. In exercising the office, he must beware lest he innovate anything. He must render accounts to the bishop or abbot or prelate nullius who has taken possession of the see.

— **III.** An Apostolic Administrator, constituted permanently, has the obligations of a residential bishop. Given for a time, he has the same offices which a Capitular Vicar has; yet the obligation of saying Mass for the people then holds the bishop alone. Even while the see is full, he can visit the diocese.

— **IV.** Apostolic Vicars and Prefects have the obligations of residential bishops. Yet the convocation of a synod is not prescribed in a prefecture; in a vicariate, its frequency is not defined. Nor must a Prefect visit the sacred thresholds. An impeded Vicar can visit the sacred thresholds through a procurator, even from the City. They must celebrate Mass for the people, but only on feast days of precept, with the Circumcision excluded, and on the Sundays of Easter and Pentecost (c. 306). Unless they have a coadjutor with future succession, they must designate a pro-vicar or pro-prefect, who, when they are lacking, assumes the whole governance as delegate. He must admonish the Holy See concerning the care assumed. Cf. cc. 293-311 and *Per.*, IX, pp. 19 ff.

IV. Obligations of Canons

— 1. Titular canons and Beneficiaries bound to choir must reside in such a way that on the days on which they are held, they are truly present at choir. For provided they furnish the services owed, of themselves they preserve the option of the place of habitation. With a stricter law saved, they cannot be absent beyond three months, continuous or interpolated, in individual years. Nor, without special permission of the bishop, can they take holiday in the time of Lent and Advent, or on the principal solemnities of the year; nor are more than a third part permitted to be absent at the same time (c. 418).

Those illegitimately absent do not make the fruits their own pro rata; they must hand them over to the Ordinary, to be distributed to a church, pious place, or the poor (c. 2381).

2. Those who obtain a choral benefice must pay the divine offices in the choir itself on individual days, unless service by turn has been granted by the Apostolic See or by the laws of the foundation (c. 414). The divine office comprises the psalmody of the canonical hours and the celebration with chant of the conventual Mass to be applied for benefactors in general, besides other Masses appointed by special law. Yet it is permitted to celebrate Mass without chant when the bishop or another in his place celebrates with pontifical rite (c. 413).

It is not enough that canons be present in choir or recite the office in a low voice; rather it is necessary that they fulfill their parts in the psalmody. Otherwise, like the absent, they lose the daily distributions to be made among those present; and also, unless they count the time of absence or omitted psalmody among the months of vacation, pro parte, the fruits of their benefice or prebend. Lehmkuhl (II, 825) observes that the threefold obligation of residing, reciting the divine office, and chanting in choir is sanctioned by privation of fruits, so that one who is lacking to only one obligation must restore only part of the fruits. Nevertheless, against that common opinion, the Sacred Congregation of the Council, in the cause Toletana and of others, July 10, 1920, to doubt 3: "Whether, after canon 2381 is in force, a Beneficiary or Canon illegitimately absent can retain the fruits corresponding to the private recitation of the divine office," responded: "To III. Negative." Canon 2381 sounds thus: "He who obtains an office, benefice, or dignity with the burden of residence, if he is illegitimately absent: 1. by that fact is deprived of all fruits of his benefice or office,

in proportion to the illegitimate absence, and must hand them over to the Ordinary, who is to distribute them to a church or some pious place or the poor."

Those legitimately excused from choir do not therefore gain the daily distributions. Yet to certain ones the daily distributions also are conceded; indeed to some even the distributions which are said to be among those present, unless the express will of the founders prevents it.

Various causes of excuse are numbered in canons 420 and 421. Jubilated capitulars gain the distributions among those present, that is, those who have obtained an indult of jubilation from the Holy See; those who are occupied with pious exercises, but only once in the year do they enjoy this privilege; those who assist the bishop solemnly performing sacred things; those who devote work to preparing processes of beatification or canonization, or are called as witnesses in those causes.

3. Invited by the bishop, they must assist him exercising pontificals in churches of the city or suburb, and accompany the same coming to the cathedral church and returning (c. 412).

V. Obligations of Pastors

— 1. The care of souls is to be exercised toward all their parishioners who are not legitimately exempt. But it remains entire for the bishop that, for a just and grave cause, he withdraw religious families and pious houses not exempt from the care of the pastor (c. 464).

Hence "the pastor must celebrate the divine offices, administer the sacraments to the faithful as often as they legitimately petition, know his sheep and prudently correct those wandering, embrace the poor and wretched with paternal charity, apply the greatest care in the Catholic instruction of children" (c. 467, §1). "Let the pastor diligently watch lest anything against faith and morals be handed down in his parish, especially in public and private schools, and let him foster or institute works of charity, faith, and piety" (c. 469). He must take care "that the faithful, especially midwives, physicians, and surgeons, thoroughly learn the right mode of baptizing for a case of necessity" (c. 743); that the faithful approach the sacrament of confirmation at an opportune time (c. 787); that children, having attained the use of reason and being sufficiently disposed, be refreshed by the Eucharist as soon as possible, at the same time watching lest they approach before the use of reason or without sufficient disposition (c. 851, §5); that the sick do not lack the faculty of communicating according to their devotion (cf. c. 848); that frequent, indeed daily, communion be promoted among the faithful (cf. c. 863); that the faithful committed to him find in their pastor, who by a grave obligation of justice must administer the sacrament of penance by himself or through others, cf. c. 892, and in other priests, prudent confessors solicitous for their salvation and perfection; that the sick, while they are fully in possession of themselves, receive the sacrament of Extreme Unction (c. 944). He must diligently inquire concerning the morals and qualities of those to be ordained (c. 1000), and by both public and private exhortation and direction studiously detect and foster seeds of priestly, religious, and apostolic vocation. Cf. apostolic epistle, November 30, 1919, of our Most Holy Lord Benedict XV. He must frighten away his sheep from marriages with non-Catholics or impious persons, prudently dissuade marriages which give slight hope of a happy outcome; but instruct those about to marry thoroughly concerning their mission and their duties; and with "diligent and poured-out charity" help "the sick... in his parish, but especially those near death," "solicitously refreshing them with the sacraments and commending their souls to God" (c. 468, §1).

Concerning the instruction of the people, let the points be weighed which Pius X prescribed in the encyclical letter *Acerbo nimis*, April 15, 1905 (*A. A. S.*, VII, 623): these must be at least commended to all and are to be observed virtually. But the continuous omission of preaching notably beyond a month, for example for two months, or discontinuous omission protracted notably beyond three months in a year, is charged as grave sin. Cf. Lehmkuhl, II, 280.

But today the greatest importance lies in diligent inspection of schools. For those about to marry, who today, more than formerly, must be taught their duties, it will be very useful to have ready a little book to be handed to them, which contains the principal heads of Christian doctrine and discipline, and solidly, piously, and distinctly explains the rights and duties of spouses.

The visitation of the sick, made in due time and assiduously, furnishes pastors occasion of knowing families and of reconciling many to themselves, even the healthy. But insofar as can be done, let him assist the dying person, even one fortified with the sacraments, at the departure of life. "If there is question of a man accustomed to sins, no one does not see that there is, even if grave inconvenience must be undergone, a grave obligation of repelling from him in every way a not slight danger of eternal destruction" (Lehmkuhl, II, 821). Let him not omit to instruct those who care for the sick concerning the method of assisting the dying person, of suggesting frequent acts of charity and contrition. By which solicitude he will at the same time demonstrate that he is not moved by the base instigation of money or self-love, so that those baptized Catholic not fall away from the right of Christian burial.

2. The pastor must reside near his church, and of itself in the parochial house, if any is had. With the utility of the parishioners saved, the Ordinary of the place can permit another dwelling (c. 465, §1).

That house generally will be within the bounds of the parish. Yet it can happen that the pastor resides near the church and nevertheless outside his own parish. But let him remember that he then, in his own house, is staying outside his own territory, where he has less power, for example of dispensing.

An annual absence of two months is of itself conceded to the pastor; his Ordinary can extend or restrict this on account of a grave cause (c. 465, §2).

Nor are the days on which, once in the year, he is occupied with pious exercises to be computed in the two months (c. 465, §3).

But as often as he is absent, the pastor must provide for the spiritual safety of the faithful. And if he will be absent beyond a week, he needs the written permission of the Ordinary of the place, and, unless cooperating vicars already exist for him, he must leave in his place a vicar to be approved by the same Ordinary. For a religious pastor the consent of the Superior is also necessary; and his substitute is to be approved by the Ordinary and by the Superior. If a sudden and grave cause calls a pastor away beyond a week, let him himself provide for the matter, admonish the Ordinary, and stand by his mandates (c. 465, §§4-6).

But in time of plague, the pastor is prohibited from being absent; yet he can arrange the matter with a cooperator in such a way that one cares for the healthy, the other for the sick. Cf. Benedict XIV, *De synodo*, l. 13, c. 19, nn. 2-6.

The one illegitimately absent, by that very fact, does not make his own, in proportion to the illegitimate absence, the fruits which correspond to the exercise of parochial functions. All these he must hand over, as a penalty, to the Ordinary, who is to destine them to a pious end. Cf. *A. A. S.*, XII, pp. 361, 364. Besides, one must proceed against the guilty person by the mode which is explained in cc. 2168-2175.

3. On the same days as the bishop, and by the same reason, the pastor must apply Mass for the people. Cf. n. 87, 6. And, contrary to what had been previously established, one who governs several parishes fulfills his obligation by one application of Mass. Yet if they have distinct patrons of the place, he will have to celebrate once for the people on the feasts of each. This Mass is of itself to be celebrated in the parochial church. To one legitimately absent, the option is permitted of celebrating in another place, or of committing the celebration to the priest who bears his place in the parish.

Finally, for a just cause, the Ordinary of the place can make for the pastor even a habitual faculty of applying Mass on another day than the law requires (c. 466).

4. The pastor must accurately prepare, write, and preserve the parochial books and the book concerning the state of souls. Therefore let him have an archive in which, with other documents, they may be kept and be able to be visited at the opportune time (c. 470). And the prescribed annotations of law are to be made diligently (c. 470, §2). General negligence, for example of noting marriages and sacred ordinations in the book of the baptized, can easily, on account of harms to be feared, affect one with the guilt of grave sin.

VI. Obligations of Parochial Vicars and Quasi-Pastors

— **I. Parochial Vicars,** since they bear the actual care of a parish, have the same obligations as pastors properly so called, even that of saying Mass for the people.

— **II. Quasi-pastors** must apply Mass for the people only on those same days on which Apostolic Vicars or Prefects must.

Invested with a function similar to that of pastors, they are held by similar offices.

Summary

— From accepted legitimate election, the Supreme Pontiff obtains the fullest jurisdiction and the fullest use of the power of order, if he is a bishop, or from when he is consecrated bishop.

His power is at once supreme and immediate over all and individual churches and baptized persons. Outside constituted dioceses and parishes, the whole care of missions among non-Catholics is reserved solely to the Apostolic See.

To the Apostolic See are reserved causes of greater moment, which thence are called major causes. For the rest, cf. Treatise I and the canonists.

On Bishops and Ordinaries of Places.

1. From divine institution itself, particular churches are to be governed, under the authority of the Roman Pontiff, with ordinary power by bishops, who are successors of the Apostles.

Yet there are titular bishops, who govern no church, although they too have the fullness of the priesthood.

1. **Things Common to All Bishops.** Called to a Council, they enjoy, with an express exception for titulars saved, a deliberative voice; they are ordinary ministers of sacred ordination; they validly perform consecrations, and several blessings are reserved to them; in chapter, whether they were dignitaries or merely canons, they precede canons and dignitaries of the presbyteral order; and from received authentic notice of canonical provision, they participate in several privileges of Cardinals: for example, of choosing for themselves and their household a confessor; of blessing, with indulgences, rosaries, medals, etc., and of imposing scapulars; of blessing images of the crucified for the way of the cross and erecting the way of the cross; the privilege of a portable altar, and of celebrating everywhere Mass of their own calendar.

All, before canonical institution or provision, besides the profession of faith, must swear fidelity to the Holy See; and those promoted, if not impeded, must receive consecration within three months from received apostolic letters.

2. **Things Proper to Diocesans.** In their diocese they are ordinary and immediate pastors with legislative, judicial, and coercive power to be exercised according to the norm of the canons. They concede indulgences of fifty days. They have the power of dispensing explained in Treatise I. In all churches of their diocese they can exercise pontificals and erect a throne with baldachin.

But they must: a. take possession of the diocese, the apostolic letters having been shown to the chapter; b. provide for ecclesiastical discipline; c. preach, and, under grave obligation, at least provide for the people concerning suitable instruction; d. reside in the diocese; e. by an obligation which is at once personal, real, and to be executed on fixed days for urging the obligation, apply Mass for the people on all Sundays and feasts of precept even suppressed ones; f. make a quinquennial report to the Supreme Pontiff concerning the state of the diocese; g. and in the same year visit the sacred thresholds. To bishops outside Europe it is permitted that they seek the City only every ten years; h. by themselves or, if impeded, through another, visit part of the diocese every year, so that at least every five years the whole has been visited.

II. Quasi-bishops are: 1. an Abbot or Prelate nullius, of a diocese, who, if he has at least three parishes under him, is to be equated with a bishop, with sacred ordinations and the blessing of sacred oils excepted, if he lacks episcopal character.

2. An Apostolic Administrator, who, on account of grave and special causes, is placed over a diocese not his own, in perpetuity, as it were a residential bishop, or for a time, as it were a Capitular Vicar.
3. An Apostolic Vicar and Prefect, who, for the Supreme Pontiff, govern territories not yet erected into dioceses. As to ordinary power, they are assimilated to bishops, or, if they lack episcopal character, to Prelates nullius, with the consecration of a church and an immovable altar excepted. Besides, they are furnished with ample faculties. They have the obligations of bishops, yet with the obligation of visiting the sacred thresholds and celebrating for the people

moderated. Unless they have received a coadjutor with future succession, they must name a pro-vicar or pro-prefect, who, when they are lacking, assume the whole governance.

III. A Vicar General, endowed with vicarious power, by the nomination itself has every power which by ordinary law belongs to the bishop, except those things which the bishop has reserved to himself, or which, from law, require a special mandate; and, with express exception saved, he can execute rescripts sent to the bishop, and he participates in the habitual faculties of the bishop.

He is freely constituted and removed by the bishop. Several can be constituted according to the necessity of the diocese.

IV. When the see is vacant, all ordinary power of the bishop or quasi-bishop passes to the cathedral chapter, which must transfer all the same, within eight days, to a Capitular Vicar. The principle must then be observed: "When the see is vacant, let nothing be innovated."

When the Apostolic Vicar or Prefect is lacking, the governance is assumed by a coadjutor with future succession, if one is present, or by a pro-vicar or pro-prefect, or by the senior in the mission.

V. The Metropolitan presides over an ecclesiastical province which is constituted of various joined dioceses. The other dioceses are suffragan; yet certain ones are immediately subject to the Holy See.

In his own diocese the Metropolitan has the rights and offices of a bishop. He is judge of appeal from the sentences of suffragans; but he himself, once for all, must choose, with the Holy See approving, the suffragan Ordinary to whom appeal is made from the sentences of his tribunal. He himself presides over the provincial Council. The insignia of archiepiscopal power is the pallium.

VI. In the Western Church, Patriarchs and Primates are distinguished only by precedence and honor.

On Canons and Diocesan Consultors.

1. Canons are selected clerics who, in a definite church, cathedral or collegiate, form a college deputed to celebrating sacred offices. They are titular, who have a voice in chapter, and honorary. Among titulars there are dignitaries, who precede, and officials, who have a certain function to fulfill, chiefly: theologians, penitentiaries, and, when habitual care of souls is in the hands of the chapter, curates.

Canonries are conferred by the bishop, the chapter having been heard, with dignities excepted: these are reserved to the Holy See.

Titular canons and beneficed persons must reside in the place of the church, so that they fulfill their offices. Those absent from choir, with certain ones excepted who are judged present, do not perceive the daily distributions; those absent beyond three months, continuous or interpolated, do not make the fruits of the prebend their own pro rata.

2. Chapters are distinguished as cathedral and collegiate, regular and secular, exempt and not exempt.

All have capitular meetings and statutes to be observed. The cathedral chapter is, while the see is full, the senate which the bishop must consult in affairs of greater moment; indeed whose consent is necessary to him for certain alienations. When the see is vacant, it governs the diocese until it has

named a Capitular Vicar. When the see is impeded, the administration first belongs to the Vicar General or to the one delegated by the bishop.

II. In dioceses which lack a cathedral chapter, the bishop must constitute a group of consultors which, as the senate of the bishop, supplies the place of the chapter.

On Pastors, Quasi-Pastors, and Vicars.

I. "A pastor is a priest or moral person to whom a parish has been conferred in title, with the care of souls to be exercised under the authority of the Ordinary of the place" (c. 451). If he is a moral person, such as a monastery or chapter, he must hand over actual care to a vicar.

Besides diligent care of souls, the pastor must reside near his church, so that he always provides for the safety of the faithful, and is not permitted to be absent, of himself, beyond two months in individual years. One illegitimately absent must hand over the fruits, as penalty, to the Ordinary. In the same way as the bishop, by the same reason, the pastor must apply Mass for the people and prepare and preserve parochial books.

As to rights, certain functions are reserved to him. Besides those which, since they regard the sacraments, will be handed down below, these are: just funeral rites of parishioners, blessing of houses on Holy Saturday or on the customary day, blessing of the baptismal font, solemn blessing, and public procession outside the church. He can perceive the prestations which legitimate custom or taxation attributes to him. Demanding more, he is held to restitution.

The pastor, to whom diligent care of the sick is commended, indeed every priest assisting the sick, can concede to them the apostolic blessing in the article of death (c. 468).

II. Quasi-pastors govern quasi-parishes, or distinct territorial parts of an apostolic vicariate or prefecture. Like Apostolic Vicars or Prefects, they must apply Mass for the people. Parochial vicars bearing actual care for a moral person have Mass for the people to be applied on the same days as pastors.

III. Cooperating vicars are not quasi-pastors; but furnished with a general delegation of various breadth, they help the pastor.

N.B. - There are separate churches which are committed to a rector whom the Ordinary of the place names or at least approves, and, for a just cause, removes.

IV. A vicar forane, or dean or archpriest, with a function chiefly of vigilance and inspection, is placed by the Ordinary of the place over a district consisting of several parishes.

Treatise II: On Religious

Utility. In moral theology, for the use of schools, only a small space can be reserved for the broad and difficult treatise on religious,[1] in which, besides a few notions concerning the religious state, religious institutes and houses, and the governance of religious, the rights and obligations of individual religious are chiefly explained. For these things are more moral and more useful for all priests to know. Wherefore we too have entered upon this manner of speaking.

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[1] We undertake the treatise more broadly and more fully in the third edition of our work *De Religiosis institutis et personis*.

Title I: On the Religious State

— "The religious state is a stable manner of living in common, by which the faithful, besides the common precepts, also undertake evangelical counsels to be observed through vows of obedience, chastity, and poverty" (c. 487).

State, in this place, is understood as a stable condition of a Christian person in the Church. In order for a condition of this kind to be had, those things must be procured which are required both by the nature of the matter and by the positive will of the legislator. From the very definition of the Code it is clear that today, for the essence of the religious state, three vows are necessary, which the Code numbers with the order of excellence preserved, that is, obedience, chastity, and poverty; and besides, life in common. The condition of vows is demanded almost from the nature of the matter; life in common, from present ecclesiastical discipline. Life in common is chiefly constituted by subjection to the same rule or form of living and to the same Superiors. The community of roof and table itself varies, for various professions, within certain limits defined by Constitutions and also by common law. For today, with the cause of studies excepted, a stay outside the cloister beyond six months is withdrawn from the judgment of Superiors and requires permission of the Holy See (c. 606, §2). Yet if there is question of a religion of diocesan law, the Ordinary of the place seems able to permit this, since from c. 638 he has power for conceding an indult of exclaustration. Complete stability is contained of itself only in perpetual vows. Yet the Code did not demand perpetuity in the definition of the religious state, because temporary vows also of themselves are emitted with the intention of perseverance even unto death. Besides the three substantial vows, others are joined with religious profession in many Institutes: such as the vow of stability, of mission, of teaching children, of serving the sick, of redeeming captives, of observing strict abstinence. Through the substantial vows religious profess that observance of the evangelical counsels which is required of them. For these counsels are directed to all the faithful in some measure; they are part of the Christian way of conceiving and conducting life.

In order that some state distinguish the faithful, it must be recognized by public authority. By today's law, positive and formal approval is necessary for every religious institute, since from c. 492, §1, the bishop cannot even permit any one to be founded without the Holy See having been consulted. Therefore ecclesiastical approval is today to be placed among the conditions of the religious state.

— The author of the religious state, according to those things which its nature requires, is Christ the Lord. For He gave the counsels which from Him are called evangelical; He, by the words and figures which He used, indicated that firmness which is obtained by vows. Think, for example, of the likeness of the castrated, in Matt. 19, 12: "There are eunuchs... who have castrated themselves for the kingdom of heaven." He conferred power and office upon the Church for ordering the religious state. He, by example and words, exhorted men to follow more perfect things. Therefore that the religious state is of divine law, not commanding but counseling, "this is," says Suarez, *De relig.*, tr. 9, l. 3, c. 2, n. 3, "the opinion of all Catholics rightly thinking."

— A work of counsel is strictly an action considered not so much as good and meritorious in itself, but as useful unto an end; more broadly it signifies a good work, not commanded, better than its

opposite or than its non-evil negation. Cf. I, n. 232.

Moreover the evangelical counsel of poverty was expressly given by the Lord to the young man who had questioned Him concerning perfection: "If thou wilt be perfect, sell what thou hast and give to the poor" (St. Matt. 19, 21). The counsel of perfect continence is easily drawn from the place alleged above concerning eunuchs, to which the Lord subjoined these things: "He who can take, let him take"; and we have St. Paul as the genuine interpreter of the mind of the Lord, 1 Cor. 7. Finally, the counsel of obedience is contained virtually in those pursuits of humility and abnegation which are commended in the Gospel: for religious obedience is the most fitting means for following these things; but more formally it is given by the very example of perfect obedience by which Christ perpetually denied His human will in order that He might embrace the divine, "made," according to the words of the Apostle, "obedient unto death, even the death of the cross" (Phil. 2, 8). The same Apostle again, having interpreted the mind of the Lord, exhorts us thus: "For let this mind be in you, which was also in Christ Jesus." Now religious seek this by their own proper obedience, that even in particular matters, concerning which there is no precept or clear indication, by following the will of a Superior they may more certainly adhere to the divine will. For by his office and by the power which proximately or remotely proceeds authoritatively from Christ sending the apostles, the legitimate Superior makes the things which he commands, if before they were indifferent, the only good things and therefore things willed by God; the things which he desires to be done are rightly presumed to be desired in the name of God. And by perpetual accommodation to the will of the Superior, the religious observes an order of life which, approved by the Church, is shown to be acceptable to God.

Summary

— **I.** "The religious state is a stable manner of living in common, by which the faithful, besides the common precepts, also undertake evangelical counsels to be observed through vows of obedience, chastity, and poverty" (c. 487).

As state, it says a stable and approved condition in the Church. It is stable through vows at least temporary, with the intention of further perseverance. Life in common is had chiefly through subjection to the same Superiors, according to the same rule, and through some community of roof and table. Through the three vows which are called substantial, and to which others not rarely accede, religious profess the observance of the evangelical counsels required of them.

II. The author of the religious state is Christ, through the counsels, through exhortation to perfection, through the power given to the Church, so that the religious state must be said to be of divine law, not commanding but counseling.

III. A work of counsel is strictly an action useful unto an end; more broadly, a good work not commanded, better than its opposite or its non-evil negation. The three are proved to be evangelical counsels.

Title II: On Religious Institutes and Houses

— **I. What a Religion Is, and of How Many Kinds.** Today any religious Institute is called by the common name of Religion. But a Religion is of pontifical law if it has obtained from the Apostolic See either a decree of approval or at least of praise; of diocesan law, if it has been constituted by episcopal authority. In the Code, a clerical religion is said to be a religion whose greater part of members are increased by the priesthood; the others are lay.

Yet that criterion does not seem to suffice for removing every doubt, as when the whole internal hierarchy is in the hands of priests, or there is a twofold order of religious, clerics and laymen, and the class of clerics is judged chief. Will you say, in cases of this kind, that the clerical nature of the religion is impeded by the numerical plurality of laymen?

Of religions of pontifical law, some have solemn vows: they are called Orders, and their members, after vows, are regulars; others have only simple vows: they are called religious Congregations or Congregations, and their members, after vows, are religious or religious of simple vows. Thus among men. But religious women of simple vows are called sisters, while by the name of nuns are designated both religious women of solemn vows and religious women whose vows are solemn from the institute, but, from the prescription of the Apostolic See, are simple in certain places.

Of religions of pontifical law, some are exempt, others are not: the former are withdrawn from the jurisdiction of the Ordinary of the place. Religions of solemn vows are of themselves exempt. But over nuns who would of themselves pronounce solemn vows, yet in reality are admitted to simple vows alone, the bishops of Belgium and France preserve a greater authority than responses of the Holy See and custom have attributed to them after the French disturbance. Cf. response of the Sacred Congregation of Religious, May 22, 1919 (*A. A. S.*, XI, p. 210).

— **On Diocesan Religions.** Although bishops can found a religious Congregation, they are prohibited from doing this without the Holy See having been consulted. And aggregation to a religion of the First Order is necessary so that there can be a religion of Tertiaries. A diocesan religion spread through several dioceses is subject to the various Ordinaries in whose territory it subsists, so that laws can be changed only by their common consent, with the points which were subjected to the Apostolic See always saved.

But once founded, a religion can no longer be suppressed except by the Holy See (cc. 492-495).

— **Hierarchical Structure.** 1. Most religions of men today are constituted in such a way that under one common supreme authority, each is composed of various houses, which themselves again coalesce into provinces. Hence, among internal powers, there is a certain supreme one which usually belongs to the general chapter or congregation. There is also general governance, committed to a Superior or Provost, or Minister General, to whom some Council or general Definitory is present. Provinces are governed by a provincial Superior, to whom provincial consultors or definitors are for help. But the provincial Congregation, which is sometimes convoked, in most religions by no means has parts to be fulfilled in the provinces similar to the parts which belong to the general congregation for the whole religion. It often happens that it merely expresses votes and deputes delegates to the

general chapter. Finally, over individual houses there is placed a true local Superior, a Rector, Prior, or Guardian, who is helped by his own counselors.

Yet older religions, of monastic or even canonical form, lack this collegial unity. Individual monasteries are governed by a prelate or abbot, of his own right, whom the chapter of the monastery assists. Yet so that they might enjoy the privilege of exemption, which was no longer granted to separated monasteries, most monasteries came together into monastic congregations, over which a certain Abbot General presides. But his power is not to be compared with the power of the Superior General of more recent religions. And of some mixed genus are the Cluniac and Cistercian Congregations, which, besides the stable unity of the monastery over which its own abbot presides, form a true universal body under a General. Leo XIII introduced among the Benedictines an Abbot Primate of the whole Order, with some defined power.

2. For a long time cloister itself prohibited religious women from imitating the collegial system of religions of men. Wherefore individual houses even of the Poor Clares, Colettines, and Teresians are of their own right. Not long ago a certain Union of Ursulines, the Roman Union, obtained from the Holy See a form of cloister so mitigated that solemn vows could be reconciled with collegial form. The more received Institutes of women, which are devoted to various works of charity and are not bound by pontifical cloister, have been accustomed to be hierarchically constituted. Yet more often than among men, the residences even of Sisters are individually of their own right.
3. Now Superiors General and provincials, or those having equivalent power, and not only the Abbot Primate and Abbot Superior of a monastic Congregation, but also Abbots of monasteries of their own right, are in law Major Superiors; and if they pertain to an exempt clerical religion, they are addressed by the name of Ordinaries, but not Ordinaries of the place.

— **II.** The residences of religious are called by the generic name of religious houses; a regular house is the house of an Order. A formed house designates a religious house "in which at least six professed religious dwell, of whom, if there is question of a clerical religion, at least four are priests" (c. 488, 5).

Usage also has it that the word monastery is rather reserved to houses of monks and nuns; the word convent, now more general, is more proper for houses of mendicants, while more recent religions not rarely, according to the various destination of the house, call their houses novitiate, college, residence, etc.

— **III.** The erection of a religious house, whether formed or not formed, requires, if it is exempt or situated in places subject to the Sacred Congregation of Propaganda Fide, the good pleasure of the Apostolic See and the written consent of the Ordinary of the place. In other cases, the permission of this Ordinary suffices (c. 497, §1). Yet a house of novitiate must be approved by the Holy See if there is question of a religion of pontifical law.

The constitution of the house having been obtained, a clerical religion can annex a public church or oratory to the house, in such a way nevertheless that the definite place of the public oratory is to be approved by the Ordinary of the place; and, with the conditions attached in the faculty itself saved, any religion is permitted to exercise its own works (cc. 497, §2 and 1162, §4).

But the erection of a school, hospice, or similar separate building demands the written permission of the Ordinary: which permission suffices (c. 497, §3).

— The suppression of an exempt religious house requires apostolic good pleasure; the house of a Congregation of pontifical law but not exempt can be suppressed by the supreme moderator, with the Ordinary of the place consenting; the house of a Congregation of diocesan law, by the authority of the Ordinary of the place alone, the moderator of the Congregation having been heard, but with the right of recurring in suspensive effect to the Apostolic See saved. Yet if there is question of the only house of the Congregation, apostolic good pleasure is required: for once a Congregation has been founded, it cannot be extinguished except by the authority of the Holy See (cc. 493 and 498).

Summary

— **I.** Religious institutes are called by the common name religions. Having obtained a decree of praise, they are of pontifical law; the rest are of diocesan law; but today bishops are forbidden to found or approve religions without the Holy See having been consulted. Spread into various dioceses, a diocesan religion is equally subject to the individual Ordinaries. And, once founded, it cannot be suppressed without the Holy See.

Religions are clerical or lay; Orders, with solemn vows, or Congregations, exempt or not. Men are called regulars or religious; religious women are sisters or nuns.

Most institutes today coalesce from various houses, indeed also from provinces, so that the supreme Moderator, provincial Moderator, who are called Major Superiors, and local Moderator are to be distinguished. The very abbot of a monastery of his own right, and any independent Superior, is also a Major Superior. A Major Superior of an exempt clerical religion is called an Ordinary, yet not an Ordinary of the place.

II. The house of an Order is specially called regular; a formed house requires at least six professed, of whom four are priests, if there is question of a clerical religion.

The erection of a house, even not formed, demands, if it is exempt or in places subject to Propaganda Fide, the good pleasure of the Apostolic See and the written consent of the Ordinary of the place, whose consent suffices for other houses. A house of novitiate, if there is question of a pontifical religion, must always be approved by the Holy See.

A religious house is suppressed, if exempt, with apostolic good pleasure acceding; if of pontifical law, by the supreme moderator, with the Ordinary of the place consenting; if diocesan, by the authority of the Ordinary of the place, the moderator of the Congregation having been heard.

Title III: On the Governance of Religions

— **I.** 1. All religions are subject to the power, even dominative, of the Roman Pontiff; diocesan religions are also subject to bishops or quasi-bishops. As we were saying just now, n. 104, the supreme internal power is in the hands of the general or abbatial chapter; but governance is in the hands of Superiors with their Counselors. Yet these are not Superiors. More recent religions are accustomed to be administered by Superiors of a threefold grade: general, provincial, local. But in houses of their own right, such as monasteries of older religions, the Superior of the house is at the same time quasi-general. Counselors assist Superiors; their consultative vote must be sought in some affairs, their deliberative vote in other affairs of greater moment.

2. A Superior General and an independent Superior are elected by the chapter or congregation; in which election, besides their own Constitutions, the norms of common law must be observed. The mode of designating other Superiors varies: generally they are constituted by the Superior General and his council.

3. Merely local Superiors cannot be constituted for a time beyond a triennium; yet they can be confirmed once, if the constitutions bear this, but not twice immediately in the same house.

Major Superiors are of themselves temporary; yet they can be perpetual, or constituted for life. Yet in new religions of women, perpetual Superioresses will not be admitted.

4. Superiors General of religions of pontifical law must present a quinquennial report to the Holy See;[(1)] but all must promote the execution of decrees of the Holy See.

5. Religious houses are visited both by their own Major Superiors and by the Ordinary of the place, within the limits established by law.

6. Every religion of men of pontifical law must have a Procurator General who treats the affairs of the religion before the Holy See. Of itself the Procurator General must reside in Rome and pertain to the religion which he represents.

II. Concerning the governance of confessors, cf. what is to be said concerning the sacrament of penance. For lay religions not exempt, the Ordinary of the place designates the chaplain and approves preachers; for exempt clerical religions, the regular Superior provides; his negligence is supplied by the Ordinary (c. 530).

[(1)] The formula recently prepared is found in *A. A. S.*, XIV, 101 or *Periodica*, XI, p. 18 ff.

— **III.** For temporal administration, oeconomi are to be constituted, whom the law requires to be distinct from Major Superiors; it desires them to be distinct from the local Superior (c. 516, §§2-4). Administration of goods is made according to the norm of the constitutions; yet the investment of money which constitutes the dowry of religious women requires the previous consent of the Ordinary of the place. The same Ordinary exercises greater power over houses of diocesan law and over houses of nuns than over other houses of pontifical law. In alienations of goods, the rules of common law must be observed, and the Superior needs the consent of his chapter or Council. And if

there is question of alienating precious things or other things whose value exceeds the sum of thirty thousand francs or lire, the contract is null without antecedent apostolic good pleasure. The same good pleasure is necessary for contracting debts beyond the same sum (c. 534).

Summary

— **I.** The supreme power is in the general chapter; administration is in the hands of Superiors. Counselors assist these, with a voice sometimes deliberative, sometimes consultative. Temporal administration is made by oeconomi. In alienations, the solemnities of law are to be observed. A Superior General or quasi-General, that is, independent, is elected by the chapter; the rest sometimes by the chapter, generally by the Superior General and his council. A local Superior cannot be constituted beyond a triennium, or be confirmed immediately in the same convent for more than another triennium.

Congregations of pontifical law must, through the Superior General, present a quinquennial report to the Holy See; and institutes of men must have a Procurator General of their religion in the City. All Superiors must promote the execution of decrees of the Holy See.

Houses are visited by their own Superiors; and, within the limits of law, by the Ordinary of the place.

Concerning confessors, cf. the treatise on the Sacrament of Penance.

Title IV: On Individual Religious Persons

Chapter I: On the Variety and Condition of Persons

I. Preliminary Question on Vocation

— 1. **Juridical Liberty.** By both divine and ecclesiastical law, any Catholic detained by no impediment can be received among religious (cf. c. 538).

2. **Vocation.** Leaving aside opinions concerning a special interior instinct, which God indeed can give but which is by no means necessary, suitability for bearing the burdens of religion and a right intention of serving God in religion suffice for lawful entrance, which of itself also is to be advised, since the profession of the counsels is of itself to be preferred to the mere profession of the precepts. But the firmer the will, led by a supernatural motive, shows itself, and the more manifest the suitability is, the clearer is the divine vocation. Nor is present sanctity or justice of the person demanded, since religion is a school for acquiring perfection. Yet here a distinction must be made between religions as such and certain religions. For those which exercise apostolic ministries suppose in the candidate a fairly proximate hope of blameless life. And because now life in common is required for every approved religion, the vocation to religious profession is less universal than the vocation to private observance of the evangelical counsels. Moreover these inculcate to all the faithful by what spirit life must be lived.

But vocation explained thus is truly divine, because, as outstanding testimonies of the Fathers confirm, it must be attributed to the power of the Holy Spirit that someone, the enticements of the world having been overcome, dedicates himself wholly to divine service.

Although, however, it is of itself entire for the faithful person to obey God inviting and embrace the religion of the counsels, or to be content with the religion of the precepts, the same option is not left to counselors. For these are bound by a grave obligation to advise that which is better. And Christ Himself, when He said to the young man whom He loved, "If thou wilt be perfect," would not have permitted His apostles and disciples to offer opposite counsels. For He did not send them to correct His sayings, but, as witnesses of Him (Luke 24, 48; Acts 1, 8), and having obtained mercy that they might be faithful (1 Cor. 7, 25), to teach to observe whatsoever He had commanded them (Matt. 28, 20). And since there is question of the whole manner of life, it is already objectively grave that someone rashly assume or fulfill the office of counselor in this matter.

II. On Postulants and Novices

— **Postulancy** (cc. 539-541). All women and all lay brothers, before they are enrolled among novices, must, by common law, in a religion where vows are perpetual, spend at least six whole months in postulancy; in religions of temporary vows, one must stand by the constitutions concerning this matter. But the Major Superior can prolong the prescribed time of postulancy, yet not beyond another semester.

Concerning the mode and place of postulancy, the Code defines nothing besides these things: a. that it be made under the special care of an approved religious, in a house where observance flourishes; b. that postulants wear modest dress different from that of novices; c. that aspirants to be nuns observe

the law of cloister, yet not under censure; d. that before the novitiate, for at least eight whole days, they be occupied with spiritual exercises.

— **Impediments to Entrance into the Novitiate.** With special prescriptions of the constitutions saved besides, from common law, c. 542:

The following are admitted invalidly to the novitiate:

Those who have adhered to a non-Catholic sect, that is, from the authentic declaration, those who, apostates from the Catholic faith, have given their name to a heretical or schismatic sect (Response, October 16, 1919); those who do not have the age required for the novitiate, that is, who have not completed the fifteenth year of age (c. 555, 1); "those who enter religion induced by force, grave fear, or fraud, or whom the Superior receives induced in the same way." Just fear is not here distinguished from unjust, neither in the candidate, who seems never able to be coerced justly, nor in the Superior; "a spouse, during marriage"; "those who are bound, or have been bound, by the bond of religious profession," no distinction being made of temporary or perpetual profession, in the same or in another religion; "those to whom a penalty is imminent on account of a grave delict committed, concerning which they have been accused or can be accused." Therefore the impediment does not affect those who, although guilty, are subject to no serious danger of accusation in another forum, canonical or civil; "a bishop, whether residential or titular, even if he has only been designated by the Roman Pontiff." Therefore he is already impeded who, not yet consecrated or preconized in consistory, has received authentic notice of his pontifical nomination or designation; "clerics who, from an institute of the Holy See, are held by oath to devote their work to the good of their diocese or of missions, for the time during which the obligation of the oath perdures."

Since an institute of the Holy See signifies something more special than a canon of the Code, and clerics in sacred orders, from c. 542, 2 itself, must merely consult the Ordinary of the place so that they give their name to religion altogether lawfully, there is not question here of clerics who, ordained by title of the service of the diocese, had to make from c. 981, §1 an oath concerning perpetual service of the diocese. It must be said otherwise concerning the oath of mission, since the very formula, received until now, excludes religious life assumed without the good pleasure of the Holy See. But chiefly are understood resident students of certain colleges of the City, for example of the German-Hungarian College, who promised temporary service of three years in the northern parts of Europe, with the option of religious life expressly denied to them during that space.

— The following are admitted illicitly but validly:

"Clerics constituted in sacred orders, without the Ordinary of the place having been consulted, or with the same contradicting, from the fact that their departure would yield to grave detriment of souls which otherwise could by no means be avoided." Therefore of itself positive permission is not necessary; consultation suffices. Yet if from their departure there remains grave detriment of souls which cannot otherwise be avoided, then the contradiction of the Ordinary will make entrance illicit for them, but not invalid.

Can a cleric licitly remain in the novitiate who entered it illicitly? We judge that the matter depends on this: whether the matter is still sufficiently whole and the permanent necessity can be met by departure, or on the contrary, departure has now been made less useful, a prevailing advantage stands in its way, and the Ordinary himself, abstaining from contradiction, perhaps tacitly assents. And it

seems likely to happen that, the Ordinary protesting, the matter will be referred to the Holy See to be decided. Clerics who are not in sacred orders are not obliged to consult the Ordinary, but natural equity of itself demands that he, having courteously been made more certain concerning the plan, have the occasion of giving prudent counsel.

"Those burdened by debt, who are not able to pay."

Because by that sanction the law of Sixtus V *Cum de omnibus*, §§4 and 5 (1587), tempered by the Constitution of Clement VIII *In suprema* (1602), is confirmed, the canon admits the same interpretation, so that there is question of those who owe to a certain and definite creditor, by onerous title, those things which they have hope that, remaining in the world, they can pay. Indeed those were excused from that law who without grave fault had been reduced to these straits. But attention will also have to be paid to infamy of fact, if any is incurred, and account will have to be had of civil sanctions concerning debtors. Cf. Tamburini, *De iure abbatum*, III, d. 69, 3, n. 11.

"Those subject to rendering an account or involved in other secular business, from which the religion could fear lawsuits and troubles."

There is question of those who, by private or public cause, must render account of temporal administration, for example of guardianship, on account of which notable troubles hang over them. Therefore not only lawsuits and troubles which would be made against the religion are to be considered here; for religion also has not a little to fear from lawsuits and troubles made against its members.

"Sons who must assist parents, that is, father or mother, grandfather or grandmother, constituted in grave necessity, and parents whose work is necessary for feeding or educating children."

Sons must assist parents who in the world would have the means of providing, of which they are deprived in religion. On account of the same cause they would have to bid farewell to the novitiate. After profession the strict obligation of departing, at least for a time, having obtained, for example, an indult of exclaustration, urges only him who cannot otherwise provide for the extreme and indubitable necessity of parents.

What the Code sanctions concerning grave necessity of parents seems to have to be said concerning extreme necessity of brothers and sisters.

"Those destined to the priesthood in religion, from which nevertheless they are removed by irregularity or another canonical impediment."

The canon is to be understood of those irregularities and impediments which of themselves will remain at the time of ordination, or are not taken away by the privilege of religion before ordination, for example by profession. Otherwise, from c. 987, 5, as many as, being destined to the priesthood, had not yet completed ordinary military service would have to be repelled from religion. But for the irregular and impeded, dispensation must be obtained before the novitiate, contrary to what Rev. Fr. Fanfani thinks, *De iure religiosorum*, n. 150. For there is no cause why we should violate the clear disposition of law by a distinction to which the general words of the canon are repugnant and which takes away free judgment from the Holy See.

"Orientals in Latin religions, without permission given in writing by the Sacred Congregation for the Oriental Church."

— Aspirants must present testimony of baptism and confirmation.

If they were in a seminary, college, or postulancy or novitiate of another religion, sworn testimonial letters are required from the rector of the seminary or college, the Ordinary of the place having been heard, or given by the Major Superior of the religion, according as the seminary or college belongs to the Ordinary or to the religion. And they must report for what cause the aspirants were dismissed or departed spontaneously.

If sworn letters cannot be had, even with the Ordinary or supreme Moderator intervening, the matter is to be referred to the Sacred Congregation of Religious (cc. 544, 545 and decree of the Sacred Congregation of Religious, November 21, 1919). Accurate information concerning character and morals is to be taken.

For men, besides, testimonial letters of the Ordinary of origin are necessary, that is, of the place where, when the aspirant was born, the father, or, failing him, the mother, had domicile or quasi-domicile; and of the Ordinaries in whose diocese or quasi-diocese, "after the completed 14th year of age, they have stayed beyond a morally continuous year, with every contrary privilege removed" (c. 544, §2).

All testimonial letters are to be given gratuitously within three months from their requisition.

— Aspirants to be nuns, from common law itself, but other religious women according as is prescribed by the constitutions, must bring the dowry defined by constitutions or custom.

That dowry is to be handed over before the reception of the habit, or at least its handing-over is to be made secure in a valid civil form; it is to be invested prudently and fruitfully in a mode approved by the Ordinary of the place and the regular Superior, if there is one; and by the death of a religious woman who has emitted at least temporary vows, it is irrevocably acquired by the religion. If there is question of a religion of pontifical law, the dowry cannot be condoned, not even in part, without an indult of the Holy See, which is accustomed to be granted for a certain number of cases, or use of a faculty made to an Apostolic Legate.

At least two months before the novitiate, the Ordinary of the place must be admonished by the Superioress, so that by himself or through a delegate he may explore the will of the aspirant.

— The novitiate (cc. 553-571), in the mode prescribed by the constitutions, generally begins with the reception of the habit; but for validity it must be made at least for one whole and continuous year in a legitimate house of novitiate, that is, if there is question of a religion of pontifical law, in a house which has been erected with permission of the Holy See. But the year is completed only when the day of the same number and month on which it was begun a year before has been completed, so that the first day of entrance is not computed. But the novitiate is interrupted if the novice, dismissed or spontaneously bidding farewell to the religion, has gone out from the house, or has been absent beyond thirty days, continuous or not continuous, for any cause whatsoever. If he has been absent beyond fifteen days, for validity it is required and suffices that those days be supplied. Besides, in cc. 558 and 564, the Code prescribes distinct probation for lay brothers and for other novices, so that a novitiate made for one class is useless for the other.

Novices enjoy the privileges of their religion, and after death have a right to the same suffrages as the professed.

In religious Congregations, novices must freely make a testament during the novitiate, which after profession they will be able to change, unless the matter urges, only with permission of the Holy See.

Before the first profession of vows, the novice must, for the whole time by which he will be bound by simple vows, cede the administration of his goods to whomever he prefers, and, unless the constitutions bear otherwise, freely dispose concerning their use and usufruct. This cession and disposition can also be supplied or completed after vows; it can also be changed with due permission; and by departure from religion it ceases to have force. But during the novitiate the novice cannot validly bind his goods or in any way renounce them, as also benefices.

For at least eight solid days, the novice must send spiritual exercises before the vows to be pronounced.

But before the first temporary profession is made, and then before perpetual profession, the Superioress of religious women must admonish the Ordinary of the place at least two months beforehand, so that by himself or through a delegate he may explore the conscious and free will of the religious woman (c. 552, §2).

III. On the Professed

— **I. Various Notions and Divisions.** Profession is distinguished as simple and solemn, which differs from the former in conditions and effects. But solemn vows are those which are recognized by the Church as such (c. 1308); these are vows plainly authentic. The greater firmness and efficacy which is connected with them bring it about that one solemnly professed is judged more perfectly consecrated to God, more fully deputed by the Church to professing the religion of the counsels.

Simple profession is either temporary or perpetual. In any religion of perpetual vows, for validity of perpetual profession, the novice must, in the very house of novitiate, send before perpetual vows a profession of simple vows to be valid for a triennium, or, if the age required for perpetual profession is farther away, until that age, "unless the constitutions require annual professions." The legitimate Superior can prolong that time for individual religious for a just cause, for example for six months, for a year, for two years, indeed for three, but not beyond (c. 574).

Yet to not a few Institutes it has already been conceded that perpetual profession be prepared by temporary vows for six years.

That temporary profession is to be made in the very house of novitiate.

But no profession before the age of sixteen completed years can validly be made; perpetual profession requires the twenty-first year completed.

Profession is not valid unless it is express, unless the legitimate Superior has admitted to it, and unless it is received by the legitimate Superior, by himself or through another. Cf. c. 572. Wherefore, in institutes of pontifical law, no priest of himself is to be delegated by the Ordinary of the place to receive profession or assist at it. Yet reception by the Ordinary or his delegate can be prescribed by Constitutions.

— **II. Admission to the Novitiate and to Profession.** But to admit to the novitiate and to professions belongs to Major Superiors with the suffrage of the chapter or council, which is deliberative for the first temporary profession, consultative for perpetual profession (cc. 543 and

575). For other temporary professions, the constitutions are to be observed. The space of vows having elapsed, these are to be renewed immediately, on the very day recurring on which they were made, with consideration of the hour neglected. Yet Superiors are given the faculty of anticipating, not beyond a month, the renewal of temporary vows; but when the time of temporary profession has passed, the religious is either to be admitted to perpetual profession or is to be dismissed (cc. 575 and 577).

— **III. Effects of Profession.** 1. All professed enjoy the privileges and spiritual graces of their religion, and, after death, have a right to the same suffrages; and they are held by the same obligation of religious discipline. Yet where there is an obligation of choir, with an express disposition of the constitutions saved, temporary profession does not impose private recitation of the office.

Likewise, with an express disposition of the constitutions saved, the professed of temporary vows lack active and passive voice; but the time prescribed for acquiring it is computed from first profession. "After a year from any religious profession, parochial benefices are vacant; after three years, the rest" (c. 584).

2. Simple profession, with special law saved, renders acts contrary to the vows illicit, not invalid, and leaves to the professed temporal goods with the capacity of acquiring others; in religious Congregations, the professed are forbidden to abdicate the ownership of their goods by gratuitous title.

"But whatever the professed acquires by his own industry or by reason of religion, he acquires for the religion" (c. 580, §2).

3. Within sixty days before solemn profession, with special indults of the Holy See saved, one simply professed must renounce all goods which he actually has, to whomever he prefers, under condition of profession to follow; after solemn profession, care is to be taken, according as opportunity exists, that the abdication be made firm civilly; but goods which afterward come to the professed yield to the religion, if this is capable of possessing; in an Order incapable, they are acquired in ownership for the Holy See. But acts contrary to the vows, if they are capable of being annulled, are made invalidly by those solemnly professed.
4. One professed from perpetual vows by the law itself loses the proper diocese which he had in the world (c. 585).

Summary

— **I.** Any Catholic not impeded can be received among religious; and suitability with a right intention suffices for lawful entrance, so that one willing, especially if the will is firm, may judge himself divinely called.

But in a religion with perpetual vows, all lay brothers and all women must be proved in postulancy before the novitiate for at least six months, and be occupied with spiritual exercises for eight whole days.

From common law itself, the following are invalidly admitted to the novitiate: those who, apostates from the Catholic faith, have given their name to a non-Catholic sect; those who are not yet fifteen

years old; those who, induced by force, grave fear, or fraud, enter religion, or whom the Superior receives induced in the same way; a spouse; those who are bound or have been bound by the bond of religious profession; those to whom a penalty is imminent on account of a grave delict; a bishop, even titular and merely designated by the Pontiff; clerics for the time during which, from an institute of the Holy See, they are held by a contrary oath. Illicitly admitted are: clerics in sacred orders, without the Ordinary of the place having been consulted; those burdened by debt; those subject to rendering account; sons necessary to parents and parents necessary to children; those destined to the priesthood, from which they are barred by irregularity or canonical impediment; Orientals in Latin religions without written permission of the Sacred Congregation for the Oriental Church.

Besides, they must bring testimony of baptism and confirmation; and have testimonial letters, sometimes sworn, which the law requires.

Aspirants to be nuns, but other religious women according as is required by the constitutions, must furnish a fixed dowry, inalienable and to be invested prudently, in a mode approved by the Ordinary of the place and the regular Superior. Two months before the novitiate, before first profession, and before perpetual profession, the Ordinary must be admonished by the Superioress, so that by himself or through another he may explore the conscious and free will of the aspirant or religious woman.

II. For validity, the novitiate must be made at least for one whole and continuous year in a legitimate house of novitiate. Absence beyond thirty days, just as departure from the house after dismissal or after the spontaneous plan of bidding farewell, interrupts it. Absence beyond fifteen days is to be supplied.

Novices enjoy the privileges and, after death, the suffrages of the institute. Before profession, they must cede the administration of their goods; and dispose concerning the usufruct and use, insofar as the constitutions permit this. During the novitiate they cannot bind goods or renounce them. In a religious Congregation they must make a testament.

III. The professed make vows, some simple, which are temporary or perpetual; with a peculiar privilege saved, temporary vows for at least three years must be put before perpetual vows. The Superior can prolong that time for a just cause, yet in such a way that temporary vows do not persevere beyond six years. Others emit vows which are accepted by the Church as solemn. First profession must be made in the novitiate itself; but none is valid unless it is express, unless the legitimate Superior has admitted the novice to it, and unless it is received by the legitimate Superior, by himself or through another. The one receiving can be the Ordinary himself, if the Constitutions so bear. Major Superiors admit to the novitiate and to professions, with the suffrage of the chapter or council, and this deliberative for first temporary profession. Renewal of temporary vows can be anticipated by one month; but it cannot be deferred.

All professed are held by the same obligation of observing discipline, with an express disposition of the Constitutions saved; those temporary do not have to recite the canonical hours privately from common law; they keep their goods, with the capacity of acquiring others, with benefices excepted, which are vacant after three years, indeed after one year if they were parochial. In religious Congregations, they are forbidden to abdicate their goods by gratuitous title. Within sixty days before solemn profession, the professed must renounce all goods under condition of the profession to follow; goods which afterward come to them yield to the religion, or, in an incapable Order, to the

Holy See. Whatever any professed acquires by his own industry or by reason of religion, he acquires for the religion.

But the professed from perpetual vows lose their own diocese.

Chapter II: On the Obligations of Religious

§ 1. Obligation of Pursuing Perfection

— He who must profess a state must at the same time profess the things which the truth of the state requires. But by his profession the religious is obliged to his state, which is one of pursuing perfection.

Therefore by an obligation formally distinct from the vows, the religious must tend toward the perfection of Christian charity.

But materially, positively, it is enough that the professed pursue perfection through the vows which are joined to profession and through toleration of the governance of his Institute.

Negatively, however, from this the religious is prohibited under grave sin: a. positively to contemn or cast away perfection; b. frequently to break vows or other grave precepts, for this is repugnant to a habitual effort toward charity; c. by contempt of the rule or of the power of the Superior, or by a manner of acting by which grave danger of expulsion is induced, virtually to cast away the yoke of religion or the state.

§ 2. Obligations of Clerics

— Canon 592 imposes on religious, unless from the context of the discourse or the nature of the matter something else is established, the obligations of clerics concerning which in cc. 124-142. Cf. above, nn. 15-24.

§ 3. Obligations of Vows

I. On the Vow of Poverty

The explanation of the vow of poverty is the most difficult of the three vows. Wherefore, for the sake of clarity, a general idea of that vow seems to have to be placed before the other explanations.

— **I. General Idea of the Vow of Poverty.** By the vow of poverty, the religious promises to God that renunciation of exterior goods or riches which is prescribed by the constitutions of the religion as the matter of the vow.

In the present discipline of the Church, by force of the vow of poverty, from common law:

1. Every professed is prohibited from the independent use, for his own advantage, of any thing estimable by price; that is, he can use no thing estimable by price as his own, whether that thing is his own property, or belongs to the community, or to another person.
2. Every professed acquires for his religion the temporal fruits of his own industry, so that if he alienates the same without permission, he is also held to restitution on account of violated commutative justice. And this industry, if we take the norm of the responses of the Sacred Congregation of Religious, March 16, 1922, concerning moneys which come to religious on the occasion of military service, is to be taken very broadly, concerning every emolument of one's

own action, even one foreign to the religious state, and concerning every donation which seems in some way remuneratory of such action, as is a donation made in reward of military virtue.

3. Those solemnly professed are incapable of ownership and, after such profession, acquire all things for the religion, if this is capable; otherwise, for the Holy See (c. 582).

It is also common that those simply professed of themselves preserve their patrimony and are capable of new acquisition.

All remaining things vary, whether you consider ownership of goods or dispositions concerning goods.

For what goods can those simply professed acquire? Quite often, besides goods which connaturally accede to the patrimony, also any legacies and gifts made in view of their own person. Yet this rule is not universal: the faculty of scholastics of the Society of Jesus is less broad.

As to dispositions concerning revenues, the professed sometimes disposes by his own free judgment; sometimes the disposition must be approved by Superiors; sometimes it is defined by the Constitutions themselves.

But concerning goods, c. 583 establishes this: To those professed of simple vows in religious Congregations it is not lawful: "1. By an act between the living to abdicate the ownership of their goods by gratuitous title." The making of a testament is prescribed to novices of religious Congregations, c. 569, §3. As to the mode of disposing of goods, sometimes, but not always, permission of the Superior is to be sought.

As to sanctions, a disposition illicitly made can be opposed either to the vow or to ecclesiastical law alone or to the Constitutions. More easily are acts contrary to the vow by which something is illicitly acquired or kept than acts by which someone illicitly renounces goods. And because in religious Orders simple profession succeeded solemn profession, which by the vow of poverty excluded all independent acts concerning any goods whatsoever, those simply professed in religious Orders seem, as often as they act illicitly, at the same time to violate the vow, while so absolute a rule cannot commonly be applied to religious Congregations.

The Constitutions must be consulted; the way in which the vow of poverty is commonly understood in the Institute must be considered.

4. But all, with due permission, can perform acts civilly necessary, for example for possessing or acquiring common goods.

— **II.** The remote matter of the vow of poverty is an external temporal thing estimable by price; therefore not honor, reputation, the very industry of the religious, or the application of Mass, but indeed the fruits of industry, stipends received for the application of Mass. Manuscripts, insofar as they are retained with the person, fall outside this matter, as too much joined with the person; but if the writer wishes to separate them from his person, now donation or alienation without permission is prohibited by the vow itself. Cf. Sacred Congregation of Religious, July 13, 1913.

A work made by art, a painted picture, are matter of the vow. But a religious artist does not violate the vow who from the beginning promises or cedes to someone the work by which he will make a statue or picture, especially if the other has furnished the material.

— **III.** With the goods which continue to belong to the professed now set aside, the following acts violate the vow, unless they are made honest by due permission: acquisition, in such a way nevertheless that permission can easily be presumed for accepting what yields to the utility of the religion; donation and renunciation of a right already acquired, in such a way that by refusing an alms or donation not yet accepted, though it must be said otherwise of a legacy, charity alone can be injured; exchange, in such a way nevertheless that if it concerns fungible things of the same kind, such as various coins of themselves are, this scarcely seems repugnant to the vow, and, from presumed permission, is done altogether honestly; so that exchange of things wholly similar lacks grave fault, and lesser fault is present in exchanges of similar things among brothers of the same house; consumption, in such a way that if you receive and consume food or drink among outsiders themselves, probably, according to Cardinal De Lugo (*De iust. et iure*, d. 3, n. 53), you do nothing except a use of fact by which the vow is not injured; otherwise if you carry things home and consume them there; loan and commodatum, in such a way that, if restitution is certain and the concession has been made for a brief time, there will not have been grave violation, and less grave if you give to a brother than to an outsider; use for other ends than those which have been taxatively indicated by the prelate expressly or tacitly, as if you do not expend the whole travel allowance given for a journey and, returned home, keep it for various uses; great negligence or quasi-dissipation in using clothing, etc., or consuming things of which, as for example paper and oil, disposition is permitted to the reasonable judgment of the religious; retention of a thing beyond the time for which it is conceded, as if you retain books of common use longer, but it will not be grave if another who needs them can easily recognize the holder; concealment of a thing, even one obtained with permission, done for this reason, lest the Superior be able to take the thing away. If the thing is concealed or locked up for another end, for example lest others see it importunately, or lest a Superior of lesser grade petition revocation of the faculty, the vow will not be violated, unless the permission is judged to have been given on this condition, that nothing be closed to the immediate Superior.

— They do not violate the vow, although they can be illicit from elsewhere: administration of another's thing, made in his name; destruction of a thing, probably, if you do it merely with the mind of doing harm, taking no utility from it; acceptance of money for a pious use, whether determined, which all concede, or even, as is probable, to be defined by the religious himself, provided that he cannot use the thing also for profane uses by his own judgment; administration of a benefice, since it accedes to a spiritual thing; possession of goods in common.

What concerning a deposit properly so called, not concerning a certain simple custody of a thing furnished? A deposit seems to others repugnant to the vow, since the depositary takes on an obligation to which he cannot fully satisfy except as owner; which others deny, since it contains no act of ownership over the thing deposited.

— The permission by which the vice of proprietorship is warded off must proceed from the proper competent Superior of the religious. Wherefore, unless the constitutions subject guests to the Superior of the house in which they are staying, he will not be able to give permission except to those religious who have domicile or quasi-domicile in the house over which he presides.

Permission would be invalid if it were extorted by force or fraud. But of itself it can be general, special, express, tacit, reasonably presumed. Presumption is plainly legitimate in circumstances where the prelate is prudently judged to oppose neither the thing or substance of the fact, nor the mode by which you act, that is, permission not having first been petitioned. For then the act is made dependently upon the will of the prelate. On the contrary, permission which would be denied cannot be presumed. If the prelate, having been asked, would have conceded permission, but is opposed to the fact that you did it with himself not consulted, then either he is judged so disposed that absolutely he would not will the thing to be used by you without permission, or, the negligence being known, he would be opposed merely to the omission of permission. In the latter case, he is unwilling only as to the mode, nor is the vow injured; in the former case, he is said to be unwilling by reason of the mode as to the substance, and the vow has been violated. Displeasure which seems likely to be grave or light can be held as a sign of one or the other repugnance.

After the fact, it is of itself fitting to admonish the Superior concerning presumed permission, and not rarely the rule enjoins it. Yet to omit this is not opposed to poverty, unless the matter, not plainly past, has some successive course, as if you keep with yourself a thing accepted from a presumed faculty.

Of itself, unless otherwise established, the permission which a prelate now performing an office previously gave continues to be valid; but he cannot give permissions to himself, as to an inferior, for the later time: for he was never subject to himself.

The dissent of a greater prelate, or a simple prohibition made by the same, of itself takes nothing away from the power of a lesser prelate, who therefore can validly concede what the greater Superior has denied. Yet the latter can weaken the former's faculty in advance or after the act.

From a reasonable interpretation, express permission of receiving several medals, rosaries, and little images in number is tacit permission of distributing them; but permission made to someone of giving or receiving, when from the declaration of the Superior or from usage it is judged to regard all, consequently gives to others the faculty of receiving or giving. Yet one must act in good faith, lest one person seem to have been constituted through whom all mutual gifts, with the Superior unaware, pass. And unless the prelate has contradicted it, from tacit or presumed permission, religious can, when the prelate cannot be approached, give modest alms in grave necessity of the poor or when this seems to pertain to edification. The same must be said concerning slight donations which are, as it were, owed from gratitude, if the religious has certain goods conceded to himself for use. St. Alphonsus, l. 4, n. 21. And when, as in certain religions it has been accustomed to be done for clothing, a certain amount of moneys or things is so given for the support of the religious that neither the monastery must supply anything nor he himself render an account, or if he is staying outside the cloister, the faculty is judged conceded of giving to whomever he pleases that which by living more sparingly he has obtained as remaining over.

— **IV. Grave Matter.** 1. The question concerning grave injury of poverty is reputed difficult and is accustomed to be treated incompletely. For although today most religious are no longer solemnly professed, nevertheless present moral treatises are accustomed to examine only those cases which formerly were almost universal, namely of religious who can have nothing proper. Yet it is manifest that donation of a thing which a religious truly possesses cannot be assimilated to donation of a thing

not possessed. Donation of the former, unless there were a positive prohibition, would not even be contrary to the vow of poverty. For by donating or abdicating, someone becomes poorer.

2. When there is question of the vice of proprietorship properly so called, or of acts which are prohibited by the vow to be done concerning things not proper to oneself, the more common opinion proposes this rule: the same quantity which would constitute grave theft is to be indicated as a grave injury of religion in one professing poverty. That rule rests upon a certain likeness between theft and sin against the vow of poverty: in each an undue appropriation is committed.

But this rule must be explained more; for there is absolutely and relatively grave matter of theft. Most take matter relatively grave, with account had of the riches or poverty of the monastery itself. Yet there is not question of estimating damage, which pertains to injustice, but of weighing neglect of due dependence upon Superiors, which seems to be the same whether the thing wrongly usurped belongs to a poor or to a rich one. Wherefore Palmieri, t. IV, whom Genicot follows, II, 98, thinks that an absolutely grave quantity must be taken. That opinion will be safe in a religion whose approved authors have defended it: the intention of those vowing can be judged accommodated to this, who can, not indeed turn light matter into grave, but attenuate the obligation which of itself would correspond to the matter.

But elsewhere we would not put it forward; for it seems to us alien from the true. For does not another relative consideration succeed in place of the relative consideration of damage or detriment brought? Both, justice and poverty, regard property, but in a different way: the former, that you may preserve another's property inviolate; the latter, that you may repel it from yourself. Therefore, just as under the former respect the question concerning grave matter is posed thus: what is notable spoliation of another, so under the other respect, which is our present one, this question must be solved: what is notable acquisition of a religious as such? But that this varies according to the manner of living of the one acquiring is manifest. And who will deny that a religious who, as a Capuchin Friar Minor, professes strict poverty sins gravely by a lesser quantity than a regular canon of a wealthy monastery? Wherefore we judge that the condition in which the religious who has sinned stands from his profession is to be attended to. Is it, as in most present religions, the condition of an honest priest? Matter grave in comparison with an honest priest will of itself have to be taken.

3. But a much greater quantity is required when a religious, without due permission, disposes of goods whose ownership he lawfully keeps. For then not so much the thing as the very distribution or administration is usurped. Wherefore: a. if he disposes for himself, we judge that he sins gravely when from this he draws a tenor of life which gravely derogates from the profession of poverty; b. but if he attributes to another, the quantity absolutely grave in the account of theft could perhaps be taken four or five times. And if the use was a work of piety, or something similar, the Superior will scarcely of himself be gravely unwilling.
4. Several things which are accustomed to make the prelate, whose permission removes the vice of poverty, less unwilling attenuate the gravity of the sacrilege, so that there is need of a greater quantity for lethal sin. Hence, if there is question of edibles and drink, especially for the present use of the religious, unless the thing was extraordinary and precious, grave fault

will be absent; the fault is also of itself lighter if from common things you illicitly take for yourself or give to brothers of the same house than if you give to outsiders; if you intend a useful use than if a vain one.

And it is clear that when use alone is usurped, the value of the use is to be considered.

On the contrary, because the prelate is judged more unwilling, several wish that one sins more gravely against the vow if at the same time he has injured justice than if he has injured religion alone.

5. Small sacrileges, although often repeated, do not seem to coalesce. Yet he sins gravely from the beginning who deliberately accepts small things with the mind of progressing to grave matter; and he who, from several things preserved, has with himself a grave value which he cannot retain without grave guilt.

— A religious injures justice, whether toward the religion or toward outsiders, who damages, steals, retains for himself, or gives to others what by right belongs to the community or to others, all these things being understood as is explained in the treatise *On Justice*. But when the detriment belongs to his own religion, although the very severity of discipline and the lesser faculty of disposing in a prelate, who is not owner but administrator, does not allow that the religious be judged a son under family power, nevertheless, because the goods of the religion yield to the utility of the religious, their case seems able to be estimated more benignly than that of outsiders, so that you can increase somewhat, for example by half, the quantity required for grave sin.

The cases are:

a. of injury without sacrilege: as if a religious, merely from the mind of doing harm, brings damage upon another's thing, or as confessor unjustly dispenses someone from restitution;

b. of sacrilege without injury: as if the religious otherwise applies or hands over to another what he could consume unproductively for a certain end; if he takes for himself what the prelate would not have denied him; if what he has spared of money, for example on a journey, he expends otherwise in the same moral time; if from outsiders he accepts something consumable by use and offered exclusively to himself;

c. of sacrilege concurring with injury: as if he does not hand over to the religion the fruits of his own industry, for example Mass stipends received.

And grave injury can be light sacrilege, and conversely: as if a religious snatches a modest quantity from a poor person, or, conversely, takes for himself a great amount of money from a person lightly unwilling.

— Because permissions and obligations of religious are judged to have been made or undertaken for no temporal profit of the Institute but for the sake of religion, sloth or laziness of a religious does not seem to be condemned as injustice. A religious will make restitution to the community by avoiding expenses which he could lawfully make from common goods, by handing over to the community what he could have applied to other uses. Yet for that reason he must not deprive himself of things which are referred to his own honest support.

— **On Common Life and on Peculium.** A threefold account of common life can be distinguished. The first is had when, other things being equal, religious are clothed, fed, and treated in a morally equal way. Other things being equal, insofar as Superiors at the same time with paternal charity provide for the peculiar necessities of a weaker body, and, with attention to the end of the Institute, procure what special studies or ministries can require.

Another account is observed if religious obtain necessary things for themselves from the community, formally or equivalently. Formally, as when things are bought with common money; equivalently, as when things bought with another's money are handed over to the free disposition of the Superior, and are conceded for use to the religious for whom they were destined by the buyer only dependently upon the will of the Superior and precariously.

Finally the third account demands that things be administered commonly, and that there be no portion of common things which the religious, beyond what present necessity morally requires, is permitted to possess, administer, or hold for his own uses.

The first account of common life procures uniformity; the other, common possession; the third, common administration.

To the second and third account of common life peculium is opposed. But peculium is distinguished into that of perfect right, which the Superior now cannot take away, and that of imperfect right, which can be circumscribed or taken away by the Superior. Peculium of perfect right is opposed to the vow of poverty, just as it is commonly understood in present law; peculium of imperfect right is not of itself repugnant to the vow, but if there is question of lasting peculium and one received, as it were, by customs, it is alien from the mind of the Church. She urges everywhere the prudent restoration of common life. But a custom which is opposed to the Code cannot be tolerated unless centenary or immemorial, insofar as Ordinaries have judged this opportune.

2. Now the Code, c. 594, §1, prescribes that "in any religion common life be observed by all, even in those things which pertain to food, clothing, and furniture." Besides, in §2 it is enjoined that whatever religious, even Superiors, acquire by their own industry or by reason of religion, and whatever goods come to an Order by reason of the solemn profession of members, be mixed with common goods, and that any money and all securities be deposited in the common chest.

With this prescription of the second paragraph saved, the common life of which in §1 seems able to be understood as it is imposed by the constitutions. This is confirmed by c. 2389. For canon 2389 commands Superiors gravely to admonish, and, if amendment has not followed, to punish religious who in a notable matter violate the law of common life as prescribed by the constitutions.

— There does not exist a special virtue of poverty, since riches and the possession of them are of themselves indifferent. But excessive affection toward temporal goods, just as in another person, so also in a religious, is to be charged as a sin which, according to the varying case, will be opposed to varying virtue.

II. On the Vow of Chastity

— **Matter of the Vow.** By the vow of chastity, which coheres intimately with the profession of sanctity, a religious is prohibited, from the motive of religion: a. from all lust, internal and external;

b. from marriage during profession.

For the common understanding of the matter has it thus: that the material object of the vow is the same as that of the virtue. Yet it can happen that, with the virtue intact, only the vow of chastity is violated, and conversely. One who is bound by a simple vow contracts marriage illicitly but, with peculiar exception saved, validly. If he uses the same, he will indeed injure the vow but not the virtue of chastity. And he who, himself free of lust, induces someone to sin with another person, will have sinned against the virtue, but not against the vow.

Some charge the violation of a solemn vow as a stricter sacrilege; but that the species varies on account of solemnity is not demonstrated.

Marriages honorable of themselves, with a pact of continence and therefore with a vow of chastity, can be composed together. But in the vow of chastity of religious, a vow of celibacy is judged to be contained, as is proved by the canonical penalties themselves to be alleged immediately below.

— **Juridical Effects.** "Religious who have professed solemn vows attempt marriage invalidly" (c. 1073).

Besides, "a marriage not consummated between baptized persons, or between a baptized party and a non-baptized party, is dissolved... by the law itself through solemn religious profession" (c. 1119).

With a special disposition set aside, as in the Society of Jesus, a simple vow of chastity does not dirime marriage. And by no simple profession is a marriage merely ratified dissolved. But by simple profession nuptials are prohibited; and every vow of chastity of religious, since it is public, is reserved to the Holy See. Concerning the effect of dismissal or departure with indult, cf. below, nn. 154, 157.

— **Penal Sanction.** Those solemnly professed who presume to contract marriage even civilly only, just like persons who presume to contract nuptials with them in the same way, are punished with an excommunication *latae sententiae* simply reserved to the Holy See. If there is question of those professed of perpetual simple vows, the excommunication *latae sententiae* is reserved to the Ordinary (c. 2388).

On account of the word "presume," every ignorance, with affected ignorance alone excluded, excuses from the censure. But the Ordinary to whom the excommunication is reserved, since the Code defines nothing further, seems to be the one to whom the penitent is actually subject.

III. On the Vow of Obedience

— **Account of the Vow.** The vow of obedience of religious is a promise made to God of the obedience which is owed in religious life.

1. **Whom one must obey.** By force of the vow of obedience, the religious must obey: a. that hierarchical prelate who commands him as a religious by power of jurisdiction. This is, as to Orders and Congregations of pontifical law, the Supreme Pontiff (c. 499, §1) and the regular Prelate, at least exempt; as to diocesan religions, also the bishop or quasi-bishop; b. those who are placed over the internal governance of the religion or house: therefore the religious Superior properly so called, and also, if usage bears this, others to whom the Superior has communicated his power, as to a Prior, sub-Prelate, or Minister, sub-Rector. But usage rather has it that, at least when the Superior of the house is present, he alone is to be obeyed from

the vow. Yet in other matters the authority of the Superior himself, and thus the vow, could be violated.

2. The remote matter of the vow is contained in all those things which either are explicitly presented by the rule or constitutions, or belong to it reductively, insofar as they are at least very suitable for the observance of the rule: thus mutual services, suitable punishment of delicts. For religious vow obedience according to their religious manner of life. St. Thomas, 2, 2, q. 104, art. 5 ad 3.

Although the matter is disputed, internal acts do not seem able to be directly prescribed, since obedience owed to man cannot exceed the mutual conversation of men, which is circumscribed by external things.

In doubts concerning power, the presumption stands for the Superior, at least when the matter belongs to the genus in which it is established that the Superior can command; in doubts concerning the honesty of the matter, if the Superior prescribes what is probably honorable, he seems to have to be obeyed, though Lessius is contrary, c. 41, n. 76. In negative doubts, let the subject simply commit himself to the governance of Superiors.

— The proximate matter of the vow of obedience comprehends precepts strictly such, which are imposed on religious as such by force of dominative power or even of jurisdiction.(1) Precepts strictly such, that is, by which the Superior intends to oblige conscience; on religious as such, that is, precepts which are referred to their proper state, not to the common condition of citizens or the faithful, such as precepts concerning the observing of sacred times; by force of dominative power or even of jurisdiction, so that he also will have violated the vow who has transgressed a rule obliging under sin. Yet one must see how the vow is commonly understood in the religion of the one vowing. But violation of the special law of religious or of laws which have been made for religious does not seem contrary to the vow unless it brings forth properly so-called precepts.

In many religions today, the Superior is not judged properly to command, not even under light sin, through the very words: "I strictly prescribe"; "I enjoin under precept"; but it is necessary that he command in the name of our Lord Jesus Christ, or in virtue of holy obedience, or by at least some other manner clearly express his will of obliging conscience.

Therefore he sins against the vow:

1. Who impedes the precepts themselves while he tries to withdraw himself from the dominion of Superiors in perpetuity or for a time: through apostasy, flight, or by illicitly procuring his own expulsion.
2. Who virtually violates the precepts when, even on the occasion of a simple command, he absolutely declares: "I do not wish to obey, I will not do it," understanding that of every matter or of some grave matter. If he limits it to a small matter, which seems to him useless or ridiculous, the violation will not have been grave.
3. Who violates a precept obliging under sin.

Violation of the vow of obedience is sacrilege; and besides, a sin, generally light, against observance toward the Superior to whose dominative power the religious is subject. If the Superior, which he is

not presumed to do, has used his power of jurisdiction in commanding, the sin will also be opposed to that virtue to which the matter prescribed pertains.

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(1) There are those (Suarez, *Rel.*, tr. 7, l. 10, c. 2, n. 5; Sanchez, *Dec.*, 4. 11, 25) who think that it remains entire for the Superior, when he prescribes by force of jurisdiction, either to urge or to omit the obligation of the vow. Rather, from our very definition of religious obedience, we would take away the opposite opinion from Lugo. Cf. Lugo, *Paenit.*, 10, 172.

— **An Opportune Manner of Prescribing.** It pertains to the gentle governance of Superiors that they rarely induce the guilt of sin by their precepts. But a religious who does not obey the more broadly preceptive will of the prelate, although he is not a transgressor of his vow, nevertheless will offend observance toward the Superior, charity toward the community, and humility; and habitual disobedience of this kind does not seem to be excused from grave guilt, whether on account of the sadness by which it affects the Superior and Brothers, or on account of the common detriment which it effects, or on account of the danger of expulsion which it thus prepares. It is not rarely said to transgress the virtue of obedience, or obedience commonly so called. Yet the special virtue of obedience does not intervene here.

§ 4. Obligation of the Rule or Constitutions

— **I. Notion.** A rule is a norm of living according to evangelical perfection, imposed upon religious so that commonly and efficaciously they may tend toward the end of their religion.

From received usage, the word *rule* is rather reserved for the more ancient norms, which often are, for various Institutes, a certain fundamental law; while more recent norms, or those which are added to the rule, assume the name of *constitutions*. Thus the black Benedictines and the Trappists have the common Rule of St. Benedict, but their own Constitutions.

— **II. Obligation of the Rule.** Today the whole rule is never contained in counsels, but, at least in several articles, it brings forth some obligation, whether direct, when it induces guilt of sin, either proportioned to the matter or light; or indirect, or at least of undergoing a penalty (cf. I, n. 169). Already the Constitutions of the Friars Preachers, and then most of the more recent ones, are to be held as penal laws.

Although then, from its genus, an act prescribed by the rule remains indifferent, nevertheless practically, or in the concrete, violation of the rule, unless there is place for epikeia, will rarely be immune from fault because of the disorder of motive, or the common detriment, or inconstancy in purposes. Moreover a transgression from formal contempt of the rule as such, not as minimal or inopportune, will have to be charged with mortal pride. For by his profession the religious is subject to the rule, nor can he put off this subjection.

Observe that an act which is not immune from venial fault is not necessarily wholly vitiated. Cf. I, nn. 118 and 123.

— The rules which imposed it having been suppressed, subjects cannot be induced by religious Superiors in any way to make a manifestation of conscience to them (c. 530). A manifestation of conscience is a revelation of matters which lie hidden in conscience and proximately regard virtues or vices: therefore it is not a response about the external observance of the rule, nor about skill or lack

of skill in praying. Subjects here seem to be understood as all who are called religious broadly, so that novices indeed, but not postulants, seem included under the name. Superiors seem to be taken as those properly such, such as Masters of novices are not. He induces to manifestation who, either openly or especially privately, exhorts subjects to manifest conscience; not he who benignly accepts a manifestation or renders it easy. An exhortation of this kind is prohibited only to Superiors, and when there is question of a manifestation to be made to themselves.

Spontaneous opening of the soul is not prohibited; indeed filial confidence is commended; and those are praised who prudently disclose doubts of conscience to Superiors. Prudently: wherefore the Code, c. 530, mentions only priest Superiors; yet it happens that intimate communication with the Superior herself is to be counselled.

§ 5. Obligation of Cloister

— Cloister, taken formally, is, in the fuller sense, the sum of canonical sanctions by which religious are prohibited from freely going out themselves, or outsiders from freely entering, a defined space which is designated by the name of cloister taken materially. In this full sense it is customarily taken among nuns, and in a certain measure among Sisters; while among men attention is paid almost only to the admission of outsiders, so that material cloister, understood more strictly, is taken of the space from which outsiders are prohibited.

Indeed with varying force and sanction, the Code nevertheless has imposed the common law of cloister upon all religions, indeed upon the very societies where life is lived in common without vows. Cf. cc. 597, 598, 604, 679, §2.

— 1. By the special name of papal cloister is called the cloister which, from c. 597, §1, is to be observed in the canonically constituted houses of regulars, whether of men or of women, even non-formed houses.

From c. 488, 7° and 2°, regulars are only those who have pronounced vows in a religion in which solemn vows are in fact emitted. Wherefore houses of nuns where only simple vows are emitted are not subject to papal cloister, so that in cc. 600-602 and 2342 there is question of nuns strictly so called.

2. The cloister of regulars necessarily affects, morally speaking, the whole house, with the public church excluded together with the adjoining, that is, contiguous, sacristy, the lodging for guests, if there is one, and the parlor, which, as far as can be done, ought to be established near the door of the house (c. 597, §2); yet among men this strictness is tempered by the necessity of living arrangements for students or of other works proper to the religion (c. 599).

3. Among men, only women, of whatever age, class, or condition they may be, are prohibited from entering the cloister. The wives, with their retinue, of those who hold supreme rulership are excepted (c. 598). The prohibition is sanctioned by an excommunication *latae sententiae* simply reserved to the Apostolic See, by which pubescent women who enter the cloister are punished, and whoever introduce or admit women of any age into the same cloister.

Concerning the going out of men, the Constitution *Nullus omnino*, §§18-21, of Clement VIII, which permitted going out only for a just cause, from special license, and with a blessing imparted, is no

longer confirmed or extended. But c. 606, §1, inculcates upon Superiors the accurate observation of the prescriptions of their own religion, both concerning the going out of subjects and concerning outsiders to be received or approached. But that subjects be absent from the house of their own religion beyond six months for another cause than studies, the permission of the Apostolic See is always required (c. 606, §2). Yet this seems to be tacitly contained in the approval of ministries which of themselves can demand a more prolonged absence.

4. Excepted are Cardinals and those who actually hold the supreme rulership of peoples, and their wives with retinue; excepted also are the local Ordinary or the regular Superior as Visitor, the Confessor, or one acting in his place, for the service of the sick, physicians, and those whose work is necessary. Apart from these, no one of whatever class, condition, sex, or age can be admitted within the cloister of nuns without license of the Holy See (c. 600). Yet postulants themselves are received within the cloister and are held by the law of cloister, though not by its sanction (c. 540, §3).

Nor, after profession, is it lawful for any nun, without a special indult of the Holy See or the faculty of a Legate of the Roman Pontiff, even for a short time, under any pretext, to go out from the monastery, except in the case of imminent danger of death or of some other most grave evil. This danger, if time allows, is to be recognized in writing by the local Ordinary (c. 601).

And this cloister is placed under the vigilance of the local Ordinary.

Those violating the cloister of nuns by entry, and those introducing or admitting them, and nuns illegitimately going out from the cloister, are punished with an excommunication *latae sententiae* simply reserved to the Holy See (c. 2342, 1° and 3°).

Observe, when there is question of nuns, contrary to what is said concerning men, that not the introduction or admission of all excluded persons is punished by excommunication, but only of those who are of such age and state of mind that, if they themselves entered, they would contract censures.

— In the houses of religious Congregations, whether of pontifical or diocesan law, a similar discipline of cloister is to be observed, yet in such a way: a) that it is protected by no papal censure; but in peculiar circumstances and for grave causes, the bishop can fortify that cloister by censure, unless there is question of an exempt clerical religion; b) that among Sisters, entry is prohibited not to persons of every sex, but only of the male sex; c) that because of residence of students or other works of religion, even among Sisters, partial cloister is admitted, comprehending that part of the building which is reserved for the habitation of the religious (c. 604); d) that no general law prohibits going out, even of Sisters; but superioresses and Ordinaries of places must watch lest, apart from necessity, individual Sisters go outside the house (c. 607); e) that for just and reasonable causes, Superiors can admit other persons within the cloister.

§ 6. Obligation of Choir

— Choir is no longer a common obligation of religious. But where it exists, daily common recitation of the divine office is imposed in individual houses where there are at least four bound to choir and not actually legitimately impeded. In the same religions of men, and as much as can be done, also of women, Mass corresponding to the divine office must be celebrated daily according to the rubrics;

and, with lay brothers excepted, solemnly professed who have been absent from choir must recite the canonical hours privately (c. 610).

Summary

— **I.** That they may preserve the truth of their state, religious must contend toward perfection by vows and religious observance.

II. The common obligations of clerics are of themselves extended to religious by canon 592.

III. They must observe the vows. Acts contrary to them are performed, of themselves, only illicitly by those simply professed, and invalidly by those solemnly professed. But violation of a vow induces the character of sacrilege.

1. By the vow of poverty all are prohibited from using any thing estimable by price for their own advantage as their own, that is, independently of the competent Superior. Dependence is preserved by permission not only express or tacit, but also reasonably presumed. But prohibited abdications or dispositions made in favor of others will be able, according to the manner in which the matter is understood, to be opposed to ecclesiastical law alone. Grave matter varies according to the various case. When there is question of the vice of proprietorship properly so called, or of acts which are prohibited by the vow of poverty from being done concerning things not one's own, the more common opinion judges that matter grave which would constitute grave theft. This gravity seems to be estimated relatively to the condition in which the religious by force of his profession is placed. But small sacrileges do not seem to coalesce. Thefts committed to the detriment of one's own religion are estimated more benignly than thefts of outsiders, so that the required quantity can be increased somewhat, for example by half.
2. By the vow of chastity a religious is prohibited, from the motive of religion, from all internal and external lust, and from marriage during the time of profession.

Professed who presume to contract marriage, even civilly only, and persons who presume to contract with them in the same way, are punished with excommunication reserved to the Holy See if they are solemnly professed, or to the Ordinary if they are professed of perpetual simple vows.

3. By the vow of obedience is promised to God the obedience which is owed in religious life. By force of the vow one must obey the Superior who is placed over the internal governance of the religion or house, and also the Prelate who commands a religious as such by force of the power of jurisdiction: such is the Supreme Pontiff, the regular Prelate at least exempt; and, for a diocesan religion, also the bishop or quasi-bishop. The remote matter of the vow is whatever is either explicitly presented by the rule or constitutions, or is very suitable for their observance; but the proximate matter comprehends precepts which are imposed upon religious as such by force of dominative power or even of jurisdiction. Not rarely today, in order that the vow be violated, it is presupposed that the Superior prescribe in the name of Our Lord Jesus Christ, or in virtue of holy obedience, or clearly express his will of obliging conscience. By the vow religious are also prohibited from impeding the preceptive action of the Superior, by withdrawing themselves from the dominion of the Superior, or from virtually violating

precepts, by declaring absolutely, "I do not wish to obey; I will not do it": for they must preserve the state of subjection.

IV. Religious must observe the common life, by which they receive necessities for themselves from the convent in common, with a separate peculium therefore excluded, at least such as is prescribed by the Constitutions. And a peculium of perfect right, or one which cannot be taken away by the Superior, is commonly opposed to the present vow of poverty.

V. A rule is a norm of living according to evangelical perfection, imposed upon religious so that they may commonly and efficaciously tend toward the end of their religion; it has the obligation at least of a penal law, or even a greater one which has been expressly or tacitly added. The name of rule is often reserved to the more ancient norms, while the more recent ones are called Constitutions.

Everywhere, however, the obligation of manifesting conscience to Superiors has been suppressed; nor can they induce subjects to make it to themselves. But spontaneous opening of the soul is not prohibited; and filial confidence is commended by canon 530.

VI. Cloister obliges all religious not to go out of the religious house except with due permission; this is understood more strictly concerning nuns. Nor is it now lawful for Superiors to permit, even for a grave cause distinct from studies or, as we think, from proper ministries, that subjects remain outside the house of their own religion beyond six months (c. 606, §2).

Cloister, called papal, to be observed in the houses of regulars, whether of men or of women, prohibits among men the entry of all women of whatever age, class, or condition, with the wives, with retinue, of those who hold supreme rulership excepted. Among nuns, excepted are Cardinals and those who actually hold supreme rulership and their wives with retinue, the Visitor, the Confessor, physicians, and others whose work is necessary; no one of whatever class, condition, sex, or age can enter the cloister. Postulants are received within the cloister and are held by the law of cloister. Cloister is defined more precisely by the proper Ordinary, with common law attended to. Papal cloister is sanctioned by excommunication.

And also in the houses of religious Congregations, at least partial cloister, which in a particular case can be dispensed by Superiors, is now imposed as to be observed by the Code.

VII. The obligation of choir, where it exists, has been explained above.

Chapter III: On a Religious Promoted or a Pastor

I. - On a Religious Promoted to a Dignity or Governing a Parish

— **I. On a religious promoted.** One named a Cardinal or bishop, whether residential or titular, remains a religious, bound by vows and the other obligations of his profession, except those which he himself prudently judges cannot be composed with his dignity. He is exempted from the power of Superiors, and, by force of the vow of obedience, remains subject to the Roman Pontiff alone. Of goods which he had or which come to him, he recovers or obtains the use, usufruct, and administration. But dominion, if he himself is incapable, he acquires for the diocese, vicariate, or prefecture, if he has been a residential bishop, Apostolic Vicar, or Apostolic Prefect; otherwise he acquires it for the capable Order or the Holy See. A Cardinal besides freely disposes, even by testament, of benefice revenues, with the special law concerning sacred furnishings saved (cc. 626-628; 239, §1, n. 14 and 1298).

Having laid aside the cardinalate or episcopate, the religious must return to religion, but he can choose any house in which he may dwell; nevertheless he lacks active and passive voice.

— A religious who governs a parish remains bound to observing the vows and constitutions, insofar as this can stand with his office. He is subject to the religious Superior alone in those things which pertain to religious discipline; but in his office he undergoes the cumulative jurisdiction of the Superior and of the local Ordinary, so that the Ordinary prevails over the Superior. Alms for the persons or works of his parish he himself collects, administers, and spends, with the vigilance of his Superior saved; but to receive, collect, and administer alms for building, preserving, or adorning the parochial church pertains to the local Ordinary, or, if the church belongs to a religious community, to the Superior. For the investment of money which has been given in view of the parish, he must obtain the previous assent of the local Ordinary. A religious pastor is always removable at the will both of the local Ordinary, with the Superior notified, and of the Superior, with the local Ordinary notified, and this by equal right. Cf. cc. 630, 631, 454, §5.

Summary

— **I.** Religious promoted to the cardinalate or episcopate, and Apostolic Prefects, remain religious, bound by vows and obligations which can be composed with their state. By force of the vow of obedience they are subject to the Supreme Pontiff alone. They preserve or recover the usufruct of their goods; but dominion, if they themselves are incapable, they acquire for the diocese, vicariate, or prefecture over which they are placed; the rest, as before, acquire it for the Order or the Holy See. Cardinals freely dispose of benefice revenues.

II. A religious pastor, in carrying out his office, undergoes the cumulative jurisdiction of his own Superior and of the local Ordinary, so that the Ordinary prevails over the Superior. He is removable at the will of either.

Chapter IV: On Those Passing to Another Religion

— Passage to another religion or to another monastery *sui iuris* cannot be made without an indult of the Holy See. One passing to another religion must perform a novitiate, though not likewise a postulancy; during this he observes the vows and must obey the Master of novices also by reason of the vow of obedience. The particular rights and obligations which he had remain suspended. If he does not persevere in the new proposal, he is bound to return to the former religion, unless the time of vows has expired. One passing to another monastery of the same Order repeats neither novitiate nor profession. If he had already been professed of perpetual vows, one passing makes no temporal vows precede perpetual profession, but is not admitted to it without a deliberative vote of the Council or Chapter, and the Superior has the right of proving him longer, yet not beyond a year from the completed novitiate. One passing to another monastery of the same religion, from the day of passage; one passing to another religion, from the new profession made, loses all rights and obligations of the prior monastery or religion, and takes up the rights and offices of the other. If in the prior religion he had been solemnly professed, the very solemnity of the vows of itself is extinguished. Cf. cc. 632-636.

Summary

— Passage to another religion or to another monastery *sui iuris* requires an indult of the Holy See. One passing to another religion must perform a novitiate, during which he observes the vows; but he has special obligations suspended; if he had been professed of perpetual vows, he must make no temporal vows precede perpetual ones. But one passing to another monastery of the same Order repeats neither novitiate nor profession.

Chapter V: On Departure from Religion

I. - On the Departure of Religious

— **I. Licit departures** (cc. 637-643). 1. When the time of vows has been completed, a professed religious can freely leave the religion.

2. Through an indult of exclaustration, dwelling outside the cloister is permitted for a definite time or while the cause subsists. Then the professed religious observes the obligations which can be composed with his state; in place of the Superiors of his own religion, he is subject to the Ordinary of the territory where he dwells, also by reason of the vow of obedience; nevertheless he must lay aside the exterior form of the religious habit, unless, because of a peculiar cause, he who grants the indult determines otherwise.

For religions of pontifical law only the Apostolic See can grant this indult; for religions of diocesan law, the local Ordinary also can grant it.

3. Through an indult of secularization, which the local Ordinary himself can grant for a religion of diocesan law, the religious is fully separated from his religion and, freed from vows and religious obligations, is fully assimilated to seculars. If he had been a religious in sacred orders, he must return to his own diocese; if he has lost this, he cannot, with another disposition of the Holy See saved, exercise sacred orders until he has found a bishop as benevolent receiver. But the bishop can receive the religious either purely and simply, or for experiment for three years; this time he can prolong once. After the second triennium has elapsed, the religious remains incardinated.

Nevertheless many offices cannot be conferred, without a new indult of the Holy See, on a secularized man who had been professed of perpetual vows; indeed, neither on one dispensed from temporal vows, or from an oath of perseverance, or from peculiar promises of his Institute, if he had been bound by them beyond six years.

— **II. Illicit departures** (cc. 644, 645, 2385, 2386). 1. Through apostasy from religion: this delict is committed only by a professed religious of perpetual vows, who illegitimately goes out from the religious house with the mind of not returning, or who, even if he has legitimately gone out, does not return, with the intention that he withdraw himself from religious obedience. And he is presumed an apostate who has not returned within a month, nor has manifested to the Superior his intention of returning.

2. Through flight, which he commits who, without the Superior's license, deserts the religious house with the mind of returning to the religion. Yet he is not considered a fugitive who merely goes out for a walk without license: it is necessary that for some time, for instance for two or three days, he wished to be his own master.

Fugitives and apostates are to be sought diligently, and the penitent must be received. Apostates, besides other penalties, contract by the fact itself an excommunication reserved to their own major

Superior, or, if the religion is lay or non-exempt, to the local Ordinary in the place where they are staying.

Fugitives by the fact itself incur privation of office, if they had any in religion, and suspension reserved to their own major Superior.

II. - On the Dismissal of Religious (cc. 643, 646-672)

Dismissal is one kind by the law itself, another pronounced by decree of the Superior.

— Those are held as legitimately dismissed by the law itself: 1. public apostates from the Catholic faith; 2. a religious man who has taken flight with a woman, or a religious woman who has taken flight with a man; 3. those attempting or contracting marriage, or even a bond, as they say, civil (c. 646, §1).

Then it suffices that the major Superior, with his Chapter or Council, declare the fact and preserve the proofs (c. 646, §2).

— **By decree of the Superior.** 1. When the time of vows has elapsed, professed religious can be dismissed for just and reasonable causes, but not because of infirmity, unless it is certainly proved that it had been fraudulently kept silent or dissembled before profession (c. 637).

2. While temporal vows endure, they can be dismissed for grave causes, whether on the part of the religion or on the part of the religious. In Orders or Congregations of pontifical law, the Superior General dismisses, or the Abbot of a monastery *sui iuris*, with the consent of each one's Council, manifested through secret votes; if there is question of nuns, there dismisses, according to the case, either the local Ordinary or the regular Superior to whom they are subject, after the Superioress with her Council has given attestation of the causes in writing; in Congregations of diocesan law, the local Ordinary in whose territory the religious house is situated dismisses: he is admonished not to use his right with the moderators unaware or justly dissenting.

If the dismissed religious has recourse to the Holy See in due time, while the recourse is pending the dismissal effects nothing.

A religious thus dismissed is assimilated to one secularized; if he had been a cleric in minor orders, by that very fact he is reduced to the lay state (cc. 647, 648).

3. After perpetual vows (cc. 649-672):

a) either there is question of a professed man. Then it is necessary that grave, external, certain delicts have preceded, three in number formally or virtually, from obstinacy after two warnings which, if there is question of a continued delict, must be separated by a space of at least three days, and must always be made with opportune admonitions and the threat of dismissal added. Then, in an exempt clerical religion, the process, every privilege having been removed, must be judged by the tribunal of the general moderator, yet in such a way that the sentence of expulsion must be confirmed by the Sacred Congregation for Religious before it is completed by execution. Yet for distant regions, the Superior General, with the consent of his Council, can commit judgment to three upright and prudent men. In a non-exempt religion of pontifical law, the supreme Moderator issues a decree of

expulsion, which the Holy See must confirm before execution; in a religion of diocesan law, the whole matter to be decided is committed to the local Ordinary. A free exposition of his reasons must always be permitted to the accused, and his responses must be faithfully reported in the acts;

b) or there is question of a professed woman. Grave exterior causes also, and incorrigibility proved by experiment, are prerequisites. The Superioress judges concerning this matter; and place for the free defense of the religious woman to be blamed must be given. But she herself never pronounces the sentence or issues the decree of expulsion; rather, if there is question of religious women of diocesan law, or, as it seems to us, in Belgium and in France, of nuns who have been reduced to simple vows, the Ordinary issues the decree of dismissal; if there is question of nuns or of Sisters of pontifical law, the acts must be transmitted to the Sacred Congregation, which will decree what seems more expedient. The acts of nuns are transmitted by the local Ordinary with both his own vote and that of the regular Superior, if there is one; the acts of Sisters are sent by the supreme Moderatrix;

c) whether there is question of a man or of a woman, in the case of grave exterior scandal or of very grave harm threatening the community, the religious man or religious woman can be expelled immediately. If there is question of one professed of an exempt clerical religion, the major Superior, or if the matter is too urgent the local Superior, but he with the consent of his Council, sends the accused back to the world, the religious habit being laid aside at once, and the process is immediately made if it has not yet been instituted. If there is question of a professed man or woman of a religion of pontifical law, the major Superior, with the consent of his Council, or, if the matter is too urgent, the local Superior with the assent of his Council and of the local Ordinary, dismisses the accused man or woman, the religious habit being laid aside at once, yet in such a way that the matter is submitted without delay to the judgment of the Holy See through the Ordinary or major Superior. If there is question of a professed man or woman of diocesan law, or of a nun of Belgium or France, the matter seems able to be resolved by the local Ordinary;

d) a professed religious thus dismissed remains bound by the vows, unless the constitutions or indult of the Holy See provide otherwise. If he had been a cleric constituted in minor orders, by that very fact he has been reduced to the lay state. But if he had been in sacred orders and had committed a delict because of which he is dismissed by the law itself (c. 646), or which is punished by infamy of law, or deposition, or degradation, he is perpetually prohibited from wearing ecclesiastical habit. Otherwise he remains suspended by the fact itself until he has obtained absolution from the Holy See. If, as is established of itself, he has observed the vows, he may return to the cloister; and if for three years he has given arguments of full amendment, the religion must receive him. Grave reasons which stand in the way of admission are to be submitted to the Holy See.

Summary

— **I.** 1. A religious departs licitly when the time of vows has been completed; when an indult of exclaustration has been obtained for a definite time or while the cause subsists; or when an indult of perpetual secularization has been obtained, which the Ordinary can grant to a religious of diocesan law.

2. One departs illicitly through apostasy from religion, which delict is proper to one professed of perpetual vows; and through the flight of one who, without license, goes out so that for at least some days he may live as his own master. Apostates and fugitives are punished with penalties.

II. 1. Public apostates from the Catholic faith are held as dismissed by the law itself; also a religious man who takes flight with a woman or a religious woman who takes flight with a man; and those attempting or contracting marriage, or even a bond, as they say, civil.

2. By decree of the Superior, professed religious can be dismissed for just and reasonable causes when the time of vows has elapsed; for grave causes while temporal vows endure; and religious thus dismissed are assimilated to secularized persons; and, if in minor orders, they are reduced to the lay state. Infirmity not fraudulently kept silent is always excluded as a cause of dismissal.

After perpetual vows, the dismissal of a man must be preceded by grave, external, certain delicts, three in number formally or virtually, after two warnings to be made, with opportune admonitions and the threat of dismissal added. In an exempt clerical religion of pontifical law, the process must be instituted by the tribunal of the general moderator, yet in such a way that the sentence of expulsion must be confirmed by the Holy See. In a lay or non-exempt religion of pontifical law, the supreme moderator issues a decree of expulsion which the Holy See must confirm; in a religion of diocesan law, the matter to be decided is committed to the local Ordinary. - The dismissal of a woman of perpetual vows demands grave exterior causes and incorrigibility proved by experiment. If there is question of nuns or Sisters of pontifical law, the acts must be transmitted to the Sacred Congregation, which is to establish what seems more expedient. In a religion of diocesan law, the Ordinary issues the decree of dismissal.

Yet in the case of grave exterior scandal or of very grave harm threatening the community, a religious man or religious woman can be dismissed immediately.

One dismissed of himself observes the vows; in minor orders he is reduced to the lay state; in sacred orders, he is at least suspended, or is punished more gravely.

Having amended for three years, of himself he is again to be received.

Chapter VI: On the Privileges of Religious

— **Notion.** We call privileges of religious not indeed all peculiar dispositions, even favorable ones, which have been enacted concerning religious, but those which have been conceded to them although they are not required by the state itself. The Code, cc. 613-625, numbers: communication of privileges; privileges of clerics; exemption; use of indults given to dioceses; questing; privileges of abbots concerning governance.

— **1. Communication.** The Code communicates to nuns, insofar as they are capable, the privileges of the same regular Order (c. 613, §2).

Among religions themselves it excludes any communication for the future.

> By this disposition of c. 613, §1, are privileges already previously acquired and possessed by communication *aeque principalis* taken away or not? Some affirm. Thus R. P. Blat, *Comment.*, I, pp. 601, 602; Biederlack-Fuehrich, *De religiosis*, n. 145; and c. 613, considered separately, favors them. But others, and indeed more in number, deny it. Thus Creusen and Vermeersch, S.J., *Summa novi iuris*, n. 222; *Epitome I. C.*, I, 615; *Nederlandsche Katholieke Stemmen*, 1919, the matter being better deliberated after a stricter opinion; Prummer, O.P., *Manuale*, pp. 302-303; Brandys, O.F.M., *Kirchl. Rechtsbuch fur relig. Laiengenossenschaften*, n. 94; Fanfani, O.P., *De iure religiosorum*, nn. 77, 78. These are favored by the general economy of the Code, which, alien to violent disturbance, is not judged to wish to cast religious down from a several-centuries-old use of privileges and to furnish occasion for not a few doubts and difficulties: for when there is question of a religion not so recent, one must labor not a little to discern the titles of privileges. Canon 4 also favors them, by which privileges hitherto conceded and in use remain intact unless expressly revoked. Now in c. 613 there is lacking a clear revocation by which, for example, it would be said: "the very privileges hitherto acquired by communication having been revoked"; but only the ambiguous formula is read: "any communication for the future having been removed." Wherefore, until, if it ever does so, the Commission on the Code has imposed the stricter discipline, religious can safely continue to use all their privileges, even those obtained by communication, as they commonly do in the City itself.

— **2. Privileges of clerics.** "Religious, even laymen and novices, enjoy the privileges of clerics of which in cc. 119-123" (c. 614).

— **3. Regulars,** unless they live illegitimately outside the house, novices not excluded, with their houses and churches, are exempt from the jurisdiction of the Ordinary, except in cases expressed by law (cc. 615, 616). "Religions of simple vows do not enjoy the privilege of exemption unless it has been specially conceded to them" (c. 618). Nevertheless, in religions of pontifical law, the local Ordinary cannot change the constitutions, or, of himself, take cognizance of the economic matter, or insert himself into internal governance and discipline.

Therefore, when there is question of regulars, contrary to what is true of religious of simple vows, exemption is presumed; subjection must be proved. Yet nuns who are not subject to regular Superiors are subject to the Ordinary. Exemption from jurisdiction of itself does not bring exemption

from visitation. Nevertheless regulars are of themselves immune also from this by their privileges. We spoke of the force of local exemption in I, n. 258. And, with a peculiar privilege saved, the Ordinary can sanction with penalties what he is permitted to command (c. 619).

— **4. Use of indults.** With vows and proper Constitutions saved, all religious staying in a diocese can use an indult by which the obligation of common law is legitimately taken away for that place by the local Ordinary (c. 620).

— **5. Questing.** Regulars who from their institute are called and are mendicants can, in the diocese where their house has been established, seek alms by the license alone of their Superiors; but outside the diocese they must ask the written license of the local Ordinary in whose territory they desire to quest. Other religious always need this license (cc. 621-624).

— **6. Privileges of abbots.** Abbots who govern a monastery, after they have been blessed, can confer first tonsure and minor orders on their professed members, and can use pontifical insignia, with the violet skullcap excepted (c. 625).

— **7. Dispensations.** To these privileges add the privileges of various Orders, especially the privilege of dispensing in vows and oaths, concerning which it was said in volume I, n. 296.

Appendix: On Societies Which Lead Life in Common Without Vows

— **1.** The societies of which there is question here, in Title XVII, Part 2, Book 2 of the Code, are constituted by four notes: a) life in common; b) governance of Superiors; c) approved Constitutions; d) study of imitating religious. In what manner? Unless we are mistaken, insofar as they too pursue perfection.

The Code does not treat under this title of Societies which lack any one of these notes; rather, these are governed by the titles concerning associations of laymen.

2. The dispositions of the Code come back to this: that it subjects those societies to several canons concerning Religious and besides to their own constitutions. But they participate in the law of religious in the erection and suppression of the society, provinces, and houses; in governance; in the administration of goods; in impediments of entrance; in obligations; in passage; in dismissal; and in penalties.

Summary

— These privileges seem to be alleged:

I. Communication of privileges, which nuns enjoy with respect to the regular Order, but not, at least for the future, various religions among themselves.

II. Privileges of clerics, which laymen themselves and novices enjoy.

III. Exemption from the jurisdiction of the Ordinary, which regulars with their houses and churches enjoy of themselves.

IV. Use of indults by which the local Ordinary takes away or tempers the obligation of common law for the territory.

V. Questing permitted to truly mendicant regulars, by the license alone of Superiors in the diocese where they have a house.

VI. Use of Pontificals and conferral of tonsure and minor orders conceded to abbots blessed for governance, and various faculties of dispensing conceded to Superiors by common law or peculiar indults.

Appendix. Societies which, without the customary public vows, lead common life so that they may imitate religious, participate in the law of religious in several matters, as in the erection and suppression of the society, provinces, and houses, in governance, in the administration of goods, in impediments of entrance, in obligations, in passage, in dismissal, and in penalties.

Treatise III: On Laypersons

Utility. - To be instructed concerning the juridical relations of laypersons is equally useful to clerics and laypersons: to clerics, so that they may fulfill the offices which correspond to rights; to laypersons, so that they may be more affected toward the Church and may obey her admonitions with a more prompt soul. Moreover, by a distinct knowledge of ecclesiastical and lay associations, even dissensions can be avoided.

— **I. General notions.**

Writers of moral theology are accustomed in this place to observe some things concerning the various offices which are incumbent upon laypersons according to their various condition: for example, judges, advocates, witnesses, defendants, physicians, masters, workmen. Yet these distinguish persons more in civil society than in the Church. Nor, especially today, is the reason clear why something should be said in specie concerning these few kinds of persons, while many others are omitted. Wherefore the things better to be noted opportunely are treated in the individual chapters on virtues, so that we may confine the discussion to the state which they commonly have in the Church alone.

By baptism a man is constituted a person in the Church (c. 87). But persons in the Church, by divine institution, are distinguished into clerics and laypersons, although not all clerics are of divine institution (c. 107). The rights and offices of Christians are common to clerics and laypersons; but this difference exists between each genus, that laypersons, by canon law, are incapable of ecclesiastical jurisdiction. By canon law, I say, from which therefore the Pope can dispense, and the Pope himself, by divine law, is immune: for every baptized Catholic, possessing the use of reason, can validly be chosen Supreme Pontiff.

Laypersons are prohibited from wearing clerical habit, with seminarians and others who aspire to orders excepted; excepted also are laypersons who are legitimately dedicated to the service of the church, "while they are within the same church, or outside it have a part in some ecclesiastical ministry" (c. 683).

But they "have the right of receiving from the clergy, according to the norm of ecclesiastical discipline, spiritual goods, and especially the helps necessary for salvation" (c. 682).

Nevertheless ascription to a non-Catholic sect and censure, especially excommunication, stand in the way of that right in a certain measure (c. 87).

A baptized person is never stripped of every right, since in the baptismal character he preserves a title to special solicitude and, in the hour of death, to the administration of the necessary sacraments.

— **II. On associations of the faithful.** In the Part on laypersons the Code treats of associations of the faithful, not because they exclude clerics, but because they are destined also to non-clerics or laypersons.

Moreover, some associations of the faithful are of ecclesiastical origin, because of a formal decree of erection, or at least a prerequisite approval of the Church (c. 686); while others are of lay origin and nature, although, if they pursue a pious end, they are honored by praises of ecclesiastical power and indulgences. The former are governed by cc. 685 ff.; the latter are not excluded by the commendation of c. 684, but exist by their own reason and are not subject to bishops except according to c. 316, §2. Cf. in the Corrientes case, November 13, 1920, the *Votum* of the Consultor, concerning the Conferences of St. Vincent de Paul, *A. A. S.*, XIII, p. 135 ff.

Moreover, Catholics are praised who give their name to associations commended by the Church; and associations of ecclesiastical character are reserved to Catholics who are not ascribed to a condemned sect or public sinners (c. 693). Of these, some associations promote a more perfect Christian life among the members, and are Third Orders; others exercise defined works of piety or charity, and are Pious Unions; others are constituted for the increase of public worship, and in the Code are called Confraternities (cc. 685, 702, 707). Before the Code, the word *Confraternity* was more generic.

The faithful are turned away "from associations which are secret, condemned, seditious, suspect, or which strive to withdraw themselves from the legitimate vigilance of the Church" (c. 684).

Summary

— The rights and offices of Christians are common to clerics and laypersons; laypersons are prohibited from wearing clerical habit, unless in ecclesiastical ministries, or unless they aspire to orders.

Unless censure or ascription to a non-Catholic sect stands in the way, they have the right of receiving from the clergy, according to the norm of ecclesiastical discipline, spiritual goods and helps.

Associations erected or approved by the Church are reserved to Catholics; these associations either promote a more perfect Christian life among members, namely Third Orders; or exercise defined works of piety or charity, namely Pious Unions; or are constituted for the increase of public worship, namely Confraternities.

The faithful are turned away from secret, condemned, or suspect associations.

Book II: On the Sacraments

Treatise I: On the Sacraments in General

(cc. 731-736)

Utility. - This is the common utility of the present treatise: that, by generic accounts concerning the nature, dispensation, and use of the sacraments, it may furnish a certain first information and anticipated knowledge concerning the individual sacraments, which may render plainer and permit more expeditious explanation of the parts which recur in the individual sacraments with some specific notes.

Division of the treatise. - In order we shall speak: On the Nature and Division of the sacraments; On the Minister and the right Administration of the sacraments; On the Subject by whom the same are validly and licitly requested.

Chapter I: On the Nature and Division of the Sacraments

— A Sacrament of the New Law is a sensible thing which, from the stable institution of Christ, has the power of effecting the sanctity or grace which it signifies.

No one is ignorant that there have been and still exist several usages, even ecclesiastical ones, of the word *sacrament*. But we assume the word in the technical usage of this book in the definition.

It is defined by faith in Trent, Session VII, canon 1, that there are seven sacraments, neither more nor fewer, truly and properly such, namely baptism, confirmation, eucharist, penance, extreme unction, order, and matrimony, and that all and each were instituted by Jesus Christ our Lord.

This definition does not prevent Christ, the author of the sacraments, from having been able to commit the ultimate determination of the elements of a sacrament to the Church. Concerning this matter dogmatic theologians are to be approached. This power of the Church is also the reason why moral theologians, solicitous for practical security, are accustomed, more than dogmatic theologians, to define the conditions of validity circumspectly and severely. The same power imposes on us also a diligent attention to the sacramental decrees which are issued by the Sacred Congregation of the Holy Office, through which the supreme authority of the Church is accustomed to express its mind in this matter.

As a sensible thing assumed for signifying, a sacrament is in the genus of sign. But it is proper to this sign that by signifying it operates, and indeed operates that which it signifies.

But it signifies sanctifying grace, whether first grace, when it first gives or restores it; or second grace, when it increases the same; then sacramental grace, special to the individual sacraments, that is, a special right to helps accommodated to the end of each sacrament.

But it signifies these things by means of the very title to having these things, which it places in the soul. This title, in three sacraments, constitutes a real, spiritual, indelible quality. That quality is called character, which, according to St. Thomas (3 p., q. 63, art. 3, c.), "is specially the character of Christ"... a certain participation of the priesthood of Christ, derived from Christ himself. But the sacraments by which it is imprinted are baptism, confirmation, and order. As often as these sacraments are validly conferred, that character is imprinted, although an obstacle can stand in the way of the further effect of grace.

Not only in these but in all sacraments, very many theologians, after St. Thomas, distinguish that which is sign only, or signifies and is not signified: the sacrament itself; that which is reality and sacrament, because it is simultaneously signified and further signifies, as character; finally, that which is reality only, or which is merely signified and does not signify: sanctifying and sacramental grace.

But what is the proper character of the three sacraments which imprint character, and what, in the other sacraments, is the title demanding grace, does not plainly agree even among those who think that in all sacraments there is reality and sacrament.

Moreover, a sacrament is a stable sign, or a sign instituted permanently in the Church militant. Wherefore the washing of feet at the Last Supper, the breathing by which Christ risen gave the Holy

Spirit to the apostles, and the words of Christ to Magdalene and to the paralytic, "Your sins are forgiven you," although they signified the spiritual effect of grace, are not sacraments, since perpetual institution is lacking.

Finally, it effects or operates grace *ex opere operato*, that is, by its use and application through its own efficacy, and not *ex opere operantis*, or not from the act and disposition of the minister, which, even when it is required for the effect of the Sacrament, is not the cause, but the condition without which not.

— Properly speaking, the following are not sacraments:

1. The figures and sacraments of the Old Law: various purifications and consecrations of priests; the paschal lamb, and especially circumcision; both because they were not instituted by Christ and because they did not effect true sanctity. And although, from the received opinion of theologians, circumcision at one time took away original sin through true grace, it did this either *ex opere operantis*, in adults, or not *ex opere operato* simply and rigorously; for it did not contain grace as cause, because the fountain of grace had not yet flowed forth, that is, the merits of Christ had not yet been acquired through his passion; nor did it formally confer grace insofar as it was circumcision and from its own institution, but insofar as it was a profession of faith; nor did it confer it by force of its application and use, for it did not give it to everyone not placing an obstacle. But circumcision was a sign of incorporation into the people heir of temporal promises, which were a figure of the spiritual promises made to those who are children of Abraham not by flesh but by spirit, that is, to the Christian people.
2. Sacrifices both of the Old and of the New Law, because they are formally instituted not for conferring grace *ex opere operato*, but for exhibiting and rendering worship to God. Although the Sacrifice of the New Law, or the Mass, obtains grace *ex opere operato* for him for whom it is offered.
3. Martyrdom, because although it confers grace *ex opere operato*, it is not specially instituted for this end.
4. Sacramentals, as the blessing of an abbot, because precisely from their use and *ex opere operato* they do not confer grace.
5. Acts of virtues, because they do not confer grace but merit it, and they are not all sensible.

— Therefore the sacraments are divided:

1. Into sacraments of the living, which, instituted for nourishing or increasing grace, of themselves demand a subject already living or endowed with sanctifying grace; and of the dead, which, instituted for conferring first grace, do not require in the subject an antecedent state of grace. The sacraments of the dead are baptism and penance; extreme unction is of a certain mixed character; the other four are of the living. Yet in a true sense, even first grace derives from the eucharist, insofar as, before the reception of the eucharist, no one obtains grace except from some desire for it, "either through himself, as adults, or by the desire of the Church, as little ones" (St. Thomas, 3 p., q. 79, art. 1 ad 1).

2. Into sacraments necessary by necessity of means or of precept, and not necessary. Necessary of themselves for all are baptism and eucharist; necessary after grave sin is the sacrament of penance; necessary in a qualified way are confirmation and extreme unction; of simply free use are order and matrimony.

Necessity is considered with respect to individuals; for those which are of free option to individuals, that is, order and matrimony, are most necessary to the Church.

3. Into sacraments repeatable or not repeatable. Strictly, the latter are those which imprint character (c. 732, §1). From the present discipline, extreme unction cannot be repeated in the same danger of death.

4. Into formed sacraments, which are as it were completed by the effect of grace, and unformed or not formed sacraments, which, validly administered, nevertheless, because of a defect of disposition in the subject, do not confer grace on the subject. At least some, with the obstacle removed, revive or confer grace: this is certain concerning the sacraments which imprint character. Concerning the others the matter is less clear, but, with the eucharist excepted, it can probably be affirmed. Cf. below, n. 208.

— **On the Matter and Form of the Sacraments.** Sacraments can be taken by way of a physical composite or by way of an artificial composite. In the former way, they are compared by scholastic doctors with physical substances which consist of matter and substantial form. Matter is the more determinable part; form is the determining and perfecting part. Matter itself is distinguished as remote: the sensible thing, as, in baptism, water; in the eucharist, bread and wine; in extreme unction, blessed oil; and as proximate, or the same matter as employed in the sign: the very action of washing or immersing, of anointing, in baptism and extreme unction; the sacramental species remaining after the conversion, in the sacrament of the eucharist. Form is the words or what is put in their place, as, in matrimony, the sign of consent.

Here we are treating of the former account.

In the other way, or when sacraments are taken by way of an artificial composite, the matter and form themselves, or the things and words together, have themselves after the manner of matter, but the signification after the manner of form.

— **On the Union of Matter and Form.** A question to be solved presents itself spontaneously: what conjunction of matter and form is essential to a sacrament? This is the general rule. As much conjunction as is required that one sign be constituted, so much conjunction is required. But a sign which must signify commonly is to be judged from common estimation. Therefore there must be such conjunction between matter and form that, according to the moral estimation of men, with the nature of the individual sacraments considered, one affects the other, that is, that the words are judged to fall upon such a thing and to compose one sign with it. Hence:

Physical "simultaneity" is required in the eucharist alone, so that the words may be true: "For this is my body," etc.

Moral simultaneity strictly so called is necessary in baptism, confirmation, extreme unction, and order: that is, so that one sign may be constituted, the words must be pronounced and the matter

must be applied morally at the same time. This is had without doubt if you have begun to pronounce the words before the application of the matter has had its end, or have begun to apply the matter before you have ceased to pronounce the form; indeed, if, without interval, the pronouncing follows the ablution or anointing, or the ablution or anointing follows the pronouncing. But if the matter is separated from the whole form by one *Pater Noster*, validity itself is already denied by St. Alphonsus, l. 6, n. 9.

In penance, which is by way of judgment, absolution can be delayed for a rather long time. And provided the circumstances demonstrate the connection between accusation and sentence, there is no reason why we should assign a maximum interval. Yet there are those who deny that so great a distance can intervene as can separate, in forensic judgment, the instruction of a case and its definition. This stricter opinion seems to be supported by the extrinsic authority alone of St. Alphonsus (l. 6, n. 9).

Finally, in matrimony, which is made by way of contract, and in which matter and form are found in mutual consent, it suffices, as in other contracts, that the consent of the one reach the morally persevering prior consent of the other.

— **On the Truth or Integrity of Matter and Form.**

1. The very value of the sacrament prevents matter or form from being changed substantially; but an accidental change will often be illicit. In this matter, the common estimation of men must be very much attended to. Matter is changed substantially when, according to common use and estimation, it differs in name and in reality from that which Christ prescribed. Thus raw material is not called bread, nor is that held as elemental water which is contained in the juice of a plant. Corruption of the form is to be called essential or accidental according as the same sense remains or does not remain. But it is corrupted essentially not only when the very sentence is formally changed, but also: a) when individual words are materially corrupted, so that they express nothing or something different; this occurs more easily in the base or root, that is, in the beginning, than at the ending, as if you should say *matris* instead of *patris*; b) if, because of an excessive interval, the words no longer seem to coalesce into one sentence; c) if not one single person pronounces the whole form, but several, one one part and another another part of the whole form. - On the contrary, the form may be able not to perish if you either omit, add, substitute, transpose, or, from defect of language, pronounce less well certain sounds which are plainly indifferent to the sense. Cases will be given concerning the individual sacraments.
2. A good intention does not avail to restore a signification which has been taken away by a change. But a signification which of itself is ambiguous can, from a manifest intention, be determined to one thing, so that the same material corruption may be held accidental if it appears to have proceeded from unskillfulness or distraction, while if done from a depraved intention or deliberately, it would have been substantial. Thus Pope Zacharias resolved the case concerning baptism. Cf. c. *Retulerunt*, 86, d. 4, *Cons.*
3. Without doubt, under one pronunciation of the form, several are validly baptized or absolved at the same time; and licitly indeed, in a case of urgent necessity; outside this, some hold it prohibited under mortal sin, others under venial sin. Cf. St. Alphonsus, l. 6, n. 29; d'Annibale,

III, 235. - If while one applies the matter another pronounces the form, for example, "I baptize you," he utters a falsehood and therefore says it in vain, as the Holy See itself declared. Cf. n. 225. Nevertheless in extreme necessity this might be attempted under condition, because the person saying and the person doing perhaps are morally one, since the application of the matter and the pronunciation of the form are done in the name of the one Christ. But the sacrament stands if several ministers perform the whole, for example, if they absolve or consecrate together, or if one perfects one part, another another part, of a composite sacrament; for example, in extreme unction, one, with the congruent form, anoints the hands, another the feet (d'Annibale, l. c.); or, in the sacrament of order, one, after the litanies, imposes hands; another, toward the end of the Mass, by the third imposition of hands confers the power of forgiving and retaining sins.

Summary

— **I.** A Sacrament of the New Law is a sensible thing which, from the stable institution of Christ, has the power of effecting the sanctity or grace which it signifies.

We know by defined faith that there are seven sacraments properly such.

A sacrament is a sign which by signifying operates that which it signifies: that is, sanctifying grace, whether first or second, and sacramental grace. But these are signified by means of the title to having them, which it places in the soul. This title in three sacraments, baptism, confirmation, and order, is character, or a real, spiritual, and indelible quality. That it be imprinted, valid conferral of the sacrament suffices. A sacrament is said to be efficacious *ex opere operato*, insofar as it operates not from the act and disposition of the minister or subject, but by its use and application.

II. Sacraments are: of the living and of the dead, according to the primary end of their institution; necessary to individuals and not necessary; repeatable and not repeatable; formed, which are as it were completed by the effect of grace, and unformed, which, validly administered, because of a defect of disposition in the subject, do not confer grace on him. Those which imprint character, with the obstacle removed, revive or confer grace. The same can probably be affirmed concerning the other sacraments.

III. Sacraments consist of a more determinable part, or matter, and a determining and perfecting part, which is form. Matter is remote: the sensible thing; or proximate: the same as employed in the sign. Form is the words, or that which is put in the place of words, and of itself, in matrimony, any sign of consent.

Between matter and form so great a conjunction is required that, according to the moral estimation of men, they constitute one sign, through simultaneity which, according to the nature of the sacrament, can be required as physical, thus in the eucharist; or suffice as broadly moral, as in penance and matrimony; or as strictly moral, as in the other sacraments. A substantial change of matter, when it differs in name and reality from that which Christ prescribed, or of form, when the sense becomes none or another, stands in the way of the value of the sacrament; but an accidental change will for the most part be illicit. Intention cannot restore a signification taken away; but a manifest intention can effect that ambiguity be brought to the right signification. The matter must be applied by the minister pronouncing the form, if the form expresses the action of the minister. But

the sacrament is valid if several, concelebrating, express the whole, or if, in extreme unction, one perfects one part, another another part, of a composite sacrament.

Chapter II: On the Minister and Right Administration of the Sacraments

I. - On Valid Administration

— **Who can be called a Minister of the Sacraments.** In the broad sense, anyone who ministers a sacrament at least validly is called a minister of a sacrament: thus a layman baptizing, thus baptized persons contracting matrimony. But properly a minister of a sacrament is one who, having received the power of order, is deputed to confer that sacrament, although perhaps some condition must be added either for the value itself or for liceity. Thus a priest has been ordained for absolving sins; yet he needs jurisdiction in order to confer valid absolution. He has also been ordained for baptizing; yet of itself the license of the Ordinary or pastor is required that he baptize licitly.

Moreover, a minister can be deputed simply, or principally, as though to a proper office, or secondarily and in a supplementary manner. The first is the ordinary minister, the other the extraordinary minister. Thus a deacon is the extraordinary minister of baptism and of the holy eucharist.

— **Conditions of Value. On Intention.** No faith or probity of the minister is necessary for the value of a sacrament; but, besides the power to be explained afterward, there is required and suffices an intention, or will, at least virtual and absolute, or one equivalent to this, and determined to a certain matter and person, of doing not merely the external ritual act, but the sacrament, or at least that which the Church does or which Christ instituted. Thus holds the common opinion from Trent, session 7, canon 11, against Catharinus, who was content with the will of the external act. No faith or probity is necessary, because the sacraments operate not from the disposition of the minister but from divine power, according to the institution and merit of Christ. - Intention at least virtual is required, because no act human and free in itself proceeds from habitual or interpretative intention, and administration must be done through a human act; virtual intention suffices, because this is referred to free and efficacious will, and because actions done from such a will are imputed as human when they are done by a man who, being master of himself, can impede the efficacy; and, because of easy distractions, indeed the moral impossibility of always having an intention strictly actual, it would have been too hard and full of scruples if actual intention were essential. Concerning the various account of the voluntary, cf. what was said in I, 46. - Absolute intention is required, by which a condition concerning the future is excluded, because, in conditioned administration, there is no will at the moment at which the external sign is placed; but when the condition arrives, the sign or operating cause is no longer had. Nevertheless matrimony must be excepted, because it is made by way of contract and follows the laws of contract. Now contracts can be made conditionally, and, when the condition has been fulfilled, pass into absolute ones. - Finally determined intention is required, lest the will lack an object and, being applicable to no thing or person, be shown vain. Cf. G. Boed, *L'intention de faire ce que l'Eglise fait dans le ministre du sacrement* (*N. R. Th.*, 1923, pp. 453, 533 ff.).

Therefore one drunk or dreaming does not confect a sacrament, although he previously intended the confection, because the act is not in itself human; nor does the priest who, having bread before him, merely recites the deed and words of Christ consecrating, because he has no intention of the sacrament. Concerning the deed of Athanasius as a boy and of Genesius the mime to whom baptism

is said to have been conferred in a play or comedy, it is not sufficiently established historically; but manifestly he effects nothing who intends merely to play. A pagan baptizing must have the intention of performing a rite which, not indeed from his persuasion but from that of Christians, is sacred. But the will of a matrimonial contract suffices in a heretic, even if he stubbornly denies the sacrament of matrimony, because the contract itself is the sacred rite of baptized persons who marry. Indeed, if he does not wish to do what the Roman Church does, or does not wish to confer or receive grace, falsely thinking Catholics to be deceived, the sacrament will be valid, because the will of making a true contract is judged the more powerful; and the general intention of doing those things which Christ instituted prevails over an intention which proceeds from error. If by a prevailing will he did not wish to do what the Roman Church does, the administration would not be valid. Also, because of positive exclusion of the will of doing what the Catholic Church does, Anglican ordinations were null. Cf. Leo XIII, Constitution *Apostolicae curae*, September 13, 1896. - One distracted while he consecrates or absolves must repeat nothing under condition: the act remains human.

— "He who in the usual way places the actions required for a sacrament cannot prudently doubt concerning the required intention, unless he positively excludes it. The reason: because he wishes to do what he sees others doing, and others are accustomed to similar things" (Lacroix, p. 2, n. 58). Omission of the required intention in a Catholic man "is an almost impossible case" (Ballerini-Palmieri, *Op. theol.*, tr. 10, s. 1, c. 2).

— If someone has had several contrary intentions, the matter is to be decided from the intention which, after examination has been made, must be judged principal and prevailing.

This is especially to be considered in weighing the force of conditions or clauses which are repugnant to the nature of matrimony.

— Voluntary distraction in the sacramental action itself, although it does not harm the value, is nevertheless a much graver fault than distraction which is admitted during prayer. Nonetheless, with grave danger of notable error excluded, it is only venial. Many, with St. Alphonsus, l. 6, n. 410, but with others contradicting, except the consecration of the eucharist.

— **On Conditioned Administration.** 1. Equivalent to absolute, as to the effect, is the placing of a condition which regards an essential element: *if you are not baptized, if you are capable, I baptize you*; *if you truly are sorry, I absolve you*. - Wherefore he sins only venially who irrationally places a condition of this kind; but as often as a reasonable doubt, according to the nature of the sacrament, is present concerning such an element, reverence for the sacrament requires that, if it is conferred, it be conferred in no other way than under such a condition.

2. If a sacrament is to be conferred, it is generally gravely illicit, because of connected inconveniences, to place a condition which does not regard an essential element, especially if it is not easily certain. Thus it would be grave for one ordaining to place the condition, "if the one to be ordained is worthy, impeded by no censure or irregularity"; for the consequences of a vain or doubtful ordination are most grave. Canon 942 itself excepts the case of extreme unction to be administered to a sick person concerning whose contumacy in manifest mortal sin there is doubt. For this conditioned administration, by which reverence for the sacrament is cared for, is without inconvenience. Matrimony also is excepted, which, for a just cause, can be

contracted under a condition concerning the present or suspensive concerning the future, but not under a resolutory condition.

3. The placing of a condition which regards an essential element does not always suffice to make the administration of the sacrament licit. Thus it is scarcely ever lawful, unless perhaps when better matter is not found for completing the sacrifice, and it is not to be proposed for adoration, to confect the sacrament of the eucharist with doubtful bread or wine.

4. Conditioned administration is to be done, however, with the case just mentioned excluded, if denial of the sacrament exposes a man to danger of grave harm, or deprives him of a great good. And this is especially valid when it does not stand through him that he does not avert the danger or remove the doubt: as if there is question of baptizing a man who is destitute of the senses; of anointing a man who perhaps is dead. But the more necessary a sacrament is to salvation, the more easily conditioned administration will be prescribed, or at least permitted.

5. Of itself it suffices that the condition be conceived mentally. Before the Code, the heresy of rebaptizers caused that, by positive law, pronunciation of the condition was prescribed in baptism. This law is indeed confirmed by no canon, but since it seems to be contained in the Ritual itself, concerning the sacrament of baptism, and liturgical laws are not revoked by the Code unless expressly (cf. c. 2), this obligation must be said to remain.

— **On Conditioned Repetition of a Sacrament.** 1. Unless the minister is excused by scruples, especially since time for deliberating scarcely suffices for one anxious, it is grave, because of the joined irreverence, to repeat a sacrament under condition when no reasonable doubt concerning the value of the conferred sacrament subsists. - Yet to repeat one word of the form in vain is not judged grave. - But one who is conscious to himself of a depraved custom of uselessly repeating the form or part of the form must strive, under grave sin, which rarely will be committed because of excusing scruples, to amend it.

2. The more necessary the sacrament is, say baptism, or the more harmful its nullity is, say presbyteral or episcopal ordination, the lesser cause suffices for it to be repeated licitly.

3. But when a reasonable doubt stands, the necessity of the recipient or harms to others to be guarded against, for example, when there is question of ordination, impose the obligation of repeating the sacrament. But where there is question of baptism or of ordination, repetition will be licit, although not prescribed, if some apparent reason or authority of Doctors troubles the mind, although the doubt is supported by no intrinsic reason or suitable authority. Cf. Lugo, *Resp. mor.*, l. 1, d. 33, n. 3. Hence c. 732, §2: "But if a prudent doubt exists whether they truly or whether they validly have been conferred," namely the sacraments of baptism, confirmation, and order, "let them be conferred again under condition."

II. - On Licit Administration

— That he may administer the sacraments licitly, it is necessary that the Minister:

1. be immune from censure. This is required under grave sin in him who offers himself spontaneously. Insofar as one excommunicated or suspended can administer the sacraments when asked by others because of utility, cf. below, n. 211.

But insofar as by a canonical penalty they are prohibited from exercising order, those become irregular who place an act of it (c. 985, 7°);

2. be immune from irregularity, if there is question of exercising the power of order, unless grave harm excuses;
3. be immune from mortal sin. Some demand the state of grace because of the gravity and sanctity of sacramental action, which is done in the person of Christ and operates sanctity, so that it is most gravely unbecoming to exercise the same in the state of mortal sin. Thus Lugo, *De sacramentis in genere*, d. 8, n. 150. But others, as Suarez, *De Sacramentis*, p. 1, d. 10, sect. 4, and St. Thomas himself, as Ballerini-Palmieri think, tr. 10, s. 1, c. 2, locate the grave unbecomingness in this: that a "person specially deputed and consecrated from office to that function," and therefore furnished with special graces and bound by a special obligation to minister the sacraments worthily, without due sanctity acts as public minister of Christ and of the Church in a holy action, such as a sacrament is.

Therefore the latter, contrary to the former, do not condemn every administration in mortal sin as of grave fault, but only the confection and solemn administration of a sacrament for conferring which the minister has been deputed by the very order received.

Hence, according to a probable opinion, they do not sin gravely who, in the state of mortal sin: a) do not confect the eucharist but merely minister it, which Lugo, n. 155, holds against Suarez; b) exercise sacramentals, bless water or nuptials, consecrate altars, churches, vessels, and preach: these actions do not tend proximately to the sanctification of the soul. Yet it would be mortal to consecrate chrism or bless the oil of the sick in mortal sin, because he who constitutes valid matter of a sacrament begins to sanctify; c) a deacon and subdeacon ministering in their own order in the sacrifice, because they confect no sacrament; d) laypersons baptizing in necessity, or conferring matrimony upon themselves: but as recipients, they must be in the state of grace; e) a priest baptizing not solemnly; f) a deacon baptizing solemnly but without commission at least legitimately presumed; with commission, he is in the condition of a minister consecrated for that; h) a bishop conferring minor orders or even the subdiaconate, because it is not certain that these are sacraments.

In this opinion it is more easily explained why he probably sins only by one sin who in one course baptizes, confirms, or absolves several while entangled in mortal sin.

But the state of grace, unless there is question of confecting the eucharist in the celebration of Mass, must not be procured through use of the sacrament of penance: it is enough that with sincere persuasion the minister judge himself contrite. And if there is danger in delay, and he cannot confess or become contrite so quickly, administration will be done without irreverence (cf. Lugo, d. 8, n. 151); but he who foresaw the case and neglected to fortify himself will be culpable in the cause (d'Annibale, III, 248 [6]).

— The minister sins mortally who, in the administration of a sacrament, with danger to its value, abandons the safer opinion (St. Alphonsus, l. 6, n. 57); or, outside necessity, uses doubtful matter or form. For he treats the sacraments unworthily.

— The minister sins gravely who does not merely dissimulate the administration of a sacrament, which sometimes can be done laudably, but falsely simulates it. Hence proposition 29 among those

reproved by Innocent XI: "Urgent grave fear is a just cause for simulating the administration of a sacrament." But here simulation strictly so called must be distinguished from the other, more broadly so called.

Simulation strictly so called consists in a feigned utterance of the form over matter of itself apt. This, unless the circumstances betray that nothing is being done seriously, in which case not even simulation is had, is "a sacrilegious lie, since the minister abuses the sacred thing itself, namely a sacred rite instituted by Christ, as a means of uttering a lie" (Lehmkuhl, II, *De Sac. in genere*). Proposition 29 must be understood of this simulation alone. Cf. Palmieri, *Op. theol.*, IV, 694.

Simulation more broadly so called is had when, in place of the due form or matter, something else representing the appearance of them is employed. And it is formal or material, according as the deception of another is intended or this merely follows and is permitted. And of itself that deception in religious matters is illicit.

Thus it is certain that it is wicked for a non-consecrated host to be offered as consecrated to someone ignorant; or for someone to celebrate Mass while omitting the form of consecration. Certain other things are permitted for a grave cause: a) lest he manifest to others an indisposed penitent, a priest could pray something and make the sign of the cross, which bystanders will take as absolution: here the denial of absolution is merely dissimulated. Nor does he lie who stands before a confessor to speak about another's business; for he himself has properly spoken nothing with others; b) for avoiding scandal or infamy, in a most rare case, a priest could pronounce the words "The Body of our Lord Jesus Christ" and not offer the host to someone sitting at the sacred table; c) for a grave cause, they permit that a feigned consent be given in Matrimony. If a lie is absent, not even the sacrament is simulated, since the matter and form are contained in true consent.

— He sins gravely or lightly, according to the moment of the matter: a) who pronounces the words of the form corruptly, inarticulately, indevoutly; b) who accidentally changes the matter or form; c) who, contrary to the custom of the Church, without cause changes or omits ceremonies. If this happens from contempt, it will be mortal; if from negligence, it is often mortal when, in a grave matter, it is opposed to a precept strictly such. "In confecting, administering, and receiving the sacraments, the rites and ceremonies which are prescribed in the ritual books approved by the Church are to be accurately observed." Thus c. 733, §1. The words and received usages teach us which dispositions of the Ritual oblige under grave sin, or under light sin; which are merely directive. Thus the rubrics of the Missal within Mass are judged almost all preceptive; outside Mass, the more common opinion holds them as merely directive. Cf. St. Alphonsus, l. 6, n. 399.

— The obligation of ministering the sacraments can flow from justice or charity.

1. Those who are engaged in a pastoral office, from ordinary or delegated jurisdiction, must, under grave sin and from justice, minister the sacraments to their subjects reasonably asking. For they must from office provide not only for necessity but also for the fitting progress of their subjects. And besides the great detriment which subjects may suffer, the very danger already of turning them away from frequent use of the sacraments makes the sin grave.

The same are bound, in common necessity, such as sinners in general suffer, with grave inconvenience to themselves; but in grave and in extreme necessity of their subjects, even with

evident danger of life, since the execution of the office undertaken extends to that point. The degrees of necessity were declared in volume II. Yet it is enough to administer the necessary sacraments with danger of life when, without new danger, other aids cannot be supplied. But the necessary sacraments are: baptism, penance, and, in defect of this or for those who, not yet absolved, are destitute of the senses, extreme unction. If success or necessity is only probable, the obligation for the pastor indeed remains with probable danger of life; it does not seem to stand with morally certain death: as if you seem likely to perish before you reach the infant to be baptized, or you probably presume him to have been baptized, or if an adult can easily elicit perfect contrition, or another is present who can and wishes to furnish that. Cf. Cappello, op. c., n. 67, 3. Wherefore Benedict XIV (*Syn.*, l. 13, c. 19, nn. 2, 6) does not condemn the pastor who, if a suitable vicar assists the sick, reserves for himself the care of the healthy; for it is expedient that someone be at hand whom they will not flee from fear of contagion. A prevailing reason of the common good, as if, with you perishing, the salvation of many would be endangered, can excuse a pastor.

Hatreds also to be avoided against the Catholic Church can prevent you from being obliged or able to provide even for someone's extreme necessity, for instance that of an infant dying without baptism. Cf. d'Annibale, II, 82 (3).

When there is question not of public attack upon the faith, but of sacraments, such as Penance, which are customarily administered by priests with care of souls rather than by prelates, the obligation of mediate prelates is less personal and is regularly fulfilled through others.

Corollaries. a) They sin gravely who often show themselves morose and difficult; who wish to hear confessions of subjects only on a few days within the month, much more those who wish to hear them only in Easter time; who establish inopportune times for the distribution of the most holy eucharist. Once or twice to deny the sacrament to one who is in no necessity is not judged grave.

b) A pastor requested by name must himself minister to the subject, unless he has been impeded, or the subject would willingly go to another. Yet he must not comply with an irrational petition; wherefore, with the sacramental seal saved, he must by no means waste time with a scrupulous person or a little devotee.

2. Other ministers are bound according to the laws of charity alone: therefore under grave sin in grave necessity of neighbor, but they will be excused by grave inconvenience of their own. With probable danger of life they must administer sacraments absolutely necessary only in extreme or quasi-extreme necessity and insofar as success is morally certain.

N.B. Grave common necessity is deservedly equated to extreme necessity: both because common harm prevails over private harm, and because grave common necessity brings with itself the extreme necessity of many.

— The obligation of denying the sacraments to one asking unworthily also presses the minister, according to the following rules.

1. Religion, lest the sacred thing be profaned; charity, which forbids scandal and participation in another's sin; and fidelity in the entrusted function of dispensation compel the minister prudently to have regard to the worthiness of the one receiving the sacrament.

2. The rules are reduced to two chief heads: a) where the petition is made in secret, the sacraments are to be given to the worthy and denied to the unworthy. For no other reason here occurs of itself to be considered. Except the prohibited use of sacramental secrecy; b) where the petition is made publicly, the publicly unworthy and the manifestly infamous are to be kept away, but not occult sinners. For nothing prevents a public sinner from being treated according to his merit. And it is easily understood why, even after grace has been recovered, the same man cannot ask for the sacrament with detriment to the public good, or before scandal has ceased. Reasons again drawn from the public good, besides the right not to have reputation injured, are most powerful for declaring why occult sinners who ask publicly are not to be repelled. For to bestow the sacrament on one merely unworthy, who of himself, up to the last moment, can make himself worthy by an act of contrition, is not intrinsically illicit, but is material cooperation in another's sin, which reasons drawn from the good of men, for whose sake the sacraments exist, are able to excuse. Now it seems wicked that, from private and fallible knowledge of unworthiness, any minister could afflict the faithful with public disgrace, with danger of hallucination and error from ignorance, levity, or passion of soul. And even if he acted according to the merit of the cause, the minister nevertheless would seem to give and deny the sacraments according to his pleasure, which would furnish occasion for many offenses and disturbances, and would give rise to the gravest scandal of turning the faithful away from frequenting the sacraments themselves.

An insufficient reason for the concession of a sacrament would be sought from preserving the reputation of the one asking. For the unworthy man who dares to approach the sacrament ought to ascribe to himself the harm of reputation arising from repulse. Cf. Cappello, *De Sacramentis*, I, nn. 72, 76.

Therefore if only a few are present who would not wonder at the matter, the benign rule itself already seems to cease.

Nor should you confuse denial of a sacrament with delay commanded for a just and public cause, as if someone approaches irreverently, or is ordered first to care for cleanliness or decency itself in clothing.

— It remains that we briefly explain the rules themselves.

1. What inquiry into the qualities of the subject is permitted or prescribed to the minister?

a) He who asks entrance into the Church possesses no special right; but the approach to the Church is not open except to those who approach spontaneously and give a founded hope of Christian life. Wherefore before the baptism of an adult, inquiry must be made concerning his consent, knowledge, and competent disposition;

b) Once baptism has been received, a Christian has the right of receiving the sacraments which regard his own sanctification; and the presumption of probity favors him. Wherefore where the minister is not a judge but merely a dispenser, the sacraments are of themselves to be denied to no one living as a Catholic, unless unworthiness is certain. In Penance, on the contrary, the minister, because of the office of judge, must prudently be made more certain concerning the disposition of the penitent.

The case of Order and Matrimony is special. For it belongs to the public good that Order not be conferred on one who is feared likely to be an unworthy minister; nor is every cause of unworthiness infamous; nor is repulse made openly, at the altar. Wherefore a candidate who asks for order is judged to permit that a special inquiry be made concerning him, which the conferrer of the function prudently institutes concerning every candidate, and the bishop can, from informed conscience, or because of causes known to himself, even secret ones, deny him ascent. But observe that here worthy reception of the sacrament is not considered, but the worthy exercise of sacred functions. The right conclusion of matrimony contributes very much to the common good of the city and of the Church. Wherefore, besides impediments of divine law, the Church prudently orders the matrimony of the faithful through other impediments and laws, and commits to the pastor, to whom belongs the right of assisting at matrimony, that he diligently investigate, both by the public pronouncement of banns and by private investigation, whether perhaps something stands in the way of the matrimony. He prudently questions the spouses themselves concerning impediments, concerning free consent, especially that of the woman, and concerning sufficient doctrine. But where nothing stands in the way, he is forbidden to deny his presence, which is not that of a minister but of an authorizable witness; indeed, for avoiding greater evils, he must sometimes assist at marriages little to be approved. But the spouses themselves, although they confer the sacrament one on the other, are not ministers of the Church. From charity indeed one must impede the sin of the other, but grave inconvenience excuses them so that they can enter a matrimonial covenant with an unworthy person. Therefore no investigation is made concerning the worthy reception itself of the sacrament except for baptism and penance.

— 2. Who are the publicly unworthy who must be repelled? And how long are they to be kept away?

a) Strictly, publicly unworthy is only he whose present sin or unworthiness is already commonly known; less strictly, he who is not yet infamous, but whose iniquity has notoriety of law because of the sentence of a judge or confession of a delict in judgment (c. 2197, 2°), or can no longer be hidden by any subterfuge. Otherwise he is occult. But he asks a sacrament occultly who asks before the minister alone, or before a few others of whom no account is to be taken.

Therefore publicly unworthy are no longer all, in our regions, who are alleged in the Ritual by way of example, money-lenders, blasphemers, etc.; for, at least from presumed confession, their unworthiness regularly has ceased when they ask for the sacraments. Nor, of themselves, are those publicly unworthy who follow the parties of liberals or socialists: for the account of liberalism and socialism is equivocal, and in some good faith can be admitted. But publicly unworthy will almost always be the notoriously excommunicated, interdicted, prostitutes, concubinarians, those exercising a notoriously illicit profession, or an office prohibited by public decree. Such also are those liberals or socialists who glory in the sacraments received, as though in a motive of impenitence and perseverance in error. Code c. 855 calls publicly unworthy "the excommunicated, the interdicted, and the manifestly infamous."

b) Lest what is holy seem to be given to dogs, the Roman Ritual keeps the publicly unworthy from the eucharistic table "unless their penance and amendment are certain, and they have first satisfied for public scandal." Canon 855 repeats this in almost the same words. Therefore those from whom only amendment must be demanded are to be distinguished from those who besides must give public satisfaction or reparation. Public approach to the sacrament of penance of itself suffices for proving

amendment. And that approach can easily be presumed. Others must separate from a concubine, leave a brothel, dismiss an office, or repair public scandal. And if it is commonly certain that someone, notwithstanding confession, has often relapsed, generally he will have to be proved for some time before he is admitted to the holy table. But it will belong to the confessor to warn such persons concerning their obligation, lest they expose themselves to repulse.

c) Indeed, in doubt concerning amendment and satisfaction furnished, it is judged that the eucharist should rather be denied to a public sinner of this kind. Thus from St. Alphonsus, l. 6, n. 48; d'Annibale, III, 262, and Lehmkuhl, II, 56. On the contrary, where a greater evil is to be feared from denial, all the circumstances are to be weighed, and, if there is opportunity, recourse should be had to the local Ordinary. No one fails to see that the greatest prudence is needed today in our regions.

d) In the article of death, it will be enough that the confessor take care, after a faculty has been sought from the sick person insofar as there is need, that the faithful know the dying man has satisfied, as he could, the obligations present. Yet the sick person's own retraction before two witnesses will be preferable. And if a concubine, or an adulterous party, for example one who after merely civil divorce married another, is staying in the very house of the sick person, the eucharist certainly cannot be brought to him openly.

N.B. The stricter indications of the Ritual, which in our regions are outside use, can be very useful in foreign missions, so that missionaries may know what they can opportunely demand, without excess, from neophytes of little cultivation.

What if one asks publicly whose delict is not yet strictly public, or is public in another place but not in the place where he asks for the sacrament?

Because of the scandal of the faithful to be feared, probably the sacrament is not to be denied unless, because of divulgation soon to happen, a greater offense of the people would arise from the sacrament conceded.

— Can the minister because of fear of death give the sacrament to an unworthy person?

By no means, if the sacrament is sought in contempt of religion. With contempt excluded, the matter is disputed. Palmieri, t. 4, n. 689, and d'Annibale, III, 264, permit the conferral, because it is not intrinsically illicit; Lehmkuhl, II, 53, denies it, because the good effect, or the life preserved for the minister, follows not equally immediately, but by means of the profanation of the sacrament. But since the very conferral of the sacrament is not yet its profanation, for the recipient could dispose himself by interior contrition, and since profanation has for its cause not indeed the action of the minister but the disposition of the recipient, Palmieri seems to have resolved the case rightly. Thus also Cappello, I, 71. St. Alphonsus adhered first to the benign opinion, then to the stricter.

— **Exclusion of Heretics and Schismatics.** Not indeed from the general rule by which sacraments are to be denied to the unworthy, but from the proper account of their separation from the Church, which possesses the sacraments as its own good, "it is forbidden to minister the sacraments of the Church to heretics or schismatics even erring in good faith, unless first, their errors rejected, they have been reconciled to the Church" (c. 731, §2).

This rule gives place to no exception when there is question of persons in good health. It is indeed circumscribed, with the text itself attended to, to those who have the age at which formal

reconciliation is demanded by the Church, that is, who have completed 14 years of age (Holy Office, November 1878 and March 8, 1882, in *Coll. de P.F.*, ed. 1, nn. 660 and 1680; ed. 2, n. 1566). But reverence owed to our sacraments will command that even adolescents of a lesser age be kept away if they are foreseen afterward to be going to adhere to a non-Catholic sect.

Nevertheless the necessity of consulting, in danger of death, the salvation of a soul permits that the sacraments of necessity, strictly or broadly so called, namely penance and extreme unction, be administered to dying non-Catholics, at least conditionally, if they are destitute of the senses, or, if present to their senses, if they seem prudently to be left in good faith. And one destitute of the senses will be helped more certainly by extreme unction than by sacramental absolution, because it does not require acts of the subject as the quasi-matter of the sacrament. Yet scandal or wonder of the people must be guarded against, if extreme unction cannot be ministered sufficiently secretly.

Nor does there stand in the way a particular response of the Holy Office, May 17-20, 1916, and published only in a diocesan periodical, by which it was denied that these sacraments could be conferred on material schismatics constituted in the article of death and in good faith asking either absolution or Extreme Unction, but it was required "that, in the better way in which it can be done, they reject errors and make profession of faith." For that response gives a general rule concerning schismatics alone, with whom one can more easily sin by a certain indifferentism, and who, because of the very petition, seem able rather conveniently to be brought to abjuration of errors; nor does it contemplate the case in which, dangerously for the eternal salvation of the soul, good faith would be disturbed.

— In the administration of the sacraments, the proper vestments to be used are stole and surplice, but not the rochet, which is an insignia of canons and is distinguished from the surplice by lesser breadth and narrow sleeves.

The stole is not to be used except in the confection of sacraments and sacramentals, and in functions for which its use is prescribed by the Roman Ritual. In the act of preaching it is not used except in places where such use is in force.

— Canon 736 also prescribes gratuitous administration of the Sacraments, forbidding that for any cause or occasion, whether directly or indirectly, the minister ask anything for the administration of sacraments except the offerings defined by the provincial Council or by a meeting of the bishops of the province and approved by the Holy See.

Nevertheless offerings admitted by custom seem able to be received. Thus Cappello, I, 96, arguing from c. 463, §1, concerning Pastors, which, because of parity of reason, he extends to others.

Summary

— **I. Valid administration of the sacraments.** 1. Besides power, in the minister there is required and suffices an intention at least virtual, absolute or without a future condition, with matrimony excepted, of doing not only the external rite, but also the sacrament, or at least that which the Church does or which Christ instituted.

From several contrary intentions the prevailing one resolves the matter. Voluntary distraction of the minister does not harm the value, but is a venial sin among the graver ones, especially if there is question of consecration.

2. No faith or probity of the minister is necessary.

3. If an added condition concerns an essential element, it brings in no doubt concerning the value; and it must be added when, notwithstanding the danger of nullity, the spiritual necessity or utility of the recipient counsels administration of the sacrament. Of itself it is enough that the condition be conceived mentally; nevertheless in baptism it must be expressed. But it is never lawful to confect the eucharist with doubtful bread or wine, with the case indicated in n. 184 excepted.

It is generally gravely illicit, because of connected inconveniences, to administer a sacrament under a condition which regards a non-essential element, especially if it is not easily certain. Except matrimony and extreme unction conferred on a sick person concerning whose contumacy in manifest mortal sin there is doubt, because reverence for the sacrament is thus cared for without inconvenience.

4. Conditioned repetition of a sacrament without reasonable doubt concerning the value of the conferred sacrament is objectively gravely illicit because of the joined irreverence; but the more necessary the sacrament is, the more harmful the nullity, the lesser cause permits repetition. But when reasonable doubt stands, the necessity of the recipient or harms to others to be guarded against impose the obligation of repeating the sacrament.

II. Licit administration. - 1. It requires a minister: a) immune from censure. Nevertheless, unless he is one to be avoided or judicially condemned or declared, one excommunicated or suspended can accede to one asking for a sacrament. In danger of death the faithful can ask absolution from any excommunicated person; and, if other ministers are lacking, also the other sacraments and sacramentals; b) immune from irregularity, if there is question of exercising the power of order, unless grave harm excuses; c) immune from mortal sin, and this under grave sin, at least when there is question of the confection and solemn administration of a sacrament, for conferring which the minister has been deputed by the very order received.

2. It forbids under grave sin that, without necessity of the faithful, a sacrament be exposed to danger of nullity: it is an unworthy treatment of the sacrament.

3. It forbids under grave sin simulation of a sacrament, which is had strictly when the form is feignedly uttered over matter of itself apt: it is a sacrilegious lie. Simulation broadly so called, by which, in place of the due form or matter, another thing representing the appearance of them is employed, of itself indeed is illicit in religious matters, even if the deception of another is merely permitted. Nevertheless it is lawful for a grave cause to give consent feignedly in matrimony.

III. Administration is owed from justice, to subjects reasonably asking, by those who from ordinary or delegated jurisdiction are engaged in pastoral office. And those who often show themselves morose and difficult would sin gravely. In common necessity, they are bound with grave inconvenience to themselves; in grave and extreme necessity of their subjects, they must, even with evident danger of life, administer the necessary sacraments, unless they are excused by a prevailing common good.

The obligation of a mediate prelate to minister parochial sacraments is less personal, and regularly is fulfilled through others.

Other ministers are bound according to the laws of charity.

IV. Administration is prudently to be denied to the unworthy, because of religion, charity, and fidelity in the entrusted function of dispensation. Wherefore, where the petition is secret, the sacraments are to be given to the worthy and denied to the unworthy, with sacramental secrecy saved. But where the petition is made publicly, only the publicly unworthy and infamous are to be kept away. For the occult unworthy person, with whose sin the minister merely materially cooperates, cannot be repelled without danger of error and of public offense, which would turn the faithful away from the sacraments.

Is the one asking worthy: this is to be inquired into before baptism and sacramental absolution. Is he fit: this is examined before ordination, just as before matrimony investigation is made lest something stand in the way. For the other sacraments, the baptized person asking is presumed worthy.

Today the publicly unworthy are the notoriously excommunicated, the interdicted, and the manifestly infamous. But they are to be kept away until their penance and amendment are certain, and they have first satisfied for public scandal. In the article of death, the retraction of the sick person before two witnesses is preferable, although it is enough that the faithful know the dying man has satisfied the present obligations as he could.

Heretics and schismatics also are to be repelled, even those erring and asking in good faith (c. 731, §2), except in the necessity of danger of death.

Can the minister because of fear of death give the sacrament to an unworthy person? This is controverted, but seems to be admitted when it is not asked in contempt of religion.

V. Sacraments are to be administered gratuitously, except for offerings duly defined.

VI. The vestments to be used in the administration of sacraments and confection of sacramentals are of themselves stole and surplice.

Chapter III: On the Subject and Right Reception of the Sacraments

I. - On Valid Reception

— **Principles. I.** For valid reception of a sacrament these three things are commonly required and suffice:

1. radical capacity, which all and only wayfaring men have with respect to baptism; and all baptized by baptism of water have with respect to the remaining sacraments. Nevertheless extreme unction demands dangerous illness, and, like Penance, use of reason by which sins could have been committed; Order demands the male sex; Matrimony demands diversity of sex and habitual use of reason, together with freedom from another bond, and excludes those laboring under perpetual impotence.
2. in adults, reception voluntary at least in this sense, that it is not physically coerced while the interior will resists; and besides, according to the very common opinion, will at least habitual and implicit. For just as an adult is not justified without his own consent, so, without the same consent, he is not initiated and consecrated to God through a sacrament. Yet because one who receives a sacrament, as such, does not act, virtual will which renders the act human is not of itself necessary. But according to the nature of the sacrament, as will be said afterward, habitual expressed will, or even virtual will, must be present.

Yet for little children and those perpetually insane, the intention which the minister has in the name of Christ and of the Church suffices. For these are saved and sanctified without their own consent. Wherefore the defect of consent in them stands in the way only of matrimony, whose essential matter and form are placed in consent itself;

3. the intention of the minister sufficiently determined so that it affects such a person of the recipient.

— What if an adult approaches feignedly or simulatedly to receive a sacrament, that is, if he accepts the external rite voluntarily, while internally he does not will the sacrament?

And it is sufficiently certain that nothing is obtained by that sacrilegious reception of sacraments which do not imprint character; indeed, there is plainly no reception of the sacrament of penance and matrimony, where acts of the recipient enter the essence of the sacrament. The more common opinion also denies that baptism, confirmation, and ordination are valid for him who dissents in heart while by mouth or by the very approach he asks for the sacrament. Nevertheless Cardinal Gasparri holds the opposite opinion as truer: both because Innocent III, c. 3 *De baptismo* (III, 42), approves those who hold that the character of Christianity is received by one who externally indeed does not resist, though he approaches baptism feignedly; and because one so approaching wills that the minister place upon him the matter and form of the sacrament, with the due intention: but in these the sacrament consists; then the interior will of not receiving the sacrament is elided by the opposite will by which the act of approaching is commanded. Indeed an intention expressly terminated to the external rite alone does not suffice in the minister, who must sanctify

instrumentally; but it is not proved necessary in him who must merely receive the sacrament. Cf. Gasparri, *De sacra ordinatione*, c. 3, s. 2, art. 1.

— **II. Corollary and Applications.** 1. A sacrament which someone coerced by fear wishes to receive is beyond doubt valid. Except matrimony, at least from the positive disposition of the Church. She also does not wish to impose obligations connected with sacred orders upon a cleric who, coerced by grave fear, received sacred order.

— 2. When there is not question of sacraments which of themselves demand a human act of the recipient, the will which is required in the recipient is rather that of one not opposing than that of one positively consenting. For every action is done by the minister; the effect is obtained *ex opere operato*, unless the contrary will of the recipient stands in the way of that efficacy.

But practically the sacraments which impose a burden must be distinguished from others by which a benefit is conferred without burden. For the former it is certainly required that there have been a positive will which at least implicitly is terminated to that sacrament. When there is question of ordination, a will once expressed and not retracted alone seems able to contain this positive intention. Wherefore for ordination habitual expressed will is necessary in the adult recipient. Many demand the same for the valid reception of baptism.

Yet there are those who are content with the will, which is had in every contrition or attrition, of doing what is necessary for salvation.

Confirmation, viaticum, and extreme unction bring grace without burden. Wherefore whoever wish to live or die Christianly in no way resist reception of these sacraments. Therefore their implicit habitual will amply suffices, not only that these sacraments be validly, but also that they be licitly bestowed on the sick who are destitute of the senses and are not to be presumed indisposed in soul. For the eucharist one must also beware of danger of exterior irreverence; and, since its necessity is less but its dignity greater, a positive presumption of the good state of the soul seems necessary, so that it may be licitly bestowed on a man who is deprived of the use of reason but seems likely to receive it with exterior decency.

He who is by no means alien from receiving a sacrament does not for that reason have the will of receiving the sacrament at any time, without consciousness of himself, at least when the time is not determined by necessity itself. Wherefore one can at least doubt concerning the value of a sacrament which without necessity is conferred on someone outside the present use of reason. Therefore, outside probable danger of death, one must wait until someone has come out of sleep or temporary insanity; and what we were saying just now about viaticum is not valid concerning the dispensation of the eucharist outside danger of death. Cf. Lehmkuhl, II, 65, note, to whom Ballerini, IV, 701, partly contradicts, and deservedly indeed when implicit habitual intention suffices.

He who takes a host which he does not know to be consecrated generally receives materially only, but not sacramentally and with fruit, the thing which is the sacrament, because sufficient will is generally lacking. Thus St. Thomas, 3 p., q. 80, art. 3 ad 3; d'Annibale, III, 257, note 2.

— 3. Matrimony, which has the character of contract, demands habitual expressed will, or will which, formally conceived, afterward has not been retracted. Indeed virtual consent is required when it is celebrated personally and between parties present.

In Penance, virtual will is needed with respect to the acts of penance; for receiving absolution alone, implicit habitual will suffices. Cappello, *De Sacramentis*, I, 83 and 85, 4°.

— **On the Insane.** 1. Those who after use of reason have fallen into insanity are to be treated as adults, whose will or disposition is to be estimated from the time before the use of reason was lost. Except matrimony, which requires the present use of reason.

2. As to those who are perpetually half-witted or doubtfully insane, the probable utilities of the subject are to be composed with reverence for the sacred sign, yet in such a way that in an ambiguous matter this prevail: the sacraments are for men.

Hence it is never lawful to give them Order. Matrimony is not permitted to them, just as to the insane in lucid intervals, except for a grave cause, to be proposed to the Ordinary. The eucharist will not be given to them too frequently; Penance and Extreme Unction will be ministered only conditionally. Finally, the sacraments which certainly are valid in children will be conferred absolutely on those who ask according to their manner; conditionally on others.

The deaf and at the same time mute from birth, if they have been suitably instructed, are capable of all sacraments just like adults. Those who have lacked instruction most probably do not have the expeditious use of reason. Wherefore, according as hope of competent instruction is still had or is lacking, they seem to be treated as children or as perpetually almost insane. Therefore to those themselves who in no way ask for the sacraments, baptism and confirmation are to be administered conditionally; and sometimes absolution itself will be given under condition. To those dying, extreme unction will be conceded conditionally, which will be able to profit them more certainly than penance; and, with danger of irreverence excluded, after conditioned absolution, at least viaticum will be able to be given.

— **On Error.** In matrimony, error about the person, when someone thinks that he gives fidelity to Titius and only Caius is present, is regarded as substantial. In the others it suffices that the will affect that capable individual, even if perhaps you absolve a woman as a man, or promote willing Sempronius, as absent Gracchus, by sacred order.

II. - On Licit Reception

— **II.** That baptism and penance may be received licitly and fruitfully, there is required and of itself suffices, besides the will of receiving the sacrament, the disposition of faith, hope, and attrition: because they are sacraments of the dead. The remaining sacraments, which are called of the living, demand the state of grace.

To approach a sacrament of the living with habitual venial sin is of itself not a sin; to approach with actual affection for venial sin will be a venial sin if the present disorder regards the very reception of the sacrament, as if someone presents himself irreverently; if it does not regard the reception, the circumstances are to be considered. It will be no sin if someone seeks in the sacrament a remedy for putting off the disordered affection; it will be sin if he neglects to put off the affection when he can do this easily enough. Cf. Cappello, *De Sacramentis*, I, n. 88.

The state of grace is to be procured by confession for the eucharist, not for the other sacraments, from a special precept, at least of ecclesiastical law (c. 856).

In what way extreme unction holds, in some manner, a middle place between the sacraments of the living and of the dead will be said in its proper place.

Acts of faith and hope are sufficiently contained in attrition itself or contrition, so that special solicitude is not to be borne concerning the disposition of faith and hope.

Rather, let the minister know this: whether or not the recipient holds those things which are to be believed by necessity of means and which must be known for receiving this sacrament fruitfully. Nevertheless, by an act of faith or hope, a sin contrary to faith or hope, if any has been committed, will have to be retracted.

— In foreign missions those can create difficulty who, doubtfully adult, are not yet sufficiently instructed and ask baptism. If instruction can be completed without notable inconvenience, baptism itself must be deferred. But if delay is subject to serious inconvenience, if, for example, administration by Protestant heretics is to be feared, those seem able to be baptized who, with parents or circumstances attended to, give hope of greater instruction in the Catholic religion, provided they ask according to their measure. Otherwise baptism will have to be deferred, yet in such a way that the salvation of the soul is always employed as the supreme rule.

— **On Reviviscence.** With the obstacle removed, baptism certainly revives and confers first grace. The same, with divine goodness and the very nature of the sacraments attended to, is commonly admitted concerning the other sacraments which imprint character; and also concerning matrimony and extreme unction, which cannot be repeated in the same marriage or danger. Concerning penance itself, most rather deny that the sacrament can be validly and at the same time fruitlessly received; we shall hold the contrary side. But they commonly deny that the most holy eucharist revives, since it can be repeated frequently, unless perhaps you remove the obstacle before the species have already been consumed.

Nor then, as R. P. Cappello observes, op. c., n. 14, is there properly question of reviviscence, since the sacrament of the most holy eucharist is the very permanent body of Christ under the species. Therefore the question ought to have been posed thus: can the application of the sacrament which previously was fruitless, indeed gravely culpable, be converted into fruitful by a better disposition of the subject for as long as the eucharistic species remain? Cardinal Billot affirms this, consequently to his chosen opinion by which, in the sacrament of the eucharist, he considers the presence of the body of Christ as reality and sacrament and therefore as title of grace to be received (*De sacramentis in communi*, Thesis 6, p. 107). But those who hold that grace is conferred not insofar as Christ is present in us, but insofar as he is eaten, will deny the same, unless they think that eating is not completed by the very taking within, but perseveres until the species are corrupted.

But the obstacle is removed when that disposition is procured which would have had to be had for receiving the sacrament fruitfully. But if the reception was sacrilegious, or after the sacrament received a mortal sin was committed, these will have to be blotted out before there can be place for reviviscence.

— The required disposition must be morally certain to the recipient himself, lest he expose the sacrament to danger of frustration and thus derogate from due reverence. Wherefore in doubt which cannot be solved by presumption, greater certitude of itself will have to be procured or awaited. Yet you are excused by a prevailing necessity, because sacraments are for men, nor is supreme reverence

owed to them as such, though otherwise one must speak of the eucharist insofar as it contains Christ. Therefore moral certitude is not to be taken in such a way that reception becomes subject to scruples and anxieties; but it is judged to be had when a solid reason for affirming is attacked by no positive reason to the contrary.

Yet there are those who are content with probable disposition in the recipient and prohibit only the minister from using a merely probable opinion. Cf. St. Alphonsus, l. 1, n. 51.

If there is danger in delay, the sacraments by which provision is made for the necessity of a dying person will have to be bestowed by the minister himself, while at the same time guarding against scandal and offense of the faithful. If the doubt affects the value, or there is question of extreme unction, administration will be done conditionally. And today, at least in places where many are not baptized, baptism itself seems first to be administered conditionally to an unknown man who is in danger of death and destitute of the senses.

— Licit reception of a sacrament also supposes immunity from a prohibiting censure. Excommunication prohibits reception (cc. 855, §1; 2260, §1), and, as to certain sacraments, interdict. Cf. on censures.

— It is further necessary that you ask the sacraments from a fitting minister. 1. Of itself, such a minister is legitimate and worthy.

2. "From excommunicated persons to be avoided, and also from other excommunicated persons after a condemnatory or declaratory sentence has intervened, the faithful can, in danger of death alone, ask both sacramental absolution... and also, if other ministers are lacking, the other sacraments and sacramentals" (c. 2261, §3). The same must be said, because of prohibited communication in sacred things (c. 1258), concerning those who are ascribed to a non-Catholic sect; and concerning those publicly intruded, because of scandal. Cf. for example, in Lehmkuhl, II, 73, the responses of Pius VI, May 28, 1793, concerning intruded persons at the time of the French disturbance.
3. From other excommunicated persons it is lawful for the faithful "for any just cause to ask the sacraments and sacramentals, especially if other ministers are lacking; and then the excommunicated person requested can minister the same, nor is he held by any obligation to inquire of the requester concerning the cause" (c. 2261, §2).
4. One must not speak otherwise concerning a minister whom you know to be constituted in mortal sin, because a thing good in itself is sought, and it stands through the minister if he does not dispose himself rightly. Therefore, with a special reason of scandal or of danger to be averted excluded, in order that you honestly ask a sacrament from a sinner, some inconvenience in some way notable, which you do not lightly bear, suffices, or "any just cause of necessity or utility" (d'Annibale, III, 261).

But if there is question of a minister who from office must minister the sacraments to you, the inconvenience of going to another church or changing confessor suffices.

5. A legitimate minister is not always a minister of any Catholic rite whatever. Outside necessity, a priest of one's own rite is to be approached for the sacraments of baptism, confirmation,

order, and matrimony. Sacramental absolution can be asked from a priest of any rite who has been approved by the local Ordinary. Holy communion can be received by any faithful person out of devotion in the rite of the church where he approaches the holy table. "Yet it is to be advised that each faithful person satisfy the precept of Easter communion in his own rite. Holy viaticum must be received by the dying in their proper rite; but in urgent necessity, let it be lawful to receive it in any rite" (c. 866, §§2 and 3). Observe that a priest must always observe his own proper rite in that ministration. In urgent necessity, if a priest of a different rite is not present, it is lawful for those who are permitted to consecrate only unleavened or leavened bread to minister the eucharist in leavened or unleavened bread, while their own rites are observed in other respects (c. 851, §2).

— Both by divine and human law it happens that use of the sacraments is prescribed, and this of itself, from the account of the sacrament, or per accidens, from the necessity of the subject, according to the rules to be handed down in their proper place.

Summary

— **I.** For valid reception of the sacraments there is need and suffices: 1. radical capacity of the subject, which all and only men have with respect to baptism; but the baptized with respect to the remaining sacraments, except that Extreme Unction also demands dangerous illness, and, like Penance, sins, and therefore use of reason; Order demands the male sex; Matrimony demands diversity of sex and freedom from another bond; and the perpetually impotent are excluded from matrimony;

2. in adults, a will at least not resisting the sacrament, or implicit habitual intention; indeed, because of the special essence of the sacrament or because of annexed burdens, habitual expressed intention for ordination, matrimony, and perhaps baptism. Matrimony contracted personally and between parties present demands consent at least virtual, which is also demanded in the acts of the penitent, while for receiving absolution habitual intention is required and, if expressed intention has preceded, certainly suffices. In children and the perpetually insane, who are saved and sanctified without their own consent, defect of consent stands in the way only of matrimony; but defect of personal sin stands in the way of penance and Extreme Unction. The insane after use of reason are to be estimated from the will which they previously had, with matrimony excepted; the half-witted or doubtfully insane, to whom uninstructed deaf-mutes are to be equated, are to be treated according to probable utilities and reverence for the sacrament. Those not perpetually insane are capable in lucid intervals; outside these, they are to be judged from the will which they had in lucid intervals;
3. the intention of the minister sufficiently determined, so that it definitely affects the person of the recipient: in matrimony alone error concerning the very person, who is thought to be Titius while he is Caius, is regarded as substantial.

II. For licit and fruitful reception: 1. in baptism and penance, sacraments of the dead, faith, hope, and attrition, in which faith and hope are already sufficiently contained, are required and of themselves suffice; in the remaining sacraments, the state of grace is required, which, for the eucharist alone, must be procured by confession, from a special precept, at least ecclesiastical.

The required disposition must be morally certain to the recipient himself; but it is judged to be had when a solid reason for affirming is attacked by no positive contrary reason.

Where there is danger in delay, let the minister bestow the sacraments by which provision may be made for the necessity of the dying person, while at the same time guarding against scandal and offense of the faithful.

2. It is also required that the sacraments be sought from a fitting minister, that is, a legitimate and worthy one. And a priest of one's own rite is to be approached for baptism, confirmation, order, and matrimony.

But any cause of necessity or utility of itself suffices that they be sought from a tolerated excommunicated person or from a sinner. If he is one's own priest, the inconvenience of going to another church or changing confessor suffices. In danger of death alone can both sacramental absolution and also, if other ministers are lacking, the other sacraments and sacramentals be sought from an excommunicated person to be avoided or judicially declared or condemned. To these non-Catholics and publicly intruded persons are to be equated.

Treatise II: On Baptism

(cc. 737-769)

Utility. - In the treatise on the sacrament most necessary, three things are especially useful to know: who can or must be baptized; what are the entirely secure modes of conferring baptism; what ceremonies are to be joined with baptism, and by what necessity and in what way they are to be used. It will also help to know accurately the conditions by which the matrimonial impediment from spiritual relationship arises.

— *Appendix II belongs to this section.* **Historical-Liturgical.** Cf. Appendix II.

Chapter I: On the Nature and Necessity of Baptism

— The sacrament of baptism is the sacrament of regeneration, through water in the word (Roman Catechism).

This regeneration comprehends the impression of character, by which one becomes a member of the Church and, remotely or proximately, fit for the other sacraments, especially for participating in the sacrifice of the New Law; remission, by way of ablution, of original guilt and of personal sins, made by the infusion of sanctifying grace; condonation of every debt of punishment; adoptive filiation of God; and the special right of the help of actual graces for the profession of Christian life. Regeneration has its beginning from character, but is perfected by the infusion of sanctifying grace.

Water, in the definition, is placed for ablution by immersion; word, for the form which contains the invocation of the Most Holy Trinity over the one to be baptized.

Baptism, besides its essential unity, also has numerical unity in the same supposit, which we profess in the very Apostles' Creed when we say: I believe one baptism.

As to the remission of faults and punishments, observe that not even in baptism is any fault remitted without attrition. But, that attrition being placed as a condition, every fault and every punishment, by force of baptism, is condoned *ex opere operato*.

In baptism the reality and sacrament, or baptismal character, according to Cardinal Billot (*De baptismo*, Thesis XXIII), has the account of consecration to the worship of the Most Holy Trinity, according to the rite of the Christian religion, and of passive potency, by which man is made capable of receiving those things which belong to Christian worship. It is the character of the Christian man. But according to R. P. de la Taille (*Mysterium Fidei*, p. 581 note), it is "the interior consecration by which man is aggregated to the priesthood of Christ in order to offering, through the ministry of priests, the victim of redemption and to participating by communion."

— Analogically, insofar as they in some way supply for the sacrament, a twofold other baptism is distinguished: of the Spirit, or of the Holy Spirit, and of blood.

1. Baptism of the Spirit is an act of perfect charity or contrition, insofar as it contains at least a tacit desire for the sacrament. Therefore it can be had in adults alone. It imprints no character; it does not necessarily take away every venial fault; and, that it take away every debt of temporal punishment, an act is required whose intensity is equivalent to the punishments otherwise to be sustained. But it takes away every mortal fault together with the debt of eternal punishment, according to this: "He who loves me will be loved by my Father" (Gospel of St. John, 14:21).
2. Baptism of blood is martyrdom itself of a non-baptized person. For from a privilege which the Fathers most clearly teach and read as promised in St. Matthew, 10:32 and 39, "He who shall confess me before men, I also will confess him before my Father... He who has lost his life on account of me will find it," every debt of fault and punishment is blotted out by true

martyrdom. The chief reason of the privilege seems to be perfect imitation of the death of Christ.

Martyrdom is defined as the suffering of death for the faith or for Christian virtue. The suffering of death is as it were the material element, concerning which the more common opinion holds that it suffices that a lethal wound has been received, or that a cause has been placed which, without miracle, had to bring on death. Thus Benedict XIV, *De Beatif.*, 3, 12 and following, perhaps against St. Thomas, 2, 2, q. 124, art. 4. - The formal element is that one suffer for the faith or for Christian virtue: hence formal heretics cannot be martyrs; but it suffices that death be inflicted in hatred of Christian virtue. Indeed there are those who think it enough that someone, for example while plague rages, as he ministers to the sick from charity, contracts the plague and thus falls for Christian virtue. Cf. St. Alphonsus, l. 6, n. 100.

He dies a martyr who is killed while sleeping, if before, conscious of threats, he persevered in faith or virtue. Nor is an option between life and apostasy necessary, provided the dying person accepts the killing. Probably they are martyrs who, earning stipends for the cause of the Pontiff or of the Church, have been killed while fighting. Indeed probably soldiers can be martyrs who, falling in a just war, refer their devotion to their fatherland to God. For piety toward the fatherland and legal justice are Christian virtues, and "any human good whatever can be a cause of martyrdom, according as it is referred to God" (St. Thomas, 2, 2, q. 124, art. 5 ad 3). But since it is unknown with what soul soldiers died, the Church does not honor them as martyrs.

Martyrdom cannot be denied without rashness to infants who are killed in hatred of Christ; but in an adult there is required: a) consent to death, or acceptance of martyrdom at least habitually; b) if he had been outside the state of grace because of actual sin, a movement of penance. Must this be of contrition, or does attrition suffice? And we judge the effort made to elicit contrition to suffice. Moreover, that the grace of perfect charity or contrition should be lacking in him who gives to Christ the greatest sign of love seems to be a chimerical hypothesis.

Not a few demand, for the true account of martyrdom, that the martyr not resist, so that thus he may perfectly imitate Christ, who was killed as a lamb. Yet more probably force which martyrs have opposed to the impious does not stand in the way of martyrdom, if they defended the cause of Christ more than themselves: for instance, if a missionary wished to protect a Christian people.

That a martyr be increased with the honors of the blessed, miracles properly so called are not required; nevertheless, certain signs are demanded of themselves, so that the martyrdom itself may be certain. Among signs this one stands out: if the blood poured out has been the seed of Christians.

— **Comparison of the Three Baptisms.** 1. Baptism of water operates *ex opere operato*; of the Spirit, *ex opere operantis*; of blood, as it were *ex opere operato*, and in adults, at the same time *ex opere operantis*.

2. Baptism of blood excels the others: it equally blots out faults and punishments; it configures more perfectly to the death of Christ (Philippians 3:10). For in martyrdom conformity is had by imitation, in baptism of the Spirit by affection, and in baptism of water by figural representation; it manifests a more splendid efficacy of the power of the Holy Spirit, who operates hiddenly in the sacrament, moves the heart in baptism of the Spirit, and in baptism of blood exhibits the greatest proof of love; finally, it confers the aureole, or the reward, the

accidental joy on account of an excellent victory reported over the enemy in this life (St. Thomas, supplement to 3 part, q. 96, art. 1, c.).

Yet baptism of water alone imprints character, renders the baptized person capable of the other sacraments, and confers sacramental graces. Wherefore neither other baptism dispenses from the obligation of receiving, when occasion is given, the sacrament of baptism; just as it does not dispense the baptized from use of the sacrament of penance for mortal sins not yet confessed and committed after baptism of water.

— **Remote Matter.** 1. Valid matter is every water, in a liquid state, which, according to the common estimation of men, is held as natural[(1)] and usual. Such is water of a spring, of a well, of rain; water dissolved from snow, hail, ice; distilled water or water chemically made. Nor does an accidental change of color, taste, or odor stand in the way, which is had in sea water or in sulphurous water. It does not harm the value if it has been mixed with another body so moderately that it retains the common use and name of water, for instance lye with a little soap, a broth thinly cooked with meat. For in every liquid of this kind one can truly be reborn from water, which from the Gospel of St. John, 3:5, is necessary.

Inept matter for baptism is saliva, sweat, tears, urine, water expressed from the juice of roses, herbs, plants; beer; water which from mixture is no longer suitable for ablution, nor is named water: for instance mud, broth, wine mixed with water. For in the moral estimation of men, such water is not judged natural and usual.

Doubtful matter is water dissolved from salt, flowing from a vine or trees, physically drawn from wine, flowers, or plants,[(2)] ice itself and snow not dissolved (St. Alphonsus, l. 6, n. 104); very thin broth and beer, lye, indeed rosewater.

2. Licit remote matter is, in private or non-solemn baptism, any natural and pure water, although use of baptismal water is especially to be advised to a priest; in solemn baptism, water blessed for this is of itself to be used.

Baptismal water is to be prepared twice in the year, on Holy Saturday and on the vigil of Pentecost, with oils recently consecrated, if these could be had. Recently, that is, on Thursday, in the Supper of the Lord, which preceded the preparation. If water in the baptistery has diminished so that it does not seem likely to suffice, "other non-blessed water is to be mixed in, even repeatedly, yet in a lesser quantity" (c. 767, §2) than that which remains pure or already once or twice mixed. If the water has entirely failed, the pastor should pour fresh water into the well-cleaned font and bless it with the special rite prescribed in the liturgical books. And to missionaries there is also conceded the faculty of using the shorter formula which has its name from Paul III and is found in the Appendix of the Ritual, at the beginning. Where true danger of disease is present, especially where an infant is to be baptized in the womb, the Holy Office, August 21, 1901 (*Coll. P. F.*, n. 2121), permitted use of water mixed with mercury bichloride corrosive, or *sublime corrosif*. The proposed proportion was 1/1000.

Use of doubtful matter is permitted only in necessity and under condition. To use very impure water, when other can be had, is a grave sin of irreverence. He who uses natural water instead of baptismal in solemn baptism from negligence seems to sin gravely.

(1) In c. 737, §1, by the words "natural water" is understood that which is commonly held as true and is usual. It matters little whether it has been made by human art or by nature.

(2) Since chemically made water is certain matter, we do not see what can be objected against water whose elements have been found chemically in plants rather than immediately in hydrogen and oxygen.

— The proximate matter of baptism is ablution which, as St. Thomas notes, 3 p., q. 66, art. 7 ad 2, preserves some account of immersion, since always in ablution at least some part of the body is placed under water. Each account seems to be required. Or, better, the proximate matter should be called ablution by way of immersion. For in the Scriptures themselves baptism is said to us to be a "washing of water" (Ephesians 5:26) and "burial together" with Christ: "For we were buried together with him by baptism into death" (Romans 6:3). In baptism we die with Christ, so that with him we may rise again. And the very word *baptizo*, *baptizein*, means to dip, to immerse.

Therefore for the value of baptism there is need that water in such quantity physically touch the body, at least as to a principal part, that someone morally can be said to be washed.

This can be had in either way, whether the body is moved toward the water, as in immersion, or the water is moved to the body by infusion or by sprinkling. Moreover water can be moved in such a way that either several parts of water, for example of water springing forth, simultaneously touch several parts of the body, or a smaller quantity of water, yet more than one drop, as it seems, successively touches several parts of the body. This same is obtained in a twofold way: either water flows by running down, or by hand or even by a well-wetted finger it successively reaches the parts of the body. Observe that movement of the hand or finger is required, since simple application of a wetted hand is not judged to be ablution.

Therefore baptism conferred over an infant's clothing or over the mother's womb is null: in neither way is the infant himself physically touched. Baptism conferred over the afterbirth, or the deciduous membrane by which the body is contained in the mother's womb, is very doubtful, since it is not proved to be a true part of the infant. There seems to be lesser reason for doubting concerning baptism by which only the hair has been wetted. Yet the matter is controverted. Wherefore, where the hair is thick, let it be parted by hand, or, what is better, let baptism be conferred on the forehead. And because it sometimes happens that the whole body of a newborn infant is anointed with oil, he will act more cautiously who, not content with pouring, at the same time washes the forehead by hand.

Baptism in which only a less principal part, such as finger, hand, foot, is washed is also doubtful. And unless the head has been washed, sufficient doubt remains so that baptism ought to be repeated (St. Thomas, 3 p., q. 68, art. 11 ad 4). Wherefore this manner of acting, by which, the membrane ruptured, an infant in the womb is washed by means of a small tube, is less certain than Ballerini proclaims it to be, *De baptismo et de quinto praecepto*. Add that there is some doubt whether an infant, before he is separated from the mother or brought forth, is capable of baptism.

Baptism is doubtful and to be repeated under condition if only one or another drop has been used, for example, if a multitude has been sprinkled as though with holy water. And the Holy Office, December 14, 1898, ordered that baptism conferred by way of anointing on the forehead with the thumb wetted in baptismal water be repeated under condition.

In baptism by immersion, a few with Soto and Toledo require that the baptized person emerge from the water. This seems false, because for the body to be washed there is no need that the body emerge, and *baptizein* is merely to dip. Therefore the baptism of an infant whom, while pronouncing the words, you cast into a river seems to be valid. But unless the death of the infant is already imminent, the effect of death is badly permitted, so that the guilt of a certain homicide is contracted. In the case of extreme necessity, where the infant otherwise would die without baptism, some indeed, with St. Alphonsus, l. 6, n. 106, condemn the action as homicide, but others probably say that the effect of baptism at least probable is immediate and so good that, on account of that proportionate reason, the other effect of accelerated death can be permitted. Cf. Lehmkuhl, II, 86, 5, with Palmieri approving, t. IV, n. 729. But all permit that in extreme necessity an infant be washed with cold water.

— By canon 758 four modes of washing are held as valid: infusion, which now is almost the only one used by Western Catholics; immersion; sprinkling; the mixed mode of infusion and immersion, when the one to be baptized is immersed and, while he is in the pool, is at the same time poured over with water by the baptizer. The Code prescribes, however, that "the first or second mode, or the mixed mode from both, which is more in use, be retained, according to the approved ritual books of the various Churches." In reality baptism by sprinkling is plainly less secure. Through twelve centuries, immersion was the ordinary mode, which still is used for infants at Milan. St. Thomas held it as safer, 3 p., q. 66, art. 7, c.

— The prescribed form of baptism in the Latin Church is this: "I baptize you in the name of the Father and of the Son and of the Holy Spirit." From this, this form of the Greeks does not differ substantially: "The servant of Christ is baptized in the name of the Father and of the Son and of the Holy Spirit."

That we may judge concerning the essential words, these five things are to be observed, which are signified in the utterance of the form: 1. the person baptizing, at least implicitly, which in the form of the Greeks is not neglected: the words "the servant of Christ is baptized," uttered assertively, are equivalent to "is baptized by me"; 2. the act of baptizing, so that the form be connected with the matter and, by indicating the end of the ablution, determine the same; 3. the person who is baptized: for the form no less than the ablution must affect a certain person; 4. the unity of the divine nature, by the word *in the name*; 5. the trinity of Persons, and that explicitly and distinctly, by common words.

At least practically, these things are to be demanded. Concerning the necessity of each one, theoretically, one can doubt greatly. Thus in the year 1633, September 8, the Holy Office declared this form of the schismatic Armenians true and legitimate: "May my hand now baptize in the name of the Father; may my hand now baptize in the name of the Son; may my hand now baptize in the name of the Holy Spirit" (*Coll. P. F.*, I, n. 74).

— Therefore he baptizes validly, although he sins venially, who for *I baptize* says: *I wash*, *I dip*, etc.; for the action is well indicated by these words. It is not entirely the same thing to indicate the action and to indicate the effect of the action, so that the English formula "I christen thee" can give some occasion for doubting.[1] - He baptizes validly who for *you* designates the subject by the common name *servant of Christ*, in the manner of the Greeks, or by the proper name "Peter"; or who for the sake of honor says, "I baptize Your Lordship"; or who omits *I*, or adds *Amen*. - The Sacred Congregation of Propaganda Fide and the Holy Office declared valid the formula "with the name" used without bad intention. A very brief interruption, "I baptize you (this water is cold) in the name," etc., does not

stand in the way of value; nor do these additions stand in the way: "in the name of the Father who created you, of the Son who redeemed you," etc. - If, with the order changed, you say, "In the name of the Father... I baptize you," the baptism is valid.

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(1) Lehmkuhl, II, 88, while he observes this, nevertheless adds that this form is much more probably valid. Sabetti-Barrett, *Comp.*, n. 657, incline rather toward the negative side. Moreover another certain form is available to English speakers: *to baptise*.

— These forms are not valid: "I baptize in the name," etc., when the designation of the person to be baptized is entirely omitted; - "I baptize you in the names..." since the essence or divine nature is thus signified as multiple; - "I baptize you in the name of God or of the Most Holy Trinity," or "in the name of one and triune God," or "in the name of the three Persons," or "of the Father and of the Son," with the person of the Holy Spirit omitted. The reason is because the three divine Persons are not distinctly expressed; - "I baptize you in the Father and the Son and the Holy Spirit"; or "with the Father and the Son and the Holy Spirit"; or "in the name of the Father through the Son, in the Holy Spirit," because either all or certainly clear signification of unity of essence is lacking; - "in the name of our Lord Jesus Christ," at least today, because of the omitted invocation of the Most Holy Trinity. How the texts which seem to sound as if baptism was conferred by the Apostles in the name of Christ, and the response of Nicholas I to the Bulgarians which seems to hold this formula as valid, are to be explained: this must be borrowed from the dogmatic theologians; - if you should say *of the Mother*, *of me*, because the sense varies; - if a cough, not plainly momentary, separates the syllables of one word, or, too protracted, for instance through half a quarter of an hour, takes away the coherence of the words; - if you add the name of the Blessed Virgin Mary as a part of the form: therefore the value then will depend upon the intention of the agent. (2)

— The forms are doubtful if, with the particle *in* removed, you say only "name," or substitute "in the virtue, in the majesty of the Father," etc. For it is not plainly certain whether *in the name* signifies "by the authority of the Father," etc., in which case the indicated changes would be only accidental; or "with the Father invoked." - There has been doubt concerning the formula: "I baptize you in the name of the Father, in the name of the Son, in the name of the Holy Spirit," or "I baptize you in the name of the Father; I baptize you in the name of the Son; I baptize you in the name of the Holy Spirit," because the unity of essence might not be sufficiently expressed. But the Holy Office, January 11, 1882, declared that these are valid. Also it does not seem that one should doubt concerning the value of the form: "In the name of God the Father and God the Son and God the Holy Spirit," unless you wished to express three gods. - The omitted conjunction *and* before the word "Holy Spirit" gives place to lighter or graver doubt, according as, for example, while you pronounce the words, you separated the Son from the Holy Spirit sufficiently or not. On the contrary, if it is omitted before the word *Son*, since Father and Son of themselves bring in distinction, it introduces not even doubt; - "I baptize you in the name of the Begetter, the Begotten, and the Spirated"; or "in the name of the Almighty, the Wise, and the Good"; or "in the name of the Unbegotten, the Begotten, and the Good"; because the Trinity of Persons is not explained by words by which it ought and can be apprehended by all the faithful.

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(2) Although the form must be sensible, nevertheless interior intention can effect that this or that be said as a part of the form, just as interior intention effects that these droplets adhering to the chalice

be consecrated or not. Wherefore it is not required that it appear what is said as the form or what is added as an invocation.

— The same person must wash and pronounce the form. Wherefore baptism seems to be invalid if the one to be baptized, while another says the form, slips into the water,[3] or is pushed forward by someone other than the baptizer, or places himself under water springing from a fountain or falling in drops. But it is valid if the minister himself places the one to be baptized under water thus naturally falling.

What if the water falls not naturally but by the work of another? Ballerini thinks it does not matter for what cause the water flows. But others object that then from two persons one washer is constituted, so that baptism is doubtful (Lehmkuhl, II, 86, 4).

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[3] It is confirmed by a response of the Sacred Congregation of the Sacraments, November 17, 1916 (*A. A. S.*, VIII, 478). Yet in a case of necessity the thing will be able to be attempted under condition, because of the moral unity of persons, by which the one to be baptized seems to act at the minister's command.

— When a triple pouring of water is made, the form is more rightly uttered in such a way that it is not finished before the third ablution, because the form with any first ablution constitutes baptism. But whether you have pronounced the form immediately before or immediately after the ablution, this does not stand in the way of value.

— The invocation of the Most Holy Trinity is to be made upon the one to be baptized, not upon the baptizer, who will have thought in this way to call upon the help of the Most Holy Trinity for baptizing.

— **Necessity of Baptism.** "Baptism, the gate and foundation of the sacraments, necessary for all unto salvation in reality or at least in desire," is such: this c. 737 pronounces concerning the sacrament of baptism.

Summary

— **I.** The sacrament of baptism is the sacrament of regeneration through water in the word. It imprints character, remits, by way of ablution, original guilt and, with the condition of attrition placed, personal sins before baptism, indeed, probably those committed in baptism itself; condones every debt of punishment; makes an adoptive son of God; confers the right of special help for the profession of Christian life.

The sacrament is in some way supplied by: baptism of the Spirit, or the act of perfect contrition or charity, insofar as it contains at least tacit desire for the sacrament; through that act at least mortal fault with the debt of punishment is taken away; and baptism of blood, or death suffered for the faith or Christian virtue. Killing in hatred of Christ completes the martyrdom of infants, while in adults acceptance of martyrdom is necessary, and, if they have been stained by personal mortal fault, effort toward contrition. By martyrdom every debt of punishment is taken away, and the aureole is conferred. Yet character is imprinted by the sacrament alone.

II. The remote matter of the sacrament is natural water, or that which is commonly held as true and usual. Moderate admixture of another thing does not harm the value, provided the name and

common use of water are preserved. And in private baptism all pure water is licit; in solemn baptism, water blessed for this is to be used, and indeed, as it seems, under grave fault. Baptismal water is to be prepared twice in the year with oils consecrated in that year, if these could be had. Deficiency of water is provided for in various ways. The shorter formula of blessing, that of Paul III, is permitted to missionaries.

The proximate matter is ablution, which can be done by immersion, simple or mixed with infusion, by infusion, and by sprinkling. That baptism be certain, there is need that on the head the man can morally be said to be washed. The mode in use must be observed. Sprinkling today has become obsolete.

III. The prescribed form in the Latin Church is: "I baptize you in the name of the Father and of the Son and of the Holy Spirit." Therefore there must be signified: the baptizer, the baptized, the act of baptizing, for it would not suffice to indicate the effect, the unity of the divine nature, "in the name," the Trinity of persons explicitly and distinctly, by common names, so that baptism conferred in the name of Christ is to be repeated. The same person must wash and pronounce the form. It does not stand in the way of value whether the form is pronounced immediately before or immediately after the ablution. The addition of the name of some saint will corrupt this form or not according to the intention by which the name is pronounced as part of the form or otherwise. The Trinity is to be invoked upon the baptized person, not upon the baptizer.

Chapter II: On the Minister of Baptism

— Any man using reason, of whatever faith or infidelity, state or sex, validly ministers baptism. For licit administration, solemn baptism, or that which the rites and ceremonies of the Church accompany, is to be distinguished from non-solemn baptism.

— **1.** The ordinary minister of solemn baptism is a priest; yet the conferral of baptism is a parochial function which, apart from the local Ordinary or one's own pastor, in his own territory, another priest does not administer licitly except by license of the pastor or local Ordinary. Yet this license, in a case of necessity, is legitimately presumed (c. 738, §1).

But one's own pastor, from c. 94, is the pastor of domicile or quasi-domicile, who nevertheless, outside his own territory, is prohibited from baptizing solemnly without due license of the Ordinary or pastor of the place (c. 739).

A traveler is to be baptized by his own pastor in his own parish if this can be done easily and without delay; otherwise he can be solemnly baptized by any pastor in his own territory.

Statutes sometimes define the distance which is judged excessive for a child to have to be brought to his own pastor; yet it will always be lawful to do this. Indeed a custom at least centenary can be tolerated by the bishop, which always gives faculty to the pastor of the place of baptizing children born in his parish.

The supplying of ceremonies after baptism conferred in necessity without ceremonies is also reserved to one's own pastor. It is less certain whether baptism which is to be repeated privately under condition is reserved to the pastor (Lehmkuhl, II, 91).

Of vagrants, or of those who have only a diocesan domicile or quasi-domicile, the proper pastor is the pastor of the place where they actually are (c. 94), so that they are licitly baptized by any pastor in his own territory.

Where there are still lacking parishes or quasi-parishes into which the diocese or quasi-diocese is divided, the proper minister of baptism, besides the local Ordinary, is defined by peculiar statutes and received customs.

An outside pastor who without notable cause or the presumed consent of the proper pastor or Ordinary baptizes an infant brought to him is judged gravely to usurp another's jurisdiction. Fear lest baptism be neglected sanely excuses him entirely.

— **2.** The extraordinary minister of solemn baptism is a deacon. But licit use of his power requires: a) license of the local Ordinary or pastor; b) a just cause for conceding that license. When necessity urges, a deacon can legitimately presume the license.

A just cause does not mean a grave cause. A multitude of persons to be baptized, or a multitude of penitents whose confessions must be heard, or another serious inconvenience permits a pastor to commit baptism to a deacon.

But the cause for presuming this license must be much graver. It is necessary that necessity of conferring baptism urge.

But a layman or cleric below a deacon can never baptize solemnly. And that solemn ministration makes the same irregular from delict (c. 985, 7°). By the general words which this canon uses, it seems to resolve the controversy whether only clerics or also laymen would become irregular by this usurpation. This irregularity is also incurred by a priest who by canonical penalty is prohibited from this ministration (c. 985, 7°). But, unless there is question of censured persons to be avoided, the excommunicated, interdicted, and suspended, when asked by the faithful, can licitly confer the sacraments (cc. 2261, §2; 2275, 2°; and 2284).

But a deacon who baptizes solemnly without commission, since from c. 741 itself he has the power, although he uses it badly, escapes this irregularity.

— **3.** In necessity, non-solemn baptism is legitimately ministered by anyone, "the due matter, form, and intention being observed; but insofar as it can be done, two witnesses or at least one are to be used, by whom the conferral of baptism can be proved" (c. 742, §1).

This necessity, in our regions, will almost always be danger of death; but in regions of missions, the very absence of a priest or difficulty of approaching him. For the Sacred Congregation of Propaganda Fide, January 27, 1788; January 16, 1804 (*Collect.*, 593, 674), praised the custom of enjoining catechists or more prudent laymen that they quickly baptize the infants of Christians, even those who are well.

Yet the order is to be observed, so that a priest be preferred to a deacon, a deacon to a subdeacon, a cleric to a layman, a man to a woman, unless the reason of modesty or even the greater skill of the woman advises that she be preferred (c. 742, §2).

Change of this order is judged light. Yet they except if before a faithful person a heretic is used, or before a priest a layman. This latter, however, we judge to have been said too severely. For there is question of private baptism, concerning which the Code establishes the principle that the same can be ministered by anyone, and in one and the same sentence exhibits the order by which a priest is said to be preferred to a layman, a man to a woman. It seems little likely that neglected preference is in one case mortal, in another merely venial.

— Nevertheless by a special prohibition both parents are prohibited from baptizing their offspring, unless in danger of death when no other is present who may baptize (c. 742, §3).

The present-day cause of this prohibition can no longer be sought from the spiritual relationship which, as baptizer, a husband would contract with his wife, because from c. 768 the baptizer is no longer bound by any relationship with the parents of the baptized. This other cause subsists: that it is not fitting for a twofold paternity, natural from generation, spiritual from the administered sacrament of regeneration, to be conjoined in the same person. This reason does not seem to induce a grave obligation.

As is evident of itself, if a parent is more skilled, he will safely be able, in order to provide better for the salvation of the offspring, to baptize the infant himself rather than one less fit.

The pastor must take care that the faithful, especially midwives, physicians, and surgeons, thoroughly learn the right mode of baptizing for a case of necessity (c. 743).

The opportuneness of this precept is demonstrated by lamentable errors.

— "The baptism of adults, where it can conveniently be done, is to be deferred to the local Ordinary, so that, if he wishes, it may be conferred more solemnly by him or by his delegate" (c. 744).

These words are placed so temperately that they seem to contain, rather than a precept, a wish which the Ordinary himself can fulfill by a statute by which he reserves the baptism of adults to himself. This is customary enough in our parts. Elsewhere, the very circumstances of places will stand in the way of that reservation.

Besides, there is question here of baptism to be conferred absolutely, not of conditioned repetition, which often demands secrecy and is customarily done without ceremonies.

Summary

— Every man using reason baptizes validly. The priest is the ordinary minister of solemn baptism; yet he does not baptize licitly except by license, at least presumed, of the Ordinary or of the proper pastor, in his own territory. A traveler is to be baptized by his own pastor in his own parish if this can easily be done without delay; otherwise he is permitted to be baptized by any pastor in his own territory. The extraordinary minister of solemn baptism is a deacon by license of the Ordinary or pastor, conceded because of a just cause of inconvenience, or presumed in necessity.

In necessity, which in regions of missions is constituted by the very absence of a priest, any man legitimately ministers non-solemn baptism. A priest is to be preferred to a deacon, a deacon to a subdeacon, a cleric to a layman, a man to a woman, unless modesty or greater skill of the woman advises otherwise. Change of order is judged light, unless a heretic is preferred to a faithful person. Excepted is necessity of danger of death: parents are forbidden to baptize their own offspring. Absolute baptism of adults is often reserved to the Ordinary; and it is the wish of the Code that it be deferred to him of itself.

Chapter III: On the Subject of Baptism

— One must begin from this highest principle: the capable and, of itself licit, subject of baptism is every and only wayfaring man, not yet baptized; who besides, if he has been an adult, has sufficiently consented to his baptism.

The right use of this principle demands that we distinguish: the infant in the womb, the abortive fetus or the monster brought forth, the born infant, the healthy adult, the adult in danger of death, and the doubtfully baptized infant or adult.

— **I. On the Infant in the Womb.** 1. Of itself complete birth is to be awaited. Danger lest he be brought forth dead gives cause for attempting baptism of the infant enclosed in the womb. But a fetus thus baptized must be baptized again under condition (c. 746, §§1 and 5). Cf. Hoornaert, *Le baptême en cas d'urgence*.

Canon 746, §1, prohibits the baptism of an infant enclosed in the womb "as long as there is probable hope that, rightly brought forth, he can be baptized." But the supreme necessity of this sacrament seems to allow that we understand these words of so probable a hope as equals moral certitude. Wherefore if there is probable danger of death before birth, we have said that baptism in the womb is to be attempted.

2. An infant who has put forth the head is, when danger of death urges, to be baptized absolutely on the head; nor is this baptism afterward to be repeated (c. 746, §2).

But if he has put forth another member, he is, when the same danger urges, to be baptized under condition; this baptism will have to be repeated under condition after birth (c. 746, §3).

With another distinction of parts omitted, the Code suppresses the controversies moved concerning these things, admitting absolute baptism on the head alone, and on every other part only conditioned baptism.

3. When a pregnant mother has died, "the fetus, extracted by those to whom it pertains, if he certainly lives, is to be baptized absolutely; if doubtfully, under condition" (c. 746, §4).

The fetus is extracted by the operation which, from Caesar, to whom it was useful, is called Caesarean. This operation certainly is to be done, even if conception was recent. Wherefore, as quickly as possible, a surgeon or another who can do it is to be called, meanwhile preserving the womb of the dead mother warm and opening her mouth; "nor is the physician perhaps saying that every effort is made in vain because the fetus is already dead to be easily believed: for indeed they rarely know this altogether certainly" (Lehmkuhl, II, 104).

Yet the priest himself, lest he become liable to a grave civil penalty or render religion hateful, will neither perform that section nor directly command it to be done; but by grave admonition he will try to induce the husband of the deceased woman, or relatives, or a physician, or a man endowed with public authority, to take care for that section. For already the doubtful effect itself excuses the priest for whom most grave inconveniences would have to be undergone; and the damage itself to religion

supplies a public reason for abstaining. This reason moved the Holy See so that, on February 15, 1780, it prescribed to Missionaries in China that they commit the matter to the burden and office of surgeons. The Holy Office again referred to that decree on December 13, 1899. Cf. *Coll. Pr. Fid.*, nn. 541 and 2073.

With inconveniences of this kind excluded, anyone, if a physician is lacking, could or should complete the incision from charity toward the infant perhaps to be saved. And by the principle of double effect, the danger of accelerating the death of the apparently dead mother is excused.

While the mother is living, that baptism of the infant, who seems unable to be brought forth alive by the natural way, be procured more certainly, Caesarean section is licit even with grave danger of death for the mother.

Today, since that section has become much less fatal, since, with sleep procured, every horror also is removed, that section is not rarely to be earnestly advised, and indeed early, lest the mother become unequal to the strength needed. And unless she herself is brought into grave peril, objectively she seems to be obliged to admit that section. Yet admonition will have to be made prudently, lest the good faith of the endangered mother be disturbed. The obligation itself, insofar as it arises from baptism to be conferred, is diminished when there is probable hope of validly baptizing the infant in the womb itself.

— **II. 1. On the Abortive Fetus.** "Care must be taken that all abortive fetuses, at whatever time brought forth, if they certainly live, be baptized absolutely; if doubtfully, under condition" (c. 747). For we do not know at what moment the spiritual soul is infused; nor do few think that this soul is infused from the first instant. Canon 747 seems to have been written according to this latter opinion; nevertheless, it by no means proposes it doctrinally, but merely hands down a practical norm.

Contrary to what Augustine thinks in c. 747 (*A Commentary*), relying too much on ocular observation, not after some days, but, as microscopic inspection demonstrates, immediately after penetration of the spermatozoon into the ovum, from the two pronuclei of the spermatozoon and ovum a nucleus is composed and there is had a being living by its own life, that is, a man. By the usage of physicians it is called an embryo; after six weeks, a fetus.

A certain sign of death is almost nothing except putrefaction, and beginning putrefaction does not suffice. But it happens often enough that a pregnant woman, while she is in agony, casts forth the fetus. Therefore one must beware lest the fetus be suffocated in the bed.

The better and safer way of baptizing these fetuses is by immersion in tepid water, taking care that while you pronounce the form, you immerse the fetus and then draw it out from the water.

Baptism does not seem to be conferred in a closed ovum, because the exterior membrane belongs least of all to the fetus. With Lehmkuhl approving, II, n. 104 note, and Ferberes, II, n. 825, Capellmann, *Medicina pastoralis*, proposes this way of baptizing the smallest fetuses enclosed in the ovum: that, the ovum carefully opened, the amniotic fluid be allowed to flow off slowly; and that then with the thumb and finger of each hand, you grasp some fold of the covering and rupture it so that the matter of the ovum flows out.

Sometimes instead of a fetus a mole is brought forth, or a mass of flesh, shapeless and without life, which remains from the fertilized ovum when unequal nutrition of the afterbirth and fetus has

effected that the latter is as it were absorbed by the former. "Moreover," says Eschbach (*Disp. physiologica theologicae*, p. 2, d. 2, art. 2), "it is expedient also to cut apart and inspect moles themselves, since experience testifies that more than once a tiny infant has been found in them."

But it must not be dissembled that fetuses can scarcely be recognized unless they have been conceived for some weeks. Nevertheless, a most opportune admonition is made concerning the obligation of baptizing fetuses, since too frequently rather large fetuses are cast forth who ought to have been baptized and buried in a sacred place.

— **2. On a Monster.** Today it is sufficiently certain that a woman cannot conceive from a brute animal, nor properly from a demon, who has power only to introduce human semen. Wherefore whatever living thing, whatever is not plainly certain to be destitute of life, and is brought forth from a woman, is to be baptized at least under condition.

An acardiac monster, which lacks heart and brain, is to be baptized under the condition *if you live*. It is always brought forth with a well-developed fetus and after this fetus. But Antonelli, t. 2, n. 401, advises that it be given uterine baptism immediately after the developed fetus has been brought forth, because scarcely otherwise is it brought forth except dead.

Concerning the unity of the subject rather than concerning its truth one can doubt. Therefore, if in a monster otherwise of human form, the chests and heads are doubled, baptism is to be conferred absolutely on each head; but if only either heads or chests are doubled, baptism is to be conferred absolutely on one head, conditionally on the other head or chest (d'Annibale, III, 274, note 38). If there are only several arms or legs, there is no reason for baptizing twice. Cf. c. 748.

— **III. On the Born Infant.** 1. That outside danger of death an infant before use of reason be licitly baptized, it is necessary that, without injury to the parents, grave danger of perversion can probably be removed. For reverence for the sacrament must be cared for; nor are evils to be done so that goods may come. Cf. Billot, *De baptismo*, who argues first from this, that it is injurious to parents that someone without authority insert himself in the governance and care of those who are constituted under the power of another (*De sacramentis*, I, Thesis XXIII).

Wherefore: a) provided his Catholic education has been secured, the infant of infidels is licitly baptized "if the parents or guardians, or at least one of them, consent; if the parents, that is, father, mother, grandfather, grandmother, or guardians, are lacking, or have lost right over him, or can exercise it in no way" (c. 750, §2).

b) "Concerning the baptism of infants of two heretics or schismatics, or of two Catholics who have lapsed into apostasy or heresy or schism, generally the same norm is to be observed" (c. 751).

The norm is placed less absolutely, because here not so much the right of parents, who by baptism are subject to the Church, as the difficulty and danger or harm of the business itself, stand in the way of Catholic education.

When the parents themselves offer a son to be baptized, unless they are moved by a superstitious end alone, they already seem virtually to consent to Catholic education. Yet prudence can prevent children who must remain among pagans from being baptized. Therefore the prescriptions of Ordinaries are to be observed by missionaries, or the Ordinaries must be asked by missionaries concerning sufficient cautions to be demanded.

Far more easily will sufficient hope of Catholic education be present if the parent himself offering or consenting to baptism has been Christian. Indeed concerning a child born of a Catholic and an infidel, even after the death of the faithful party, the Holy Office responded on July 6-8, 1898, to 4 (*Coll. Pr. Fid.*, n. 2007): "If a possible hope shines forth that children of this kind can in their own time be instructed in the true religion, then, with cautions given, that is, with Catholic education promised, let them be baptized."

Wherefore baptism is not denied even to the children of socialists or unbelievers who were baptized Catholic.

Missionaries must also beware lest by their manner of acting they seem to foster the superstition of the parents. Yet the father does not sin by superstition who wills that his son be truly baptized so that he may be freed from disease.

2. In danger of death, that is, "when he is in that peril of life such that he is prudently foreseen likely to die before he reaches the use of reason," even when parents are unwilling the infant of infidels is licitly baptized (c. 750, §1). For then the spiritual necessity of the infant must be preferred to the right of parents.

In regions which are rarely visited by missionaries, it can happen that thus, even with parents unwilling, an infant is licitly baptized if, for example, after his thinness and the conditions of the region have been inspected, he is foreseen as probably likely to die before use of reason, and no better occasion of baptism is foreseen as going to be present. Yet it is necessary that the danger be personal to the child: a plague devastating the region does not suffice for all the children of pagans to be baptized.

Yet greater hatreds to be avoided against the Catholic religion, and cruelties against Catholics to be feared, can stand in the way so that, even in danger of death, infants are not baptized when parents are unwilling (Sacred Congregation of Propaganda Fide, April 7, 1727).

— **IV. On the Adult Not Dying.** 1. An adult here is judged anyone who has attained the use of reason; for he who enjoys reason is his own master for the business of eternal salvation. Cf. c. 745, §2, 2°.

2. In an adult, the will of receiving baptism is necessary for value. But licit reception besides supposes in him: a) faith, whose defect can be supplied by no other disposition. Wherefore an act of faith and knowledge of the truths which, whether from certain or from probable opinion, are to be explicitly believed by necessity of means, must absolutely be procured. For here the safer opinion is to be followed. Regularly also baptism is to be prepared by competent instruction, which comprehends all precepts of divine law, although sometimes instruction concerning certain mysteries, for example concerning the Eucharist, can prudently be postponed until after baptism; b) it supposes besides penance. Therefore the one to be baptized is to be admonished that he be sorry for his sins (c. 752, §1), and helped so that he have at least true attrition.

Nor will attrition itself with the connected purpose be had without sincere conversion, that is, unless he asks baptism with a right end, embraces the positive obligations of the Christian religion, and is

moved by such a will as does not expose the sacrament to danger of profanation by apostasy or enormous and scandalous crimes of this kind. Therefore regularly a certain probation in faith and morals will be demanded, which, where there have been special difficulties, for example in time of persecutions, of itself must be greater and longer.

For similar reasons it sometimes happens that reception itself into the Catholic Church is prudently deferred for a minor by birth whom, if converted, grave vexations await, besides some hatred of the Catholic Church.

— **V. On the Adult Placed in Danger of Death.** 1. The burden of complete instruction is lightened as much as necessity demands. Wherefore, "if he cannot be more diligently instructed in the chief mysteries of faith, it is enough, for conferring baptism, that he in some way show that he assents to the same, and seriously promise that he will observe the commands of the Christian religion" (c. 752, §2). Concerning certain obligations in which good faith covers defect, one will be able prudently to be silent, always guarding against scandal.

2. He who cannot formally ask baptism, "but either previously or in the present state has manifested in some probable way the intention of receiving it, is to be baptized under condition; if then he becomes well and doubt remains concerning the value of the conferred baptism, baptism is again to be conferred under condition" (c. 752, §3).

Therefore a conjecture in some way probable that he is not baptized and that he wishes to be baptized creates the obligation of baptizing such a dying person. But a conjecture of the will of baptism can easily be had concerning him who has heard of the Christian religion. Indeed "a soul contrary to Christianity, by which before he was trying to shake off the goads of grace... can be both a reason for thinking that the dying person placed in danger has changed his mind, and now desires faith and baptism" (Lehmkuhl, II, 78, ed. 9). Wherefore, in our regions, any dying person, destitute of the senses and not yet baptized, can at least be baptized under the condition, "if you are capable."

Moreover, in great cities there are now so many who are not given baptism, even if they are born of baptized persons, that certain baptism can no longer be gathered from conversation among the faithful alone. Therefore it will be better to baptize conditionally, before absolution itself, an unknown dying person who is destitute of the senses.

A few think that in every attrition or will of saving the soul, which itself is not without knowledge of God as punisher of evils and rewarder of goods, a sufficient will of baptism is already contained. Wherefore, with the supreme necessity of baptism attended to, there seems to be no dying person destitute of the senses, whether in a faithful region or in an infidel region, who, with scandal set aside, cannot be baptized under condition. Cf. Cappello, op. c., I, n. 159.

Of itself indeed baptism, if it can, must be conferred upon many at the same time. The law of charity has this. Yet because most grave authors, such as Suarez, *De Sacramentis*, p. 1, d. 24, s. 1, n. 5, and Lugo, *De Sacramentis in genere*, d. 9, n. 129, deny that baptism can be conferred on others, the obligation will be only of baptizing those who, from c. 752, §3, have manifested in some probable way the formal intention of receiving baptism.[1]

(1) Observe that it will more certainly profit an infidel who is mentally competent to elicit a perfect act of love of God and contrition, unless he expressly admits baptism.

— You will ask which certainly or doubtfully insane or doubtfully adult persons are to be baptized?

1. The insane from infancy, constituted in whatever age, are assimilated to infants (c. 745, §2, 1°). Wherefore they are always validly baptized; and licitly also, if, after the use of reason has been obtained, there will be founded hope of Christian instruction; or insanity is prudently foreseen as perpetual, or necessity of baptism urges.
2. Those who have lucid intervals, while they are of sound mind, are to be baptized if they wish (c. 754, §2).
3. Those who after the use of reason have fallen into insanity which is judged perpetual are to be baptized absolutely or conditionally, if some will of baptism, certainly or doubtfully sufficient, can in some way be conjectured while they enjoyed reason. Because of what was said just now, n. 242, we also do not oppose the conditioned baptism of others. If the insanity is not foreseen as going to be perpetual, lucid intervals are to be awaited, unless danger of death is imminent (c. 754, §3).
4. "He who labors under lethargy or frenzy is to be baptized only when awake and willing; but if danger of death is impending," he is to be baptized if before he has shown some desire of receiving baptism (c. 754, §4). And as far as we are concerned it is lawful to wash the others in that peril conditionally.
5. The baptism of one doubtfully insane is of itself to be deferred until lucid intervals or better developed reason have removed the doubt. But if waiting has been impossible or useless, he will have to be washed under condition, or even absolutely if, according to his measure, he is judged to have instruction and will of baptism. But if use of reason preceded, and then he had no will of baptism, some probable conjecture of present will toward baptism seems to be required.
6. One doubtfully adult is to be treated as one doubtfully insane. Of itself, therefore, his baptism is to be deferred. Yet if he already wishes to be baptized, as opportunity will prudently be given, he is to be separated from pagan parents who would create danger of perversion. Yet graver inconveniences, especially of public order, are to be avoided.

Yet if his Catholic instruction is morally certain, we do not see why the baptism of one doubtfully adult who according to his measure desires to be baptized should have to be deferred. Suppose converted pagan parents wish to be baptized with their whole offspring. Neither to adult offspring who consent, nor to children before the use of reason, will baptism be denied; why should it be denied to those doubtfully adult who ask baptism in the way in which they can?

— **VI. On the Doubtfully Baptized.** 1. Baptism is to be conferred once; and he sins gravely, by the sin of sacrilege, who confers or receives baptism again. Nevertheless the irregularity by which sacrilegious repetition of baptism, in the recipient and in the public rebaptizer, was formerly punished has been removed by the Code. Cf. Lehmkuhl, II, 1283.

2. But the extreme necessity of baptism permits that baptism be repeated under the condition, "if you are not baptized," if some doubt, yet reasonable, is had concerning the prior baptism.

Often, when the prior conferral, perhaps invalid, is certain, conditioned repetition is to be performed secretly or with witnesses removed, for avoiding scandals or offenses.

Wherefore "exposed and found infants, unless, the matter having been diligently investigated, their baptism is certain, are to be baptized under condition" (c. 749). But a note in which baptism is affirmed by no means furnishes sufficient security.

It is not lawful promiscuously to rebaptize under condition infants baptized by heretics or those converted from heresy, but, according to the account of times and places, an examination concerning the value of baptism is to be instituted; and this rather by weighing individual cases than by using presumptions (Holy Office, November 20, 1878). Nevertheless, if an examination cannot be made, baptism is to be repeated under condition; for because infidelity, or even among non-Catholics of good faith, negligence grows more day by day, baptism conferred by a non-Catholic is, practically, at least regularly to be repeated "unless there is brought forward a witness worthy of all faith who can testify point by point concerning baptism rightly performed." Thus almost Lehmkuhl, II, 27 note, alleging besides the response of the Holy Office, February 4, 1885, to the Visitor of the Copts.

Much less are they to be rebaptized promiscuously who, in necessity, were baptized by a physician, midwife, or pious layman. Yet because the probity or the very skill of a midwife is not always certain, nor rarely is baptism then conferred with the mind disturbed, for example by cares to be given to the endangered mother, there will easily be place for repeating baptism conditionally unless, after interrogation has been made concerning the way in which baptism was conferred, reasonable doubt is removed. But the interrogation is to be made in such a way that the manner in which the baptism was done is described. Wherefore even in certain missions it has been established that those baptized by catechists should regularly be baptized again under condition, unless two witnesses could testify to legitimate conferral. The Sacred Congregation of Propaganda Fide itself, September 8, 1869, extended to all vicariates of the Indies a decree of this kind of the Synod of Pondicherry (*Collectio Lacensis*, VI, 670, appendix). Nor can we disapprove that something similar be decreed concerning baptisms conferred by a midwife.

— By canon 753, §1, the Code warns that it is fitting that healthy adults to be baptized and he who is about to baptize them be fasting. This prescription of the Ritual seems to be referred to the more ancient obligation, which long remained, of conferring the sacraments before every eating or drinking.

Almost up to the seventeenth century fasting was imposed on those receiving and those ministering baptism. Cf. Martene, *De antiquis Ecclesiae usibus*, t. 1, p. 10.

Besides, the same canon, §2, demands that, unless grave and urgent causes stand in the way, an adult baptized should immediately assist at the sacrifice of the Mass and receive holy communion. Thus, by the rite itself, it is shown how the sacrament of baptism has an order toward receiving the Eucharist. Cf. St. Thomas, 3 p., q. 65, art. 3, c.

We understand this in such a way that of itself it is indeed fitting that the ceremony of baptism of adults be completed by the sacrifice of the Mass and holy communion; nevertheless urgent excuses

are not required unless each is deferred for a long time. For the word *immediately* in law permits an interval of two or three days. Besides, the fasting itself necessary for communion is not properly prescribed. Therefore the usage will not be disapproved of baptizing adults in the evening who on the following day assist at Mass and are refreshed by the sacred banquet.

Summary

— **I.** The capable and of itself licit subject of baptism is every and only wayfaring man, not yet baptized and, if he has been an adult, consenting.

1. Danger lest the fetus be brought forth dead permits that baptism be attempted in the womb, to be repeated after birth under condition. When a pregnant mother has died, the extracted fetus is to be baptized absolutely or under condition, if he certainly or doubtfully lives. That an infant be baptized, Caesarean section is licit even with grave danger of death; and if the necessity is met sufficiently certainly in this way alone, it is objectively prescribed. Yet admonition is to be made prudently.
2. All abortive fetuses, which are not certain to be dead, are to be baptized at least under condition. In a monster, one can doubt concerning the unity rather than concerning the truth of the subject. Wherefore whatever is brought forth from a woman not certainly dead must be baptized at least under condition.

II. 1. That outside danger of death an infant before use of reason be licitly baptized, it is necessary that, without injury to the parents, grave danger of perversion can probably be removed. Wherefore the infants of infidels are not to be baptized when parents are unwilling; and generally the same norm is to be observed concerning the infants of heretics, schismatics, or apostates.

When he is in that peril of life such that he is prudently foreseen likely to die before use of reason, even with parents unwilling an infant is licitly baptized. And he is to be baptized unless a prevailing common detriment stands in the way.

2. Licit baptism of an adult demands faith and penance. Wherefore the baptism of one not dying is regularly to be prepared by competent instruction and fitting probation in faith and morals. In danger of death, it is enough that the dying person in some way show that he assents to the truths of faith, and seriously promise that he will observe the commands. And concerning certain obligations one will then be able prudently to be silent.

He is to be baptized under condition who cannot formally ask baptism but has in some probable way, before or now, manifested the intention of baptism. Nor does there seem to be any dying person destitute of the senses who, with scandal set aside, cannot be baptized under condition.

3. The insane from infancy are assimilated to infants. And cf. what was said above in the treatise on the Sacraments in general.

One doubtfully adult is to be treated as one doubtfully insane.

III. The extreme necessity of baptism permits that under condition, "if you are not baptized," baptism be repeated, if some doubt, yet reasonable, is had concerning the prior baptism.

Of itself indeed inquiry concerning those baptized in heresy is to be made; but if this cannot be done, baptism is to be repeated under condition.

Chapter IV: On the Rites, Ceremonies, Proof, and Annotation of Baptism

Article I: Rites and Ceremonies Commonly to Be Observed

— 1. Of itself, the ceremonies of baptism determine the rite to which one will belong (c. 98).

Yet offspring must be baptized in the rite of the parents. If the parents belong to different rites, the offspring, with special law saved, is to be baptized in the rite of the father. If only one parent was Catholic, he is to be baptized in this one's rite (c. 756).

2. The ceremonies are to be taken from an approved ritual, and therefore, in the Latin Church, from the Roman Ritual. And the rites, in grave matter, are to be observed under grave sin.

Notable ceremonies are: in solemn baptism, use of water blessed for this, which seems prescribed under grave sin (c. 757), saliva, salt, breathing, anointing with chrism, and indeed recent chrism if it is at hand, and a sponsor.

When a grave cause impedes all from being used, let at least those be observed which, in the case, can be observed. Those omitted will have to be supplied in the Church when opportunity is given. Nevertheless in baptism which is conferred at home because of imminent danger of death, the ceremonies which precede baptism are omitted; only the ceremonies which follow baptism, if time is present, are observed (c. 759, §1).

3. Some ceremonies are prescribed for the baptism of infants, others for the baptism of adults. But because of a grave and reasonable cause, the local Ordinary can now indulge that adults be baptized with the ceremonies of infants, which are shorter and simpler.

The reason can be sought from the aversion of the one to be baptized from longer ceremonies, from other business to which the minister must attend, or from too great a number of those to be baptized. Wherefore an Ordinary of missions who knows his missionaries to be stretched by many cares seems able simply to permit them, in his territory, the use of the ceremonies of infants.

4. When an infant baptized by a heretical minister is brought to the Catholic Church, the ceremonies of the baptism of children are to be used, whether baptism under condition must be repeated or not. - But if an adult is converted from heresy, the ceremonies can laudably be supplied but need not be, unless baptism must be repeated under condition; in that case, by common law, with dispensation of the Ordinary saved, the ceremonies of adult baptism are to be used.

Nevertheless it is lawful for the local Ordinary to permit that this conditioned baptism of a converted heretic be done without ceremonies (c. 759, §2).

When baptism is repeated conditionally, the ceremonies which were omitted in the prior baptism must be supplied, with the exception just mentioned saved; but if the prior baptism was conferred solemnly with all ceremonies, the ceremonies in the second can be repeated or omitted.

5. Observe that the thumb is to be used for applying saliva; but the eucharistic fast is not broken by salt tasted by catechumens. When the hair of the person to be baptized is too thick, some anoint with chrism the upper forehead, or the part of the head near the hairline; others take care that some part on the crown be shaved; others separate the hair, content if a very little chrism touches the head. The Sacred Congregation of Propaganda Fide, January 14, 1806, disapproved none of these.
6. "Let pastors take care that a Christian name be imposed on him who is baptized; but if they cannot obtain this, let them add to the name imposed by the parents the name of some saint, and in the book of the baptized let them write down both names" (c. 761).

Both names are to be written down so that the person can always be certainly recognized.

7. Interrogations to sponsors are to be uttered in the Latin language, but, if there is need, let them be repeated in the vernacular language which the godfathers and godmothers can use in their responses. And while the priest recites in Latin the Our Father, Hail Mary, and Creed, the sponsors will be able to recite the same at the same time in the vernacular tongue.
8. Except in imminent danger of death, the sacrament is not of itself to be separated from the solemnities. Wherefore as an abuse to be eliminated there has been reproved the custom of certain regions always of washing infants, *ondoyer*, with essential baptism, so that afterward in the Church the ceremonies alone may be supplied.

Where the abuse has been general, it belongs of itself to the Ordinary to determine beforehand the mode by which it is to be eliminated; but individual priests can accommodate themselves to the instructions of the Ordinary; and of itself it is to be wished that they know how to dissuade from the practice in such a way that they do not contradict the Ordinary.

— **Place.** 1. Solemn baptism is, under grave precept, of itself to be conferred in a church or in the adjoining baptistery (c. 773). Wherefore, if the parochial church is too distant, but another church or another public oratory is nearer, baptism is to be conferred in this sacred place (c. 775).

But by c. 774, §1, it is now established that, any contrary custom or law being reproved, indeed every contrary privilege revoked, any parochial church whatever is to have a baptismal font, "with the legitimate right already cumulatively acquired by other churches nevertheless saved," or which they will have acquired thereafter from episcopal ordinance.

2. Nevertheless in private houses, solemn baptism can be administered to the children or grandchildren "of those who actually hold supreme rulership of peoples or have the right of succeeding to the throne, as often as they have duly requested it"; and, from a just and reasonable cause, in some extraordinary case, also to others, if the local Ordinary has judged it to be conceded (c. 776).

From the very ordinary use of the word, *nepos* can be taken both for the son of a brother and for the son of one's own son.

It is also manifest that in regions of missions or in places where churches are lacking, solemn baptism can and must be administered outside the church by a competent minister.

— Baptism, whether private or solemn, can be administered on any day.

How quickly? "Let infants be baptized as soon as possible; and let pastors and preachers frequently remind the faithful concerning this grave obligation of theirs" (c. 770).

From the nature of the thing, a delay which brings in danger of dying without baptism is grave; and, with custom and the prescription of positive law attended to, many judge that a delay is grave which, without cause, is protracted beyond a month, or, with cause, beyond two months. Certainly a bishop can command that baptism not be deferred beyond eight days.

R. P. Cappello, op. c., I, n. 19, seems to speak too severely here.

Adults themselves also are of themselves to be baptized as soon as this can be done worthily and conveniently, since baptism is the gate of the Church, and the Church is a necessary society. Yet because of notable temporal harm it will be able prudently to be postponed. And c. 772 itself advises that, "according to the most ancient rite of the Church," the baptism of adults, if it can conveniently be done, especially in metropolitan or cathedral churches, be reserved to be done on the vigil of Easter and of Pentecost.

— **Delegation of Faculties.** The various faculties which we have recalled as made by law to Ordinaries can prudently be delegated by them to others, from general principles. For they pertain to their ordinary power.

Article II: On Sponsors and Spiritual Relationship

— **Notion of Sponsor.** To him who is reborn in this sacrament of baptism there is given, as though another spiritual father, a godfather or godmother. Therefore these contract, of themselves, a grave obligation, after the parents and during the spiritual infancy of him whom they have taken from the font, that is, until he has been sufficiently instructed in Christian faith and morals, of procuring, by themselves or through others, insofar as they can, his Christian instruction, "so that in his whole life he may show himself such as they promised by solemn ceremony that he would be." Nor does spiritual solicitude cease after instruction has been finished. For "it belongs to sponsors, from the function undertaken, to have their spiritual child perpetually commended to themselves" (c. 769).

The guilt of sponsors is grave if, when they themselves can provide, the child is left destitute of spiritual aids.

But because they are bound secondarily, if the child is raised among Catholics who care for religion, they can presume the sufficient care and diligence of the parents.

— **Conditions of Value.** "That someone be a sponsor, it is necessary: 1. that he be baptized, have attained use of reason, and have the intention of carrying out that function; 2. that he belong to no 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 a cleric deposed or degraded; 3. that he be neither father nor mother nor spouse of the one to be baptized; 4. that he be designated by the one to be baptized himself, or by his parents or guardians, or, these failing, by the minister; 5. that in the act of baptism he, by himself or through a procurator, physically hold or touch the one to be baptized, or immediately raise or receive him from the sacred font or from the hands of the baptizer" (c. 765).

In Portugal the Blessed Virgin Mary is given as godmother to not a few infants; and then an honorable woman, who touches the infant with an object referable to the Blessed Virgin Mary, acts in her place in baptism. Here is an example of the testimony of baptism so conferred: "The sponsors were Paul Alves, married, and Our Lady, whose crown Gertrude Pereira touched to the little boy." It is clear that the Blessed Virgin Mary is not godmother except in a metaphorical sense, insofar as the infant is commended by pious parents peculiarly to her protection; and then one sponsor properly so called remains, the one with whom the Blessed Virgin Mary is associated.

Therefore those are kept away who by nature or by law are judged unfit, or who already by another title, as parents, must bear care of the one to be baptized.

The very spiritual relationship which he would contract keeps away the spouse of the one to be baptized. By the incapacity of heretics who have given their name to a sect, the question is suppressed whether or not they sometimes can be admitted. They are not prohibited from being present as witnesses.

Of itself it is required that the sponsor raise the baptized person from the font and thus acknowledge him as his own, in a similar manner to that by which a man, by receiving the infant of his wife, formerly professed him as his own.

Therefore that manner will have been more perfect in itself, that he immediately and directly raise the baptized person from the font or from the hands of the baptizer or of the person who was carrying the infant during baptism. Yet he is morally judged also to raise if, in the act of baptism, he touched the infant by a hand placed upon or under him, not merely momentarily with the tips of the fingers. Designation made by a competent person is also necessary. If they disagree among themselves concerning the person, the option of him who is named first in the Code as designating seems to prevail.

Legitimate ecclesiastical acts are acts of various kinds which in the ecclesiastical forum produce juridical effects and suppose or confer some commendation of the person: thus to administer ecclesiastical goods, to act as judge..., to perform the function of sponsor, to cast a vote in ecclesiastical elections, to exercise the right of patronage. They are numbered in c. 2256, §2.

— **Conditions of Liceity.** "But that someone be licitly admitted as sponsor, it is necessary: 1. that he have reached the fourteenth year of his age, unless otherwise seems right to the minister for a just cause; 2. that he not be excommunicated because of a notorious delict, or excluded from legitimate acts, or by infamy of law, although no sentence has intervened, nor be interdicted or otherwise publicly criminal or infamous by infamy of fact; 3. that he know the rudiments of faith; 4. that he not be a novice or professed in any religion, unless necessity urges and permission of the Superior, at least local, is had; 5. that he not be constituted in sacred orders, unless express license of his own Ordinary is added" (c. 766).

Therefore observe that it is lawful for the minister to admit one younger than 14 years if some just cause, for instance difficulty of finding another in the family, advises it.

When a sentence has intervened, the excommunicated, those excluded from legitimate acts, and those infamous by infamy of law cannot validly undertake the function; if they were merely notorious, they are only prohibited from being sponsors. Nor are religious now properly excluded, as

before. But permission of one's own Ordinary is necessary for a minister in sacred orders to be a sponsor.

Therefore the baptizer himself is not expressly excluded, although the Code supposes that they are distinct persons, and the Sacred Congregation of Propaganda Fide, September 21, 1843, treating of the function of sponsor of Confirmation, declared that this is not to be tolerated. But by a more recent response of January 14, 1873 (*Decr. auth.*, n. 3305), it ordered that then the minister act the parts of sponsor through a procurator.

— It is absolutely not lawful for Catholics to act as sponsor when baptism is conferred by a heretical minister. Cf. declaration of the Holy Office, May 10, 1770 (De Vecchio in Scavini, III, 230). For the sponsor asks baptism from one to whom it is not lawful to baptize, and seems exteriorly to promise instruction in heresy.

"In doubt whether someone can be validly or licitly admitted or not to the function of sponsor, the pastor, if time allows, should consult the Ordinary" (c. 767). Otherwise, let him rather keep away the doubtful sponsor. If he cannot do this without serious inconvenience, let him add another certainly fit sponsor.

— 1. One who is solemnly baptized must have one sponsor; yet not beyond one godfather and one godmother (cc. 762, 764).

To use two godfathers or two godmothers is venial if they are of the same sex as the one received; if of diverse sex, St. Alphonsus, l. 6, n. 155, once judged that this was mortal because of multiplied impediments of matrimony. But since today the force of spiritual relationship is greatly restricted, mortal guilt does not seem certain.

2. "Even in private baptism, a sponsor, if he can easily be had, is to be used; if he was not present, he is to be used in supplying the ceremonies, but in this case he contracts no spiritual relationship" (c. 762, §2).
3. When baptism is repeated under condition, the same sponsor, if it can be done, is to be used who perhaps was present in the prior baptism; if there was none, or the same cannot be had, a sponsor is not necessary (c. 763, §1).

But when baptism is repeated under condition, neither the sponsor of the prior baptism nor the sponsor of the later baptism contracts spiritual relationship, unless the same one was used in each (c. 763, §2).

For only in the latter case is it certain that someone was sponsor in valid baptism.

— **On Spiritual Relationship.** "From baptism only the baptizer and the sponsor contract spiritual relationship with the baptized person" (c. 768).

This relationship constitutes a diriment impediment of matrimony, yet of lesser degree, as will be explained afterward.

Before the Code, both the sponsors and the baptizer also contracted relationship with the parents of the baptized, by way of co-parenthood.

In private baptism, the baptizer himself contracts relationship with the baptized. Concerning sponsors the matter is not clear.

When someone raises a child through a procurator, only the one mandating, not the procurator, is bound by the relationship.

Article III: On the Annotation and Proof of Baptism Conferred

— **Annotation of Baptism.** "Pastors must diligently and without any delay record in the baptismal book the names of the baptized, mention having been made of the minister, parents and sponsors, of the place and day of conferred baptism" (c. 777, §1).

If he was an illegitimate child, the name of the mother is to be inserted, if her maternity is publicly certain, or she herself of her own accord asks this in writing or before two witnesses; likewise the name of the father, provided he himself of his own accord requests this from the pastor either in writing or before two witnesses, or is known from a public authentic document. In the other cases, let the one born be inscribed as the child of an unknown father or of unknown parents.

Therefore the annotation is to be made by the pastor even if another priest ministered baptism. For the pastor alone has the quality for making public faith concerning baptism. Yet if the matters were noted and signed by another hand, it will be enough that the pastor confirm the acts by his subscribed name.

If infamy of the parents of an illegitimate child seems likely to arise from annotation, the Sacred Congregation of the Council is to be approached, which is to establish what must be done (Commission for the Interpretation of the Code, July 14, 1922, response to VIII, *Per.*, XI, 104).

The minister who, with the pastor absent, has baptized someone, should as soon as possible render certain the proper pastor of the baptized person by reason of domicile concerning the baptism conferred (c. 778).

If the baptized person lacks domicile, the pastor of quasi-domicile, or, if he was a vagrant, the pastor of the place of baptism, seems to be made certain.

— **Proof of Baptism.** If prejudice is done to no one, one witness above every exception, or the oath of the baptized person himself if he received baptism in adult age, is enough for proving baptism.

Therefore cases are to be distinguished. Proof which injures the utility of no one is admitted; fuller proof, on the contrary, is required if it concerns another person that the thing not have been done, as if nullity of matrimony should depend on it.

Summary

— **I.** Offspring must be baptized in the rite of the parents, that is, of the Catholic father, or of the Catholic parent if the other is non-Catholic; and by the ceremonies of baptism he is ascribed to that rite.

The rite of the approved Ritual must be observed under grave sin in grave matter. If certain ceremonies have been impeded, let those which can be used be used; let the others be supplied afterward in the Church. In baptism which because of danger of death is conferred at home, the ceremonies which precede baptism are to be omitted. Shorter and simpler ceremonies are prescribed

in the baptism of infants than in the baptism of adults. But the local Ordinary can, for a serious cause, indulge that adults be baptized with the ceremonies of infants, and that converted heretics be baptized under condition without ceremonies.

If the pastor cannot obtain that a Christian name be imposed on one to be baptized, let him himself add the name of a saint to the name imposed by the parents, and let him write down both in the book of the baptized. The custom of always separating baptism from solemnities is reproved.

II. Under grave sin, where churches are had, solemn baptism must be conferred in a church or adjoining baptistery; and any parochial church whatever is now baptismal. But in an extraordinary case the local Ordinary can concede that which the law itself concedes, if they legitimately ask, to the children or grandchildren of those who actually hold supreme rulership or possess the right of succeeding to the throne, that is, that they be baptized at home.

III. Baptism can be conferred on any day. Infants are to be baptized as soon as possible and within the time established by the Ordinary. The same must be said of adults, whose baptism nevertheless is laudably reserved to be done in cathedral churches on the vigil of Easter and Pentecost.

IV. A godfather or godmother is as though another spiritual parent, who, after the parents, and therefore secondarily, during the spiritual infancy of the baptized person, must procure Christian instruction for him, insofar as he can, under grave sin, and have him perpetually commended. For value, he must be baptized, master of himself, and consenting; must belong to no non-Catholic sect, nor be excluded from legitimate acts, nor be a degraded or deposed cleric, nor father, mother, or spouse of the one to be baptized; must be designated by the one to be baptized, or by his parents or guardians, or, these failing, by the minister; must in the act of baptism, by himself or through a procurator, physically hold or touch the one to be baptized, or immediately raise or receive him from the font or from the hands of the baptizer.

Several others cannot licitly be sponsors, especially those who have not yet reached the 14th year of age, without the express assent of the minister; those ignorant of the rudiments of faith; novices or professed religious, unless necessity urges and with permission of the Superior; clerics in sacred orders, without express license of their own Ordinary; those infamous by law or fact.

In doubts let the Ordinary be consulted if it can be done; otherwise let the doubtful sponsor be kept away, or let one certainly fit be added by the minister.

A Catholic can never be sponsor in baptism conferred by a heretical minister.

One sponsor is required; and also in private baptism he is to be used; nor can more than one godfather and one godmother be used. When baptism is repeated under condition, let the same one who was used in the prior baptism be used; if he cannot be used, none is necessary.

If there was no sponsor in private baptism, a sponsor is to be used in supplying the ceremonies; but he contracts no spiritual relationship.

V. From baptism, at least solemn baptism, the baptizer and sponsor contract spiritual relationship with the baptized person; in private baptism, the baptizer with the baptized person. It is less certain whether also the sponsor does.

VI. The pastor himself must diligently and without delay annotate baptism in the baptismal book, or at least confirm by subscribed name an annotation made by another hand. Another minister must as soon as possible make certain the pastor absent, proper by reason of domicile, concerning the baptism conferred.

For proving baptism, one approved witness, or the oath of the baptized person in adult age, suffices if the proof brings prejudice to no one; otherwise fuller proof is required.

Treatise III: On Confirmation

(cc. 780-800)

Utility. - Certainly the immediately practical utility of the Treatise on Confirmation is less for individual priests; for this reason it is customarily set forth briefly. Yet theological knowledge of this sacrament is such as greatly increases estimation of this sacrament, which today is very expedient. For through confirmation Christians are ordered to carrying on warfare for Christ. But how much does it contribute to the private good of individuals and the common good of all that strong soldiers be at hand for Christ?

— *Appendix III belongs to this section.* **Historical-Liturgical on Confirmation.** Cf. Appendix III.

Article I: On the Nature, Matter, and Form of This Sacrament

— Confirmation is the Sacrament of the New Law by which, through anointing with chrism, under the prescribed form of words, performed by the hand of a suitable minister on the forehead of the baptized person, the Holy Spirit is given to him for strength. Cf. c. 780.

The reality and sacrament, according to Cardinal Billot (*De Sacramentis in communi*, Thesis VI), is deputation to confessing the faith bravely, or to carrying on the warfare of Christ: it is the character of a soldier of Christ. According to R. P. de la Taille (*Mysterium Fidei*, p. 581, note), the character of Confirmation is "the interior consecration by which man is formally deputed to confessing the Christian faith against the enemies of the Christian name, by a certain office of the Church as an enrolled authentic witness of Christ."

— The essential remote matter is chrism, made from balsam and olive oil, and consecrated by a bishop.

Balsam of any region can be used; but recent chrism is required under grave sin, unless it is lacking and the sacrament cannot be deferred.

Balsam alone does not suffice, although Camus thought this, nor oil alone, with which Cajetan, Soto, and Navarrus were content. For chrism in the Church designates a mixed ointment; but neither element lacks its proper signification, since oil signifies splendor, but balsam the odor of good reputation (Decree for the Armenians). Nevertheless, relying especially on the response of Innocent III, c. *Pastoralis*, 1, *De sacramentis non iterandis* (I, 16), which is explained variously,[1] Suarez and St. Alphonsus think that oil probably suffices. Wherefore, in the article of death, this so useful sacrament could be conferred conditionally with blessed oil alone.

The consecration itself performed by a bishop is essential, so that there can be doubt whether the Supreme Pontiff himself can commit this consecration to a simple priest. Cf. c. 781, §1. But the consecration is performed yearly on the Supper of the Lord.

(1) "*Pastoralis*... You wished to consult us... whether the sacrament of confirmation ought to be repeated in him who by error was anointed not with chrism but with oil. To this we have judged that we must respond briefly, that in such cases nothing is to be repeated but what had been incautiously omitted is to be supplied cautiously." Since the anointing of chrism is to be supplied, and it cannot be supplied without its form, finally the Pontiff commands that the whole essential rite be supplied. Hence the varied exposition of the text.

— The proximate matter is anointing on the forehead by the hand of the competent minister. Therefore the anointing is to be made by the hand itself, not by some instrument (c. 781, §2). And indeed it is to be made in the form of a cross. Yet that this is essential is less certain.

The first extension of hands toward those to be confirmed, which is used in the Latin Church alone, does not seem essential; so that the Sacred Congregation of Propaganda Fide, August 6, 1840 (*Coll.*, n. 905), denied that confirmation had to be repeated conditionally where it had been omitted.

From necessity of precept the anointing is to be done with the right thumb; but it would be valid even if it were done with the finger of the left hand: for true imposition of hand subsists. Indeed it is not certain that the minister who uses another finger sins gravely, since nothing proves that the thumb was anointed for this end, and therefore that the use of the Church is violated in a grave matter.

— The true and necessary form in the Latin Church is: "I sign you with the sign of the cross and confirm you with the chrism of salvation, in the name of the Father and of the Son and of the Holy Spirit." The scholastics dispute whether it is essential expressly to signify both actions, of signing and of anointing, or whether it is enough to render the confirming signation, so that it suffices to say: "I sign you with the chrism of salvation." We think this more likely to be true. It is not certain that the distinct invocation of the Most Holy Trinity is essential, although it is probably required. The conferral of the grace of the Holy Spirit must be expressed for value, as is done by the words "with the chrism of salvation."

If the words "I sign you with the sign of the cross" are essential, the anointing itself in the form of a cross will be essential.

The Greeks, in the anointing itself, say only "The seal of the gift of the Holy Spirit." But they premise to the anointing an invocation of the Most Holy Trinity, perhaps essential, and, with the third Person named, a certain mention of the Most Holy Trinity is now had.

Article II: On the Minister and Subject of Confirmation

— **I.** The ordinary minister of valid confirmation is every and only bishop; but the extraordinary minister, from a faculty made either by common law or by a peculiar indult of the Apostolic See, can be any priest, so that a priest can be said to be the remote minister of this sacrament. Cf. c. 782, §§1, 2.

With this faculty received, the presbyter indeed acquires no jurisdiction, but his power of order, which he has incomplete, is perfected. But that the Supreme Pontiff alone and no other bishop can give this necessary complement seems to be attributed to a reservation made by the Supreme Pontiff. Cf. Lehmkuhl, II, 133, 134.

All priests of the Greek rite obtain this faculty. In the Latin Church, by law itself the following are endowed with that faculty: Cardinals of the Holy Roman Church (c. 239, §1, n. 23), an abbot or prelate nullius, an Apostolic Vicar and Prefect; but these latter three cannot validly use it except within the limits of their territory and only while the function lasts (c. 782, §3).

Besides, "a presbyter of the Latin rite to whom, by force of an indult, this faculty belongs, validly confers confirmation only on the faithful of his own rite, unless in the indult something else has been expressly provided" (c. 782, §4).

Therefore a faculty given by the law itself is not circumscribed by this exception.

But priests of an oriental rite who at the same time baptize and confirm infants of their own rite are prohibited from conferring confirmation on infants of the Latin rite (c. 732, §5). The confirmation conferred nevertheless more probably is valid.

— In his own diocese, a bishop legitimately administers confirmation even to outsiders, unless express prohibition of their own Ordinary stands in the way; but in another diocese, he is permitted to minister confirmation to his own subjects privately and without staff and miter. That he minister it solemnly, he needs license of the local Ordinary at least reasonably presumed (c. 783).

Before the Code, they demanded, and indeed under grave guilt, the tacit consent of one's own Ordinary that outside subjects be legitimately confirmed. Yet they permitted that this consent be presumed, both as to those who ran in from another diocese, and as to one to be ordained who had received dimissorial letters for orders from his own bishop.

A Nuncio or Apostolic Delegate, if he is a bishop, by force of his faculty, n. 63, can confirm in the whole dominion subject to his jurisdiction and during a sea voyage, both in going to and returning from the place of his mission.

— A bishop must, by grave obligation, minister the sacrament of confirmation to his subjects duly and reasonably asking it, especially at the time of the visitation of the diocese (c. 785, §1).

The same is the office of a presbyter furnished with apostolic privilege, toward those in whose favor the faculty has been conceded (c. 785, §2).

Indeed the Ordinary who is prohibited from confirming by himself must provide, as much as can be done, that at least within any five-year period this sacrament be administered to his subjects (c. 785, §3).

Wherefore, after the Code, we judge that an Ordinary sins gravely who has neglected this administration beyond five years, although formerly they judged a delay grave after eight or ten years.

Concerning the negligence of a bishop, the Metropolitan must make the Roman Pontiff certain from cc. 785, §4 and 274, 4°.

— **On the Subject.** 1. All and only the baptized not yet confirmed are validly confirmed.

2. From among the baptized not yet confirmed, the following are licitly and fruitfully confirmed: a) adults who, constituted in the state of grace, are sufficiently instructed; b) the perpetually insane. Nor in those who have been masters of themselves is there need that they previously asked this sacrament, because in the profession of Christian life there is had a sufficient will of

this sacrament. Therefore it is enough that the insane person be in the state of grace; and he is presumed to be in that state, unless the contrary is at least vehemently suggested; c) infants constituted in danger of death, or those for whom it seems expedient to the minister because of just and grave causes (c. 788). These causes can exist if a long absence of the bishop is foreseen, or if it is feared that the infant will die before another occasion of the sacrament.

With these causes excluded, administration of confirmation is conveniently deferred in the Latin Church to around the seventh year of age (c. 788), so that a sacrament less necessary may be received with greater reverence and in a more conscious manner.

But the dignity of this sacrament demands this: that those to be confirmed be thoroughly instructed concerning the special grace of this sacrament, that is, of fortitude, especially of intrepid confession of faith. This will be the occasion of inculcating in Christian adolescents that noble manliness which despises exterior human fears and, stronger, overcomes the interior attacks of temptations. And it is to be wished that so great a sacrament be held at a greater price.

— 1. The sacrament of confirmation has no necessity of means. Yet for a dying person who cannot confess or be anointed by extreme unction, the sacrament could become necessary.

2. The necessity of precept itself was commonly denied before the Code, both because the negligent are punished by no penalty, and because the obligation is gathered neither from Scripture or tradition, nor from the end or institution of the sacrament. Yet they admitted that an obligation of receiving it could arise per accidens for avoiding scandal, or, with persecution pressing, if someone fears that in torments he may fail in strength.

But now from c. 787, "it is lawful for no one, when occasion is offered, to neglect it"; so that this negligence, which betrays a certain sloth or lesser esteem, must be blamed at least venially. Besides, by the same canon, an obligation is imposed on pastors of taking care that the faithful approach it at an opportune time.

In the Greek Church, all infants are fortified by this sacrament. The same can be affirmed concerning the children of Catholics in the City also, since the custom is that some bishop be called to a dying infant to confirm him. But elsewhere, because of the rarity of bishops, very many infants die not confirmed.

If someone considers these things, does he not begin to grieve over this unequal condition of children, and to inquire into the manner by which morally an occasion may be given to all of obtaining in the soul that new character which by this sacrament is imprinted in the soul? Now much more easily today, by common law itself, the faculty of confirming is communicated to presbyters. Could not faculties be conceded, in places where bishops are few, to deans or archpriests for confirming children placed in danger of death? Those who are eminent in authority will judge concerning the opportuneness of the matter; yet it will be lawful for us to have it among our wishes.

3. Those to be ordained or to be initiated by first tonsure should indeed first be confirmed. Yet omission is not thought mortal (St. Alphonsus, VI, 786). Navarrus (*Manuale*, c. 22, n. 9) adds that not even a bishop sins mortally who ordains one not confirmed or himself not confirmed.

Article III: On Ceremonies and Sponsors

— By canon 789 those to be confirmed, if they are many, are admonished that they be present at the first imposition or extension of hands, and that they not depart before the rite has been completed.

— **On Time and Place.** 1. Confirmation can be ministered at any time; it is most fitting to administer it in the week of Pentecost.

2. The proper place of administration is a church; yet the minister, for a cause which he has judged just and reasonable, can confer this sacrament in any other decent place (c. 791). And it is lawful for a bishop to administer confirmation also in exempt places of his diocese.

— **On Ceremonies.** 1. Administration can be solemn or private: solemn, with miter, staff, and cope; private, without miter and cope, or without miter and staff. From a just cause it is lawful to administer the sacrament privately. In public administration, they judge it mortal if all sacred ornaments are omitted; but not if only some one is omitted.

But a delegated presbyter cannot use pontifical vestments unless he has their use from another source, but he must wear at least stole and alb: cf. the Appendix of the Ritual. And he is ordered to read aloud to the people, in the vernacular language, the indult by which he received the faculty. Those who are instructed with this power from common law have nothing to read aloud.

2. "Omission of the prayers which precede confirmation is to be held grave" (Lehmkuhl, II, 138); but omission of the blow is light.

— A sponsor is to be used under grave sin, if he can be had. If he cannot be had, confirmation without a sponsor becomes licit.

That someone be validly a sponsor, it is necessary: "1° that he himself also be confirmed, have attained the use of reason, and have the intention of carrying out that function; 2° that he be ascribed to no heretical or schismatic sect, nor noted by a declaratory or condemnatory sentence with any of the penalties of which in c. 765, n. 2; 3° that he not be father, mother, spouse of the one to be confirmed; 4° that he be designated by the one to be confirmed or his parents or guardians, or, if these are lacking or refuse, by the minister or by the pastor; 5° that in the very act of confirmation he, by himself or through a procurator, physically touch the one to be confirmed" (c. 795).

The penalties of which in c. 765, n. 2, have been indicated in n. 253, where the sponsor of baptism was treated.

Because of the manner in which they are distinguished in the enumeration, the one to be confirmed, the parents, and the guardians are absolutely competent to designate the sponsor, nor is the order among them required for value; while the minister and pastor can merely supply the defect.

4. That someone be assumed licitly as sponsor, it is demanded that he be distinct from the sponsor of baptism, unless confirmation legitimately is done immediately after baptism; and of the same sex as the one to be confirmed. But these are not required under grave sin, so that a reasonable cause, in the judgment of the minister, excuses from observing these conditions.

But besides, the prescriptions that someone be licitly a sponsor of baptism are to be observed.

Before the Code, a general rule forbade the same sponsor from presenting more than two at the same time, unless the bishop judged that more could not be found. And on July 12, 1883, the Sacred Congregation of the Council refused to approve the contrary custom of the diocese of Fiesole, which was almost centenary. The Code establishes the same, but admits the excuse of a just cause. For from the nature of the thing, the office of sponsor cannot be seriously undertaken toward many. Yet from another side, reasons to be approved, even of a general order, can stand in the way lest several be assumed: as if individual sponsors with the confirmed are accustomed to celebrate the festive day in a manner little fitting. Nor, with the very tempered manner attended to by which the necessity of having a sponsor of confirmation is imposed, is the matter judged grave.

The Code also prescribes that only one sponsor be assigned to each one to be confirmed (c. 794, §2).

In places of missions where confirmed persons are lacking, it was responded by the Sacred Congregation that some be confirmed without sponsor and become sponsors of the rest.

— Between sponsor and confirmed there arises, from valid confirmation, spiritual relationship, from which the sponsor must have the confirmed person perpetually commended to himself and, according to his strength, when parents, guardians, and the sponsor of baptism are lacking, must care for his Christian instruction (c. 797). But this relationship induces no impediment of matrimony (c. 1079).

— **Prescribed Annotations.** 1. Confirmation is to be inscribed in the book of the baptized itself; 2. also in a peculiar book the names of the minister, those confirmed, parents and sponsors, the day and place of confirmation are to be noted by the pastor. The minister must, by himself or through another, make the absent pastor certain as soon as possible; 3. when prejudice is done to no one, conferred confirmation is proved by one witness who is above every exception, or by the oath of the confirmed person himself, unless he was confirmed in infant age.

Summary

— **I.** Confirmation is a sacrament of the New Law by which, through anointing with chrism, under the prescribed form of words, performed by his own hand by a suitable minister on the forehead of the baptized person, the Holy Spirit is given to him for strength.

The essential remote matter is chrism consecrated by a bishop, although in the article of death conditioned conferral with oil alone can be attempted. Recent chrism, that is, of the current year, is to be used under grave sin. The proximate matter is anointing on the forehead performed by the very hand of the competent minister. The true and necessary form in the Latin Church is: "I sign you with the sign of the cross and confirm you with the chrism of salvation in the name of the Father and of the Son and of the Holy Spirit." For the essence the words probably suffice: "I sign you with the chrism of salvation."

II. The ordinary minister of valid confirmation is every and only bishop; the extraordinary minister, from faculty of common law or apostolic indult, can be any priest. All presbyters of the Greek rite have the faculty; in the Latin Church, an abbot or prelate nullius, an Apostolic Vicar and Prefect, while the function lasts and in his own territory, and Cardinals. The Ordinary must, under grave sin, provide at least within any five-year period, insofar as can be done, that this sacrament be ministered to his subjects.

III. The subject of valid confirmation is every and only baptized person not yet confirmed; of licit and fruitful confirmation, an adult in the state of grace, one perpetually insane, and an infant. Nevertheless, unless a just and grave cause advises that it be done otherwise, administration of confirmation in the Latin Church is conveniently deferred to around the seventh year.

IV. The necessity of the sacrament is not of means, but of precept, insofar as negligence of occasion is venial.

V. Confirmation can be ministered at any time and, for a reasonable cause, in any place. Solemn confirmation is done with miter, staff, and cope; private confirmation, without miter and cope or without miter and staff, is lawful from a just cause. In solemn administration, to omit all sacred ornaments would be grave. A presbyter, if he lacks use of Pontificals, uses at least stole and alb. The prayers before confirmation are to be recited under grave sin.

A sponsor is to be used under grave sin, if he can be had. For value, he must be confirmed and fulfill the conditions of a sponsor of baptism. For liceity, let him be distinct from the sponsors of baptism, unless confirmation immediately follows baptism.

VI. From confirmation there arises between sponsor and confirmed a spiritual relationship, which nevertheless, contrary to relationship arisen from baptism, induces no impediment of matrimony.

VII. Confirmation is to be annotated by the pastor in the book of the baptized and in a peculiar book.

Treatise IV: On the Most Holy Eucharist

(cc. 801-869)

Reason of the order. - Having mentioned, in c. 801, the threefold benefit of his presence, his sacrifice, and communion, by which Christ gives himself to us in the most holy eucharist, the Code treats, in the prior chapter, of the sacrifice of the Mass, then, in the other, of the sacrament of the most holy eucharist. Moral theologians indeed were accustomed to explain the eucharistic argument in the inverse order. Yet the order of the Code seems more logical, since in the very sacrifice of the Mass the sacrament is confected, and it is of itself more fitting to treat the cause before the effect. Therefore let there be:

Title I: On the Sacrosanct Sacrifice of the Mass

— **Utility.**

> Choir of the new Jerusalem, applaud, And marvel what this victim is, Which Melchisedech the priest foresaw, Offering in praise, on the way, While mystically he met Abraham: Christ is figured, who is believed The living bread and fixed on the cross, Who rising again dies no more, Who, assumed, gives life to the mind; And into bread the wood is transformed, While the wood of the cross slays this one.

That excellent Prose of the Breviary of Bourges, which we borrow from the work of R. P. de la Taille, p. 74, wonderfully joins, in one context, the figure, the celebration in the Supper and on the Cross, and the consummation in the heavens of the sacrifice of infinite value by which Christ enriched the economy of the New Law, when through the Holy Spirit, that is, through the eternal power of divinity, he offered himself immaculate to God (Hebrews 9:14; cf. op. cit., p. 76).

But dogmatic theology vindicates to itself the solemn exposition of the mystery of our redemption, nor does it leave to moral theology except humble parts, almost canonical, which contain the disciplinary laws concerning the celebration of Mass and concerning its application. Yet daily use, and difficulties of conscience, which arise in great number, for example by occasion of stipends, sufficiently demonstrate the utility of accurate knowledge.

— *Appendix IV belongs to this section.* **Historical-Liturgical concerning the sacrifice of the Mass.** Cf. Appendix IV.

Chapter I: Various Notions concerning Mass

— Mass, more anciently called *missio*, first designated the dismissal of catechumens before the offertory, and of the faithful after the consummation of the sacrifice. After the former dismissal had been removed by use, it began to designate the whole ceremony whose end it of itself announced.

Therefore it is sometimes taken for the sacrifice itself, and then Mass can be defined: "the sacrificial oblation of the body and blood of Christ" (*Mysterium Fidei*, p. 319). But more properly it is that sacred ceremony in which the sacrifice of the New Law is offered (Trent, s. 22, can. 1).

While in the sacrament we passively receive the gift of God, in the sacrifice we act, we offer the victim; the sacrament immediately infuses grace into us, while the sacrifice intercedes for us before God. In the sacrament, the effect *ex opere operato* is owed to God as principal cause, to the sacrament as instrumental cause; in the sacrifice, the effect *ex opere operato* is had because God, in view of the sacrifice itself as such, with consideration of our devotion omitted, is prepared to concede to us, yet with fitting reason, the goods for obtaining which the sacrifice is offered (*Mysterium Fidei*, p. 321).

In the eucharistic sacrifice also there can be distinguished sign only, reality and sign, reality only. Sign only is attended to in the species, which constitute a certain apparent sacrifice, not a true one, of bread and wine, designative of the true sacrifice, not an apparent one, concerning the body and blood of Christ. Reality and sign is the true sacrifice itself concerning the body and blood of Christ, designated by the apparent sacrifice of bread and wine. For the species, together with the words, avail to signify the division of body and blood made in the Passion for the redemption of the human race. Therefore in the Mass they represent the past immolation of the Cross, just as in the Supper they pre-signified the imminent immolation of the Cross. But in that very pre-signification consisted the oblation which Christ made, ritual and sensible, of his death; and likewise in the representation of death consists the oblation which we make of Christ, who by his Passion and death was left in the state of a victim consummated forever by heavenly glory. This oblation, from what has been said, is wholly perfected in each consecration; in this, therefore, as the more common opinion holds, the essence of the Mass is to be placed. But Communion is not oblation, but participation of the offered victim. A few have thought that either consecration suffices for the essence of the sacrifice. This opinion is judged improbable by Lehmkuhl, II, 229, but not by Ballerini-Palmieri, *Opus theolog.*, IV, 989; and it must be called improbable by all for whom it is certain that the sacrifice of the Mass is essentially representative, and that the oblation of the body and blood of Christ is so true and real that nevertheless it consists in a certain symbol of death, which is called mystical immolation. Finally, reality only is our interior worship signified by the oblation of that divine victim, or our internal immolation.

— The primary and essential end of the Sacrifice, the end of the work, is latreutic: it is offered in recognition of the supreme dominion of God and as sign of our servitude. Wherefore sacrifice also is offered to God alone. But since thanksgiving for benefits received also pertains to the due honor of God, the end of praise and thanksgiving, or the eucharistic end, is closely joined with the former. In our present condition, divine worship also contains the postulation of benefits of every kind. Hence sacrifice becomes impetratory. Finally, from our condition after the fall of Adam, God must be

placated, lest the benefits of him, liberal and merciful, be impeded by our sins. Wherefore sacrifice is offered as propitiatory. Propitiation of itself says: a) compensation for a misdeed, by which fault is redeemed and the offended one is rendered as it were unharmed; and b) the punishment of vindicative justice is supplied by which satisfaction is made to him. In the former way the offended one is placated; in the latter, the penal debt is extinguished. Therefore propitiation comprehends two things; but propitiation strictly so called regards laying aside wrath or placation, while extinction of punishment is more properly called satisfaction.

Distinct sacrifices were deputed to these ends in the Old Law, while, from the very law of its institution, the sacrifice of the Mass is at the same time latreutic, eucharistic, impetratory, and propitiatory (Trent, s. XXII, c. 1, end of c. 2).

Moreover, the propitiatory sacrifice itself is of itself latreutic, eucharistic, and impetratory. Cf. *Mysterium Fidei*, Elucidation I.

By a certain secondary reason it is also offered, not indeed to the saints, but to God in honor of the saints (Trent, s. 22, c. 3).

The victim of this sacrifice is Christ himself, who because of our conjunction with him has been made our victim, whom we can offer.

— The principal offerer is Christ, at least insofar as he himself offered the sacrifice of redemption and commanded its perpetual renewal, competent power having been given for this end to priests who, by virtue of the Lord's oblation once made, would themselves offer the victim of Christ.

We say at least, because according to the opinion of Suarez (in 3 p., q. 83, art. 1, d. 77, s. I), which very many after him embrace, the priest so "confects in the person of Christ and as his legate representing him" (St. Thomas) that Christ concurs with the individual sacrifices as actual offerer. Yet that opinion, already disapproved by Vasquez (in 3 p., q. 19, a. 4, d. 76, c. 1, n. 6) and then by several others, does not please all even today. Thus it is rejected in the work *Mysterium Fidei*, Elucidation XXIII, p. 276 ff. Wherefore, that we might omit this controversy, which belongs to the dogmatic theologians, we have made Christ the offerer at least by that reason which all Catholics admit.

Therefore the priest is minister of Christ insofar as he is endowed by Christ with instrumental power for offering the sacrifice; but he is minister of the Church as its procurator and mandatary.

Therefore the priest bears a public person; the spiritual society sacrifices through him as through a Superior.

The celebrant is besides offerer, just as a singular private person who stands by the sacrifice can be an offerer.

The remaining faithful are offerers, both mediately through the Church, if they are its members, and immediately, if morally, by a peculiar reason, they are joined with the sacrifice itself and cooperate in some active way toward this sacrifice: whether they pay a stipend, minister, or assist at Mass. Contrary to what Noldin thinks, p. 166, the merely mental union by which someone joins himself with Masses which are celebrated cannot constitute an offerer, since sensible participation is desired, and sacrifice is a sensible oblation. Cf. Suarez, *Euchar.*, d. 77, s. 3, n. 3.

Therefore the celebrating priest, besides his own person, represents Christ and the Church; as offerer, he disposes concerning the impetration of Christ and concerning the impetration of the Church. But as performing the consecration, just as in the confection of any sacrament, he is the ministerial cause of Christ alone, who principally operates. Cf. Palmieri, IV, 992.

— a) The fruit of the Mass, or the reward, gift, effect which, on account of the celebrated sacrifice, comes either to the priest, or to those for whom it is offered, or to others, is distinguished as one from *ex opere operato*, another from *ex opere operantis*. The former belongs to the sacrifice especially on the part of Christ, who, although now he can neither merit nor satisfy, nevertheless annexed his infinite merits and satisfactions to that sacrifice, and impetrated benefits of every kind for us through it. In some measure also the value which arises from the impetration of the Church, always, though in varying degree, the beloved spouse of Christ and pleasing to God, is said to be *ex opere operato*, because it does not depend on the devotion of the minister.

The fruit *ex opere operantis* belongs to that sacrifice from the disposition or fervor of the priest celebrating and of those who, by requesting the sacrifice, ministering, or assisting, actively cooperate toward this sacrifice. For through this good work they merit and satisfy, and through this most worthy prayer they impetrate various things for themselves or for others.

b) On the part of the principal impetratory cause, that is, Christ, the effect of the Mass is absolutely infallible; on the part of the object, if there is question of an actual help that someone dispose himself to grace, or of remission of temporal punishment, it is again infallible; if concerning other things, it is necessary that they be expedient for salvation and be according to the ordinary laws of Providence.

On the part of the subject, apt disposition is required. And as regards remission of punishment, it is required and suffices that, fault having first been blotted out, the state of grace be had.

c) On the part of the mode by which the fruit is acquired, the sacrifice profits both those who offer it and those for whom it is applied by the offerers, that is, by way of suffrage; and it can profit by a twofold title at the same time. But the faithful can offer the sacrifice immediately by joining themselves with the celebrating priest; and they can also do so through the celebrant, as he who pays the stipend and thus is as it were cause of the celebrated Mass.

But every priest, with Christ alone excepted, first offers for himself, then can offer for all with whom he is joined by charity (Hebrews 5:3). From the very institution of Christ and of the Church, the celebrant offers for all living and dead Christians; for the salvation of the whole world (Order of Mass, at the offertory). Finally, by perpetual usage it is certain that it is in the power of the priest to make a special application to a definite intention. Cf. proposition 30 condemned by the Constitution *Auctorem Fidei*, August 28, 1794, Denzinger, 1530. Wherefore, besides the merit which each one necessarily obtains for himself through the good act of offering or participating in Mass, there is distinguished the general fruit, or common or universal; the special, or middle and ministerial; and the most special, which some call special, others personal.

The general fruit comes, without peculiar intention, to all for whom, from the institution of Christ and of the Church, the sacrifice is offered. Even those who are disposed, or who are impeded by no obstacle, participate in this fruit unequally, so that the participation is greater of those who are more joined with the priest. Therefore those who are present at Mass participate in the benefits more than

the absent; the faithful more than those who are outside the Church; indeed certain persons, in punishment, are deprived of direct participation by excommunication.

The most special fruit comes of itself and without necessity of any intention to the priest, and cannot be communicated with others. Yet insofar as it is of impetration, he is not prohibited from using it for others.

The special fruit is in the power of the offerer, and it yields to him who is designated by the intention of the priest. Therefore this application demands the definite will of the priest.

Suarez, *De Sacramentis*, 3 p., d. 78, s. 2, n. 3, thinks that the general fruit is circumscribed by impetration.

— **On the Value of the Mass.** 1. Principles. On the part of the victim offered, the Mass is of infinite dignity and infinite value: it contains an infinite treasure. But insofar as it is our oblation of an infinite thing, now its value is not infinite, but it has measure principally from the devotion and affection of the Church, which, although always holy and the beloved spouse of Christ, nevertheless can vary in degree of sanctity; secondarily, from the devotion and fervor of the other offerers, who indeed can subtract nothing from the value which the Church confers, but can add something to the same.

But the application can be impeded or diminished by an obstacle or lesser disposition of the subject to whom it is made.

In the living, dispositions are easily desired: thus affection for venial sin impedes application of satisfaction to the penal expiation of that sin. In the dead, present dispositions are indeed best; but in this application, which is made by way of suffrage, several contend that the past dispositions of souls are also attended to. Cf. Schmid, S.J., *Zeitschrift für kath. Theologie*, Innsbruck, 1893, p. 297 ff., *De applicatione per modum suffragii*; and Genicot, II, n. 222.

— 2. **Corollaries.** a) A Mass offered for several profits each one less, since the total fruit, which is exacted according to the devotion of the offerers, must be divided among several;

b) A Mass offered by several titles for one and the same person will profit him more than if it is applied to the same by one title alone. Therefore he who, according to the intention of Titius, is present at the Mass which at the same time he ordered to be celebrated for Titius, profits Titius more than if he had merely paid the stipend; and the utility for Titius grows if several offer the Mass for him by assisting at it, than if the author of the stipend alone were present;

c) The more persons are present at the sacrifice, the more, of itself, or other things being equal, the value of the Mass grows;

d) The value of the Mass is not diminished for individuals because there are more distinct concelebrating priests, or others offering. For from the inexhaustible treasure, a thousand offer just as well as one.

Yet do not gather thence with Cajetan (*Opuscula*, tom. II, tr. 3, q. 2) that a Mass which a priest celebrates for two stipends profits each offerer equally as if two Masses were celebrated.

For, after an agreement has been made with one offerer concerning a fitting stipend, no other can now be an offerer of the same sacrifice through a stipend; but if another has contributed something,

"that will be found outside the ambit of the matter corresponding to the celebration of that sacrifice. The reason of this is because, where something is adequate not only materially but also formally, that is, given and accepted as such, nothing will accede, while such a pact stands, except what is altogether extrinsic. Just as tribute cannot be paid twice; but after tribute has been rendered, whatever is spent over and above has another account. If therefore the priest sacrifices according to the intention of Titius formally giving the integral stipend, he cannot at the same time sacrifice according to the intention of Caius as one giving a stipend" (de la Taille, op. cit., p. 352).

Observe that the case is altogether diverse of one who offers a richer alms for Mass. For he is judged from greater devotion to stand forth more liberal with respect to one sacrifice; and therefore he will receive greater fruit.

Thus also solemn Mass profits more than private Mass. Yet several Masses repeat acts of devotion of the celebrant and those standing by. Therefore it is difficult to establish what of itself profits the deceased more: whether a solemn sacred rite be offered for him, or, for the same sum of money, several private Masses. Therefore it will be more satisfactory to accommodate oneself to received usages. Thus also de la Taille, l. c., in the note.

e) The faithful in general are at once offerers and subjects for whom Mass is offered. But the more numerous the offerers are, the more the total value of the offered Mass grows. Therefore the diminution which follows the division of total value among several is of itself compensated by the total value increased;

f) Besides the limitation which the devotion of the offerers brings to the value of the Mass, another is had from the disposition of him to whom the application is made.

— In this plainer way the controverted question concerning the infinite or finite force of efficacious application seems to be solved. Several admitted that the efficacy is intensively infinite, insofar as if nothing were lacking to the application and disposition of the subject, the effect of impetration or propitiation would be circumscribed by no certain breadth, and one sacrifice would avail for impetrating every benefit. There have also been those who contended that the efficacy is extensively infinite, insofar as application made for several would profit each one equally as if Mass had been celebrated for only one; this was defended by St. Alphonsus himself in his Moral Theology. Yet from that opinion, as we are taught by the editor P. Gaude in l. 6, n. 312, he receded in various little works, such as *De caerimoniis missae*, etc.; and he propounded, as the more common, the opinion which said that the fruit was intensively and extensively finite.

But indications of limitation are both the common custom in the Church of offering the sacred rite for individual persons, whether living or dead, and not generally for all; and the prohibition lest someone attempt by one Mass to satisfy an obligation arisen from stipend, vow, precept of a Superior, etc. But others seek the finite efficacy from a positive will of God which would have attached the infinite satisfactions of the Cross to individual sacrifices not infinitely, but according to a certain mode. Better, as it seems to us, a will of this arbitrary kind is excluded.

— That priests can validly concelebrate is sufficiently certain from episcopal consecration, in which the consecrator with the consecrated, and from presbyteral ordination, in which the new priests with the one ordaining, concelebrate. It is certain also from the usages of the Oriental rite. And they admit also that it is lawful for individual concelebrants to receive a stipend for their oblation.

Yet the explanation of the matter is not so easy, so that Cajetan, in 3 p., q. 82, art. 2, after difficulties had been proposed, attending only to the concelebration of priestly ordination and episcopal consecration, denied that the new priests truly consecrate, but thought that they merely recite the Mass together with the bishop; but he admitted that the consecrated bishop truly consecrates the bread and wine with the consecrator, because physical simultaneity in the pronunciation of the form could then be obtained. This opinion of Cajetan, as regards the new priests, cannot be composed with the practice and sense of the Church.

Concerning the matter itself, these things besides can be established as certain: a) that priests truly concelebrate, there is need that each one efficaciously influence the consecration. For in each consecration itself the essential oblation consists; b) that each one efficaciously influence, it is necessary that transubstantiation not happen before all have pronounced the essential form. For words cannot influence into a transubstantiation already performed. From St. Thomas, q. 82, art. 2, we can gather only this: that no consecration is repeated, but one consecration is made by the concelebrants, since the intention of all is borne toward the same instant of consecration; and that the plurality of celebrants is not superfluous, because all consecrate in the person of Christ, in whom all are one.

An explanation seems able to be attempted in two ways. Since the instrumental causality of the consecrating priest is not properly physical, in order that the concelebrants efficaciously influence into one consecration, which God as principal cause operates by total causality, it suffices that they morally pronounce the essential words at the same moment. In this explanation, therefore, a proper action of consecrating is ascribed to each. Or all are said, from agreement, to consecrate *in solidum* as one individual presbyterium, so that all utterances constitute only one sacramental sign and therefore one form of consecration, which is not complete until all have completed their recitation. This latter explanation is proposed in *Mysterium Fidei*, p. 354 ff.

In the former explanation, since all things have themselves as if each one made a separate consecration, the individual priestly oblations are manifestly worthy of stipend. In the other explanation, each is judged to take a quota part of the total stipend, which is to be fitted to the number of celebrants. And since the fruit grows from the number of those devoutly offering, concelebrants can also then apply the Mass for the separate stipend which they have received.

But the words uttered in the Mass of ordination, "Have the intention of consecrating with the Reverend Bishop," do not signify: "Have the intention of consecrating then when the Bishop has pronounced the words, whether your pronunciation has already been completed or is still to be completed"; but it is a simple admonition that they strive as much as they can to pronounce the words together with the Bishop, and that by moral conjunction they will to perform one consecration with the Bishop.

Summary

— **I.** Mass, which is sometimes taken for the sacrifice itself of the New Law, is strictly the sacred ceremony in which the sacrifice of the New Law is offered.

The essence of that sacrifice is commonly placed in each consecration of bread and wine; and it is at the same time latreutic, eucharistic, impetratory, and propitiatory.

The principal offerer is Christ, at least insofar as he himself offered the sacrifice of the Cross and commanded its perpetual renewal in the Church, suitable power having been given to priests. The Church offers the sacrifice through the ministry of the priest deputed by her; the celebrant also offers, as he is a private person; the remaining faithful offer mediately through the Church and immediately if morally, by a peculiar reason, they are joined with the sacrifice. The celebrant is minister of the Church as offerer; minister of Christ and instrument of God as performing the consecration.

The fruit of the Mass is distinguished as one from *ex opere operato*, which belongs to it on the part of Christ and in some measure also on the part of the impetration of the Church; another from *ex opere operantis*, from the disposition of the celebrant and of those who actively cooperate with the sacrifice; with at least the impetratory fruit attended to, general, which comes to all for whom it is offered from the institution of Christ and of the Church; special, which is in the power of the offerer, and therefore demands a definite will of the celebrant; most special, which comes to the priest.

The fruit is infallible on the part of Christ and on the part of the object, if it is an actual help for disposing oneself to grace, or remission of temporal punishment, or if the thing is expedient for salvation and is according to the ordinary laws of Providence; but on the part of the subject it requires an apt disposition. For remission of punishment it suffices that, fault having been blotted out, the state of grace be had. Application is made to the dead by way of suffrage, and perhaps their past dispositions are attended to.

From the offered victim, the sacrifice of the Mass is of infinite value. Yet the efficacy of the application is finite both intensively and extensively. Intensively, insofar as, although the thing offered induces a value far surpassing our acts, nevertheless the devotion of the offerer is also to be considered: hence the value of the application is fitted principally to the devotion of the Church offering commonly through the priest, and to the devotion of those offering more specially, that is, of the celebrant, of the one giving the stipend, and of those assisting. Extensively, insofar as, when applied for many, application to each individual becomes less perfect. But the fruit is not diminished because of a greater number of concelebrants, offerers, or faithful.

Chapter II: On the Obligation of Celebrating

Article I: Various Sources of Obligation

— **1. The Priestly Order Itself,** from the present discipline, obliges all priests to celebrate the sacred rite several times a year (c. 805); and the bishop or religious Superior must take care that, at least on individual Sundays and feasts of precept, they perform divine things (c. 805).

From the present discipline, I say, which by a sufficiently common opinion of classic doctors has been introduced or manifested. And they hold that there is a grave obligation of sacrificing three or four times a year.

But with positive law set aside, it will be lawful with St. Bonaventure, in 4 Sent., d. 12, p. 2, art. 2, q. 1; Lugo, *Euchar.*, d. 20, n. 2; d'Annibale, *Summula*, III, 163 (10); Ballerini-Palmieri, IV, 1005, 1006, to deny the efficacy of the demonstration by which St. Thomas, 3 p., q. 82, art. 10, Suarez, Vasquez, Laymann, and St. Alphonsus, l. 6, n. 313, wish to derive that obligation from natural or divine law. For in so great a number of priests, complete abstinence of some does not take away in the Church of God that number of Masses which is equal to worshipping God duly and impetrating graces; the cited place, 2 Corinthians 6:1, "We exhort you not to receive the grace of God in vain," is not to the point, since it treats of vocation to faith and to salvation, nor do the words sound as a precept. Besides, St. Jerome never celebrated Mass, nor was he alone in abstaining from celebration; St. Ignatius himself omitted celebration for a whole first year. But, as is evident, today the pious use of daily celebration is very much to be commended.

— **2. Precept of a Superior.** Let us distinguish celebration and application of Mass.

Celebration, as long as he judges it commanded by necessity of the Church, the proper territorial Ordinary does not indeed seem able to prescribe directly, but from c. 128 he is permitted to impose on a priest not impeded a function with which this obligation is joined.

The application of Mass itself can be commanded to all by the Supreme Pontiff; and to religious subjects, from the manner in which the vow of obedience is customarily understood, by the competent Superior. Indeed Lehmkuhl, II, 283, thinks that the obligation of justice of celebrating for stipends, which he himself has undertaken for the community, can be transferred by the Superior to individual professed persons. It is controverted whether or not a bishop or Superior, who can command by jurisdiction alone, has power for commanding application. R. P. Cappello, op. c., I, 689, admits the power.

Yet a precept of this kind is opposed to received usage. Cf. Lehmkuhl, II, 282; Wernz, III, 583.

Recently, however, on May 8, 1920, in the Vigevano case, the Sacred Congregation of the Council judged that, by force of an apostolic indult by which a faculty is made to a bishop "of dispensing priests exercising care of souls from the obligation of sacrificing the Mass for the people, of permitting priests repeating Mass on a feast day that they may have power to apply the second Mass according to the mind of the Ordinary himself, for the effect of spending the alms in favor of the Seminary," by force, I say, of such an indult, a right belongs to the bishop of prescribing the

application of which there is question, so that, this episcopal prescription having been made, it is no longer free to the pastor on those days to sacrifice for the people, nor to the priest binating to celebrate the other Mass gratis for another intention (*A. A. S.*, XII [1920], p. 536 ff.).

But application of Mass can be prescribed under grave sin (St. Alphonsus, l. 6, n. 317).

— **3. Care of Souls.** After the sacrifice of Holy Mass was instituted, by divine-natural law pastors of souls, whether secular or regular, must sometimes sacrifice for their sheep. This is more of absolutely divine law in bishops, since the very function is of divine institution. Cf. the dissertation of Tarquini, *J. S. S.*, I, 389 ff. In what way the Church has now defined the obligation of bishops, quasi-bishops, pastors, and quasi-pastors, we saw above, nn. 87, 89-92, 94-96.

Yet concerning the strict obligation of regular Superiors it is not certain. Cf. Cappello, op. c., I, 640.

— **4. Burden of a Benefice.** A beneficiary must, under mortal sin and the debt of compensating, celebrate as many Masses, whether by himself or through another, according as the mind of the founder forbids or permits this option, as the letters of foundation require.

If the chaplaincy[1] was manual, or consists in Masses not properly founded but to be cared for by a private person, and for each Mass a certain alms is handed over, this whole alms is owed to the celebrant. But if individual stipends do not correspond to individual Masses, it is enough that the beneficiary provide a congruent alms to the celebrant, unless something else has been provided in the tables of foundation.

Without an apostolic indult, it is not lawful for a bishop to reduce burdens of Masses because the assigned revenues are unequal to the tax to be paid today, unless the founder himself has made this faculty to the bishop.

But if the revenues themselves have entirely failed, without fault of the beneficiary, the beneficiary, from the common opinion, is no longer held by celebration.

But if they have decreased: either a competent alms was assigned to each Mass, to be estimated from the time of the foundation, as if he said: "I bequeath such an olive grove to the fabric of the church with the burden that from the annual fruits one hundred stipends of two francs be taken for as many Masses"; then according to the increase or diminution of revenues, the number of Masses will have to be increased or diminished; or the testator defined the number of Masses absolutely; then some permitted that, from the mind of the testator, the beneficiary diminish the number of Masses pro rata, if from the revenues he no longer drew that tax which from the ancient computation was congruent. Others opposed this opinion, and St. Alphonsus did not dare to judge concerning its probability. But now, from c. 1517, §2, recourse must be had to the Holy See for that reduction of Masses.

Permission of the Holy See, which is not denied, is also to be sought so that one can use the Italian law which, with a certain tribute paid, makes an abundance of freeing goods of a chaplaincy from pious burdens, while nevertheless the obligation of fulfilling these burdens remains.

He who by reason of a benefice is held to daily celebration must also, unless a diverse intention of the founder is certain, apply Mass for the founder.

A beneficiary impeded by an illness not prolonged need not substitute another for himself or compensate omitted Masses: for the obligation is to be interpreted in a human manner; and honorable masters themselves condone these impediments to servants. But an illness of fifteen days, indeed of one or another month, is not judged prolonged, as Lugo probably estimates, *Euchar.*, d. 21, n. 49, according to the testimony of St. Alphonsus, VI, 333. But other impediments, even just ones, of business ought not to harm the founder. Wherefore the beneficiary must satisfy through another the burden which he himself cannot fulfill, or afterward supply it himself, at least when the burden is real. For if the burden was personal of daily celebration, he can omit it as often as a reasonable cause occurs (Sacred Congregation of the Council, September 18, 1683). The common opinion also permits the same one, unless the tables of foundation prescribe stricter things, to offer the sacred rite four or six times a year for himself or for persons joined by blood or friendship, gratis.

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(1) By the name of chaplaincy is designated a simple benefice which, because of the burden of celebrating Mass, is judged to give care of a chapel or oratory.

— **5. Voluntary Promise.** a) This can be a vow; its matter is judged grave. It can be a gratuitous promise: unless the one promising expressly bound himself under grave guilt, the obligation is judged to be of fidelity, and therefore light. Finally it can be onerous, or from contract. Here, from c. 826 itself, manual stipends, stipends after the manner of manual, and founded stipends, or founded Masses, are to be distinguished.

"Stipends which are offered by the faithful for Masses, whether from their own devotion, or, as it were, into the hand, or from an obligation even perpetual made by a testator to his own heirs, are called manual" (c. 826, §1). Stipends of founded Masses which are handed to other priests are called after the manner of manual, whether by law or from an indult of the Holy See, because they cannot be applied in their own place or by those who would have had to apply them according to the tables of foundation (c. 826, §2). Finally, stipends which are received from the revenues of foundations are called founded.

By what reason the use of demanding a stipend for Masses is pure from all simony, we saw in the prior special part, where there is question of the virtue of religion and the sin of simony.

The breadth of the matter seems to demand that we treat these arguments in distinct articles.

Article II: On Founded Masses

— **On Pious Foundations.** 1. **Notion.** Pious foundations designate temporal goods given in any way to some moral person in the Church, with the perpetual or long-lasting burden of celebrating some Masses, or fulfilling other pious functions, or performing some works of piety or charity (c. 1544).

2. **Acceptance of Burdens.** The local Ordinary or major Superior of exempt religious defines norms concerning the dowry, or "capital," to be required and concerning the right distribution of fruits. His written consent is required for accepting a foundation; nor must he give it before it is legitimately certain that the moral person is able to satisfy both the new burden and the old ones (c. 1543).

3. **Placement of Goods.** The Ordinary or major Superior designates a safe place where the money and movable goods of the endowment are to be kept, until as soon as possible, after

those whose interest it is and the council, whether diocesan of administration or of religion, have been heard, they are prudently placed fruitfully, according to the judgment of the Ordinary or Superior, with express and individual mention of the burden (c. 1547).

4. **Documents of Burdens.** One copy of the tables is to be kept safely in the archive of the moral person to whom it pertains, the other in the archive of the curia of the Ordinary or major Superior (c. 1548).

A little table of the burdens incumbent on the church from foundations is to be made and preserved in a safe place with the rector of the church. And besides the book deputed for inscribing manual Masses, another is to be preserved with the rector in which individual perpetual and temporary burdens, their fulfillment, and the alms are annotated, so that an exact account concerning all these can be rendered to the local Ordinary (c. 1550).

— **Execution of Burdens.** Concerning founded Masses, many things return which we said concerning the burden of a benefice. Therefore, as to the place, time, intention, and quality of the Mass, the will of the founder is to be observed. He who neglects it without just cause sins, and indeed gravely if he often does it, even if the heirs consent: for they themselves are held to executing the will of the testator. Yet Lugo does not estimate it mortal rarely and from a cause to celebrate in another church and at another altar than is owed. Indeed he does not seem to sin even venially who, obliged to daily celebration, rarely and from a reasonable cause celebrates elsewhere. But if he was obliged to celebrate at a privileged altar, he can omit this less easily without grave guilt, at least unless he compensates that either by personal privilege of the altar, or by application of a plenary indulgence. Yet by a plenary indulgence a privileged altar is compensated only imperfectly.

— **Change of Burdens.** But perpetual transfer from one altar or church to another cannot be made without an apostolic indult. But because an accidental change of the will of the testator, made for a reasonable cause, does not seem to exceed the power of a bishop, therefore they commonly judge that it is lawful for a bishop to concede a temporary transfer for a reasonable cause. Yet if there was a special cause for the testator to establish a certain hour or a certain altar, the bishop could not derogate from the will of the founder by dispensation (Ballerini-Palmieri, IV, 1030).

But Masses which at the end of the civil year within which they ought to have been celebrated have not been said are to be handed over to the Ordinaries, according to the manner to be defined by them (c. 841).

But the reduction itself of Masses is reserved to the Holy See by cc. 1517 and 1551.

Article III: On Masses Owed for a Stipend

We think that the many things which have been prescribed concerning this matter can be set forth summarily in this way.

— **I. The Undertaking of the Obligation.** These things are not lawful:

1. by celebrating several times in the day, to accept a double or triple stipend, except for the three Masses on the Nativity of the Lord; or by one Mass to satisfy an obligation of justice, such as a pastor has, and to say another for a stipend. For the other Mass only some remuneration from

an extrinsic title is permitted (c. 824, §2), for example, of singing, of the hour, of a distant place. But it does not matter which Mass is said first;

2. to receive a stipend for a Mass which is already owed from justice (c. 825, 2° and 3°), or which in any way is applied to another first intention; but "as many Masses must be celebrated and applied as stipends, even small ones, have been given and accepted" (c. 828);

3. to retain an alms for a Mass applied before it has been requested (c. 825, 1°), unless the offerer, having been warned, ratifies the matter.

In this way we reconcile with the absolute prohibition of the Code the opinion admitted by St. Alphonsus, l. 6, c. 3, n. 337, and rejected by R. P. Cappello, op. c., I, n. 604, which permits that for a person already deceased, to whom it will profit to be aided more quickly by a Mass, a priest who foresees that a stipend is going to be offered may already offer the Mass and afterward receive the stipend. Yet if we wish to speak accurately, money given in this way will no longer have the character of a stipend of the Mass, but rather of a remunerative donation for the benefit received of Masses celebrated. Wherefore the offerer seems to have to be warned that he should ratify the matter;

4. to accept one stipend for the celebration alone, another for the application of the same Mass, "unless it is certain that one offering was offered for celebration without application" (c. 825, 4°);

5. to receive so many burdens of Masses to be celebrated personally that you cannot satisfy them within a year (c. 855).

Therefore he who can say within a year 300 Masses for a stipend is forbidden to bind himself to celebrating more than 300 Masses personally. Nor, since the law does not distinguish, does it matter if an option is given of saying them over several years. Yet the express consent of the offerers, who know the quantity of Masses already accepted, seems able to permit this: no injury is done to one who consents;

6. by means of stipends really, or even in appearance, to trade or conduct commerce (c. 827). What trading or commerce is was explained above, n. 21. Those devices have the appearance of trading which, although they do not fall under the strict definition of trading, nevertheless are imbued with the color of trading because of profit studiously sought from the collection and distribution or exchange of stipends.

For, since in every trading or commerce these two things are discerned: acquisition, and a profitable sale or quasi-sale intended through the acquisition itself, the very appearance of trading seems to require both elements at least in some imperfect way. Now the acquisition will be the studied collection of stipends, made in order to obtain profit from paying out or distribution, which will be a quasi-sale, although the proper character of gainful or artificial trading is in part lacking.

And so he trades by means of stipends who collects stipends of greater price so that, having obtained Masses with a smaller stipend, he may profit from them; or who collects stipends so that he may profit from the exchange of money. But he commits the appearance of trading who collects stipends so that, having obtained the consent of celebrants, he may be able to retain part for himself. He

conducts commerce by means of stipends who collects stipends so that he may convert them into books which, with profit, he hands over to priests for money, or so that he may transfer them to another place where the use of a smaller stipend prevails. But if he hands over books without profit, still that collector of stipends commits the appearance of trading. These things, therefore, cannot be done without an indult of the Holy See.

But he who, from stipends not studiously collected, retains a part for himself or for a good work neither trades nor exercises commerce, although this is forbidden by a direct prohibition;

7. to demand a stipend beyond the tax established by the Ordinary or by custom, or, unless you are moved by reason of particular friendship or mercy, to be content with less, if the local Ordinary has forbidden smaller stipends to be accepted. For exempt religious themselves are held to observing these taxes and statutes.

It is lawful to increase the tax for an added extrinsic labor of singing, etc.

— **II. The Gravity and Execution of the Obligation.** 1. The priest must celebrate the Masses thus promised under grave obligation. Yet he who omits one out of a hundred promised for the same intention does not seem to Lehmkuhl, II, 269, 1, and Cappello, I, 668, certainly to sin gravely, because he lessens one series by a modest part; which, however, others do not admit.

There were also those who said that the obligation of one Mass is not grave if the stipend is not grave. And Ballerini, IV, 1012, does not judge this opinion improbable. In the appended note, Palmieri would rather gather the gravity from the precept of the Church, because, as he himself says, if it arose from contract, a small sum of money would have to be restored under grave obligation, which cannot be admitted. All these things seem to us to rest on a confusion by which the contract concerning the celebration and application of Mass is assimilated to sale. The obligation of celebrating one Mass is grave because the priest from justice has bound himself to a matter of great moment. Nor does one who violates the obligation have to restore a small sum of money under grave obligation, but to take care that the Mass be said.

2. The obligation does not cease even if, without fault of him who is burdened with the duty of celebrating, the alms already received have perished (c. 829). And this from natural law itself, as R. P. Arendt, S.J., lucidly proves in a special dissertation.

We restrict that severity to him who was held by a personal obligation of celebrating, by himself or through others. For this is general, that if someone, from another's onerous obligation, has obtained that to which he had a right, he must now execute his own obligation absolutely, in whatever way the profit received has perished.

But if there were question of one who was only a mandatary (of whom in c. 837), who merely had to transmit stipends and had never acquired the stipends, he would be held to nothing if those stipends had perished by a fortuitous event while with him. For these had not entered his patrimony; and the obligation of mandate must be said to cease by impossibility of execution.

3. He who accepts a sum for Masses to be said, the number of which was not defined, must compute his obligation according to the tax of the place in which the offerer was dwelling,

"unless another intention of his is legitimately presumed" (c. 830).

4. Masses must be said at the time expressly prescribed; if it was not expressly prescribed, the celebrant must say as soon as possible the Masses whose cause urges; but others within a moderate time.

This can be estimated according to the rules of the decree *Ut debita*, May 11, 1904, so that one promised Mass ought to be said within a month, then for two Masses of the same intention three days beyond a month can be counted; ten Masses offered by the same person are to be completed within a month and a half; but six months are deputed for one hundred Masses to be said. All these things are to be taken not mathematically but morally.

But a delay of one or another month beyond the lawful time is considered grave.

5. The offerer is presumed to have requested only the application of the Mass; "yet if the offerer has expressly determined some circumstances to be observed in the celebration of the Mass, the priest, accepting the alms, must stand by his will" (c. 833).

And so in itself the priest is permitted to choose the quality of the Mass according to his devotion; yet the circumstances which he has tacitly admitted by receiving the alms he will have to observe. And many circumstances, for example, of a privileged altar, of black vestments, of a votive Mass, are such that, since they are not burdensome, they ought not to be compensated by a greater stipend. And although a Mass with black vestments or of the feria with the proper prayer of the deceased is no longer required for gaining the indulgence of a privileged altar, "nevertheless we are admonished by the decree of the Holy Office (Section on Indulgences), February 19-20, 1913, that this is laudably done, when it is lawful and fitting, for the sake of piety toward the deceased" (*Periodica*, VII, 121).

6. Toward the end of any year, whoever by any title are obliged to burdens of Masses are to hand over to their Ordinaries the burdens of Masses for which satisfaction has not yet been made, according to the manner to be defined by them (c. 841, §1). In Masses "after the manner of manual," the obligation runs from the end of the civil year within which the burdens ought to have been fulfilled; in manual Masses, after a year from the day of the burden undertaken, without prejudice to a diverse will of the offerers (c. 841, §2).

The diverse will of the offerers, when there is question not of Masses which, as Masses after the manner of manual, have proceeded from a pious foundation, but of manual Masses, could grant a time greater than a year; in which case the burdens will not have to be handed over. Masses after the manner of manual are made from founded Masses, because they can no longer be celebrated by the persons obliged, and are to be handed over to Ordinaries. But they admit that this time can be taken morally and that some Masses can be retained at the end of the year, lest a priest lack stipends (Cappello, op. c., I, p. 712).

7. Local Ordinaries and religious Superiors who entrust Masses to be celebrated to their own subjects or others must take care, as far as they are able, that they are celebrated as soon as possible (c. 844).

We interpret this canon, rather obscure, in this way. Since local Ordinaries and Superiors have many subjects to whom they entrust Masses, the faithful not rarely hand over a great number of Masses to them with that intention, that they may be celebrated more quickly than by individual priests. Yet nothing indicates that the lawful time is in itself to be defined otherwise. The same persons, besides, are accustomed at the end of the year to receive burdens for which the space of time has already elapsed. This is another reason for taking care that those burdens be fulfilled as soon as possible. Yet since they ought not to transmit the burden of these Masses to others, and so preserve too many to be fulfilled, they are merely warned that they "take care as far as they are able." For it can happen that, because of too great an abundance, the Masses cannot be discharged so quickly.

8. He who is held not indeed by the obligation of celebrating but of distributing Masses should distribute the Masses as soon as possible; but, unless something else is clear, the time of lawful celebration has its beginning from the day on which the priest about to celebrate them has accepted them (c. 837).

Here there is question of the administrator of a pious cause, or an heir or executor of a testament, who, as the first offerer, has Masses to be distributed; but not of him, for example, a Superior, who has already undertaken in himself the burden of celebrating by himself or through others. For it cannot be in this one's judgment that, by delaying distribution, he increase the lawful time.

— **III. Transmission of the Obligation.** 1. The severity of recent decrees, especially of the decree *Recenti decreto*, May 22, 1907 (*Periodica*, III, 138 or II-III, 322), having been moderated, the Code permits Masses to be handed over to well-regarded priests, whom either the transmitter himself has known to be "above every exception," that is, altogether worthy, or the testimony of their own Ordinary has commended (c. 838).

Those above every exception are the same as excellent persons, or those upon whom suspicion cannot fall. This is properly said of a witness who is eminently suitable (cf. Reiffenstuel, *Ius can.*, II, 20, 10-11). Transmission permitted to approved priests is prohibited from being made to booksellers or merchants who collect alms of Masses and repay to priests not the money itself but books and other merchandise (cf. Sacred Congregation of the Council, September 9, 1874; decree *Vigilanti studio*, May 23, 1893). But it is not disapproved that stipends which abound be entrusted to a good priest to be distributed to poorer priests. But in order that they be handed over to a pious work, for example, an institute for spreading good periodicals, it is necessary that there be certainty about an indult by which either retention of part of the stipend, or exchange with religious newspapers, is permitted, although because of the appearance of trading or the dangers of abuses, these things were prohibited by the decree *Ut debita* of the Sacred Congregation of the Council, May 11, 1904.

But the bishop does not seem able by synodal statute to prohibit what c. 838 expressly permits, that Masses be handed over to other approved priests outside the diocese, nor to attach a condition unknown to common law, for example, the consent of the Ordinary "lest stipends be transferred outside the diocese." We say this about stipends of which priests have free disposition. For if there is question of stipends offered to a church, for example, a secular sanctuary which is a place of pilgrimages, the local Ordinary could use his jurisdiction in those churches to command that stipends accepted there not go beyond the boundaries of the diocese. But insofar as they are executors of pious wills (c. 1515), they can indeed impede those transfers which they judge

imprudent or alien to the mind of the donor; yet they cannot directly prohibit stipends from being carried outside the diocese.

But sometimes, in an indult for the reduction of founded Masses, provision is made that Masses to be celebrated outside the diocese not be handed over beyond a third part; or bishops are permitted to forbid transfer beyond the disposition of the Code. Thus in the month of March 1922 the Sacred Congregation of the Council indulged to the bishops of the Netherlands that they could prohibit priests from transmitting Masses outside the diocese without their consent (cf. *Periodica*, XII, p. 37 ff.).

2. He who has handed over to another for celebration Masses committed to his faith remains obliged "until they have obtained testimony of the obligation accepted by the same persons and of the stipend received" (c. 839).

And so concerning the execution itself of a legitimately transferred obligation, contrary to what was provided by the decree *Ut debita*, no solicitude is now imposed by positive law upon him who transfers the burden.

3. Manual offerings are to be transmitted entire, "unless either the offerer expressly permits something to be retained, or it is certain that the excess above the diocesan tax was given with consideration of the person" (c. 840, §1). They are to be transmitted entire at least in this way, that the celebrant by the celebration acquires a right to the whole stipend.

Is this prescription of positive law alone, which, already from Urban VIII and Innocent XII, Constitution *Nuper*, December 23, 1697, was sanctioned, and afterward several times and now by c. 840, §1 is confirmed, or also of natural law? There are those who think that in itself it is lawful that you offer less, though a just stipend, to the priest, and retain the excess, because this is the common norm admitted concerning him who executes through another an obligation undertaken. Thus Busembaum himself in c. 3, dub. 1 *De Eucharistia*. Others think the same in itself lawful for a priest, but not for a layman transmitting, because in a priest, but not in a layman, the intention of the offerer is fulfilled, who was deputing the alms for the congruent support of a priest. Thus Suarez, *Sacr.*, I p., d. 86, s. 3, toward the end. But this assimilation of one transmitting an alms with the executor of any obligation seems false to us. For he who offers the alms of a Mass to one accepting it by no means, at least in itself, simply says to him: "Take care that so many Masses be celebrated"; but he intends to join such an alms with the Masses which will be said. He admits no other title besides celebration by which that money can be kept. Nor does he destine it immediately to the support of the priest, but only through the mediation of celebration; that is, he does not give the money except as a stipend of a Mass. Nor is the thing indifferent; for from a more abundant alms he can hope for a better or more intense application of the fruit for himself (cf. Sacred Congregation of the Council, in the Cause of Montevideo and others, January 10, 1920, among the observations of the secretary, *A. A. S.*, XI, 1920, p. 72). And so with the much more common opinion today, we hold that the alms is customarily offered in such a way that, already in itself, the distributor or priest who transfers the obligation undertaken to another can retain for himself no part of the stipend received by any title.

He who has secretly retained part of the stipend has sinned against justice and is held to restitution. Thus we say with St. Alphonsus, l. 6, n. 321, and we prove it both from the nature of the offense,

which contains the malice of theft, and from the obvious sense of the decrees of the Holy See. Already Alexander VII condemned proposition 9: that a priest can satisfy through another "by conferring a smaller stipend on him"; and Benedict XIV, Constitution *Quanta cura*, declared that collectors of Masses who retained part of the stipend for themselves were not immune from theft. Wherefore at least concerning those who are not priests (for the collectors in themselves were not priests), the matter can no longer be doubted. Yet there were those who thought that the obligation of restitution is not certainly clear. Thus Ballerini, IV, 1017; more expressly Noldin, III, 191, and even now, Arregui, *Summarium*, n. 567, 5. But cf. the strong reasons, both historical and intrinsic, which R. P. Arendt opposes to these in the booklet *De laesione iustitiae commutativae in missae manuali stipendio alteri celebranti diminuto* (Prato, 1914). That injustice primarily injures the offerer himself of the stipend. Wherefore c. 840, §1 admits that it can be expressly permitted by the offerer that something be retained. Yet restitution can also be made to the celebrating priest; indeed to him occult restitution is to be made, so that the will of the offerer, not revoked, may obtain its effects.

But he does not violate justice who, by title of donation, obtains from the celebrant part of the stipend or even the whole stipend which he had to hand over. And in itself the matter stands the same whether the celebrant wished to offer the Mass gratis or for a partial stipend. Yet the danger of abuse is much greater in a partial donation than in a complete donation. Wherefore partial liberality could be prohibited where full liberality was admitted, and must be proposed and admitted more cautiously than complete liberality.

Canon 840 itself permits that the excess above the diocesan tax be retained if it is certain that the excess was given with consideration of the person, so that it is not a formal part of the stipend.

4. "In Masses after the manner of manual, unless the mind of the founder stands in the way, the excess is legitimately retained, and it is enough to remit only the manual alms of the diocese in which the Mass is celebrated, if the rich alms partly holds the place of the dowry of the benefice or pious cause" (c. 840, §2).

For the founder is judged not only to have prescribed Masses, but also to have wished to benefit the service of some church and therefore its beneficiaries. Yet the Code does not simply permit that the richer alms of a founded Mass be retained in part whenever Masses are celebrated elsewhere or by another than ought in itself to have been done, but attaches this condition: "If the greater alms is, as it were, a partial dowry of the benefice or pious cause." But then it does not require that the customary alms of the place where the Masses were founded be assigned, but declares it sufficient that the alms of the diocese where the Mass will be celebrated be paid. This can give place to cunning devices. Yet it does not seem able to be a frequent abuse.

— **Corollaries or Scholia.** It is helpful to illustrate the doctrine handed down by certain cases. In solving these, the rule of c. 827, concerning every appearance of trading to be kept away from the offering of Masses, must always be kept before the eyes, besides the principle of justice concerning fulfilling the will of the offerer.

1. It is lawful to ask another that he be willing to celebrate gratis and yield the whole stipend to the transmitter. Nor, because of a particular cause of consoling someone's affliction or of a good work, is a priest forbidden to ask part of the stipend from the celebrant, provided the

concession is not made a condition without which the Mass would not be transmitted: for then the character of true liberality would be absent; and provided Masses are not collected with the mind of obtaining in this way parts of stipends: for then an appearance of commerce would be introduced.

2. Priests can exchange intentions of Masses among themselves, retaining their respective stipends even when unequal, since then each renounces the whole of the other's stipend, and abuse is more difficult. Yet a studied capture of a richer stipend would have to be reproved, namely if frequently, by seeking out rich stipends, you acquire profits of this kind for yourself.
3. A pastor who entrusts to another the singing of a Mass whose celebration is placed among parochial rights, for example, in the funerals of the dead, does not have to hand over to the celebrant except the customary alms for a Mass which is sung at such an hour; the rest he licitly retains as pertaining to stole fees.
4. He to whom Masses are legated, which the testator has taxed above the customary alms, if he fulfills the burden through another, can easily keep the excess by title of legacy.
5. But if Masses have been legated not to a definite priest, but to a church, the Sacred Congregation of the Council, June 25, 1874, judged that the alms, from the mind of the founder, cannot be separated from celebration. Much less will this separation be permitted if not even the church itself was determined: then it is clear that the testator wished favor to be given to the celebrant alone.
6. It is not lawful for rectors of churches to take anything from manual stipends by which provision may be made for the beauty and ornament of the church; the same is lawful for paying the expenses of celebration, if the Church has no other revenues destined to this end, provided as many Masses are celebrated as have been prescribed by the offerers. But from perpetual foundations it is lawful to deduct the expenses of utensils (cf. *A. S. S.*, XXI, p. 299 ff.).

Nor does a rector of a church seem able to be prohibited from asking from outside priests who desire to celebrate in his church that they pay the expenses of celebration (cf. St. Alphonsus, l. 6, n. 322, end; d'Annibale, III, 190 [17]).

7. For churches which receive Masses in too great a quantity for them to be able to be celebrated there in due time, c. 836 sets down this rule: "The faithful are to be warned by a notice placed in an open and obvious place, that the Masses offered will be celebrated either there, when it will conveniently be possible, or elsewhere."
8. He who demands a greater stipend without a title of extrinsic labor or something similar is presumed in the external forum to be simoniacal; but in the internal forum he will be guilty of scandal, of a violated law obliging from religion, and also of injustice, since he asks beyond what is just (Bucceroni, II, p. 157), but not of the sin of simony unless he wished to sell sacred things, as if he asks more on account of a privileged altar or a miraculous place.
9. He who had promised Masses for a stipend is not in itself freed by occult restitution of the money, since the offerer of the stipend is nevertheless frustrated of the Masses to which he had

acquired a right, nor is money equivalent to Masses. But either an occasion must be offered to the same person of obtaining Masses, or condonation must be obtained from the Holy See, which can supply the defect from the treasures of the Church.

— **IV. Annotation of Masses.** 1. The rector of any church or pious place in which alms of Masses are customarily received must accurately note, in a special book, the number, intention, alms, and celebration of the Masses received. And Ordinaries, whether of places or major Superiors of exempt clerical religions, must review books of this kind each year by themselves or through others (c. 843).

2. Moreover the local Ordinaries themselves and religious Superiors who entrust Masses to be celebrated to their own subjects or others must enter in order in a book the Masses which they have accepted with their alms. "Indeed all priests, whether secular or religious, must accurately annotate what intentions of Masses each has received and for which he has satisfied" (c. 844).

That this burden is a matter of conscience is evident in itself, lest because of our negligence we ourselves violate grave obligations, or, oppressed by some accident, prepare inextricable difficulties for successors.

— **V. Penalties.** By more than one earlier decree penalties *latae sententiae* were established. The Code does not confirm these; but it wills that those who have committed an offense against the prescription of c. 827, by which every appearance also of trading is kept away from the offering of Masses, or of c. 828, by which as many Masses are commanded to be celebrated and applied as stipends have been accepted, or of c. 840, §1, which commands that one transmitting Masses transmit entire the manual offerings of Masses accepted, be punished by their Ordinary according to the gravity of the fault, not excluding suspension, or deprivation of benefice or office, or, if there is question of laypersons, excommunication (c. 2324).

— **VI. Indults.** The Holy See can condone faults in the external forum and remit several obligations, since it can compensate not a few defects from the treasures of the Church.

For the same reason, it can in advance indulge certain things which otherwise would be prohibited, especially when it is not always clear that there is question of natural law. And when the prohibition is of positive law, its intervention bars the excesses whose danger is usually the cause of the law.

— **VII. On Gregorian Masses and the Gregorian Altar.** 1. In his *Dialogues*, l. 4, c. 55 (*P. L.*, 77, 410 ff.), St. Gregory relates that on the thirtieth day the soul of the monk Justus, for whom he had commanded that the sacred rite be celebrated through thirty strictly continuous days, was freed from purgatorial flames. Hence there prevailed the pious use of the Gregorian thirty, which is subject only to these conditions: that in an uninterrupted series through thirty days Mass be offered by one or several priests for one and the same soul. Through thirty days, I say, so that on the Nativity of the Lord only one Mass can be computed for the same thirty. But not long ago, March 15, 1884 (*A. S. S.*, XVI, 509), the Sacred Congregation of Indulgences affirmed that confidence concerning the special efficacy of Gregorian Masses is pious and reasonable. This efficacy is explained in *Nouvelle Revue Theologique* (t. 21 [1889], p. 121) by the special intercession of St. Gregory. Hence it follows that a priest derogates from an obligation of justice who, having undertaken the special burden of thirty continuous Masses, interrupts the same, unless he has done this from an indult of the Holy See, which can supply the defect. Thus an interruption of three days at the end of Holy Week does not

stand in the way of the virtue of the thirty; thus by decree of May 26, 1918, the Sacred Penitentiary made the faculty that on June 29 of that year priests could interrupt the thirty in order to celebrate Mass for the intention of the Supreme Pontiff for peace. But, with the intervention of apostolic authority set aside, the priest who says disconnected Gregorian Masses deprives the offerer of the stipend of a reasonable hope of special fruit. But if, as usually happens, that burden has been compensated by a greater stipend, he keeps that increase for himself without title (cf. decree of the Holy Office, December 11, 1912 [*A. A. S.*, V, 32-33]).

What, then, remains to be done by him who, distracted, has interrupted the series?

Although other counsels also are suggested, if the Gregorian thirty was to be executed from justice, as Gregorian, the truly secure way will be of having recourse to the Sacred Penitentiary. Yet Cardinal Gennari also thinks it sufficient that he take care that Mass be said at the Gregorian altar of the City, or at an altar privileged after the manner of Gregorian.

For they judge the special efficacy of thirty Masses to be connected likewise with one Mass which is said at the Gregorian altar which exists at Rome in the church of Monte Celio. For, besides the common character of a privileged altar, it is said to have a special power for the souls of purgatory, the persuasion concerning which, approved by the same decree of the Sacred Congregation of Indulgences, seems to bear the same explanation. You may say the same of Gregorian altars after the manner, which after the decree of the Holy Office, December 11, 1912, are no longer newly conceded (cf. Gennari, *Questioni teologico-morali*, n. 417).

Summary

— I. 1. From the present discipline, priests, as such, must celebrate several times in the year; and bishops and religious Superiors must take care that priests celebrate at least on individual Sundays and feasts of precept.

2. Because of the necessity of the Church, the proper Ordinary can prescribe celebration to a priest not impeded, by conferring on him an office with which celebration is required. The Supreme Pontiff and a religious Superior can impose the same directly and simply, or prescribe application.
3. Pastors must sometimes sacrifice for their sheep.
4. A beneficiary must celebrate and apply Mass so that he satisfies the letters of foundation.
5. A voluntary promise can oblige from religion, if it is a vow; from fidelity, if it is a simple promise; from justice, if it is a contract.

II. Founded Masses are those whose stipends are received from the revenues of foundations. But a foundation designates temporal goods given to some moral person in the Church with the perpetual or at least long-lasting burden of performing a pious work, for example, of celebrating Masses. The written consent of the local Ordinary or major Superior of exempt religious is required for a foundation to be accepted; the goods are first to be kept according to his prudent judgment and as soon as possible to be placed fruitfully. Copies of the documents are to be placed in the archive of the curia of the Ordinary or Superior and of the moral person to whom the foundation pertains. A little table of the burdens of the Church is to be kept with the rector; and the burdens to be fulfilled and

fulfilled are to be annotated in a book for this. Burdens are to be executed accurately according to the will of the testator; nor can perpetual transfer of burdens from one altar or church to another, or reduction of Masses, be made without an apostolic indult. An accidental change of the will of the testator seems permitted to the Ordinary. Burdens remaining at the end of the year are to be handed over to the Ordinary.

III. A stipend, by which provision is made at least in part for the support of the minister, and which is not paid as the price of the Mass but as a real prestation in a legitimate contract, by which prestation having been performed, the priest obliges himself to the application of the Mass, is paid and accepted without the stain of simony.

To remove all avarice, 1. these things are forbidden: except for the three Masses on the Nativity of the Lord, on the same day to satisfy by one or several Masses an obligation of justice and of stipend; to retain a stipend for the application of a Mass before it has been requested, unless the offerer, having been warned, ratifies the matter; to accept one stipend for celebration alone, another for application, unless it is certain that the other was offered for celebration alone; to receive so many personal burdens that you cannot satisfy them within a year; by means of stipends really, or in appearance, to trade or conduct commerce; to demand a stipend beyond the established tax; or, against the prohibition of the Ordinary, to be content with less.

2. The obligation of celebrating from a stipend is grave; nor does it cease even if the alms received have perished while with him who is held by the burden of celebrating. For a sum received, Masses, unless something else is demonstrated, are to be said in that number which the tax of the place where the offerer was dwelling has defined. Masses are to be said at the time expressly prescribed; or as soon as possible, if the cause urges; and by him who undertook the burden of celebrating, always within a moderate time, so that for two Masses of the same intention, three days beyond a month can be awaited. An undue delay of one or another month is considered grave. The quality and place of the Mass to be said in themselves remain in the power of the celebrant. Ordinaries and Superiors who entrust Masses to others to be celebrated must take care, as far as they are able, that they are celebrated as soon as possible. They are also to be distributed as soon as possible by the distributor, especially since in itself the time of celebration begins from the distribution having been made. Toward the end of the year, the remaining burdens of Masses are to be handed over to the proper Ordinaries. For Masses which are celebrated after the manner of manual, that is, elsewhere and by others than the documents wished, since they draw their origin from a foundation, the civil year is considered in itself; for others, the year from the day of the burden undertaken, without prejudice to a diverse will of the offerers.

One obliged can transmit Masses to priests above every exception, even outside the diocese, unless, as regards Masses received in churches subject to him, the Ordinary has forbidden this (response of the Sacred Congregation of the Council, February 19, 1921); but the transmitter remains obliged until he has obtained testimony of the accepted obligation and of the stipend received. Except with the express assent of the offerer, manual offerings are to be transmitted entire; and he who has secretly retained part of the stipend has violated justice and must restore: thus the truer opinion. The excess which certainly was given with consideration of the person can be retained. In Masses after

the manner of manual, in itself it is enough to remit the alms of the place where they will be celebrated, if the rich alms partly holds the place of a dowry.

3. Obligations of Masses and their execution are to be annotated accurately by all priests; and the books of the rector of a church are to be reviewed each year by the Ordinary, by himself or through another.

Those who offend are to be struck by grave penalties by Ordinaries. But the Holy See can condone faults and remit obligations which it has the means of compensating from the treasures of the Church.

He who, distracted, has interrupted the series of a Gregorian thirty should have recourse to the Sacred Penitentiary, unless he otherwise compensates or supplies the defect.

Chapter III: Circumstances of Celebration

Article I: On the Valid and Licit Application of Mass

— **I. The Author of the Application.** Only the priest offering the Mass validly applies it through his intention, nor is it in the power of any Superior efficaciously to change or impede that application: for it is an act of priestly power, whose value depends on the character.

— **II. The Subject to Whom, Capable.** The damned are entirely incapable. For the blessed, external worship and honors can be impetrated; and it already redounds to their honor that, on account of the gifts which God has lavished upon them, we give thanks to God.

Are all the rest capable? Before the Code this was not outside controversy. Several, for example Cardinal Billot, *De Euch.*, thesis LV, denied that direct application of the Mass as a work worked could licitly or validly be made to those living who are outside the Church, whose proper good the sacrifice of the New Law is.[1] The same, however, conceded that sacrifice for the prosperity and peace of the Church indirectly redounds to the conversion of infidels and heretics, to whom, moreover, the Church can apply her impetration. Yet most admitted that the fruit of impetration could be shared by all wayfarers and by the souls of purgatory, and they doubted only concerning the fruit of satisfaction, whether or not the non-baptized were capable of it (cf. Lehmkuhl, II, 212). Yet the sacrifice of the cross was offered for all, and the Mass is nothing but that sacrifice continued or renewed. Wherefore c. 809 has followed the more benign opinion, and tacitly admits that the Mass profits all wayfarers and souls of purgatory, since it permits that it be offered for all.

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[1] Yet the same Cardinal Billot, l. c., thought that Mass could profit all, even non-baptized persons, who are in purgatory, since there, the distinction between the soul and the visible body of the Church being suppressed, all are simply of the mystical body of Christ.

— **III. The Subject to Whom, Licit.** The principle is: for every capable subject whom the Church does not exclude, it is lawful to offer the sacrifice. Now, in her new law, the Church in c. 809 excludes neither infidels nor non-Catholics. Yet from public application she excludes the excommunicated person: for him, therefore, it is lawful to apply Mass only privately and with scandal removed; but she simply excludes the *vitandus*, so that she permits Mass to be offered only for his conversion (c. 2262, §2). Wherefore even after death he is deprived of suffrages. But nothing stands in the way that solemn funeral rites be done for a catechumen.

Application is made privately when public pronouncement is omitted and the name of him for whom celebration is made is not expressed in the Mass (cf. Cappello, op. c., I, n. 620, 2).

The scandal to be removed here is especially the offense of the faithful who, in certain circumstances, conscious of the celebration having been made, would ascribe it to greed for profit or to a certain "indifferentism."

After c. 809, the various distinctions between heretics and infidels can now be passed over, distinctions which writers, relying on some particular responses of the Sacred Congregations, were accustomed to use, so that they spoke more severely about heretics and schismatics than about

infidels (cf. Cappello, op. c., I, nn. 618, 619). But public celebration even for a ruler who has died in heresy is altogether prohibited (cf. briefs of Gregory XVI, February 16 and July 9, 1842, to the bishop of Augsburg and the abbot of the monastery of Scheyern, O.S.B.). But when he begins to reign, a solemn function for the prosperity of the kingdom can be arranged.

The things said thus far hold concerning the fruit of Mass from the work worked. But nothing prevents the priest and faithful from offering their celebration or participation in Mass as a good work for any living or deceased person who is not excluded by the nature of the thing.

A distinct question is raised, whether or not a stipend can be received from all (concerning which matter cf. de la Taille, *Mysterium Fidei*, p. 365 ff.). The solution depends on the very manner of understanding the stipend, concerning which there is treatment in t. II. Practically today the responses of the Holy See permit that, with scandal and all superstition set aside, a stipend be admitted from all for whom Mass can be offered (cf. also *Nouvelle Revue Theologique*, Hocedez, "Les fruits du sacrifice et le stipendium d'apres un livre recent," 1922, p. 522, etc.).

— **IV. Conditions of the Application Itself.** It is necessary that the application be objectively determined and made in due time.

1. For a confused application, for example, for someone out of ten, would be invalid. But determination can be made explicitly or implicitly, for example, as the Superior or sacristan has already established, as I noted in the little book. A disjunctive determination is admitted: according to the determination of the sacristan, if he shall have made any; but if not, in this way. It is validly made under a condition already fulfilled, but not under a future contingent condition: for him whom Titius, when asked, shall have wished; for him who first offers a stipend. Nor can it even be offered, as for a deceased person, for him who will die first. For God is judged to have adapted the efficacy of application to our human ways. Does the intention hold: according as God wills? Some deny it, because the celebrant seems to leave the determination to God; but others reply that the Mass is then applied by the celebrant to him to whom it is more pleasing to God that it be applied; and this will is certainly defined in God (cf. Noldin, III, 177, 3). By a like reason a Mass offered according to the mind of Christ or of the Blessed Virgin Mary is judged offered according to the intention more acceptable to Christ or to the Blessed Virgin Mary. But no doubt can be raised about the value of an application made for the soul more pleasing to God.

He who must satisfy several intentions can celebrate:

a) according to the order of priority of right: then in itself he first celebrates for him who first paid the stipend. Yet if there is a just cause for preferring some intention which is later in time, account is taken of this cause; and if several were equal in time and right, then several Masses seem to be offered for these together. Indeed they judge this to be the implicit intention of him who discharges several stipends; and an implicit intention suffices;

b) according to the order defined by the Superior or by the distributor. This also seems to be the implicit intention of the celebrant. Indeed if there is some contrariety or diversity between the direct intention of the celebrant and that of the Superior or distributor, the celebrant is to be thought rather to have accommodated himself to the order of the Superior or distributor. But lest disagreements of

this kind arise, it will be better above all to will to celebrate according to the mind of the Superior or distributor, and, if these have established no order, according to the order of priority;

c) for all intentions at once. This certainly can be done for a definite and not excessive number of Masses which equally urge. And then that collective mode is best, since there are those who hold that the fruit of the Mass is not diminished for individuals because the Mass is offered collectively for several. But if the intentions urge unequally, care must be taken against the danger lest the more urgent be deprived of the full usefulness of the Masses. If too many intentions are joined in this way, satisfaction will not be made for several except too late. And if the number has not been defined, but always new intentions are added, some one intention will never obtain an entire Mass.

Wherefore the Sacred Penitentiary, December 7, 1892, while it declared that collective application is lawful, prudently added: "provided that satisfaction be made integrally for the Masses within the time prefixed by ecclesiastical practice, and that Masses which are offered for a certain day or for an urgent cause are not delayed."

And so by these reasons applications can be defined when stipends are given by many unknown persons, for example, are found placed in a common box. Nor does it matter if these intentions are divided among several priests. And approved authors, indeed the Sacred Penitentiary itself, in its response of December 7, 1892 (*Analecta ecclesiastica*, II, 33), interpret very benignly that obligation of defining the application, so that they judge that he satisfies who, thinking explicitly of no order, says individual Masses out of several accepted "according to the intention of the giver." Yet a tolerated use is one thing, a recommended use another. And certainly it cannot be denied that he will act more piously, more reverently toward the sacrifice of the Mass, more suitably to the mind of the offerers, who, according as there is supply, accepts or distributes Masses in such a way that the celebrants know what kind of application has been requested: for the sick, for the dead, in thanksgiving. Nor will it be useless for the same to be made conscious of a more liberal alms, so that they may respond to the munificence of the benefactor with greater attention and fervor.

Concerning this order of intentions, cf. Lehmkuhl, *Theol.*, II, 157, and *Casus*, II, 207, 206; Ferreres, II, 459-461; Noldin, III, 177, 179.

— 2. Besides, application must be made in due time, that is, a) either before the sacrifice; and, because it has the character of donation, an application once made remains unless it is revoked, so that generally habitual application from an intention which, for example, was conceived at the beginning of the month suffices; b) or during the sacrifice. And because the sacrifice is not yet complete, an application which has been made between the first and the other consecration probably suffices.

Palmieri, *Op. th.*, IV, 1040, indeed objects that this intention does not influence the whole sacrifice, since it arrives after part of its essence has passed. But the sacrifice is not composed of two successive essential parts; rather it is one action which is begun by the first consecration and perfected by the other. After the first consecration, the sacrifice does not yet exist, and therefore is not applied; simultaneously with the other consecration it exists and is applied. Made after the sacrifice, or after both consecrations, it does not hold, because the priest cannot suspend an effect which, when the sacrifice exists, is immediately produced.

— **Corollaries or Scholia.** 1. An application made to a living person whom you thought dead, of a Mass commanded for a deceased person, strictly speaking does not hold. For the end of destroying punishments which remain to be paid after death cannot be obtained by the Mass. Nevertheless, if the person is pious, whose faults before death can be judged to have been destroyed, the application of satisfactory fruit is more abundant and more certain if it is made to the living person than to the deceased. Therefore if you wished, which can easily be presumed, to attribute absolutely the satisfactory fruit to him whom you thought dead, you benefit him more than if you had awaited death. Wherefore then it can probably be supposed that the celebration is ratified by the offerer (cf. Noldin, III, 179, 3, and Cappello, I, 607, who seems to concede this more generally).

That opinion can be confirmed by this reason, that in a celebrant for a stipend the prevailing intention is deservedly supposed to be that of celebrating according to the mind of the offerer; but he who freely celebrates for obtaining some definite grace for someone will generally have the principal intention of celebrating for his good.

2. He who has conceived several intentions opposed to one another is judged to have applied the Mass to the prevailing one. But in itself the later intention prevails, even if the priest had been disposed in such a way that, if he had thought of the former, he would not have conceived another. In order that the later not prevail, it is necessary that the former will have been so absolute that it virtually invalidated the other in advance. But if this is not clear, nothing remains except that on the following day the priest celebrate for whichever of the two intentions has in reality remained inefficacious (cf. Lehmkuhl, II, 356, 3).

And you should note well that one intention cannot prevail over another unless both concurred, or existed at the same time; therefore not if one, even through error, either did not yet exist or had been revoked or dismissed.

Examples. The prior intention is judged to prevail if it was owed on that day, while the other was free; if it was of continuing a Gregorian series, while the other intention, even for a stipend, could be deferred; if the celebrant applies a Mass accepted for a deceased person to a deceased woman through error; in this case the predominating intention is that of celebrating according to the intention of the petitioner (cf. Noldin, III, 179, 3, and Berardi, *Praxis Confessarii*, n. 3515).

3. If application has been omitted or made invalidly, the fruit from the work of the worker will profit the celebrating priest; from the work worked it will remain in the infinite treasury of the Church, unless you think that then, by the implicit intention of the celebrant, the Mass is applied to himself.

But the intention of the one giving or offering the stipend is judged to be this: that a Mass useless to him to whom it is applied should yield to his own good or that of his own, or of those to whom he is most obliged (cf. Lugo, d. 19, n. 225 ff.; Lehmkuhl, II, 255).

— **Division of the Application among Several.** 1. The Eucharistic, impetratory, propitiatory, and satisfactory fruit of the Mass can in itself be divided and applied, some to some persons and others to others.

2. Yet he who must sacrifice from justice for some intention is permitted to subtract nothing from the solid fruit, and only, with the integrity of application to this intention preserved, can he conceive another.

3. He who must apply Mass only from obedience, or by statute of an institute, seems to several, for example Bucceroni, III, 621, and Gury after Gobat, able to divide the fruits, because this is done with the end of the law intact, and the obligation is not to be extended beyond the end of the law. Therefore a Mass prescribed for someone other than a deceased person could besides be applied for liberating a soul; one prescribed in thanksgiving will have left free the disposition concerning the impetratory, propitiatory, and satisfactory fruit.

Yet the souls of the dead are aided more if, together with the satisfactory fruit, you apply also the impetratory fruit to them, especially since some think that the application of the satisfactions of Christ is made through impetration. And so there will almost always be reason for acting otherwise, so that the author of the benign opinion, Gobat, confesses that he never used the same.

4. He who is held only by a liberal promise is hindered by no obstacle from division of the fruits among intentions which have been freely undertaken at the same time and are of diverse character, such as of thanksgiving and of satisfaction for the deceased. For the priest is judged to have promised what is the minimum. Indeed some permit that he who has promised the sacred rite to ten persons fulfill those promises by one sacred rite. But since today the opinion concerning the extensive infinity of application is much less received in the schools, and he who promised the sacred rite to one person is not understood merely to give a part of a sacred rite already promised or to be promised to others, he must be said to deceive the promisees who does not simply open his mind, by which he thinks of offering one sacred rite for several together.

5. But he who has vowed the sacred rite is held according to his own intention.

— What it is to sacrifice in a second or third intention is shown by the things just said. It tends to this, that, with the integrity of the first application preserved under every respect, you apply the special fruit by a subsidiary intention, insofar as you subtract nothing from the first, or if the first has been frustrated; or even that you ask God that, notwithstanding the usefulness of it for him for whom the sacred rite is primarily offered, he nevertheless, in consideration of the sacrifice, will to bestow also this grace on another. By this latter reason, a second intention scarcely differs from a special commemoration made in the *Memento*, except that application must precede consecration.

— **V. Efficacy of the Application.** 1. The Mass is propitiatory and satisfactory insofar as it effects or impetrates the application of the satisfactions and merits of the cross (cf. Billot, *Euch.*, thesis 55). If the principal impetrating cause, or Christ, is considered, the effect of the Mass is absolutely infallible. If the object which is requested is considered, because from its institution it is directed definitely to the remission of sins, it infallibly, as regards the destruction of faults, confers actual helps by which man disposes himself either to expiate venial faults, or to obtain justifying and sanctifying grace through the use of the sacrament of penance, whether in reality or in desire; and it infallibly remits several punishments owed for pardoned faults. Other things requested are not obtained infallibly, unless they are expedient for salvation and are according to the ordinary laws of Providence. With

attention to the subject, punishments are not remitted except those which, because of faults dismissed, are owed by him who is in the state of grace. The other effects also demand disposition; but what sort it must be is less clear. As we said in *Quaestiones De religione*, chapter *De oratione*, n. 24, begun penance, or conversion to God, seems required.

2. Defect of disposition also diminishes the force of application. Indeed in the deceased of purgatory the present dispositions are excellent. But their capacity can vary according to the degree of their charity or the devotion and faith which they had on earth.

3. Finally, the application of Mass is made infallibly to that living disposed person for whom it is offered. But is it made infallibly to that soul of purgatory for whom Mass is said? Some affirm this, for example C. Billot, l. c.; Bucceroni, III, 613 bis. Others, however, whom Genicot follows, II, 222, deny the same: for there can be just causes in the past life because of which God does not will the satisfactions of the cross to profit them here and now, unless perhaps he is appeased by several sacred rites offered and satisfactory works of the living. This opinion more easily explains the use of very frequently offering the sacred rite for the same soul.

— **Suffrages before Death.** Those are in no way to be disapproved, indeed they are to be praised, who, while they live, anticipate suffrages for themselves by sacred rites already celebrated. For a living man certainly shares all the fruits, while concerning the deceased it is less clear whether or not any fruit besides the satisfactory profits them. A living man can also assist at Mass and even by this reason be an offerer. He also in itself merits more, while he himself deprives himself of stipends, rather than merely burdening his inheritance with that burden. Add the greater security about faithful fulfillment of the burdens (cf. Ballerini-Palmieri, IV, 1044, and Cappello, I, 607). Benedict XV himself embraced these reasons in a letter which, on May 31, 1921, he wrote in the form of a Brief concerning the sodality of the Good Death (Tinchebray): "It is especially to be considered that the fruits which are received from the sacred rite profit men far more abundantly while living than after death, since they are applied to the former, if well disposed and arranged, more directly, more certainly, and more abundantly than to the latter. Hence it comes about that, with the gift of perseverance, we should seek for ourselves the faculty of obtaining, while still living, both the appeasing of God's justice and the punishment which would remain for us in the fire of purgatory either wholly removed or at least greatly diminished. But if sufficiently many forgetful and ungrateful men have been accustomed to commit this, that they neglect to have the august Sacrifice offered for the expiation of the souls of those whom they seemed to hold most dear, there are in greater number those who, with grave loss of spiritual utilities, are ignorant of this: that the sacrifice of Mass which they themselves, while living, shall have had offered, will profit them much more than that which their heirs, relatives, or friends shall have commanded to be offered for their relief after death" (*A. A. S.*, 13, 344).

Yet it is clear that those suffrages avail for punishments owed at the time when they are offered, but not for extinguishing future debts.

Article II: On the Manner, Time, and Place of Celebration

§ 1. On the Manner of Celebration

— *Appendix V belongs to this section.* **I. On the Fast to Be Observed.** Historical matters: cf. Appendix V.

Current Law. 1. **Rule.** By the proper precept of celebration, a priest is obliged not to celebrate unless the natural fast has been observed from midnight (the notion of this will be explained below, where there is treatment of Holy Communion).

Therefore it cannot be said with Suarez, *Sacr.*, 1 p., d. 82, and Lugo, *Euchar.*, d. 15, n. 69, that to celebrate without the fast is nothing more than to communicate without the fast, and that one dispensed for communicating after food has been taken is dispensed for celebrating in the same way.

2. **Exceptions.** Yet the severe law itself of not celebrating otherwise than with the natural fast observed admits certain exceptions, which are of two kinds:

a) it can happen that a priest, distracted or compelled by some other necessity, has taken some food. Then the question is posed: when can he nevertheless sacrifice?

b) it can also be asked when it will be lawful for a priest deliberately, with foresight and intention of saying Mass, to take some food beforehand.

a) To a priest who from distraction or from another cause of necessity has already broken the sacred fast, they permit the sacred rite:

alpha) on account of a divine precept which more urges. Wherefore for completing the sacrifice, without doubt the fast can and must be postponed. The case will chiefly occur if no fasting priest is found who can complete the sacrifice of another priest who, after the consecration of at least one species, has been stricken by illness; or if he used water or oil instead of wine, and notices this after a part of the water or oil has been consumed; or if, after the ablution has been taken, he finds a consecrated host or consecrated fragments which cannot decently be kept until another sacred rite. And he who after the consecration remembers that he is not fasting must himself, not fasting, complete the sacrifice;

beta) for administering Viaticum to someone who has not yet satisfied the divine precept of Viaticum, several also permit celebration by a priest not fasting;

gamma) so that scandal may be avoided, if a priest, not fasting, cannot break off before the consecration the sacred rite which he inadvertently began, without danger of scandal or infamy. Indeed it can happen that on Sunday a pastor cannot omit the sacred rite without note. And then this other reason will easily concur, that several will be about to fail to go to a nearby church in order to satisfy the precept, although they can and must do so. Yet on December 2, 1874 (*Collectanea P. F.*, II, n. 1425), the Holy Office denied that scandal or the wonder of the people could ever suffice so that a second Mass be celebrated by a priest not fasting. But we judge that this scandal is to be understood of the very admiration of the people, not of the common sin of the people;

delta) by *epikeia* not a few concede that a newly ordained priest who, distracted, secretly violated the fast can celebrate his first Mass, if circumstances of very grave inconveniences concur.

b) It is not lawful for a priest deliberately to take some food with the intention of afterward celebrating except from a license given by the Holy Office, to which recourse must be made through the Ordinary; or from a license given by the bishop or quasi-bishop (the Vicar General does not suffice) in a more urgent case in which recourse cannot be made in due time to the Holy See; or from a license obtained from the local Ordinary, if he has obtained a general faculty from the Holy Office.

But this license or dispensation can be given by the bishop or quasi-bishop only to those priests who, because of the people, must either repeat Mass or celebrate it at a later hour, and who at the same time cannot observe the law of the Eucharistic fast without grave harm. Grave harm can arise from weak health, or from excessive labor of the sacred ministry, or from another reasonable cause, for example, from a distance to be overcome, from the trouble of making a journey. Only liquid food can be permitted, with every intoxicating drink also excluded. Every scandal must be removed. Scandal here is chiefly the offense of the pious, which will be avoided if a sufficient interval between the taking and the Mass is required, and if every public use of the faculty is prohibited. Finally, the Holy See must be informed as soon as possible about the dispensation given. Nor is there hope of obtaining from the Holy Office itself a dispensation on account of the private devotion or utility of the priest.

Therefore no more after the letters of the Holy Office of March 22, 1923 (*A. A. S.*, XV, 151, or *Periodica*, XII, 29), by which these dispensations are announced or conceded, than before, will a dispensation be able to be presumed. Yet if in some case truly necessary for the people a Mass cannot be celebrated unless the priest has taken something of liquid food, and there was no opportunity of recurring to the bishop, he who uses *epikeia* does not seem to be condemned.

— **II. On the State of Grace.** A priest conscious of mortal sin is forbidden to celebrate without sacramental confession first made. "But if, with a confessor lacking and necessity urging, he shall have celebrated, after eliciting an act of perfect contrition, let him confess as soon as possible" (c. 807).

By this precept of the Council of Trent, sess. 13, ch. 7 and canon 11, where those teaching the contrary are excommunicated, the Church defined the proving which from the Apostle, 1 Corinthians 11, is necessary: whether it is a mere declaration of divine law, which many with Suarez hold to be more probable, or whether it is an ecclesiastical law, as others seem to think.

He is not conscious of mortal sin who, in an antecedent confession, did not accuse a mortal sin without his own fault, nor he who seriously doubts about grave fault committed. These, therefore, are not held by the precept of confession. But must he elicit or try to elicit an act of contrition who prudently fears that he is outside the state of grace? This is very greatly to be commended; yet the authority of those who think that probable disposition suffices does not permit us to urge a strict obligation (cf. d'Annibale, III, 249 [7]).

Often circumstances will bring moral certitude of grace or of sin. Wherefore one who is too fearful will have to be dissuaded from confession, which by efficacious admonition, or even by injunction, must be imposed on a priest of more lax conscience.

But three things are required so that one who is conscious of grave sin may celebrate without confession: an urgent necessity of celebrating, lack of a confessor, and an act of perfect contrition.

1. In itself, deprivation of a stipend does not furnish an urgent necessity, but danger of death does, necessity of consecrating a host for one dying, note or infamy to be avoided, necessity of celebrating so that on a feast day the people can be present at the sacred rite, or, for a pastor, celebration from office, by which it can happen that he is held even on individual days. For some, the reason of celebrating suffices if otherwise the priest could hear no Mass; but we think this less to be approved (cf. however Lugo, *Euch.*, d. 14, nn. 115, 116 against Suarez, *De Sacr.*, 1 p., s. 4, d. 66). He who during celebration commits a mortal sin or remembers one cannot morally depart. In a solemn Mass perhaps he could confess to the assisting priest without note, but the obligation of that confession, as we shall see below, is not so certain, because of the rubric.
2. A confessor is judged to be lacking, not if he to whom the priest is accustomed and would desire to confess is absent, or he to whom he would confess more devoutly or more usefully, but a) if none is present and, considering the circumstances of a weak, older, or business-burdened person, or of roads, weather, and short time, an absent one cannot be approached without great difficulty. Such narrowness of time can exist that not even a priest separated by fifty paces from the one about to celebrate is judged to be at hand. Formerly they thought that sufficient inconvenience in itself was had by a distance to be overcome of one league or of one and a half. Now the very ease perhaps arising from the railway must be attended to. Lehmkuhl, II, 206; b) if none is present except one ignorant of the language, or lacking jurisdiction, or an excommunicated *vitandus*, or one to whom you cannot confess without grave harm of your own or another's. The case of a confessor who lacks jurisdiction in reserved matters is now no longer posed, since, as will be explained later, in that necessity any confessor can absolve directly from reserved matters, though sometimes with the burden of having recourse to the Superior. If narrowness of time does not permit a complete confession, some, as d'Annibale, III, 708, oblige the priest to accuse what he can; but others, and deservedly, doubt about that obligation of a half confession, at least if the priest can excuse himself by the act of perfect contrition and the mind of confessing fully as soon as possible.

By inconvenience alone which is extrinsic to confession the priest is excused from the obligation of placing confession before the sacred rite. Wherefore neither the infamy which the penitent himself or his religion suffers with the confessor takes away the obligation: for harm of reputation follows the obligation of confessing in itself, and it is not great because of the holiness of the seal. Yet particular circumstances of familiarity, of veneration by which an old man is honored by a younger cooperator, can make that harm extraordinary, and beget such shame as is morally invincible.

Wherefore some then excuse a priest who in necessity celebrates with perfect contrition and with the mind of confessing as soon as the opportunity of another confessor is given.

But it can happen that a fragile priest applies the matter to himself much more benignly, and excuses himself from confession, even if he has the option of four or five confessors, because he lives under the same roof with all, is known to all, etc. What remains for a prudent confessor to do, if the penitent priest reveals such things?

In this matter those things must be carefully distinguished which we can positively permit, which we can tacitly tolerate, and which we must openly condemn and prohibit. If extraordinary circumstances

regard one or, at most, another confessor, with every other opportunity removed, we can positively permit that confession, otherwise necessary, be omitted, especially since true scandal of a younger person who would know the enormous sin of an old man is easily added. But if there has been an option of several, we cannot approve the omission of confession. Yet in a special case, where the penitent has formed his conscience in this way and would easily fall into moral despair, after the fact it will be lawful to be silent or to leave the matter to his conscience. But if there is question of a priest who indulges an evil habit, so that not rarely he celebrates without confession, his excuse must be rejected. But it is necessary that among the confessors whose opportunity he is accustomed to have, he choose one to whom he may candidly open the wound of his soul. And sometimes it will be easier for him to put before confession a conversation with the confessor whom he has chosen, to declare himself miserable and in need of help. A confessor somewhat human will be moved by the other's confidence itself so that he receives such a penitent with that benignity which removes every difficulty of confession. We must act thus because we cannot tolerate the habitual omission of that precept, which would not lightly diminish both reverence toward the Most Holy Sacrament and horror of mortal sin.

3. One excused from confession can never neglect contrition. But what if he cannot even be contrite? Some, cited by St. Alphonsus, l. 6, n. 262, then remain very doubtful. But better do others, for example Lehmkuhl, II, 207; Ballerini-Palmieri, IV, 916, answer from the mind of St. Alphonsus that at least supposed contrition is available to all. For, as we said in the prior special part, an act of charity is not to be thought difficult, and he who truly renounces sin easily complies with the grace of perfect contrition.

A priest who, with confession omitted although in itself necessary, has celebrated the sacred rite, is bound by a new precept of confessing as soon as possible. As soon as possible, that is, within two or three days, and therefore not neglecting an occasion of confession, if some single one is foreseen to be going to occur within three days. And it is manifest that confession must be made before another sacred rite, unless the same necessity of celebrating and the same lack of a confessor persist.

This precept is imposed on the priest who was legitimately excused from confession, but not on him who has celebrated sacrilegiously: the law would burden this one without utility with a new sacrilege; nor probably does it oblige him who only after consecration remembers the state of sin, since he is excused by ignorance or inadvertence rather than by necessity. Indeed d'Annibale, III, 409, admits what Lugo, d. 14, n. 746, judged sufficiently probable, that he is excused from the special precept of confession who, scarcely after Mass has begun, remembers or has committed mortal sin. These appeal to the rubric of the Missal, *De defectibus*, 8, 4, which prescribes only this to him who in the celebration itself remembers that he is stained by mortal sin: "let him be contrite with the purpose of confessing and satisfying."

— **III. On Separate Celebration.** In the Latin Church concelebration of several is forbidden, except in the Mass of ordination of priests and consecration of bishops. Cf. n. 287. Yet in Portugal, in the Bragan rite, concelebration occurs on Thursday in the Supper of the Lord.

— **IV. On the Condition of Once in the Day.** Except on the day of the Lord's Nativity and the Commemoration of All the Faithful Departed, on which all have the faculty of sacrificing three times,

it is not lawful for a priest to celebrate several Masses on the same day, except from an apostolic indult, or by power made by the local Ordinary (c. 806, §1).

From common law, the Ordinary cannot permit the same priest more than two Masses on the same day; and this only on a feast day of precept, and because he judges that a notable part of the faithful cannot, because of scarcity of priests, be present at Mass.

The faculty on the day of the Nativity of the Lord is circumscribed by no condition. For, after a word had been had with His Holiness, on January 26, 1920, the Sacred Congregation of Rites, contrary to what it had answered on April 11, 1844 in Barcelona, ad 3 (*Decr. auth.*, n. 2802), declared that it is lawful for a priest who, because of weakness of sight or another just cause, celebrates by apostolic indult a daily votive Mass or Mass of the dead, to say precisely the same Mass three times. We understand the same Mass, either the votive to which he is accustomed, or even, from the mind of the legislator, one of the three assigned for that day (*A. A. S.*, XII [1920], 122). But he who wishes to celebrate only one Mass must take the Mass which corresponds to the hour of celebration: that is, in the night the first, at dawn the other, by day the third (Sacred Congregation of Rites, June 19, 1875 [n. 3354]; February 13, 1882 [n. 3767 ad 21]). He who has preferred to read only two, which remains whole for him (Sacred Congregation of Rites, June 19, 1875, n. 3355), if he separates them, should observe the hour of celebration, if he says one at night, the other at dawn or by day. If he says both by day, he seems able to omit either of the two prior ones.

But on the day of the Commemoration of All the Dead, one of the three Masses must be applied gratis in suffrage of all the faithful departed; another also gratis, according to the mind of the Supreme Pontiff; the third can be said for a stipend at the judgment of the priest. But free option is made to the priest of choosing which of the three Masses he says for a stipend, which according to the mind of the Supreme Pontiff or for all the dead (cf. Sacred Congregation of the Council, October 15, 1915 ad 1; *A. A. S.*, VII, 479, 480). But the gratuity of the two Masses is understood so severely that not even by title of extrinsic labor can anything be received; nor can the intentions prescribed on the day of Commemoration be deferred to another day, with a triple stipend received on the very day of the Commemoration of All the Dead (Sacred Congregation of the Council, cited response ad 3 and 4).[(1)] But he who celebrates only one Mass must celebrate the first, which is proper to the day; he who reads only two should add to the first that which is prescribed in the second place. But it is always whole to accept a stipend for one Mass; and he who reads only two must apply the other of the two for all the faithful departed, so that the sacred rite must then be offered according to the mind of the Supreme Pontiff only when three Masses are celebrated (cf. response of the Sacred Congregation of Rites, February 28, 1917; *A. A. S.*, IX, 186, 187). This can be observed everywhere, even if certain regions, for example Latin America, previously had to apply two Masses in suffrage of all the faithful departed (cf. Ferreres, II, 487).

And what on the day of the Nativity of the Lord was conceded to those who can read a daily votive Mass or one for the dead, that they might say the same Mass three times, was also permitted on the Commemoration of All the Dead by the same response of January 26, 1920.

As to the power of the local Ordinary: a feast day of precept is understood as a feast day on which the people in reality must hear Mass (Genicot, II, 239; Noldin, III, 206); a notable part of the faithful supposes at least twenty persons (d'Annibale, III, 405 [55]). Yet centenary custom can permit more,

if the Ordinary judges that it cannot prudently be removed (c. 5) (cf. Simenon, *Revue ecclesiastique de Liege*, 1923, p. 263).

This necessity of the people is chiefly had when one priest administers two distant parishes, and there is no other who may celebrate in the other place; or even when, for various causes, the whole people cannot morally come together for a single Mass (these causes occur frequently).

This faculty of binating on account of the necessity of the people is real, so that whatever priest takes the place of him to whom it was made can use it. And it ceases with the necessity. Wherefore, if another priest happens to arrive who wishes to say Mass at the usual hour of the people, the faculty of binating is in reality taken away. But in a case of unforeseen necessity, as if one of two priests who are accustomed to celebrate in the parish suddenly falls ill, and no other can be supplied, the priest who remains, provided he is fasting, can presume the license of the Ordinary (Noldin, III, 206).

Indults of the Holy See are conceded so that on days not of precept but of great devotion the whole people might be able to hear Mass, or so that in a region where the occasion of Mass is rare, all might be able to use the occasion of a passing priest. More benign indults have sometimes been conceded to certain pious communities. Because of extraordinary causes, as in the recent war, or in Mexican regions, three Masses have been permitted.

Before the Code, many bishops were accustomed to obtain quinquennial faculties by which, besides many other things, they were permitted to concede bination for causes other than the necessity of the people who otherwise could not satisfy the precept of hearing Mass. But those indults have not been restored. Indeed, concerning the faculty of permitting bination, there is complete silence in the new formulae of broad faculties which the Sacred Congregation of Propaganda Fide is accustomed to lavish on Vicars and Prefects Apostolic.

In an extraordinary necessity of celebrating so that a sick person constituted in imminent danger of death can be refreshed by Viaticum, several authors concede bination.

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(1) R. P. Cappello thinks that this severity by which remuneration of extrinsic labor is excluded has been tempered by canon 824, §2, by which, in a general manner, some remuneration from an extrinsic title is permitted to be received by him who celebrates several times in a day. Yet canon 6, 2°, by which confirmed old law is to be understood as before the Code, seems to stand in the way of this interpretation, so that the general concession of c. 824, §2 by no means impedes the special prohibition for the day of the Commemoration of All the Faithful. But, according to Ferreres, II, 487, in Aragon, Catalonia, Valencia, and Majorca, regulars can receive three stipends and seculars two on that day.

— **V. On an Incomplete Mass.** Mass must be said completely. Never, not even with extreme necessity urging, is it lawful to consecrate one matter without the other (c. 817). And if a priest who has begun to sacrifice, one or the other consecration having been performed, cannot complete the sacrifice, another priest must complete the Mass. Nor, if a more worthy one is lacking, does it stand in the way that he himself is not fasting, or is excommunicated or irregular. Yet after an hour, moral union is no longer judged certainly to be present, so that, although the faculty remains, the obligation of supplying is no longer to be urged.

Nor do we think that then the faithful who have been present at a Mass essentially completed must assist at another Mass. It is clear that the supplying priest is not permitted to celebrate another Mass afterward.

1. Therefore it will never be lawful for anyone who omitted consecrating the ciborium to repeat the consecration, even so that he may refresh many with the sacred banquet. But consecrated species must be brought from another church; and, if not even this can be done, those about to communicate must in themselves be dismissed, deprived of the sacred banquet. Yet if anger, blasphemies, or other scandals are to be feared, the license of binating will rather have to be presumed, since this is repugnant to no divine precept.

2. Noticing before communion that only the prior species has been consecrated, for example, because of unsuitable matter, let him place the other and at once consecrate, resuming from the words *Simili modo*. If he notices this after he has consumed the sacred species, whether from taste or in another way he has noticed the unsuitable matter of the other consecration, in itself he should place both species, offer, consecrate, and consume. Yet in a public place, to avoid scandal, the rubric permits that only the species which was lacking be placed (*De defectibus missae*, IV, 5); and Suarez, *De Sacram.*, p. I, d. 68, s. 6 and d. 85, s. 4, holds almost equally that someone repeat both consecrations,[(2)] or only the other one which was invalid. In the former way, you more certainly complete one sacrifice, but the prior sacrifice of which only one species had been consecrated seems to remain incomplete. In the other way, you join the single consecration which you perform more closely with the prior one; but it is less clear that, after one species has been consumed, the sacrifice can be completed by the other consecration. Tamburini, *Exped. sacrif.*, l. 1, c. 8, and Lugo, *De Sacram.*, d. 15, s. 4, warn that by him who notices that water had been placed instead of wine while he receives it with the mouth, with the intention of drinking the blood of Christ, that water must not be spat out: the danger of rejecting a fragment of the consecrated host stands in the way, and also the irreverence itself. He who after Mass, in the sacristy, has known the error of the other consecration will have to supply nothing, nor will he be able to (Suarez, *De Sacr.*, 1 p., d. 85, s. 1). Already the very reason of scandal would stand in the way of correction.

If, at the consumption of the blood, you positively doubt with an insoluble doubt about the truth of the species of wine, and therefore about the value of the consecration, it seems better that even then by a new consecration of true wine you make the sacrifice certainly complete.

3. Before the canon, if the celebrant remembers some impediment from the fast having been broken, from sin committed, from a censure contracted, and can leave without note; or if an excommunicated *vitandus* presumes to be present at the sacred rite, he will have either to break off the Mass or interrupt it until the impediment has been removed.

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(2) But it is never lawful to consecrate both matters outside the celebration of Mass (c. 817).

— **VI. On the Continuity of the Action.** Mass must be said without interruption, unless a just cause excuses, which "before the canon has been begun must be grave; after it has been begun, graver; after the consecration has been made, gravest" (d'Annibale, III, 404).

And so it will be lawful to interrupt:

1. after the Gospel, on account of a sermon or a procession to be received;
2. in favor of an arriving prince, bishop, Cardinal, or crowd of pilgrims who otherwise would not have the whole Mass. Then several permit that a priest who has not yet arrived at the oblation begin everything again. What the usage of places has is to be seen;
3. when grave necessity urges, either one's own, for example, of illness, or of the neighbor, as if one dying must be aided by a sacrament of necessity. To confer Viaticum and Extreme Unction, which are not sacraments of necessity, it is not lawful to interrupt Mass between consecration and communion, unless sight of the altar is preserved, or at least in a place of the same floor, from which the voice of the priest can be heard (cf. Sacred Congregation of Rites, December 19, 1829 ad 1 and 2 [n. 2672]; and February 1874 ad 1 and 2 [n. 3322], and d'Annibale, III, 404 [37]). Indeed better, with Lehmkuhl, II, 339, we shall distinguish absolution and the repeated administration of Viaticum from devotion alone. We shall permit absolution in every place sufficiently nearby that the priest need not put off the sacred vestments; the administration of Viaticum repeated from devotion, in the places just mentioned. A priest, returning afterward to the altar after consecration, will simply continue the Mass, repeating nothing; if before consecration, he will do the same, provided he has returned within an hour. After a longer delay, he will begin again from the beginning.

— **VII. On Preparation and Thanksgiving.** Mass must be said after pious preparation and with devout thanksgiving (c. 810). That you assign a fitting time to this, at least a quarter of an hour, the doctors advise, and the most abundant fruits to be gathered from this devotion advise.

In the Missal itself there is proposed a "preparation for Mass, to be made according to the opportunity of the priest"; but there is added a thanksgiving which, insofar as it consists of the antiphon "Trium puerorum," the canticle "Benedicite," the psalm "Laudate Dominum," and a few versicles with three prayers, pertains to the preceptive rubric. Yet it is not clear that these rubrics oblige under sin. But it is very laudable that the priest make the preparation at least in part as it is indicated in the Missal; but the prescribed thanksgiving he should learn by memory, since it is to be recited while withdrawing from the altar and putting off the vestments.

— **VIII. On the Assistant.** Mass must be said without an assisting priest, unless the celebrant enjoys the use of pontificals (c. 812), or this is done for reason of prudence, for example, for helping one with weak sight or a blind man, or a newly ordained priest, or one celebrating at sea, but with one server ministering and responding, of the masculine sex. "Let the minister serving Mass not be a woman, unless a man is lacking, from a just cause, and under this law, that the woman respond from afar and by no means approach the altar" (c. 813).

Under mortal sin a server is required, and the ministry of a woman at the altar itself is prohibited. A sufficient cause for your celebrating without a server will be if, on a feast of precept, you can be present only at the Mass which you celebrate.

A lesser cause allows using a server who does not know how to respond, or, when a server is lacking, admitting a woman, especially a nun or Sister, who responds from afar, while the priest performs the rest alone. To admit her without just cause does not exceed venial sin; but when a server is lacking, it

is lawful from devotion alone. But if the server has gone away and, after being awaited for a little, has not returned, they commonly permit that the priest continue alone the Mass begun, especially if the oblation has been made (d'Annibale, III, 401).

Since the server offers the sacrifice and represents the Christian people, a catechumen truly cannot serve sacred things.

What it performs through another, the people in itself is not prohibited from doing. Wherefore concerning the Mass called "dialogue," in which those present assume the parts of the responding server, when the Sacred Congregation of Rites was asked, in the response of August 4, 1922, it distinguished the secret parts of the Mass from the others. It in every way refused that the things which are to be said secretly by the priest be read aloud by the people, but in itself it indirectly declared or supposed that it is lawful for the assembly of the faithful jointly to respond to the celebrant. It permitted this matter to be defined by the Ordinary, yet at the same time judging that, because of inconveniences easily about to arise, it is expedient that common practice be preserved. Therefore where inconveniences are absent or can be removed, that which favors a more intimate participation of the people, as such, can be commended (cf. I. M. Hanssens, S.J., *Nouvelle Revue Theologique*, 1921, p. 292; D. L. Beauduin, O.S.B., *Ephemerides liturgicae*, 1921, p. 396; *Questions liturgiques*, 1921, p. 263; and cf. 1922, p. 227; *Periodica*, XII, 154).

The rescript of celebrating without a server, from an audience of His Holiness or through special faculties, is conceded both through the Sacred Congregation of Rites and through the Sacred Congregation of the Sacraments or of Religious. In the rescript of the Sacred Congregation of Rites, it is suitably added that the celebrant should take care to have at least some man or woman who assists at Mass and so represents the people. For every Mass is an act of public worship.

— *Appendix VI belongs to this section.* **IX. On Vesture.** Mass must be said in the prescribed sacred vesture, concerning whose first origin cf. Appendix VI. Canon 811 itself, §1, demands that one about to celebrate Mass wear a becoming garment which reaches to the ankles, besides the prescribed sacred ornaments; §2 commands that the priest abstain from skullcap and ring, unless he is a Cardinal of the Holy Roman Church, a bishop or blessed abbot, or this is permitted to him by apostolic indult.

And so, 1. **On the Prescribed Vestments.** They are: amice and alb, which must be of linen or hemp, but by no means of cotton; the cincture, which, although another material is not reprobated, is more fittingly made of linen or hemp; maniple, stole, chasuble, which cannot be entirely of such material from which common garments are made, but must at least bear silk threads superimposed.

Silk or precious material is to be preferred; nevertheless half-silk or silk-warp material is admitted. Cheap material is entirely excluded, and also glassy texture, lest fragments fall into the corporal and sacred chalice and afterward be consumed by the priest, not without danger to himself (cf. Lehmkuhl, II, 346). The extreme parts of the amice and alb can be adorned with denticulated fabric, representing various figures; and, for more solemn days, an alb is admitted which from the cincture downward is adorned with fringes or netting.

The priest must also be shod; but sandals suffice.

It is mortal sin to sacrifice without any sacred vestment, or to omit at the same time the maniple and stole. The defect of alb or chasuble is so great that scarcely, and not even scarcely, can they be omitted for confecting and administering Viaticum. But grave necessity, such as that of carrying Viaticum, of scandal of the people who on a feast day await Mass, will excuse from wearing the other vestments, even those which are prescribed under grave obligation. A reasonable cause, such as the very fervor of devotion, will excuse a defect which in itself is venial.

It is equally illicit to celebrate without sacred vestments and without blessed vestments, since by blessing they are made sacred. Nevertheless a grave cause, from those just indicated, seems to permit that you put on an alb and chasuble not blessed, since no exterior irreverence appears (cf. Ballerini-Palmieri, IV, 1083, 1084).

The color of the chasuble seems prescribed under venial sin. By accident, from scandal, as if in a great solemnity you use black, or from a grave prescription of the bishop violated, one will be able to sin mortally in this matter. Neither yellow nor blue color, without privilege, is admitted. Rose is permitted only on the third Sunday of Advent and the fourth of Lent. And also on ferias of Advent on which the Mass of the third Sunday is resumed, rose color is lawful. Gold can be used for white, green, and red, but not for violet or black. One chasuble which displays various colors cannot fill the place of several, but use is to be circumscribed by the dominant color. Yet the bishop can permit the use of multicolored chasubles to poor churches until those chasubles are consumed. Varied color of cinctures is not prohibited.

2. **On Prohibited Vesture.** During Mass, the use of the red skullcap is now permitted to Cardinals, the violet to bishops and abbots or prelates nullius by c. 811 itself, §2, collated with c. 325; the use of the black or white skullcap, according to the color of the vestments, to every blessed abbot (c. 811, §2). The same can use the ring. To others the use of a skullcap through the whole Mass is prohibited under grave obligation; under light obligation, if you remove it from the canon to communion. Wherefore, from a sudden and non-permanent cause of infirmity, etc., to celebrate with covered head, except from the canon to communion, will not be illicit even without apostolic indult (cf. Benedict XIV, *De sacrif. missae*, l. 1, c. 9, n. 3). Indeed in a private place, or even in a public place, if the reason is manifest to those present, St. Alphonsus, l. 6, n. 697, judges it probable that this is simply lawful from a reasonable permanent cause. This can also be said after the Code, since the necessity of apostolic indult was introduced by the precept of Urban VIII attached in the Missal, and canons which report the old law integrally are to be estimated from interpretations received among approved authors (c. 6, 2°).

If in some region, as among the Chinese it was, or still is, to cover the head manifests reverence, but to uncover it irreverence, the prohibition is seen to be removed, since the end of the law ceases in the contrary way (cf. St. Alphonsus, VI, 897).

The use of a wig, which Innocent XII gravely prohibited, is expressly forbidden by no canon of the Code. In several regions custom had tempered the law (Lehmkuhl, II, 336, 3). Wherefore, although Benedict XIV permits only false hairs mixed with natural ones, a wig which, as it is made today, modestly imitates nature does not seem certainly excluded by law (cf. Benedict XIV, *Syn.*, XI, 9, 5;

Inst. 34, 96). Yet it will be better to seek license, which the Nuncio or Apostolic Delegate can concede.

— **X. On Rite.** Mass must be celebrated in one's proper rite, so that unleavened or leavened bread must everywhere be used according to one's proper rite, and celebration must be made in the proper ritual language (cc. 816, 819).

Until now the Holy See almost never permitted celebration in another rite except after passage to that rite. Yet very recently, to foster the reconciliation of schismatics, it has begun to admit that missionaries of the Latin rite, as also the monks who are now placed over the Greek College in the City, could adapt themselves to the Oriental rites.

— **XI. On Rubrics.** Mass must be celebrated according to the rubrics of the ritual books, any contrary custom being reprobated; and the priest is commanded to take care not to add other ceremonies or prayers by his own judgment (c. 818).

Theologians distinguish directive rubrics from preceptive rubrics. Most of the latter oblige under sin, unlike the former, which merely give a norm, although violation of them is often, by accident, joined with venial sin. From Trent, sess. 7, c. 13, and the decree of St. Pius V at the front of the Missal, they gather that the rubrics to be observed within Mass, if you except certain ones, as not a few wish, are preceptive, and this, according to the matter, under grave or light obligation. This is confirmed by c. 818. The rubrics before or after Mass can probably be held as directive.

What is to be observed under grave and what under light obligation we are taught first by the common opinion of the doctors. Then we can be helped by this consideration: "1. Whether reverence owed to the Holy Sacrament, either of itself or only from human law, has been injured; 2. whether the defect occurs in the nobler part of the Mass, or in that matter which the Church, because of mystical signification, most highly esteems, or in another; 3. whether the defect is materially notable or in great quantity, or not" (Lehmkuhl, II, 327).

Rubrics can be violated both by omission of an action to be done or of a prayer to be said, and by undue addition, and by change.

— **A. On Omissions.** 1. To omit the prayers while vesting seems venial to some; to others it is not clear that it is sinful (Lehmkuhl, II, 327). But it is by no means fitting to pass them over. But the washing of the hands, even before Mass, is not a properly so-called precept (Suarez, *Sacr.*, 1 p., d. 82, beginning), although not even this is to be omitted.

2. On prayers and ceremonies during Mass: a) it is more easily grave to omit an ordinary than an extraordinary part.

Hence they judge it grave to omit: the *Confiteor* with the other prayers which occur at the beginning of Mass; the epistle with the tract, gradual, etc., which follow, unless the epistle is sung in the Mass; the first Gospel, unless it is sung in the Mass; the first collect with the corresponding secret and postcommunion; the offertory; several prayers which are said from the offertory to the canon; the preface.

On the contrary, they think it light to omit an imposed prayer, or the other commemorations besides the first prayer; the *Gloria*, Creed, Sequence; one or another supernumerary epistle, indeed all

according to Sporer; what occurs specially in the preface, "communicantes"; the last Gospel. Nor does it seem grave in Holy Week to omit the Passion itself and to recite only the part which is to be said in the tone of the Gospel. Yet he who is excused from a long recitation by weakness will have done better by saying another Mass of the Passion of the Lord. Yet some think it grave to omit at the same time so many extraordinary parts that they make a notable quantity (cf. St. Alphonsus, VI, 404; Palmieri, IV, 1105).

b) An omission made in the canon is more easily graver. St. Alphonsus, VI, 405, judges it mortal "to omit any prayer in the canon, or to change its words so that the sense is varied, or to omit some word, which having been removed, the remaining words do not make sense," or to omit the *Pater Noster*, or ten names of saints.

He who omits only the *Agnus Dei* (St. Alphonsus speaks more severely), or something similar, does not seem to Lehmkuhl, II, 330, to sin gravely.

c) As to ceremonies, it will be grave to omit the infusion of water into the wine, the breaking of the host and the commixture, on account of symbolic significations; the purification of the chalice or paten, unless you see that no fragment is present, on account of irreverence. But it is light in itself, unless you have done it from contempt or with scandal, to omit blessings, genuflections, inclinations, one or another cross over the offerings, or the striking of the breast, or the washing of the fingers; or to use water alone in purification. For more, cf. St. Alphonsus.

— **B. On Additions.** 1. Whatever you have added with the intention of introducing a new rite will be mortal. 2. With such intention set aside, although one sins gravely more easily in addition than in omission, to add the *Gloria* or Creed will be light, unless in this way you gravely deform a Mass of Requiem (d'Annibale, III, 404 [47]). 3. From some just cause, or from devotion, though not very laudable, to add one collect St. Alphonsus, l. 6, n. 411, judges not even venial. The same must be said of a short ejaculatory prayer secretly interposed. But it is better to stir up affections by the mind alone.

— **C. On Changes.** 1. To postpone Matins to the sacred rite in private recitation, especially today, where so often the Mass differs from the Office and the psalms generally have no relation to the saint or mystery which is honored, is not demonstrated to be sinful. This some already held before the reform of the psalter effected by Pius X, while others judged it grave; but St. Alphonsus, VI, 347, with the more common and more probable opinion, judged it light, from which venial sin any reasonable cause excused, such as convenience of study or of travel.

2. From a reasonable cause, it is lawful to lower the voice, provided some distinction remains between those things which are to be recited in a high voice and those which are to be recited in a subdued voice. Without reasonable cause, to say by way of a secret what is to be pronounced aloud seems venial (Lehmkuhl, II, 333). Yet to say secretly in such a way that you cannot even hear yourself, in the consecration, will easily be grave, because of the doubt which arises concerning validity (St. Alphonsus, VI, 414, end; Lehmkuhl, l. c.; d'Annibale, III, 253 [9]). To recite aloud what is to be said secretly in itself does not exceed venial sin.

But those things which can be perceived by the ministers alone are not yet judged to have been recited aloud. Grave scandal could be had if the words of consecration or of the canon are heard at

forty paces: thus St. Alphonsus, VI, 416.

— You ask whether or not he can celebrate who, from cause of infirmity or something similar, is impeded from observing all the things prescribed?

Response. He licitly celebrates who is compelled to omit or change only the lighter things, especially in a private place. In a public place, it is necessary that the witnesses be conscious of the impediment. St. Alphonsus, VI, 402, reports these examples from Gobat: if you need a cane; if you must lean on the altar with both arms; if you are unable to elevate the host. Yet for a notable defect of external decorum, permission will have to be sought either from the Nuncio or Apostolic Delegate, or from the Ordinary, if he has the faculty, as some religious Superiors do; or, in a graver matter, from the Holy See, as if you have to sit, or use an artificial hand, or must be sustained by another.

N. B. The art of imitating nature has progressed to such a degree that more things can today be conceded by the Holy See, even ordinations themselves, to those who have been mutilated in some member, especially if the cause was honorable, such as a wound received in a just war.

— 3. On account of a reasonable cause of avoiding confusion, the sound of the little bell can also be omitted in Masses which are celebrated at the same time at secondary altars of a chapel or small church. The sound of the little bell is not prescribed except at the *Sanctus* and during each elevation. A small ringing to announce the consecration is laudably added (Sacred Congregation of Rites, October 25, 1922; *A. A. S.*, XIV, 557).

You ask whether the things which, distracted, you have omitted must be repeated? 1. He who does not remember that he said or did something should not be disturbed, but should go on further. The Missal (*De defectibus*) refers this to the very words of consecration. 2. If something accidental has certainly been omitted, unless he notices the matter morally at once, let him not repeat it; before consecration, however, the mixing of water and the offering, mentally, must be supplied. But he who either certainly, or probably in a positive way, omitted something essential must repeat that absolutely or under condition, according to the case, and continue the rest in order from the point at which he had arrived before the repetition (Missal, *De defectibus*).

But repetitions are to be prohibited to a scrupulous priest, unless he is most certain (cf. the excellent counsels in Lacroix, VI *De Euchar.*, p. 2, n. 190 ff.).

— You ask concerning prayers which local Ordinaries can command. From the most recent variations which have been added in the rubrics of the Missal, we gather these things: 1. no more than two can be prescribed; 2. they are recited in the last place, after the prayers prescribed by the rubrics, before those which the celebrant freely adds; and they are never joined under one conclusion with the prayer of the Mass; 3. one can be said as a third prayer, prescribed indeed, but to be chosen at the discretion of the priest: then it occupies the place of that prayer; 4. imposed prayers must be omitted in all doubles of the first and second class, on greater Sundays, unless the first of them is chosen in place of the prayer at discretion, on privileged ferias, vigils, and octaves, in votive Masses celebrated for a grave matter and a public cause at the same time, or after the manner of solemn Masses, and whenever in Mass, according to the rubrics, four prayers have already been said. Yet collects which, at the command of the Ordinary, are to be said for a grave matter are omitted only on the vigils of the Nativity and Pentecost, on Palm Sunday, and in all doubles of the first class. But those which are expressly ordered as to be said even in doubles of the first class are omitted only on the Nativity and

Epiphany of the Lord, Thursday in the Supper of the Lord, Holy Saturday, Easter Sunday, Ascension of the Lord, Pentecost, the Feast of the Most Holy Trinity, and the Feast of the Most Holy Body of Christ.

Collects for the dead, although in Masses of Requiem admitting three prayers they have place at any time of the year, must besides be omitted in other Masses during Paschal Time, and in all Masses of a double or semidouble office, or in which a commemoration of either is made. But the prayer or collect for the dead always occupies the penultimate place, even if the celebrant adds permitted prayers.

The collect for a grave matter is to be placed before the other.

If both were grave or not grave, "first is placed, according to the order of the Litanies, the collect concerning some mystery or saint which has been prescribed; afterward that which is to be taken from the diverse votive Masses or from the prayers which are had at the end of the Missal, with the order itself of the Missal preserved."

— **What Mass Is to Be Said.** The Mass to be said is that which on that day is permitted or prescribed by the rubrics.

1. To change the quality of the Mass, with scandal or contempt set aside, or "unless frequently, on forbidden days, Masses not agreeing with the day are said," does not exceed venial sin (Lehmkuhl, II, 328; St. Alphonsus, VI, 420).
2. Private votive Masses can be read, from a reasonable cause, on semidouble feasts, on days within common octaves, on Friday after the octave of the Ascension, and in all offices of simple rite not excepted.

The Ember ferias are excepted; Advent from December 17 to 23 inclusive; ferias of Lent from Ash Wednesday, and of Passiontide to Wednesday of Greater Week inclusive; Monday of Rogations; vigils; simple octave days, even if only their commemoration has been made in the Office; days on which the Mass of an impeded Sunday must be resumed. But the Mass for bridegroom and bride, and a solemn votive Mass, are privileged.

Daily votive Masses of the dead can be celebrated without singing on the same days, and besides, in Lent, on the first free day of any week, that is, on which there is made an office of a semidouble feast or of a non-privileged feria.

Provided there does not occur a Sunday or feast of precept, even suppressed, the Commemoration of All the Faithful Departed, a double of the first or second class, even transferred, or some one of the privileged ferias, vigils, or octaves: 1. on the very day on which in a church or public oratory the funeral of the deceased is solemnly carried out, private Masses for the day of death can be said there, yet under this law, that the sacrifice be applied for the deceased himself; and this whether the body is present, or, because of a reasonable cause, absent or already buried; 2. in semipublic oratories which, with a public oratory or church lacking, hold the place of these, the same private Masses can be said on one day at discretion, from death until the burial of the deceased; 3. but the same Masses can be said daily, through the same time, in semipublic oratories which do not hold the place of a church or public oratory, and in strictly private oratories of the house of the deceased, "provided the corpse is

physically present in the house where those oratories are erected"; 4. on the more opportune day after notice of death has been accepted, as on the third, seventh, thirtieth, and anniversary day from the death or burial of the deceased, one Mass for the deceased, sung or even read, is permitted in any church. If the day has been impeded, the Mass, then to be celebrated in chant, can be anticipated or transferred to the nearest non-impeded day; 5. in the public and principal oratory of a burial place, indeed in any chapel of a burial place duly erected or to be erected, Masses can be of Requiem, provided the burial places actually serve burial and are in a cemetery.

N. B. On the first day of any month, except the month of November, outside Advent, Lent, and Paschal Time, on which the Office is made of the feria, in Masses which are not of the dead, the prayer *Fidelium* is said in the penultimate place among all the prayers, "with none of the prayers assigned for the diversity of the time omitted on account of it." The same is done on Monday of any week outside Lent and Paschal Time, provided no vigil occurs, and the Mass of the preceding impeded Sunday is not to be resumed.

The faculties themselves given show that no special cause is required, besides the very application to be made to the deceased, why, on days on which it is lawful, a Mass of Requiem may be substituted for a Mass agreeing with the Office. Indeed, although in itself a priest satisfies his obligation who, having been asked for a Mass in honor of some saint or for the dead, celebrates a Mass conforming to the Office, "it is more advisable that, as far as can be done, satisfaction be made to the intention of the one spending the alms by a Mass of Requiem or votive Mass." Thus the Sacred Congregation of Rites, January 13, 1899 ad IV (*Decr. auth.*, n. 4031).

— You ask what Mass is to be said outside one's own church or house?

With privileges afterward conceded preserved, such as those which belong from the Code to Cardinals (c. 239, 9°) and bishops (c. 349, §1, 1°), by decree of the Sacred Congregation of Rites, July 9, 1895, confirmed December 9, 1895 (*Decr. auth.*, n. 3862), the matter was ordered thus: 1. one celebrating in a church or in a public oratory must say a Mass entirely conforming to the calendar of that church or oratory, even if the Mass was of a Blessed, or proper of regulars, with peculiar rites proper to Orders excluded. And then, on May 22, 1896 (*Decr. auth.*, n. 3910), it was declared that, for the effect of the mentioned decree, the principal chapel of bishops, seminaries, colleges, pious communities, and prisons is to be held as public. But among nuns or religious women who lack their own calendar, the calendar of the diocese prevails, which therefore is to be followed (cf. response of the Sacred Congregation of Rites, July 17, 1896 [*Decr. auth.*, 3927]).

Yet if, in oratories of this kind, an office is carried out of a rite which is inferior to double, it is whole to each celebrant, except on days on which the rubrics or decrees remove this option, to choose the calendar of the place, and therefore to say a votive Mass, etc., or to celebrate his own Mass as festive.

In other oratories, the Mass is to be said which agrees with one's proper Office, even if perhaps it is of a Blessed, concerning whom in itself, outside the Church where it is conceded, commemoration is not to be made.

Yet everywhere, as using a personal privilege by which conformity to the calendar of the place is not impeded, religious to whom this is lawful can invoke their founder or founders in the *Confiteor* after the holy apostles; but all regulars can name their founder in the prayer *A cunctis*, just as it is lawful, for example, for the Friars Preachers everywhere to sacrifice in their own rite.

— **Quality of Celebration.** Mass must be celebrated devoutly, and therefore with due attention and within a fitting space of time.

1. With contempt set aside, full voluntary distraction does not seem to be charged as a mortal sin, although it is graver within the canon than outside the canon, and gravest in the consecration itself: then St. Alphonsus, l. 6, n. 410, though not all, judges it to be mortal.
2. If you complete Mass, even from the shorter ones, within less than a quarter of an hour, you will with difficulty be excused from mortal sin, according to the doctors and St. Alphonsus, l. 6, n. 400, both on account of scandal of exterior irreverence and because of the moral necessity of violating the rubrics in a grave matter.

He who completes the sacred rite notably within half an hour is scarcely excused from venial sin, because by his haste he voluntarily impedes the devotion which so holy an action most greatly befits.

But he who notably exceeds half an hour affects those present with weariness.

N. B. Since it easily happens that in a daily action errors and ways of acting less congruent with the rubrics and edification creep in gradually and without being noticed, it is to be advised that priests once in the year, for example during spiritual exercises, read through the order of Mass and the rites of Mass together with the appended chapter on defects of Mass: all of which are found at the beginning of the Missal, together with additions and variations according to the norm of the Bull of Pius X, *Divino afflatu*, November 1, 1911, and subsequent decrees of the Sacred Congregation of Rites.

§ 2. On a Suitable Time of Celebration

— The principle concerning the day is that Mass can be celebrated on all days which are not excluded by the proper rite of the priest.

Now, in the Latin rite, Mass is prohibited under grave obligation on Friday in Parasceve; and, in itself, on Thursday in the Supper of the Lord and on Holy Saturday, only the Mass is permitted which is joined to the divine office.

On Thursday indeed, so that, in imitation of the Supper of the Lord, clerics may communicate by the hand of the Pastor; on Friday and Saturday, because in the Latin rite both are aliturgical days. In the Ruthenian rite, Mass is celebrated on Friday in Parasceve if it falls on the feast of the Annunciation. In the Armenian rite all celebrate on Holy Saturday.

But the functions of Holy Week can, with the bishop assenting, be carried out in smaller parishes without chant according to the form of the Ritual of Benedict XIII; which form, also from apostolic indult, local Ordinaries can concede to pious communities.

— Besides, on Thursday in the Supper of the Lord, if a feast of precept falls, the bishop must take care that so many Masses be said in churches as suffice for the people to be able to satisfy the precept of hearing the sacred rite. When the obligation of the feast has been suppressed, the reason for celebrating several sacred rites fails; but legitimate custom, which in this liturgical matter is not required to be centenary, since the Code does not treat of liturgical laws, can be more benign and can be observed (cf. Noldin, III, 200, 3).

In parochial churches in which the functions of the Sacred Triduum cannot be done, the pastor, from license of the bishop, can read a private Mass before the solemnities of the cathedral church. The license in itself would have to be sought each year; but not rarely, from custom, celebration is made without express license (Noldin, III, 200, 1). It is also at the judgment of the bishop that in parochial churches a private Mass be celebrated before the solemn one for the sick who cannot be present at the solemn Mass. Cf. Sacred Congregation of Rites, March 27, 1773. Noldin, l. c., again concedes that the necessity of seeking permission can be removed by custom.

If in a church of regulars the accustomed functions are not done, the regular Superior can, in a private oratory, or if such an oratory is lacking, in the church with doors closed, celebrate privately so that he may communicate his own (cf. Lehmkuhl, II, 287, note). And even where the functions are done, one Mass for the sick can likewise be read, from the privilege of the Society of Jesus.

From cc. 239, 4°, and 349, §1, 1°, Cardinals and bishops, unless they must celebrate in the cathedral, can celebrate Mass in the Supper of the Lord or permit another to celebrate one Mass before them.

The Nuncio or Apostolic Delegate can permit one read Mass in public oratories on Thursday in the Supper of the Lord; the Vicar and Prefect Apostolic can do so also on Holy Saturday.

By special indult, a private Mass is conceded to several communities.

On Holy Saturday, nothing is permitted except the Mass joined to the functions of the Sacred Triduum, so that a separated Mass is very rarely conceded.

But the function of Holy Saturday can be omitted, although the functions on Thursday and Friday have been had (Sacred Congregation of Rites, December 9, 1899, n. 4049). Can the function of Holy Saturday alone be celebrated? Nothing has been declared concerning this matter; we think it can probably be done.

— **On the Hour.** On days on which it is lawful to celebrate, Mass cannot be begun earlier than one hour before dawn, or later than one hour after noon (c. 821, §1). This time in itself is ordinary, with the faculty made of following local time, true, mean, or extraordinary, from c. 33. For our sacrifice is in itself morning. If legal time is assumed, legal dawn also will be that which differs from true dawn as the legal hour differs from the true hour.

The rubric of the Missal §15 permitted Mass only from dawn to noon, which was understood in such a way that it could be begun twenty minutes before dawn, but finished twenty minutes after noon.

The tables attached to calendars indicate dawn, which begins almost when the sun has reached about the eighteenth degree below the horizon, and in winter is drawn out longer. In Rome dawn is on January 1 at 5:45; March 8 at 4:45; April 9 at 3:45; May 10 at 2:35; July 29 at 3; September 6 at 4; October 28 at 5. But many regions exist where, through part of the year, dawn does not cease, for example in Belgium from May 26 to July 19; others, where for days, weeks, and months the sun does not set. But the same regions again have a longer, indeed perpetual, night to be endured through the other part of the year.

When there is perpetual day or dawn, it is fitting at least to take care of this, that Mass be distant from the last meal by the space of some hours, for example four. But when there are longer darknesses, from a response of the Holy See it seems that the time at which men are accustomed to rise at daybreak for works can be taken morally for dawn. Indeed it seems to have been conceded that

Roman hours may be assumed. Cf. response of the Sacred Congregation of Rites, November 2, 1534 (n. 614), and February 6, 1858 (*A. S. S.*, III, 602 and VII, p. 400 note, where the vote of Fr. Secchi is had).[1]

That time is to be observed under grave sin, and indeed in such a way that greater anticipation is more strictly forbidden than delay. Grave matter, from the more common opinion, is understood as a space of one hour, so that he would sin gravely who, without just cause, had already completed Mass two hours before dawn, or had begun it after the second hour after noon. We judge this true if it is done habitually, because one acting thus seems, as it were, to usurp a privilege.

From observing the time there excuses: a) necessity, for example, of giving Viaticum to one dying: then already at midnight it is lawful to celebrate; b) a reasonable custom, so that workers and servants, even on a weekday, can hear the sacred rite; c) a reasonable cause of delaying beyond the first hour, as if a traveling priest on a feast day could not celebrate earlier; in such a case they permit a delay of one hour, and Noldin, III, 204, concedes something beyond; or if because of an overly prolonged procession, sermon, or even solemn Mass, it is to be feared that part of the people will lack Mass on a feast day unless a private Mass is joined afterward: then they concede two hours, nor do we see why as much as necessity demands could not be conceded; or if a nuptial Mass is to be celebrated and the spouses had to be awaited, for example because of the civil ceremony; d) dispensation of the Ordinary, whether of places or proper, from whom they judge that even without privilege one hour can be conceded.[2]

Regulars and religious are not rarely given a privilege in this matter. Thus to the Congregation of Purity, it was conceded by Pius VI that everywhere they could celebrate two hours before dawn or after noon.

To missionaries of the Society of Jesus a faculty can be made by the Father General that, whether because of travel or devotion, they may celebrate two hours after midnight. But Alexander VI conceded to the Benedictine Fathers the privilege that, during the whole time of the year, they could celebrate Mass two hours after midnight. St. Alphonsus, VI, 342, thinks that this privilege has been revoked. Ballerini-Palmieri, IV, 1050, think diversely. Moreover, these privileges through communication, which probably still endures in already acquired effects, have been made common to very many regulars and to some congregations.

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[1] The response is "according to the vote of Fr. Secchi." *A. S. S.*, VII, p. 400, says his opinion is reduced to this, that "with the distribution of hours according to the Roman method retained, noon would have to be determined by the passage of the sun on the local meridian."

[2] By force of the faculties of Propaganda Fide, celebration can be permitted, in a case of necessity, from one hour after midnight; but Nuncios or Apostolic Delegates can permit celebration from the third hour after midnight for a reasonable cause.

— "On the night of the Nativity of the Lord only the conventual or parochial Mass can be begun at midnight, but not another, without apostolic indult" (c. 821, §2).

The Sacred Congregation of Rites, June 2, 1883 ad X (n. 3577), denied that this Mass can be begun before midnight. Chant is not required by the canon. Can communion be furnished to those present in that Mass? Before the Code, this was denied several times by the Sacred Congregation of Rites (cf.

Gasparri, *De Euch.*, II, 1901), and from the manner in which in c. 821, in §3, the faculty of communicating the faithful is expressly conceded, which in §2 is passed over in silence, you might say that the same still holds. The Commission for the Interpretation of the Code very recently admitted the more benign opinion, which, relying on the general words of cc. 846, §1 and 867, §4, inculcates this principle agreeable to the liturgy: when the sacrifice of the Mass is permitted, communion of the faithful present is also permitted in itself.

But in other churches, that is, those which are not parochial or conventual, nothing in itself is permitted without indult. By special law, the public parochial Mass itself is sometimes prohibited.

— "Nevertheless in all religious or pious houses having an oratory with the faculty of habitually reserving the Most Holy Eucharist, on the night of the Nativity of the Lord one priest can celebrate three ritual Masses, or, with the things to be observed being observed, only one which may avail for all present also for satisfying the precept, and administer Holy Communion to those asking" (c. 821, §3).

Pious houses are those which are devoted to a pious end of charity or beneficence. Such also, from the mind of the Church, is judged a prison, insofar as in it chaplains give labor to the amendment of offenders.

Observe that the faculty is circumscribed to one priest. But from the authentic declaration of the Holy Office, November 26, 1908, these Masses cannot be celebrated with the doors of the oratory open or in churches which serve the public use of the faithful people. We have interpreted this in such a way that nevertheless it would be lawful, with doors closed, to celebrate these Masses in the church of religious, if not any people whatever, but only selected faithful, were admitted (cf. *Periodica*, IV, 311).

Cardinals from c. 239, §1, 4°, and bishops, even titular ones, who do not have to celebrate in the cathedral church, from c. 349, §1, 7°, can themselves celebrate three Masses on the night of the Nativity of the Lord, or permit another to celebrate the same before them. By force of the faculties of Propaganda Fide, three Masses with distribution of Holy Communion can be permitted in the churches of their territory by Vicars and Prefects Apostolic.

§ 3. On a Suitable Place of Celebration

— *Appendix VII belongs to this section.* Historical matters: cf. Appendix VII.

— Commonly it is not lawful to celebrate except in a church or public oratory, consecrated or blessed according to the norm of law; or in a semipublic oratory, or in a domestic oratory legitimately erected (cf. cc. 822, §1; 1193, 1195, 1196).

1. A church and oratories have this common positive note, that they are places destined and therefore reserved for divine worship, with every domestic use excluded. But a church is destined for the use of all the Christian faithful (c. 1161), while oratories are distinguished from a church by this common negative note, that they are not deputed for the use of the whole people of the faithful (c. 1188, §1).

But a threefold genus of oratories is distinguished: public, which is erected for the convenience of some college, or even of private persons, in such a way that nevertheless all the faithful have a legitimately proven right of approaching it, at least at the time of divine offices; semipublic, which is erected for the convenience of some community or gathering of the faithful coming together there, so that it is not free for each person to approach it; private or domestic, which is erected in private buildings for the convenience only of some family or private person (c. 1188, §§2, 3).

By force of cc. 1188 §2 and 1189, the oratory of a Cardinal and even of a titular bishop is assimilated to a semipublic oratory; but the chapel of a Nuncio or Apostolic Delegate, from faculty n. 52, "by permission of the Supreme Pontiff will be public."

Concerning the distinction of oratories before the Code, cf. *Summa novi iuris*, n. 474.

2. Now, in public oratories, as in churches, all sacred functions can be celebrated in themselves, with a contrary prescription of the rubrics preserved. But it is necessary that beforehand, through consecration or solemn blessing, they have already been dedicated to divine worship (c. 1165, §1; 1191).

Moreover Cardinals, with the Ordinary of the territory or sacred place assenting (cc. 1155, 1157), can consecrate a church, except for the consecration of sacred oils if they lack the episcopal character, from c. 239, n. 20; bishops, from their order itself (c. 1155); abbots or prelates nullius, from c. 323, §2.

Solemnly to bless a church or public oratory belongs to the same persons, and besides to the Ordinary of the territory, or the religious Ordinary, if the sacred place pertains to an exempt religion.

On the contrary, that Mass be celebrated in a semipublic or private oratory, legitimate erection suffices, which, after due knowledge of the place, is made by the authority of the Ordinary.

Yet a semipublic oratory can be blessed with the blessing of a public oratory; and in such an oratory all ecclesiastical functions are permitted, unless the rubrics stand in the way or the Ordinary has excepted some (c. 1193).

On the contrary, domestic oratories cannot be blessed except with the common blessing of places or houses, and in them in itself nothing is permitted except a read Mass, and this one only; and this from apostolic indult, and with the more solemn feasts excluded. Yet for just and reasonable causes, diverse from those because of which the indult was conceded, the Ordinary can permit Mass even on more solemn days by way of an act (c. 1195). But in private chapels of cemeteries, the local Ordinary can permit several Masses, even habitually, nor is an apostolic indult required (cc. 1190, 1191). To infirm priests or priests advanced in age, the Nuncio or Apostolic Delegate can concede a private oratory in which they may celebrate.

And in some extraordinary case it is conceded to the local Ordinary that in a domestic oratory he may permit one Mass, one, therefore not two, for a just and reasonable cause, by way of an act, that is, even several times, but not habitually (c. 1194).

3. Churches and public oratories can be violated, execrated, interdicted. In the two former cases, except for a true necessity of public reason, the faculty of celebrating there ceases until they have been reconciled or aptly restored to divine worship; in the third case, the prohibition of

celebrating, brought by c. 2270, §1, excludes neither every day nor every celebration, but is tempered by the exceptions of c. 2270, §2 and cc. 2271, 2272. That tempered prohibition remains until the interdict has been removed.

Reconciliation of a consecrated church pertains to those who can bless it; and they can delegate another priest for reconciliation as for blessing (cc. 1176, 1156). Yet in a case of grave and urgent necessity the rector himself of the church can reconcile it, the Ordinary being afterward informed (c. 1176, §3). He who reconciles the church can bless the water necessary for this (c. 1177). The same rector, indeed, with his consent at least presumed, any priest, can reconcile a blessed church or public oratory: this is done with common lustral water (cc. 1176, §1; 1177). And so the case in which a church cannot at once be reconciled will be rarer. In what way sacred places are violated, cf. t. II.

The execration of a church or public oratory is not had "unless it has been destroyed, or the greater part of the walls has fallen, or it has been reduced to profane uses by the local Ordinary" (cc. 1170, 1191).

But any Ordinary can reduce a semipublic oratory to profane uses for equitable causes (c. 1192, §3).

Interdict will be treated where there is treatment of ecclesiastical penalties.

4. Mass is besides prohibited in a temple of heretics or schismatics, even if formerly it was duly consecrated or blessed (c. 823, §1).

Concerning this matter, the Council of Epaon (517), c. 33, pronounced these severe words: "Basilicas of heretics, which we hold hated with so great an execration that we do not think their pollution purgable, we disdain to apply to holy uses. Certainly those which they had taken from us by violence we can take back" (Harduin, II, 1050, 1051).

— You ask by what reason an outside priest, or one not ascribed to the church, can or must be admitted to celebrating.

We gather these things from c. 804: 1. that priest in itself must exhibit commendatory letters of his Ordinary, if he is secular; or of his Superior, if he is religious; or of the Sacred Congregation for the Oriental Church, if he is of an oriental rite. But it is necessary that those letters be authentic and still valid: that is, that from the seal attached and from other notes they be shown genuine and still in force. With this condition fulfilled, the canon wills that the priest be admitted, unless meanwhile it is clear that he has committed something for which he must be repelled from the celebration of Mass, as if he has incurred suspension, etc.

And so the legislator judged that this pertains to fraternal intercourse among priests of the Catholic Church; and therefore he gives them a certain right of celebrating in churches, with the things to be observed being observed, and therefore with the tax paid, if any the bishop has defined in favor of a poor church.

But in the canon there is question of accidental celebration, not of lasting and habitual celebration. For no rector of a church is compelled to admit a priest who wishes to celebrate in his church in a stable manner.

2. With the letters lacking, he now ought not to be admitted. Yet a priest who is known to the rector can be admitted; indeed also another, once or twice, provided that then, clothed in ecclesiastical vesture, he receives nothing by any title from the celebration from the church in which he sacrifices, and signs his name, office, and diocese in a special book.
3. Particular norms, with the prescriptions of this canon preserved, given by the local Ordinary are to be observed even by exempt religious, "unless there is question of admitting religious to celebrating in a church of their religion."

Since the prescriptions of this canon must be preserved, the particular norms of the bishop must keep intact the right of admission, as it is defined by that canon; but he will be able to prescribe various other things, for example, that all outsiders sign their names (cf. also Cappello, *De Sacramentis*, I, 738, 739).

— *Appendix VIII belongs to this section.* "Mass must be celebrated upon a consecrated altar" (c. 822, §1).

An altar is distinguished as immovable or fixed, and movable or portable.

Historical matters: cf. Appendix VIII.

Present Discipline. The upper table of an altar, both immovable and movable, consists of a whole stone; this table is consecrated, and must be so large that it can hold the middle of the chalice, besides the paten, or the host and the greater part of the chalice (c. 1198, §3). But an immovable altar consists of the upper table and supports, which are consecrated with it after the manner of one thing. The table must extend to a whole stone and adhere fittingly to the support. "But the support should be stone, or at least the sides or little columns by which the table is sustained should be of stone" (c. 1197, §1, 1°; 1198, §2).

In a movable altar, the consecrated stone, generally of modest size, is without connection with the lower structure; and generally it is merely inserted into a larger table or board. If this structure appears stable and immovable, it is a fixed altar in the broader sense, which can be privileged. If it is judged movable or easily removable, it is a portable altar strictly so called, or a sacred stone.

In a consecrated church, at least one altar, especially the greater one, must be strictly immovable; in a blessed church, all altars can be movable (c. 1197, §2).

All bishops can validly and licitly consecrate portable altars (c. 1199, §2); with oils blessed by a bishop, Cardinals from c. 239, §1, 20°; Vicars and Prefects Apostolic from c. 294, §2; abbots or prelates nullius from c. 323, §2. The same, with Vicars or Prefects Apostolic who lack episcopal character removed, validly consecrate immovable altars, but the Ordinary must assent, with the right of Cardinals in their own title preserved (cc. 1155, 1156, 1199, §2).

An immovable altar loses consecration if the table is separated from the support even for a moment of time; but then the Ordinary or Nuncio or Apostolic Delegate can permit a presbyter to perform the consecration again with the shorter rite and formula.

Both an immovable altar and a sacred stone are execrated by a fracture which, either by quantity or by reason of the place of anointing, is enormous; or by removal of the relics, or by fracture or removal of the cover of the sepulcher containing the relics. Yet except if the bishop himself or his delegate removes the cover to fasten or replace it, or to visit the relics. A light fracture of the cover does not

execrate, and a small crack can be fastened with cement by any priest (c. 1200, §2). Execration in itself requires repair and a new consecration.

With an altar of one's own rite lacking, a consecrated altar of another Catholic rite can be used, but not the antimension of the Greeks (c. 823, §2).[3]

— The privilege of a portable altar permits celebration upon a sacred stone in every decent place, but not at sea, nor, in itself, under the open sky.

Cardinals have this privilege (c. 239, §1, 7°), and bishops (c. 349, §1, 1°), so that they can also permit another Mass while they are present.

It is also conceded to others, especially missionaries, by apostolic indult. Finally the Nuncio or Apostolic Delegate, the local Ordinary, or, in a house of an exempt religion, the major Superior "can concede a license of celebrating outside a church and oratory upon a sacred stone and in a decent place, but never in a bedroom, only for a just and reasonable cause, in some extraordinary case and by way of an act."

That faculty of c. 822, §4 is to be interpreted restrictively: thus the Commission for the Interpretation of the Code responded, October 16, 1919, ad 12 (*A. A. S.*, XI, 1919, 478). Wherefore a case of infirmity of a priest or parent does not suffice, since it is not extraordinary; but if it concurs, for example, with a special anniversary, it will give place to the faculty.

But the Nuncio or Apostolic Delegate (Fac. n. 34) can concede to infirm priests or those advanced in age the indult of a private oratory in which they may celebrate.

Observe that portable altars in public or semipublic oratories are in themselves permitted (cf. c. 1197, §1).

When a great and urgent cause occurs, which, if time is available, will have to be approved by the local Ordinary, it will be lawful to celebrate in a decent place, for example in a public square where silence is obtained, and on a portable altar, by way of an act. For example, if the church has been destroyed; if, on a solemn feast, the people cannot be contained by the church; in camps for the army, but only on feast days.

— In order that one may legitimately celebrate at sea, an apostolic indult or privilege is required, such as Cardinals, Nuncios or Apostolic Delegates, and bishops have (cc. 239, §1, 8° and 349, §1, 1°).

The faculty of celebrating on a ship, whether at sea or on rivers, can also be conceded by a Nuncio or Apostolic Delegate by force of n. 37 of his Faculties. The due precautions are to be used, but the assistance of another priest is no longer customarily mentioned as necessary. The decency of the place must also be guarded.

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[3] The antimension of the Greeks is a corporal, enriched with sacred relics, which, spread out on any table, is for them in place of an altar.

Summary

— I. Application, since it is an act of priestly order, lies in the power of the celebrating priest alone.

Mass can be applied for all, both living and deceased in purgatory. Yet only privately and with scandal removed for an excommunicated person; and, if he is a *vitandus*, for his conversion alone (cc. 809, 2262, §2, 2°).

Application is required to be explicitly or implicitly determined, and made in due time, and therefore to an intention already existing and not yet destroyed.

But it must be made either before the sacrifice or during the sacrifice, at least before the other consecration.

Among several intentions which cannot be combined, the prevailing one is judged to have obtained the Mass.

He who must sacrifice from justice for some intention cannot conceive another intention except with the integrity of the prior application preserved. He who is held by a merely liberal promise is not forbidden to apply fruits at least of diverse character to several. Some think that this can also be done if the Mass is to be applied from mere obedience or statute. Application in a second or third intention can be understood as subsidiary, if the prior one has been superfluous, or insofar as nothing is subtracted from the prior; and it can be a simple prayer made to God that he will also bestow another grace in consideration of the sacrifice. Then it scarcely differs from a special commemoration in the *Memento*.

The efficacy of application was treated above. But is it made infallibly to him for whom it is celebrated? This is clearer if it is made to a disposed living person than if to a deceased person.

II. 1. One about to celebrate must observe the natural fast from midnight, whose dispensation is reserved to the Holy Office. Yet the obligation ceases for him who must complete a sacrifice begun or morally cannot avoid scandal otherwise; or, as several permit, cannot otherwise administer prescribed Viaticum; or if very grave inconveniences occur for a newly ordained priest.

Those who because of the people must repeat Mass or celebrate it at a later hour, and who at the same time cannot observe the law of the Eucharistic fast without grave harm, can now, according to the norms established by the Holy Office, be dispensed so that they may take some food by way of a non-intoxicating drink before Mass.

2. One conscious of mortal sin is forbidden to celebrate unless he has been sacramentally absolved. Except if he is perfectly contrite, has no opportunity of a confessor, and the necessity of celebrating urges. And then he must confess as soon as possible. This last precept does not bind a sacrilegious person, or one who only after consecration remembers the state of sin.
3. Concelebration is forbidden in the Latin Church, except in the ordination of presbyters and the consecration of bishops.
4. It is lawful to sacrifice only once in a day, except for the triple Mass simply conceded to all on the Nativity of the Lord and on the Commemoration of All the Faithful Departed; but on this Commemoration only one Mass can freely and for a stipend be applied by the priest.

On feast days of precept, the local Ordinary can permit two Masses, not three, lest a notable part of the faithful lack Mass. In order that he concede more, there is need of an indult or immemorial custom.

Several also concede bination for refreshing a dying person with Viaticum.

5. Mass must be said completely. And if, one or the other consecration having been performed, a priest fails before communion has been made under both species, another, even one not fasting, if no fasting one is present, must complete the sacrifice, at least within an hour. Nor can Mass be interrupted without a just cause, which before the canon has been begun must be grave; after it has been begun, graver; after the consecration has been made, gravest. The accustomed interruption after the Gospel, on account of a sermon or receiving a procession, is lawful.
6. Mass must be said after pious preparation and with fitting thanksgiving. Although the canticle *Benedicite* with antiphon, the psalm *Laudate*, versicles, and prayers, seems to be imposed by preceptive words, the obligation under sin is not clear.
7. Mass must be said with one minister serving and responding, with a woman excluded, unless, for a just cause, she merely responds; and without an assisting presbyter, unless you have the use of pontificals.

In itself it is lawful, but not always expedient, that the people or assembly respond to the priest. The matter is committed to the Ordinary.

The prescribed vesture, or ankle-length cassock, besides the sacred ornaments, is to be used; and it would be mortal to celebrate without any sacred vesture, or with maniple and stole omitted at the same time. A grave cause, of Viaticum or of the people waiting, can excuse a grave omission and the use of an unblessed vestment; a light cause can excuse a venial omission, for example, of the prescribed color.

8. Mass must be celebrated in one's proper rite and according to the rubrics, omitting, adding, changing nothing. And, with perhaps a few exceptions, rubrics within Mass oblige under sin. Gravity is estimated with attention to the reverence of the sacrament, the part of the Mass and mystical signification, or the quantity itself, as if you omit the *Confiteor* with the prayers at the beginning of Mass. It is lighter to omit an extraordinary part, for example *Gloria*, Creed, than an ordinary part. And he licitly celebrates who because of infirmity is compelled to omit certain lighter things.
9. A distracted person who does not remember that he has said or done something should repeat nothing; nor is an accidental thing omitted to be repeated, unless it can be done morally at once, except for the mixing of water with wine before consecration, and the offering to be supplied mentally.

From the most recent rubrics, no more than two prayers can be commanded by local Ordinaries; they are recited after the prayers prescribed by the rubrics; and, unless they are to be said for a grave matter, they are omitted on feasts of the first and second class. One imposed prayer can now be said as a third prayer at discretion.

10. The Mass to be said is such as is prescribed or permitted by the rubrics on that day. To change the quality of the Mass in itself does not exceed venial sin. With privileges conceded by the

Code to Cardinals and bishops or by later indult to others preserved, in every public oratory and in the principal oratory of bishops or of a pious house, the celebrant must say a Mass conforming to the calendar of that oratory, unless the rite is inferior to double; in which case the option is left to him. In other oratories, he must read Mass according to his own calendar.

11. Mass must be said within a fitting space, that is, of a half hour; and he who completes it within less than a quarter of an hour will with difficulty be excused from mortal sin. Voluntary distraction during Mass does not seem to exceed venial sin.

12. In the Latin Church it can be celebrated on any day except the Sacred Triduum of Greater Week, on which, if particular concessions, especially for Thursday in the Supper of the Lord, are excepted, only the solemn functions are to be done, which on Friday do not permit except the Mass of the Presanctified.

Mass cannot be begun earlier than one hour before dawn, nor later than one after noon. Greater anticipation is more strictly forbidden than delay. He would sin gravely who habitually completed Mass two hours before dawn, or began it after the second hour after noon. The necessity of Viaticum, or of the people who would lack Mass on a feast day, simply excuses. A reasonable cause, for example of travel, or the dispensation of the bishop, indulges one hour before or after the time. And privileges are to be attended to. On the night of the Nativity of the Lord, the conventual or parochial Mass can be begun at midnight; and, in pious houses, one priest can say three Masses. Nor is distribution of communion excluded.

13. The place of celebration is in itself a church or public oratory, consecrated or endowed with public blessing; then a semipublic oratory, which is erected for the convenience of some community or gathering of the faithful coming together there in such a way that it is not free for each one to approach it; finally a domestic oratory, which is erected from an indult of the Holy See.

In a domestic oratory one read Mass alone is in itself permitted, and this with certain more solemn feasts excluded. Yet where Mass is said, there the Most Holy Eucharist can be distributed.

Mass is prohibited in a temple of heretics or schismatics, and in a violated or execrated church or public oratory, until they have been reconciled or restored suitably for worship.

In an extraordinary case the Ordinary can permit, by way of an act, one Mass in a domestic oratory.

An outside priest, furnished with letters of his Ordinary or Superior, must be admitted to celebrating, though not habitually; without these letters, he can be admitted if he is known, or if it is only once and again, provided that the unknown one gain nothing from the church where he sacrifices; and particular norms of the local Ordinary are to be observed even by exempt religious, unless there is question of a religious being admitted in a church of his religion.

14. Mass must be celebrated on a consecrated altar. It is distinguished as immovable or fixed, which strictly consists of an upper stone table and adhering support, which has at least stone columns, and is consecrated after the manner of one thing with the table; immovable in a broad sense, whose consecrated stone is merely inserted into the table, but appears stable by its structure; and movable, which consists of a consecrated stone placed on a movable table or

structure. In consecrated churches, at least one altar, especially the greater one, must be strictly immovable. All bishops validly and licitly consecrate portable altars; with oils blessed by a bishop, Cardinals, abbots and prelates nullius, all these also consecrate immovable altars, and Vicars or Prefects Apostolic.

The privilege of a portable altar permits celebration upon a sacred stone in every decent place, except the sea, for which an indult or another privilege is necessary. The Ordinary can concede license of celebrating in a decent place upon a sacred stone in some extraordinary case and by way of an act, never in a bedroom. And when a great and urgent cause occurs, to be approved by the local Ordinary if time is available, it will be lawful to celebrate by way of an act in a decent place, for example in camps, in a public square where silence is obtained.

Chapter IV: On Sacred Furnishings

§ 1. General Notions

— **Principles.** As is already clear from the things said above, and is known to all, for the due celebration of Mass several things are required, some consecrated, some blessed, some not blessed, which can be called by the general name of sacred furnishings. Moreover, the principle is that consecrations in themselves pertain to bishops, so that without a faculty of special law or apostolic indult they would be performed invalidly by priests; while any priest imparts all blessings, even reserved ones, in themselves validly, although not always licitly, unless the Apostolic See has expressed something else in the reservation (c. 1147). But the sacred oils which are to be used in consecrations must always be consecrated by a bishop.

Now, by privilege of law, even if they lack episcopal character, Cardinals can perform consecrations of churches, altars, and sacred furnishings (c. 239, §1, 20°); abbots and prelates nullius (c. 323, §2). Vicars and Prefects Apostolic can consecrate chalices, patens, and sacred stones within the boundaries of their territory and while their office endures (c. 294, §1). The same are permitted to impart all blessings reserved to a bishop.

The major Superior of an exempt clerical religion can also bless a church of his religion. But the remaining furnishings can besides be blessed by local Ordinaries, even if not bishops, for the churches and oratories of their own territory; by a pastor, for churches and oratories situated in his territory; by the rector of a church for his church; by a priest whom the local Ordinary has delegated, within the limits of the delegation and jurisdiction of the delegating one; by religious Superiors and by priests of the same religion whom he has delegated, for both their own churches and oratories and those of nuns subject to them (c. 1304). Moreover the words "for the territory," "for the church," etc., express a condition of liceity, but not of validity; and once blessed they remain such although they have been transferred to other churches.

— **Execration.** Besides altars, concerning which we have already spoken, sacred furnishings lose their consecration or blessing: 1. because of injuries or changes which take away the former form and render them unsuitable for their proper uses; 2. because of profanation, if they have been used for unbecoming uses or exposed for public sale. And we are admonished that the chalice and paten are not execrated because of the consumption or renewal of the gilding, with the grave obligation preserved of gilding again a chalice and paten whose gilding has been consumed (c. 1305).

— **Repair of a Sacred Vessel, Washing of Corporals, etc.** 1. The Sacred Congregation of Rites itself warns that sacred vessels which must be handed over to an artisan to be gilded or repaired are not to be execrated (cf. response of April 20, 1822, *Decr. auth.*, n. 2620).

2. "Purificators, palls, and corporals used in the sacrifice of Mass are not to be handed over to be washed by laypersons, even religious, unless they have first been washed by a cleric constituted in major orders; but the water of the first washing is to be sent into the sacrarium, or, if this is lacking, into the fire" (c. 1306, §2). These things are to be observed under venial sin, so that an excuse of necessity can be admitted. By force of formulae II and III of the Sacred Congregation

of Propaganda Fide, Vicars and Prefects Apostolic can permit religious sisters assigned to the service of the sacrarium to wash corporals and purificators.

— **Touching of Sacred Vessels, Corporals, etc.** 1. Sacred vessels, whatever they are, while they contain the sacred species, to handle them, not merely to touch them, without necessity, will be mortal irreverence. 2. No prohibition of touch affects merely blessed vessels while they are empty and purified; nor purificators, palls, and corporals after they have been washed. But, even before use, the chalice with paten, and, after they have been used in the sacrifice of Mass, purificators, palls, and corporals, are prohibited from being touched with the bare hand by persons other than clerics or those who have custody of them, that is, sacristans, even lay ones (c. 1306, §1). A just cause excuses the fault of that contact, which is venial.

The greater reverence by which, in certain regions, even lay custodians abstain from touching the chalice is laudable and therefore to be preserved.

To what extent certain things can be used for a profane use is said in tome II.

§ 2. What Things Are Required for the Sacrifice of Mass

— 1. There is required an altar, or certainly a sacred stone, which can hold at least the host with the greater part of the chalice.

Observe that smaller hosts are in themselves to be left during the whole time of the sacrifice upon the same corporal which contains the chalice and the principal host, and, according to the rubrics, are to be placed before or after the chalice. And so he will have acted less rightly who, after the consecration has been performed, immediately hands over to another priest the smaller hosts consecrated by him, so that he may distribute them to the people. For they make one victim and host with the principal host. The following prayers, oblations, and blessings are referred to them no less than to the principal host, nor is the sacrifice whole before the consumption of the blood (cf. Lugo, *Euch.*, d. 20, n. 69). Yet this is not thought mortal, and it can be excused on account of the necessity of expediting the communion of the people.

— 2. There are required three altar cloths, of linen or hemp, whitened and clean. Their blessing seems to be required under venial sin unless a reasonable cause excuses. The upper cloth should flow down on both sides all the way to the ground, morally however, as custom bears, and unless the form or disposition of the altar impedes this.

It would be mortal to celebrate without any cloth, unless the matter is excused by the necessity of Viaticum or of providing Mass to the people on a feast day.

— 3. Under mortal sin there are required a consecrated chalice and paten. Are they consecrated by use itself? The matter is controverted. It can probably be affirmed, since the Sacred Congregation of Rites itself, September 22, 1702 (Gardellini, 3662 ad I, but the response has fallen out of *Decr. auth.*), admitted this. But it is certain that sacred vestments are not blessed after sacred use.

The paten and cup of the chalice must be gold, or silver gilded within, or of tin gilded within. Pius IX also permitted chalices and patens of aluminum mixed with other metals. Those of bronze are not admitted. But if it is gilded within, a chalice of brass or bronze is used without grave fault. Nor is it clear that it is required under grave obligation that a silver chalice be gilded within. Tamburini

permits even a chalice made of gem, since it is very precious, provided it is not fragile and does not absorb the species.

N. B. The use of a spoon for pouring in the water is by no means prohibited. When it is placed in the chalice, it easily harms the gilding by its contact. Wherefore it will be better that, hung from a little chain, it remain over the altar beside the hand towel.

— The pyx and the little lunette of the monstrance must also be gilded. In a poor church, the Sacred Congregation of Rites admitted a little lunette of gilded copper.

The strict necessity of blessing these is denied by several. Yet it is greatly fitting that those things which must contain the Holy Eucharist be endowed with blessing.

— 4. There is required a corporal of linen or hemp, at least as to that part by which it touches the host or chalice; and it must be blessed. But the cross can be marked on the anterior part, where the altar is to be kissed, not in the middle of the corporal.

To celebrate without a corporal, or with a corporal not blessed, is judged grave, unless a grave necessity of celebrating urges.

If others can be had, it will be venial to use a corporal and other paraments less clean, but not very unclean. That you use very unclean ones, necessity is required, for example, of not omitting a prescribed Mass on a feast day.

Yet they are more easily excused from venial sin who, since they do not have care of those things, can obtain others for themselves only with difficulty.

— 5. There is required a purificator, likewise linen, yet not necessarily blessed, since no blessing of it is found in the ritual books. And so, if another is lacking, a clean little cloth will be able to be used, which afterward is no longer to be returned to profane use.

— 6. Under grave sin there is required a Missal containing at least the canon. The gravity of guilt is gathered from the danger of erring. Wherefore he is probably excused who, because of weakness of sight, cannot read, and is morally certain that he will not err. This also seems to be permitted to another in grave necessity. Indeed to him who can judge himself certainly immune from error, it will be lawful from devotion alone to celebrate once or twice without a Missal, when an opportunity of it is not had, with another book used to avoid the wonder of those present.

— 7. There is required an image of Christ crucified, yet not under grave obligation. From the Constitution of Benedict XIV, *Accepimus*, July 17, 1740, "the crucifix must stand out among the candlesticks in such a way that the priest and people can easily and conveniently look upon the same crucifix, and the image should not be so slight and small that it almost escapes the eyes of the priest himself and of the people" (St. Alphonsus, l. 6, n. 393). But if on the altar there has been a statue or painted image of Christ crucified, it is not necessary that another likeness be added. But when the Venerable is exposed, the image of Christ crucified, as usage bears, can be placed or omitted.

— There are required two candles lit from wax, as to the greater part. But to him who is not a bishop it is not lawful in a strictly private Mass, not even in a parochial one, to use more than two candles. Yet they permit this on account of solemnity or feast, and in a conventual Mass, which is not judged strictly private.

Concerning the quality of the candles, priests celebrating who do not have care of the church ought not be solicitous (cf. Sacred Congregation of Rites, March 5, 1879, not reported in *Decr. auth.*; cf. Lehmkuhl, II, 320 note).

To perform sacred things without any light is so grave that only for confecting Viaticum, which is a sacrament of necessity, is it lawful to celebrate thus. To celebrate with only a different light is also reputed grave; yet from a moderately grave cause, when an abundance of candles is lacking, this will be lawful (Cappello, n. 775, is more benign). Indeed Suarez and Gobat permit this once or again from devotion alone. To use only one candle is venial.

In its Third greater formula, n. 5, the Sacred Congregation of Propaganda Fide concedes to Ordinaries of missions the faculty of permitting that Mass be celebrated with one light, using in the case any light whatever, provided wax is lacking; and, in a case of true necessity, where neither olives are found nor another substance for feeding lamps, even without lights.

— Various other utensils are required: cushion, candlesticks, burse, veil, hand towel, but not blessed. If something from these is lacking, clean profane things will be able to supply them and then to be restored to their prior use.

The card of the secrets (*cartagloria*) in the middle of the altar does not seem to be required under sin. The smaller ones, at the side, are placed for convenience alone.

— The use of the antipendium is certainly not prescribed under grave obligation. Nor is the obligation itself clear. And it can be omitted when the altar is marble (St. Alphonsus, l. 6, n. 395), or adorned with gold or precious stone, or made in the manner of a tomb.

— **Number of Ministers.** Observe that in the present discipline, for from c. 61, D. 1, *De consecratione*, two persons responding to the priest were required, so that *Dominus vobiscum* and *Orate pro me* could have truth; by a priest who is inferior to a bishop, only one minister can be used. Two are tolerated in parochial and similar Masses, as in others which are celebrated with solemnity.

> "It is not a small thing to make one Mass; and very happy is he who can worthily celebrate one."
>
> (c. 53, D. 1, *De consecratione*.)

Summary

— I. Things, some consecrated, others blessed, others even not blessed, compose sacred furnishings. Consecrations in themselves require a bishop or privileged priest; blessings in themselves are validly made by priests, although not always licitly.

The sacred oils to be used must always be blessed by a bishop.

2. Sacred furnishings can be blessed for their churches and oratories by Ordinaries, by the pastor, by the rector of the church, by the priest whom the local Ordinary has delegated; for their own churches and those of nuns subject to them, by religious Superiors or by a priest of the same religion delegated by them.
3. Purificators, palls, and corporals to be used in the sacrifice of Mass are regularly first to be washed by a minister in sacred orders. Laypersons who do not have custody of them are

forbidden to touch with the bare hand the same things after use in Mass, or the chalice with paten. These prohibitions oblige under venial sin. It would be mortal to handle any vessels whatever while they contain the sacred species.

II. For the sacrifice of Mass there are required: an altar or sacred stone, which holds the host with the greater part of the chalice; three blessed cloths, and one indeed under mortal obligation; a consecrated chalice and paten; a blessed corporal of linen or hemp; a purificator, which can be supplied by a clean little cloth; a Missal, under grave obligation; an image of Christ crucified, under venial obligation; two lit candles of wax, as to the greater part: one candle or at least a light is altogether necessary under grave obligation; cushion, burse, veil, hand towel. Concerning the obligation under sin of the card of the secrets or of the antipendium, it is not clear.

The pyx and little lunette must be gilded within.

Title II: On the Most Holy Sacrament of the Eucharist

— **Utility.** While we are preparing to speak about the Sacrament of the Most Holy Eucharist, which is deservedly called the sacrament of sacraments, it has seemed good to us first to gather the utility of the argument from its very nobility. It pleases us to set forth this excellence in the words of the Council of Trent, sess. XIII, ch. 3, and of St. Thomas, who throughout his treatises can be called the Doctor, and by his hymns the Singer, of the Most Holy Eucharist.

"This indeed is common to the Most Holy Eucharist with the other sacraments, that it is a symbol of a sacred thing and a visible form of invisible grace; but this excellent and singular thing is found in it, that the other sacraments first have the power of sanctifying when someone uses them, but in the Eucharist the author of sanctity himself is present before use" (Trent).

"This sacrament of itself has power to confer grace" (3 p., q. 79, art. 1, ad 1). "The effect which the passion of Christ made in the world, this sacrament makes in man" (ibid., c.). "Simply speaking, the sacrament of the Eucharist is the chief among the other sacraments. And this appears in three ways: first, from that which is contained in it; for in the sacrament of the Eucharist Christ himself is contained substantially, but in the other sacraments there is contained a certain instrumental power participated from Christ... Secondly, this appears from the order of the sacraments to one another; for all the other sacraments seem to be ordered to this sacrament as to an end. For it is manifest that the sacrament of Order is ordered to the consecration of the Eucharist; but the sacrament of Baptism is ordered to the reception of the Eucharist, in which one is also perfected by Confirmation, so that he may not be afraid to withdraw himself from such a sacrament; by Penance also and Extreme Unction man is prepared for worthily receiving the body of Christ; Matrimony also, at least by its signification, touches this sacrament, inasmuch as it signifies the conjunction of Christ and the Church, whose unity is figured by the sacrament of the Eucharist... Thirdly, this appears from the rite of the sacraments. For nearly all the sacraments are consummated in the Eucharist, as is clear from the fact that the ordained communicate, and also the baptized, if they are adults" (3 p., q. 65, art. 3, c.).

If then we turn directly to considering practical utility, through a prudent manner of counseling the use of the sacrament the confessor will be able greatly to preserve, strengthen, and restore the virtue of the penitent. Therefore, as priest he must draw from the present part of the treatise rules concerning licit administration, and as spiritual physician counsels concerning the use of this sacrament.

— *Appendix IX belongs to this section.* **Historical Matters Concerning the Sacrament of the Most Holy Eucharist.** Cf. Appendix IX.

Chapter I: On the Essence of the Most Holy Eucharist

— **I. Notion of the Sacrament.** The Eucharist is the sacrament of the Body and Blood of Christ, in which, under the species of bread and wine, Christ gives himself for the spiritual refreshment of our soul.

Taken adequately, this sacrament designates at once the species and the body or blood of Christ; when it is considered especially as a sign, the species are placed in recto, since they alone are sensible; but when it is assumed as the cause of grace, then the body of Christ is placed in recto. Or, in other words, the sacrament immediately signifies the body and blood of Christ present under the species, and through the body and blood of Christ proposed for eating and drinking, the reality of the sacrament, that is, grace or the spiritual refreshment of our soul. Hence are explained the locutions by which the sacrament, inadequately, supposes either for the species or for the body of Christ, as when it is said: "Christ is under the sacrament"; or "Let us adore forever the most holy and most divine sacrament." Therefore the body and blood of Christ are the reality and sacrament.

The use or reception of the Eucharist is not properly the sacrament, but only its application, or the condition that the sacrament operate.

— **The Specific and Numerical Unity of the Sacrament.** 1. Although each species, taken separately, indeed any part of it, is an integral and essentially perfect sacrament, and both species differ physically and materially from one another, nevertheless morally and in the ratio of sacrament, the Eucharist is one sacrament in the lowest species: both because it is one sign of a sacred thing, and because it has an order to one end in the lowest species (cf. St. Thomas, 3 p., q. 73, art. 2).

When the body of Christ is considered in recto, there is never more than one sacrament numerically. But the species, considered in recto, strictly and physically speaking, are numerically as many sacraments as there are species or even parts of species; morally, however, that is one sacrament numerically which is proposed and received in the manner of one thing, as being referred to one spiritual refreshment (cf. Lugo, *De SS. Euch.*, d. 2, s. 2). Wherefore hosts on different altars are rightly conceived to be different sacraments; on the contrary, the priest receives one sacrament numerically when he communicates himself under both species, or receives several parts of a divided host or several hosts morally together.

— **II. Remote and Proximate Matter.** 1. In this sacrament remote matter and proximate matter stand in an inverse order: for in the other sacraments remote matter is a permanent thing, but proximate matter, or its use, is transient; while here the remote matter, that is, bread and wine, passes away, but the proximate matter, that is, the species of bread and wine, remains.

2. Moreover the remote matter is bread and wine. This is to be held by faith, and is proved from the institution itself of Christ (cf. Matt. 26; Luke 22). And each matter is so necessary that not only can there never licitly be an intention of consecrating only one of the two matters (c. 817), but one can also deservedly doubt the value of the one consecration performed by him who, with a positive and prevailing will, would not wish in this way at least inchoatively to sacrifice (cf. St. Thomas, 3 p., q. 78, art. 6; Lugo, *Euch.*, d. 19, n. 102).

— **Concerning Bread.** From the constant sense of the Church, only usual and wheaten bread is the remote matter of the Eucharist. But by the moral judgment of men, only that is judged to be such which has been mixed from wheaten flour and natural water, and toasted or baked by fire, and is incorrupt in its species: only this is called bread without addition. Wherefore in canon 815, §1 it is thus prescribed: "The bread must be purely wheaten and recently made, so that there is no danger of corruption."

1. Therefore unsuitable matter is raw wheaten dough, or dough not cooked in the manner of bread but fried or boiled, such as pastry and cake; bread kneaded with artificial waters (distinguish these well from natural water made chemically), or mixed with oil, milk, butter, eggs, sugar, or some other liquid, because it is not usual bread. Thus Laymann, 5, 4, 9, and Cajetan; but better, with Lugo 4, 4 and more recent authors, we hold this matter as doubtful, just as in the Missal, *De defectibus*, III, 2, it is expressly said about bread kneaded with rosewater or another distillation. Likewise unsuitable matter is bread made from rice, oats, millet, peas, beans, almonds, and other legumes and fruits of trees, or even made from barley, because all these, by common use and opinion, are judged to be distinguished in species from wheat; and bread substantially corrupted.

"A slight admixture, however, does not dissolve the species" (St. Thomas, 3 p., q. 74, art. 13, ad 3). Therefore wheat mixed with a small quantity of another grain, or bread containing a small part of oil, butter, milk, or eggs, so that morally it is judged to have been kneaded with water, is valid but in itself illicit matter, and, if it is used, the whole is consecrated.

2. Matter is doubtful which, nevertheless, because of the danger of idolatry, "unless perhaps for completing the sacrifice, and more certain matter cannot be had" (Lehmkuhl, II, 163), it is never lawful to use: a) red hosts or hosts of another color, by which letters are sealed, because by the cinnabar mixed in, the matter is notably adulterated; b) bread made from starch (*amido*): indeed, since it was falsely thought that the fat of flour was held in starch, today it is rather to be held as invalid matter; c) bread made from gluten alone, as is customarily prepared for diabetics, because it is not usual (Cappello, I, n. 270).
3. Some controversies are solved by attending to the varied use of the word. Thus *siligo* is properly winter wheat of the best quality; but there is one who has understood by this name rye (*secale*, *segale*), which is almost certainly unsuitable matter. *Far*, taken for spelt or alica (*spelta*, *epeautre*), seems so suitable that in several places bread from spelt is used without scruple; but if it is taken for bran (*semola*, *crusca*, *gruau*), it will be doubtful matter.

By analysis of the elements themselves, today it can be defined whether some grain belongs to the genus of wheat or not.

The Sacred Congregation admitted bread made in a mission from a white material which is obtained by pressure of the hands, after the crushed grains have been infused for some hours in water, though not to the point of corruption. Yet it recommended that, if it could be done, the grain should not only be crushed but reduced to flour (Response of July 23, 1852, *Coll. P. F.*, n. 1076).

Bread made from the residual material of flour which has been infused in water through the night also seems to be valid. Certain Sisters use this method so that they may obtain truly snow-white matter. Yet there is a danger lest such hosts be made almost from starch alone. Wherefore, until analysis has taught us with certainty concerning the elements of this matter, this manner of acting seems to be disapproved.

4. Valid matter is bread either leavened or unleavened. The reason is that, contrary to what will be said about wine, the action of leaven in bread is minimal, and in customary bread it is used rather for expanding the matter than for changing it. Wherefore today several bakers already make our common bread by another method, without any leaven. The matter, moreover, is established by tradition. But Latin priests must perform sacred things in unleavened bread, and many Orientals in leavened bread (c. 816).
5. Moldy bread, since it is not yet corrupted but is disposed toward corruption, is valid but illicit matter.

Therefore hosts must be recently made. The Sacred Congregation of Rites in the Gandavensis case (*Decr. auth.*, n. 2650 ad I, 1 and 2), disapproved the use of consecrating species made three months before in winter, six months before in summer.

Yet because every danger of corruption can certainly be absent, a grave reason will allow that such matter be used (Lehmkuhl, II, 163).

In itself, however, it is required that they not be more than six weeks old. Cf. below, n. 380.

6. Bread to be consecrated must, in the Latin Church, be of circular and whole form. The Greeks use square bread, and in particles triangular. This precept does not seem grave.

If a larger host is lacking, a smaller one can be used, scandal or public wonder and offense being avoided, and therefore, if it is necessary, the people being warned.

It would be grave irreverence to consecrate a host enormously broken or stained, unless you discover this after the oblation; for then there will be no sin, scandal however being excluded. Ballerini-Palmieri, IV, 830, doubts concerning mortal sin.

— **Concerning Wine.** 1. For validity itself there is required wine from the vine, and therefore wine made chemically does not suffice. This, after the Council of Florence, is taught by c. 815, §2: "The wine must be natural, from the fruit of the vine, and not corrupt." But it does not matter of what color it is. Chemistry, moreover, has not yet been able to compose complete wine. But we shall embrace the necessary essence of wine by describing wine as "a liquid expressed from grapes, not wholly unripe, in such a way that the customary fermentation has at least begun to take place." Complete fermentation is not required. And when the grapes are broken, morally at once a certain fermentation has its beginning.

2. Therefore unsuitable matter is cider and liquid expressed from mulberries or pomegranates, whether it is called wine or not; *agresta* or *omphacium*, that is, juice expressed from wholly unripe grapes (*verjus*), because it is not yet wine; grapes, or the juice contained among grapes, because, fermentation lacking, it is not yet wine; nor wine absorbed in bread, because it is less

drink than food; nor *sapa*, that is, must cooked down to half or a third part, because it now has the ratio of food rather than of drink. *Sapa* is sometimes named *defrutum*, which also signifies sweet wine. Likewise unsuitable is *lora* (*vinello*, *piquette*), that is, water poured over pressed grapes. Yet if the grapes have not been fully pressed, the matter could turn out to be doubtful or certain; and vinegar, because it results from another fermentation. A doubt which occurs after consecration, whether it had been vinegar or wine, can be solved by presumption in favor of wine. Yet if there has been a prudent doubt, St. Alphonsus, 6, 207, q. 1, wishes that certain wine be placed there, which is to be consecrated under condition, so that the integrity of the sacrifice may be established.

Concerning wild grapes, since from the description given it was not established that they were true grapes giving true wine, the Sacred Congregation of Propaganda Fide prudently responded that it was not lawful to use that liquid in the sacrifice of the Mass until it should have been judged otherwise (Response, 1819, *Coll. P. F.*, I, n. 732).

3. Validly but illicitly there is consecrated: must, because it is impure wine containing mixed-in lees which are not consecrable. According to the degree of impurity, the matter will be gravely or lightly illicit; and not a few, against Suarez who answers more severely, excuse the usage of certain places, of expressing the first fruits of grapes in the chalice. Likewise valid but illicit is wine so moderately mixed with other liquids or aromatics that it retains the nature of wine; souring wine, because it remains wine. But if it becomes notably sour, from the rubric it would be mortal. Yet you will be excused if, because you are celebrating in another's church or are a subject, you do not have the ability to change the wine: thus Ballerini-Palmieri, IV, 841, arguing from Benedict XIV himself; frozen wine, because it retains the substance and denomination of wine, and by its nature is drinkable; and if before freezing it had been consecrated, there is no cause why Christ should cease to be under such a species. This is confirmed by the rubric, which merely commands that warm cloths be applied. Some, however, deny this. Nor is it an obstacle that frozen water is unsuitable matter for baptism: for baptism is essentially a certain washing, while the Eucharist can consist without reception. That the wine is not proximately drinkable is accidental, and the impediment can easily be removed. Yet he would sin who consecrated in frozen wine.

— 4. **Concerning the Nature and Confection of Wine Which Can Be Consecrated.** It will greatly help to read the study of R. P. Pauwels, Doctor of Chemistry, in *Periodica de religiosis et missionariis*, VI, Suppl. XVIII, pp. (57)-(71). From it we borrow these few things:

a) **Principles to be Attended To.** Wine is not something one per se (let the same be said about bread), but a mixture, and indeed a liquid one. This mixture is different in different wine, and it varies according to the varied age of the same wine. Yet we know the elements of which every wine naturally consists, and in what maximum and minimum proportion they can be present. Moreover those elements are some strictly so called, others broadly so called. Strictly so called are whatever are dissolved in fermented must and have been vitally elaborated by the vine: thus alcohol, sugar, the coloring substance. Elements broadly so called serve either fermentation or dissolution. These either come from without, thus ferments; or at least are elaborated by no vital action of the vine, thus water. Moreover ferments, since they are not dissolved and are found in the lees, are not even a part of

wine, while water is so necessary to wine that it must be called a part of wine. In pure and sincere wine, all the elements strictly so called must be taken from the vine; nevertheless a very slight quantity taken from elsewhere permits you to say: "a little is counted as nothing." But the extrinsic elements or those broadly so called can have any origin, provided you keep yourself within the maximum and minimum quantity which is present in wine naturally obtained. Nor can you safely artificially mix into wine, even if you take them from the vine, elements strictly so called, such as alcohol, in such a quantity as is found in no wine naturally. Because of the provident assistance of God and the very authority which many attribute to the Church of determining more closely the matter and form of the sacraments, the decrees of the Holy See must be held in the greatest respect, nor can you safely use in consecration wine which the Church through the Holy Office has not first approved, even though scientific reason has demonstrated to you that it is true wine. For it pertains to the Holy Office to decide these questions, with the approval of the Supreme Pontiff.

b) **Applications.** To preserve wine, attending also to the responses of the Holy See, it is permitted that you infuse alcohol into wine, provided however these laws are observed:

That the alcohol be extracted from the fruit of the vine, lest anything from the elements strictly so called be added in a sensible quantity which does not take its origin from the vine;

That, after the alcohol has been added, the total alcoholic strength of that wine not exceed 12%, or, if it concerns sweet wine which naturally contains a proportion greater than 12%, and yet cannot be preserved or transported without danger of corruption, 18%; for natural wines do not contain a greater quantity of alcohol, indeed generally they do not exceed the proportion of 12%;

That the alcohol be added when the tumultuous fermentation begins to subside, that is, before fermentation has ceased, lest something seem to be mixed with wine already completely elaborated.

Since sugar is not taken from the vine, its addition makes matter which is not wholly licit. Wherefore the Holy Office has several times, for example June 25, 1891 and August 5, 1896 (*Coll. P. F.*, nn. 1757 and 1949), disapproved this addition. Yet unless the added quantity has been comparatively grave, or unless other adulterations intervene at the same time, the matter remains valid, and for a proportionate cause can become licit. Wherefore the Sacred Congregation of Propaganda Fide, November 11, 1892, permitted a certain Canadian bishop to use in the celebration of Mass wine expressed from must to which, for about 100 liters, 5 kilograms of sugar had been added.

Therefore the better manner of obtaining sweeter wine will be the condensation of must, or diminution of the quantity of water which is found in the must. This can be done either by partial freezing of the must, or by a cautiously made boiling down of the must. And it will be licit, provided the must thus thickened is subjected to fermentation in the ordinary manner, or by means of the same elements by which ferments convert sugar into alcohol.

A licit manner also will be that of mixing fresh grape with raisin, that is, a grape so dried that almost nothing of water remains in the juice (cf. response of the Holy Office, June 25, 1891, *Coll. P. F.*, n. 1757, by which this method is commended in certain circumstances).

It is also lawful to make wine from raisin to which a quantity of water has been infused which equals the weight of the raisin, indeed exceeds it twofold, since in fresh grape the proportion of water rises to 70%, sometimes to 80%. Thus must is obtained, whose fermentation can be excited or accelerated

either by adding pure ferments or by mixing in some fresh grape. The Holy Office, May 4, 1887 (*Coll. P. F.*, n. 1762), also approved this method, preferring to the addition of alcohol the condensation of the wine itself in an appropriate vessel.

That certain antiseptic substances useful for preserving wine be mixed with it can be tolerated if they have an origin from the vine, or if the rule can be applied: "a little is counted as nothing," and provided that the organoleptic properties of the wine are not adulterated.

Therefore in mission places, where grapes do not ripen, the better method will be to make wine from raisins alone. But if grapes give weak wine, the must can be thickened by adding raisins.

— **Infusion of Water.** The infusion of water into wine is not from necessity of the sacrament, but it is of grave precept, binding under mortal sin: "A very little water must be mixed with the wine to be consecrated" (c. 814).

We say: with the wine to be consecrated, because after the consecration has been performed, the mixing omitted would not be supplied. Before the consecration, however, this precept, although ceremonial, is imposed by the Church itself for the sacrifice (cf. Trent, sess. XXII, cc. 7 and 9), and therefore is so grave that if water is lacking, one must abstain from consecration, even for the Viaticum of the dying, or break off the Mass, if this can be done without scandal (d'Annibale, III, 386).

But the water must be natural. One or another sensible drop suffices, but it is expedient that several be poured in. Nor must there be scrupulosity in the matter: even a mixture of a fifth part does not obstruct the sincerity of the wine. Moreover, to prevent scruples, the quantity of wine should not be taken too small, or a spoon should be used. If by accident too much water has been poured in, more wine is to be added. The mixing must be made in the chalice, at the time and by the rite prescribed, and by a competent minister: in a private Mass, by the priest; in a public one, by the subdeacon.

N. B. The drops, together with the water naturally contained in the wine, are converted into the blood of Christ in the consecration (cf. the dogmatic theologians, or Cappello, I, 296, 297).

— **How Christ Ceases to Be Under the Species of Wine.** The real presence is taken away in two ways: 1. by any cause which corrupts wine: namely by a different fermentation, or by the infusion of a notable quantity of substance which wine does not contain, or which it does not contain in that proportion. And so the infusion of water adulterates the mixture; 2. by the notable infusion of wine itself. For since wine is not a chemical compound of its own molecules, but an aggregate of diverse molecules, whatever disturbs the mixture so that unconsecrated molecules are gathered with the others adulterates it. It is enough to see whether the diffusion is total. Thus, by a simpler and, in our judgment, sufficiently secure way, we return to the doctrine of St. Thomas, 3 p., q. 77, art. 8, too much abandoned by more recent authors. Cf. *N. R. Th.*, p. 29.

— **Conditions Required for the Consecration of Matter.** These conditions are reduced to two: 1. that the matter be morally and sensibly present to the priest; 2. that the matter be certain and individually determined in the intention of the consecrator. The first condition follows from the institution itself, and is indicated by the words *hoc* and *hic*, and is commended by tradition. And the reason of sacrifice itself demands a victim morally present. The second follows from the nature of the action to be placed by a human agent.

— **Required Presence.** 1. It is not necessary that the matter be seen, touched, or struck by the sound of the words, provided it can be seen either in itself or in another, for example, in its whole, in the container, in the vessel. Wherefore the consecration is valid which is done in darkness, or by a blind man. Vain, and not approved, is the custom by which some bring the mouth so near to the matter to be consecrated that they breathe into the chalice or onto the hosts.

2. Wine in a covered chalice or in a closed vessel is present. Hosts present in a basket, in a ciborium, or in a heap are present, although hidden beneath others or covered with the pall, corporal, or another cloth. But concerning hosts inside the Missal there is some doubt.

3. Matter placed behind a wall, or behind the priest, or enclosed in the tabernacle, is morally absent: it cannot be demonstrated by the pronouns *hoc* and *hic*. The consecration of such matter is certainly very doubtful. The same must be said of matter too distant: for example, about a distance of 100 paces, no one doubts this. d'Annibale, III, 388, defines, dubiously, as too much what is between 20 and 50 paces. A smaller quantity of matter requires greater closeness.

4. Matter so tiny that it is imperceptible to the senses cannot be consecrated separately, since it cannot be demonstrated and the sacrament is a sensible sign.

— **Required Determination of Intention.** 1. The consecration is invalid: of a third part of a host, unless the part is determined; of an indeterminate four or five hosts out of twenty; of many hosts, those which God has chosen, or which an absent Titius has designated, or those parts which after the species have been broken will remain united; for here and now the matter is not defined.

2. A host placed, unknown to the priest, apart from the heap and even upon the corporal, is not consecrated; for the priest's will does not extend to what is unknown. It is otherwise if the priest had a sufficiently present intention of consecrating whatever is on the corporal. But if, without knowing it, he holds two large hosts, he consecrates both; for he is reasonably thought to intend to consecrate what he holds in his hands; especially since otherwise he would be uncertain which was consecrated. Drops externally adhering to the chalice are not consecrated, since they are not under the intention of the consecrator; and it would be a grave sin to intend to consecrate them.

Concerning small drops internally adhering to the chalice, and small fragments which, before the consecration, are detached in the pyx, there are three opinions, with a special intention excluded: 1. they are consecrated; 2. they are not consecrated; 3. only the drops nearer the bottom of the chalice and the particles nearest to the mass of the breads are consecrated, because only these are morally one with the principal mass. To the extent this depends on the interpretation of the priest's reasonable intention, it is expedient to elicit explicitly what one wishes to do. The first opinion avoids the danger lest unconsecrated drops remain in the chalice; and Lehmkuhl, II, 166, teaches that this should be procured if a priest is binating or trinating, lest before the last Mass he consume something unconsecrated. But he who excludes the drops from consecration avoids the danger lest, by wiping, he handle consecrated matter irreverently. St. Alphonsus, *Examen ordinand.*, n. 99, is for circumscribing the intention to the drops nearer the bottom of the chalice. But unless something further defines what drops are to be consecrated, he seems to leave ambiguity. Nor does it much help

to say: let the intention be made according to the mind of the Church, since it is uncertain whether and what the Church has defined.

In conclusion: the custom, which however is not shown to bind under sin, is to be imitated, of wiping away drops before consecration; except that, if perhaps a binating priest intends to consecrate all, the intention should be elicited of consecrating only drops near the mass, including those which are doubtfully near.

3. Hosts consecrated in a greater number than the priest thought are validly consecrated: for a speculative error does not take away the practical and absolute intention of consecrating the matter present. Therefore two or three small hosts added by the server without the priest's knowledge to the heap placed on the corporal are consecrated. Hosts which the priest brought to be consecrated, or noticed had been brought, or knew before the celebration had been brought, are consecrated, even if during the consecration, no longer remembering them, he did not uncover the pyx. For the prior intention extends the actual intention, or remains actual as determined. Cf. Palmieri, IV, 859.

— What if the hosts have remained outside the corporal? The more recent authors theoretically do not think validity affected by forgetfulness of this circumstance; and deservedly so: for from the institution or the necessity of sacrifice, there is no reason why matter outside the corporal, provided it is determinate and present, could not be consecrated. Nor does the Church seem to have made such matter invalid by any law, since even the rubric warns only that the intention of consecrating certain hosts outside the corporal must not be had. The rule, moreover, is that an intention is not revoked by the inadvertent omission or lack of some non-substantial but prescribed condition; the Church, however, reproves a consecration which would knowingly be done with some undue circumstance.

Nevertheless, moved by St. Alphonsus, 6, n. 217, most concede that the consecration is practically doubtful. But the holy Doctor is very brief, and he thought he was following the common opinion; while today it is clear that Suarez, Benedict XIV, and the common opinion treated a different hypothesis, namely of a pyx remaining outside the altar or sacred stone.

But if, as happens today, the sacred stone does not contain the whole table of the altar, one would have to make the same response about a consecration performed outside the altar and one performed only outside the corporal. And an absolute assertion, disregarding the inculpable forgetfulness of the priest, conflicts with the opinion of many, even if perhaps it is more rightly founded.

Lehmkuhl, II, 168, reconciles the opinions in this way: that if a priest, who thought of the hosts before Mass, did not think of them during Mass, he is to be thought to have had this intention: I wish, in due manner, to take up these hosts for consecration; that is, I wish to place them on the corporal, to examine them, and to join them to the principal matter of the sacrifice. Therefore, the first action being omitted by forgetfulness, the intention concerning the second is doubtful. This seems to be the case of Suarez, *De Euch.*, d. 43, s. 6.

But if the priest, during Mass, at the consecration, or at least at the offertory, noticing the hosts, simply comprehended them in the intention of consecrating, although he erroneously thought they were on the corporal, there seems to be no doubt about the validity of the consecration.

This opinion seems safe to us. And one who wishes to remove for himself a cause of scruple can once for all adapt his intention to it.

— You will ask whether it is useful or not to have the counsel, which many give, of making once and for all an intention which will evacuate doubts about consecration: for example, of not consecrating whatever is outside the corporal, but of consecrating whatever is placed on the corporal (cf. Noldin, *De Sacramentis*, n. 115, note).

But this kind of counsel can harm as much as profit. First observe that this intention is not, according to general principles, of perpetual efficacy, but is valid as long as, in the priestly action, from at least confused memory, it effects something, or is in some way virtual. Hence the very permanence or force of the intention can easily be doubted. Then, after some time, many easily begin to doubt what intention they formed. But even supposing its efficacy, it can be very inconvenient that because of it hosts not be consecrated which were to be distributed to many; and again someone might grieve that there had been consecrated, because by chance they were placed on the corporal, for example both hosts which had been reserved for the second and third Mass on the Nativity of the Lord.

Wherefore, if it pleases one to make intentions of this kind, let them be very few; let them be such as can easily be held in mind, and as agree with the nature of things; and finally let a means be used of renewing the memory of the intention made, for example by a writing inserted in the catalog of Masses to be celebrated, so that it is reread often enough. The intention could be to consecrate whatever is brought, or has been brought, to the altar for the purpose of consecration.

— Hosts doubtfully consecrated can never be proposed for adoration or distributed to the people, because of the danger of material idolatry; that is, to explain this reason, which they are accustomed to borrow one from another without declaration, because it is wrong simply to propose as to be adored or received as the body of Christ that which you positively suspect to be nothing but bread.

Nor can they be consecrated again separately: for that would be to begin a new sacrifice conditionally and to leave it incomplete. But in another Mass they can be conditionally joined to the principal matter which is absolutely consecrated, or consumed after the blood has been consumed, before the purification. St. Alphonsus indeed would prefer that they be consumed after the purification before the ablution, because the little drops of blood which are consumed in the purification are certainly consecrated; but, as is now sufficiently established, by the mixing of wine they have been adulterated. Cf. n. 373.

Fr. Noldin, *De sacramentis*, n. 118, Notes, 1, alone, unless we are mistaken, permits that over particles doubtfully consecrated the words of consecration be repeated conditionally, "because," as he says, "in this way a new sacrifice is not begun," but the new consecration, even if it is efficacious, would make one sacrifice morally with the principal consecrated matter. He thinks this can be gathered from the rubric *De defectibus missae*, III, nn. 6, 7; and IV, n. 5. In the former place, if the consecrated host has disappeared, so that it is no longer found, we are commanded to consecrate another: which, unless between the consecration and communion you admit a moral union of each consecration, would be to begin another sacrifice and not to perfect it. But this rubric was written, as is said in n. 6, lest the sacrament remain imperfect, inasmuch as, as we think, some at that time were of the opinion either that communion under each species pertained to the essence of the sacrifice, or at least that it was

prescribed by divine law for its consummation. Hence from the prescribed new consecration of the principal matter, it is by no means lawful to infer that the consecration of matter which will in no way be useful for the perfection of the sacrifice can be conditionally renewed. In title IV of the rubrics, n. 5, this one thing is also manifestly intended, namely that by the placing of one matter or both the true sacrifice be perfected. Wherefore, since so many doctors who wrote about this matter passed over in silence so easy a remedy for the inconveniences of a frustrated consecration, although they themselves were not ignorant of the rubric, this opinion of Fr. Noldin cannot be called probable. And deservedly Fr. Bock, S.J., in the periodical *Bogoslovski Vesnik*, Ljubljana (Laibach), 1922, wonders that this opinion is still preserved in the latest edition of Fr. Noldin.

— **Conditions of Licit Consecration.** 1. Let a greater quantity not be consecrated than can be consumed at an opportune time. Canon 1272 prescribes that consecrated hosts "be both fresh and frequently renewed, the old ones having been duly consumed, so that there be no danger of corruption, the instructions which the local Ordinary has given on this matter being carefully observed." From the *Caeremoniale episcoporum*, the species are said to be renewed every week; yet renewal after fifteen days seems to suffice. It would be grave to defer it so that there would be danger of corruption, or, even with this danger excluded, beyond two months, because from the very responses of the Holy See such a renewal can no longer be called frequent; but frequent renewal is imposed under grave precept.

But the prescriptions of the local Ordinary are to be observed by all, even exempt religious.

N. B. Writers, however, are accustomed to press the danger of corruption beyond what is likely to be true. We know a professor of chemistry who, for the sake of experiment, in an ordinary room, yet not a humid one, negligently left two hosts in paper, which after two years he found wholly intact.

2. Let there be no departure from the rite of the Church. The matter to be consecrated must, under grave obligation, be on the corporal; which corporal must also, under grave obligation, be placed on an altar or sacred stone, which nevertheless it usually exceeds. Besides, by moral diligence the priest must take care that the host of the sacrifice be entirely, and the chalice as to its greater part, upon the sacred stone. Yet we do not think this to be grave, because what is on the corporal extended over the stone is already judged morally to be upon the stone (cf. also Cappello, I, n. 307).

Moreover it belongs to the rector or prefect of the church so to place the stone in the middle of the altar that it suffices for the celebrant to arrange the matter to be consecrated on the corporal in the common manner. Most require that at the moment of consecration the small hosts themselves be above the sacred stone. Wherefore, where the stone is narrow, it will be better, by removing the chalice from the middle, to give place momentarily to the small hosts. Yet this does not seem to be strictly prescribed. Cf. Gennari, *Consult. liturg.*, 42.

3. The pyx, by a light precept, must be covered, except when its oblation and consecration take place; but without a veil, at least after the oblation.
4. Let the celebrant take care that the hosts to be consecrated for the people be brought before the oblation. Yet this will be mentally supplied if they are present later. That they be admitted after the canon has begun, an absolutely grave cause is required, as if several would remain

without Communion, or would be forced to wait long, which will have to be weighed relatively.

If one person must wait long, some counsel that rather a part of his larger host be handed over by the priest. St. Alphonsus, l. 6, n. 216, neither approves nor disapproves this; Ballerini-Palmieri, IV, 860, permit that even for this person one small host be admitted after the canon has begun, and Cappello, I, n. 307, 3, prefers this manner.

— **V. Concerning the Form of the Eucharist.** The form of the Eucharist is the words by which Christ instituted the Most Holy Sacrament, and which the priest celebrating repeats in the person of Christ.

The bread is consecrated by the words: "For this is my body," where all the words are essential, except "for," which it will be light to omit.

Moreover the wine is consecrated by the words: "For this is the chalice of my blood, of the new and eternal testament (the mystery of faith), which shall be poured out for you and for many unto the remission of sins." In this form, certainly not essential are the word "for," which it will be venial to omit, and the words "the mystery of faith," since these for a long time, as the probable conjecture has it, were not even pronounced by the priest, but were a warning made to the bystanders about the consecration which was being performed. Thomists think certain words by which the propitiatory end is indicated are essential, such as "which shall be poured out for you unto the remission of sins." This is probable; yet the more common opinion says that only these are essential: "This is the chalice of my blood," or "This is my blood," although the rest cannot be omitted without grave sin. According to the opinion of Scotus, even the words "Who the day before..." would be essential, so that "my body" would be referred clearly enough to Christ. This opinion is commonly rejected, because "the priest, the minister of Christ, pronouncing over suitable matter the words of Christ with due intention, already sufficiently assumes the person of Christ, so that Christ is understood to say through him: this is my body" (Palmieri, IV, 866). La Taille, *Myst. Fid.*, pp. 455, 459, thinks otherwise.

Moreover each form must be pronounced formally and significatively, or assertively, that is, by intending to affirm what the words sound, and not to recite them merely historically as spoken by another. The little word *hic* cannot be taken as an adverb. But these things ought not make the anxious priest troubled. For the priest who wishes to act rightly intends to pronounce the words as is done by priests in the Church of God: which plainly suffices.

2. Valid but illicit forms: "This food, this drink, this thing, what is contained under these species is my body, or my blood"; "This chalice is the new testament in my blood," as St. Luke has it; "This is my body, taken from the Virgin," and other things which do not change the sense; the Latin forms *Hoc est meum corpus*, *hic meus est sanguis*, or *hoc est sanguis meus*.
3. *Hic* placed masculine for the neuter is valid. Nor is the consecration rendered doubtful because from negligent pronunciation you have corrupted *est* into *es*, *corpus* into *copus*, *meum* into *meu*, *calix* into *calis*, *sanguinis* into *sanguis*. Lehmkuhl, II, 170, from St. Alphonsus, 6, 224; and the carelessness is venial.
4. Invalid forms: "This body is mine; this blood is mine," if body and blood pertain to the subject, since then already before the consecration the presence of the body or blood is affirmed, which

is false; but the same form is valid by punctuating thus: "this, is my body." "This bread is converted into my body": for the permanent term of conversion is not indicated; or "here my body is placed," for conversion is not signified; "This is the body of Christ": for the priest is not sufficiently proved to speak in the name of Christ.

5. Doubtful forms: "Behold my body," because what is my body appears less clearly, and conversion is not signified; "This may be my body," or "let this be my body," for it can be taken as a wish; "That is my body, that is my blood," since *that* refers to matter situated at a distance; "This is my body," with the demonstrative *istud*, because it is not established that it is referred to nearby matter. "This is my flesh," and the very form of St. Luke above, n. 2, are held as doubtful by some.
6. On account of an error committed in the words which follow "of my blood," the form ought not be repeated under condition; nevertheless it can be, on account of the opinion of the Thomists. But if the priest has died after the half-pronounced form of the blood, the priest who continues the Mass must repeat the whole form over the same chalice, from the rubric.

For what the dying priest said is not sufficiently established.

If the error is noticed during the consecration itself, the words "who the day before" are not to be repeated. But if the form is to be repeated after the celebrant has already progressed further, the rubric requires that it be resumed from the words: "Who the day before," so that the consecration may be better introduced.

Regularly, however, from the rubric itself, the mere fact that you do not remember that you recited the form, or that a doubt occurs in this matter, is not a reason for repeating anything: such a doubt is regularly to be despised as inept.

— **The Permanence of Christ.** Under the species, even divided, and under any smallest part of them, Christ remains until so great a change has been made that the substance of bread and wine, if it were present, would be corrupted. Some, however, think that Christ does not remain under a part so tiny that it would escape the natural keenness of the human eye, because it would not be sensible (cf. Palmieri, IV, 871 and 878, 2). And already for other causes, for example, because of the difficulty of distinguishing the smallest consecrated particles from other fragments, the Church does not wish the smallest fragments to be venerated with adoration and honor.

Summary

— **I. Concerning the Sacrament.** The Most Holy Eucharist is the sacrament of the Body and Blood of Christ, in which, under the species of bread and wine, Christ gives himself for our spiritual refreshment.

Taken adequately, it designates the species and the body or blood of Christ; as sign, only the species in recto; as cause of grace, the body or blood of Christ.

It immediately signifies the body of Christ present under the species; and, through the body of Christ proposed for eating, grace or the spiritual refreshment of the soul. The use of the sacrament is its application, but not the sacrament.

It is one sacrament in the lowest species; one numerically, if you consider Christ in recto; the species considered in recto are physically as many sacraments as there are distinct parts, but morally one, if they are considered joined in the manner of one thing.

II. Concerning Matter. The remote matter is bread and wine, which pass away; the proximate matter is the species of bread and wine, which remain. Each matter must be present together, so that you deservedly doubt the value of the consecration of one who, by consecrating one matter, with a prevailing will, would not wish at least to inchoate the sacrifice. Bread is required that is usual and wheaten. But it is prescribed that it be purely wheaten and recently made. It is valid either leavened or unleavened; but the proper rite is to be observed. Wine must be from the vine, and can be described as "a liquid expressed from grapes, not wholly unripe, in such a way that the customary fermentation has at least begun to take place." Must is consecrated illicitly, since it contains lees not consecrable; likewise souring wine, unless the celebrant in another's church does not have the ability to change the wine; likewise frozen wine, which must be liquefied by applying warm cloths.

Both bread and wine are not something one per se, but are mixtures. Therefore, the elements of which they consist being preserved, and that proportion being preserved which is found in some true bread or true wine, the substance is to be judged to remain. But very great attention must be paid to the Roman responses.

A little water must be infused into the wine. One or another sensible drop suffices; and a mixture of a fifth part does not obstruct validity. Those drops are consecrated together with the wine.

When the bread is corrupted, or the wine is corrupted, either by a different fermentation or by an excessive quantity of water, indeed of unconsecrated wine, Christ ceases to be present.

The matter must be present, and therefore cannot be behind the priest, or distant beyond twenty paces, so that with certain truth it can be said: "This"; "this chalice."

The matter itself must be certain and determined in the intention of the consecrator. The priest consecrates whatever he holds before his hands, or what is morally one with the heap which he intends to consecrate; and efficacious would be, at least as long as it is preserved sufficiently present in the mind, his intention always to consecrate whatever is upon the corporal. Little drops externally adhering to the chalice are not consecrated; concerning others there are controversies. It seems better that you intend to consecrate only those near the mass, including those which are doubtfully near. That the pyx remained closed in no way impedes the consecration.

Hosts which within the Mass itself have been formally comprehended in the intention of the celebrant are validly consecrated, although by chance they have remained outside the corporal. On the contrary, he who merely thought of them before Mass had this intention: of placing the hosts on the corporal and then consecrating them. The prior action being omitted, the latter now becomes doubtful. Hosts doubtfully consecrated can never be distributed or consecrated separately; but either they are to be consumed after the blood has been consumed, before the purification, or they are to be conditionally joined to matter certainly to be consecrated.

Hosts should have been made at least within a month or six weeks; and the sacred species should be renewed at least within fifteen days. It would be grave to defer renewal with danger of corruption, or beyond two months.

The matter to be consecrated must, under grave obligation, be on the corporal; in itself it is to be placed before the oblation. That it be admitted after the canon has begun, the oblation being mentally supplied, an absolutely grave cause seems to be required, as if several would have to wait long for Communion.

Because of the perhaps doubtful presence of Christ, and the difficulty of discerning them, the Church does not wish the smallest fragments to be venerated with adoration and honor.

III. Concerning the Form. The bread is consecrated by the words: "For this is my body": all are essential, except "for," which it would be light to omit. The wine is consecrated by the words: "For this is the chalice of my blood, of the new and eternal Testament (the mystery of faith), which shall be poured out for you and for many unto the remission of sins." Certainly not essential are: "for" and "the mystery of faith"; other words cannot be omitted without grave sin, even if the more common opinion thinks these words alone are required for validity: "This is my blood" or "the chalice of my blood." Each form must be pronounced not merely historically but formally and significatively or assertively.

Chapter II: On the Minister of Holy Communion

I. - General Rules

— 1. "The ordinary minister of Holy Communion is the priest alone" (c. 845, §1). For in itself it belongs to him who consecrates to dispense the consecrated thing. The priest is called the ordinary minister, insofar as the power of order received by him directly regards this ministration of the Most Holy Eucharist.

2. Yet licit administration requires some pastoral power, or jurisdiction, either proper or delegated, because to feed the sheep, which is done most especially through the sacraments, is proper to the pastor.

From the office itself, this dispensation belongs to Ordinaries, to Superiors of exempt clerical religions, and to those who are pastors or quasi-pastors; then to the confessor of nuns, or to him who takes his place, and to the chaplain of another lay religion (c. 514).

Delegation, however, is conceded by the immediate or mediate pastor, or can be conferred by the law itself. Indeed, because administration is always valid, the law grants the faculty also to him who reasonably presumes it.

3. By the law itself of the Code, the faculty is granted to every rector of a church, as we indirectly gather from c. 846, §2, which recognizes that rector as the author of the license of dispensing; then to every priest within Mass; indeed, when he is at the altar clothed with sacred ornaments, before and after his Mass, if this is private. Yet the prohibition of the local Ordinary is reserved, who for just causes and in particular cases can forbid the ministration in a private oratory (cc. 846, §1 and 869).

Therefore a bishop or local Ordinary could not by a general decree forbid Communion in private oratories; but just causes must be present for prohibiting Communion either in such an oratory, or on such a day, because of extraordinary circumstances.

The liturgical reason itself persuades that the Communion of the faithful can be joined with every celebration of Mass. About the Mass alone which, from the Code, can be sung in parish and collegiate churches on the night of the Nativity of the Lord, there used to be held a probable exception, which now can safely be denied, after the declaration given to the bishop of Tuguegarao, which appeared in *Cultura social*, Manila, April 1920, p. 225.

4. The same law of the Code grants the faculty of distributing Communion even outside Mass to a visiting priest, from the license, either formal or at least presumed, of the rector of the church. I say to a visiting priest: for priests attached to the church are judged to have this habitual license.

Already by the decree of November 28, 1912, of the Sacred Congregation of the Council (*Per.*, VII, 70), by which Pius X removed the prohibition of ministering Holy Communion on Easter day in non-parochial churches, especially regular ones, and while the law of the Code is in force, not even during

the paschal time can the Ordinary or pastor authoritatively inhibit Communion joined with Masses. Yet because nothing compels a priest to dispense Communion, Christian charity will sometimes counsel him to obey the pastor who desires to communicate the sheep by his own hand.

5. What in itself is lawful to every rector of a church is confirmed, in the churches of regulars, by pontifical privileges which, after the decree of Pius X just alleged, hold for every day of the year.

6. The custom by which, for example in the City, Communion on Thursday in the Supper of the Lord is reserved to parochial churches, since it is opposed to cc. 867 and 869, cannot be preserved unless it has been centenary, and the local Ordinary has judged that it cannot prudently be removed. Yet its observance is inculcated each year by His Eminence the Cardinal Vicar, in the letters concerning Lent.

— The "extraordinary minister is the deacon, with the license of the local Ordinary or of the pastor, to be conceded for a grave cause, which in a case of necessity is legitimately presumed" (c. 845, §2). Therefore not every priest, but only he who enjoys the ordinary power of dispensing the Eucharist (cf. n. 385, 2), can give this license to a deacon. In a church, therefore, that is non-parochial and merely secular, the license of the rector does not suffice. But if the pastor cannot conveniently be approached, his license can be presumed, provided a sufficiently urgent cause is added. A grave cause, however, must be judged similar to that which suffices for baptism to be conferred by a deacon (cf. n. 238). This will be, for example, if otherwise several faithful must wait long for the occasion of Communion: which word "long," with attention to the quality of the faithful and the very hour at which they ask, is to be weighed relatively. Augustine, on this canon, too severely requires the necessity of Viaticum or of paschal Communion in order that the license be presumed (cf. Cappello, I, 330).

A deacon unduly ministering Holy Communion, or a pastor unduly committing the matter to a deacon, in itself sins gravely, since they violate in a notable matter the rules of the hierarchy of order. Yet the deacon does not thereby become irregular, because he is the extraordinary minister of the Most Holy Eucharist, so that he does not usurp an order not his own (cf. Cappello, I, n. 332).

In a case of extreme necessity, or of a public reason, as if Catholics, especially priests, unjustly detained in prison and liable to graver penalties, must be refreshed by the sacred banquet, anyone, even a layperson, will be able, scandal being excluded, to communicate both others and himself (cf. response of the Sacred Congregation of Propaganda Fide, July 21, 1841, *Coll.*, n. 928). Then this prevails: the sacraments are for men. But, if it can be done, those laypersons or inferior clerics will have to conduct themselves according to the instructions of the Ordinary or pastor.

Laypersons or inferior clerics unduly ministering the Holy Eucharist become irregular, from c. 985, 7.

Where another priest is lacking, a priest will more easily be able, the wonder of the faithful being removed, to communicate himself, when he cannot perform sacred things, even from devotion alone. And rather than commit this to a deacon, let him communicate himself. Nor do we think this to be grave, if it has been done unduly.

II. - Carrying Communion to the Sick

— Concerning Communion to be carried to the sick, the Code has these things.

1. It is to be carried publicly, unless a just and reasonable cause suggests otherwise (c. 847).
2. The public carrying to the sick pertains, as a right and office, to the pastor of the territory, so that others cannot do this except in a case of necessity or with the license, at least presumed, of the pastor or Ordinary (c. 848).
3. Private carrying is permitted to any priest, with the permission, at least presumed, not now of the pastor alone, but of some priest to whom the custody of the Most Holy Eucharist has been committed. But the norms prescribed by the Holy See concerning the rite then to be used must be observed accurately.
4. Yet the carrying of Holy Communion in the manner of Viaticum is reserved to the pastor of the territory in which the sick person lies, unless it concerns a bishop, to whom the canons, according to the order of precedence, must minister the sacraments of the sick (c. 397, 3°); or a professed religious, novice, or another person who, because of service, education, hospitality, or infirm health, dwells day and night in the house of a clerical religion: for then it is the right and office of the religious Superiors (c. 514, §1); or a house of nuns, even where solemn vows have been suppressed: for then it pertains to the ordinary confessor, or to him who takes his place (c. 514, §2); or even another lay religion, for which the Ordinary has substituted a chaplain for the pastor (c. 514, §3).

But it is clear that the same ministration is lawful to another priest in a case of necessity, or with the license, at least presumed, of him whose right and office it is.

Concerning these norms, these few things must be observed:

a) A reasonable cause for carrying the Eucharist secretly to a sick person can be varied and from a diverse source: danger of public irreverence, in places of non-Catholics or in cities where not a few are contemners of religion; opposition of the family of the sick person, which fears, for example, lest, if it becomes known that there is a sick person in the house of business, it may be abandoned by customers or less frequented; the timidity of the sick person himself, and much more fear lest he come into suspicion of a previous sacrilege; inconveniences of too frequent public carrying; refusal of public carrying made by the pastor, as if he has determined, even with the Ordinary approving, that Holy Communion is to be carried openly to the sick only twice or three times in the week. For it is consonant with the present discipline that the use of daily Communion be preferred to public carrying by which the former is impeded. Moreover, the judge of a reasonable cause is not only the Ordinary or pastor, but also, and indeed in the first place, the confessor, spiritual father, indeed any priest to whom it is lawful to minister Holy Communion. Yet one must act prudently and peaceably; wherefore, unless the law of secrecy is an obstacle, priests should act according to the direction of their Superior. He, however, in turn must compose matters according to the norms of the Holy See; nor can he prefer the discipline of public carrying to such a degree that therefore the sick can now be refreshed by the sacred banquet only once or twice in the week.

b) Observe, concerning public carrying itself, that cases can occur where a license denied by the pastor is reasonably presumed by the will of the Ordinary.

c) When the Most Holy Eucharist is carried secretly, the license of any rector of a church or custodian of the Most Holy Eucharist suffices, because this administration is assimilated to administration which is done in a church. But the Ordinary cannot take away or restrict a faculty made by the law itself. Wherefore statutes are no longer to be consulted to see whether others besides pastors can use that faculty or not.

The norms of the Holy See are contained in the rite proposed by Benedict XIV: "The priest should always have the stole covered by his own garments; he should put the pyx away in a little bag or burse, which, hung from the neck by cords, he should place in his bosom; and he should never proceed alone, but should be accompanied by at least one faithful person, in default of a cleric." Yet the last rubric is neglected in more than one place, and not rarely in the City itself. This indeed is little to be praised; nevertheless no one ought, with some inconvenience, to depart from a received manner, if he is ready to obey Superiors who urge the law.

d) Viaticum, strictly accepted, is the Communion which in grave danger of death is to be made by divine and ecclesiastical precept. Accepted more broadly, it is the Communion which a sick person dangerously lying ill makes from devotion, especially not fasting (cc. 864 and 858). Lest, against the mind of the Code, we make more difficult the sacramental refreshment of those who have greater need of it, we understand the Viaticum whose ministration is reserved to the pastor or others of Viaticum strictly accepted, or prescribed. Wherefore it will be lawful for another priest to bring Communion to a sick person who is not fasting, after the pastor has ministered the necessary Viaticum. And because there is no obligation that, when danger arises, Viaticum be received immediately, we shall permit the same before that ministration, provided that at an opportune time the proper pastor is called for administering the sacraments which are called the last. And unless you concede this, it will happen very often, because of prejudices and fears of soul, that those lying dangerously ill remain long deprived, in their greater necessity, of so great a help of heavenly food.

N. B. By the Code the excommunication formerly imposed against regulars who, the due license having been omitted, ministered Viaticum to seculars has been removed.

Summary

— **I.** The ordinary minister, or he who has full power of order for this, is the priest. Licit dispensation of Communion pertains to the Ordinary, to pastors or quasi-pastors; to those whom they or the law itself delegate; and to those who reasonably presume the faculty. The law grants the faculty to every rector of a church; to every celebrant within Mass, indeed immediately before or after a private sacred action, if he is or has remained prepared for Mass.

The extraordinary minister is the deacon, with the license of the local Ordinary or pastor. The concession requires a grave cause, as if otherwise several faithful would have to wait long for the occasion of Communion; and in a case of necessity the faculty can legitimately be presumed.

In a case of extreme necessity, a layperson can communicate himself and others. It will be much more easily lawful for a priest to communicate himself by his own hand.

II. In itself the carrying to the sick must be public; and then it belongs to the pastor or Ordinary of the territory. Private carrying, the rite being observed, for a reasonable cause, which the priest himself can prudently judge, is permitted with the permission at least presumed of the priest who

keeps the Most Holy Eucharist. Prescribed Viaticum, except in necessity or with license obtained, is reserved to the pastor; to the religious Superior for subjects and for those who dwell day and night in the house of a clerical religion; to the ordinary confessor or him who takes his place, for nuns; and to the chaplain whom the Ordinary has substituted for the pastor for other religious.

Chapter III: On the Subject of Holy Communion

I. - What Grace Is Received in Holy Communion

— The reality or special grace of this sacrament, instituted for the refreshment of our soul, is the spiritual transformation of man into Christ, our life, through charity, whose habit it increases and whose acts it excites. That is, the effects which temporal food works for bodily life, this food works the same effects for spiritual life. For it sustains this life, both by increasing habitual grace and by exciting the fervor of charity; it increases it, insofar as it is directly and specially referred to perfecting charity, whence the wound of "egoism" is healed, and sanctifying grace and the other virtues receive an increase; it repairs: for by exciting fervent acts of charity *ex opere operato*, it takes away venial sins and the damages which they have brought upon us; it delights already through the very active love which it excites. Thus almost Cardinal Billot, *De Euch.*

II. - Required and Sufficient Disposition of Soul and Body

— 1. **General Rule.** "Any baptized person who is not prohibited by law can and must be admitted to Holy Communion." By these words c. 853 establishes the right of a Christian to the spiritual refreshment of his soul, without a positive demonstration of his worthiness, so that only the publicly unworthy and manifestly infamous are to be kept away, if they ask publicly; but hidden ones only if they ask secretly from a minister who outside confession knows that they are not amended (cf. c. 855 and what was said n. 191-194).

Yet those also can be repelled who approach Holy Communion dressed less modestly or with that adornment which approved usage prohibits, especially if they have first been warned, at least by a general edict. These are not kept away as sinners, but as troublesome and uncivil petitioners; nor do they become infamous from a repulse whose reason is manifest.

— **II. Communion of Children.** Although baptized children receive this sacrament validly and fruitfully, nevertheless the present discipline of the Church, by which greater reverence for the sacrament is provided for, expressed in canon 854, establishes these several things concerning children:

1. Those are not to be admitted who, on account of the weakness of age, do not yet have knowledge and taste of this sacrament;
2. Those constituted in danger of death can and must be admitted to Holy Communion who know how to distinguish the body of Christ from common food, and reverently to adore it;
3. Outside danger of death, that fuller knowledge and more accurate preparation is said to be required by which they know at least the mysteries to be believed by necessity of means, and devoutly, according to the measure of their age, approach the Most Holy Eucharist;
4. The confessors of the children and their parents, or those who are in the place of parents, judge concerning the sufficient disposition of the children;
5. To the pastor a twofold office is assigned: a) of watching lest children approach the sacred synaxis before the use of reason or without sufficient disposition; which vigilance he can

exercise even by examination, if he has prudently judged it opportune; b) of taking care that those who have attained the use of reason and are sufficiently disposed be refreshed as soon as possible by this divine food.

That we may explain this canon somewhat, according to its importance, first it must be well held that by it the several norms of the decree of the Sacred Congregation of the Sacraments, *Quam singulari*, August 8, 1910, are confirmed entirely. Indeed the Code presents them in the same words. For art. 3 of the said decree sounds thus: "The knowledge of religion which is required in a child that he may suitably prepare himself for first Communion is that by which he, according to his capacity, perceives the mysteries of faith necessary by necessity of means, and distinguishes eucharistic bread from common and bodily bread, so that he may approach the Most Holy Eucharist with that devotion which his age bears." Only in this way do the norms of the Code differ from the norms of the decree, that the decree was issued for uprooting the error of those who delayed the Communion of children too much, and therefore had to insist on the facility with which children were to be admitted; while the Code also, as human nature is inclined to excesses, had to restrain or impede the contrary excesses of those who, not attending at all to the conditions placed in the decree, almost compel children indiscriminately to the sacred table. Wherefore, wishing to meet this indiscreet zeal, it places and vindicates more in recto the necessity of fuller knowledge and more accurate preparation in a healthy child.

Moreover it does three things for this end. In §1, proceeding negatively, with the Roman Ritual, from which that paragraph is taken, it keeps away children to whom knowledge and taste of the Most Holy Eucharist are lacking. Taste can be said either to be that hunger or sincere will by which they desire to receive Christ, and do not merely wish to please parents and imitate adults; or that devotion proportionate to age. For the condition of approach under the form of hunger was expressed by D. de Segur: *He loves Jesus Christ and desires him*; under the form of devotion it was rendered by St. Thomas: "When children begin to have some use of reason, so that they can conceive devotion for this sacrament." Now each passage has been praised in decrees of the Holy See.

Then §3 says positively that those are to be admitted who, according to their capacity, perceive the mysteries necessary by necessity of means, and approach devoutly according to their measure.

Finally, §5 indicates the regular time: the attained use of reason. For before this they are to be repelled; afterward children are to be led, or disposed as soon as possible. But from can. 88, seven years completed is presumed to be that time. As is clear, according to the cultivation of children, according to the very climate under which they live, exceptions can be more frequent or less frequent.

Wherefore, no less after the promulgated Code than after the decrees of Pius X, children who have not yet attained seven years can be admitted if they satisfy the conditions; but before the completed seventh year, they must dispel the contrary presumption, while after the seventh year, the presumption of capacity favors them.

Nothing is suggested concerning a general or subsequent solemn Communion of children: therefore the usage of the region will have to be considered; but that solemnity is greatly to be commended (Provincial Council of Mechlin, nn. 193 and 280).

Finally it can be asked how the judgment concerning the disposition of children, which is permitted to the confessor and parents, is to be combined with the office of vigilance of pastors.

In this way, unless we are mistaken. Concerning individual children, parents and confessors can judge, nor must they warn the pastor or approach him for consultation. At the same time a certain general inspection, as of the external forum, is committed to the pastor, of observing which children approach or omit Communion. Then, if he has some of those approaching under suspicion of ignorance, he can test them even by examination; but those later whom he thinks fit or to be disposed he will try to lead to Holy Communion. In each case, it is necessary that he have authority among parents [1]; yet a strict obligation of obeying him is not imposed by law. But the pastor cannot, relying on this can. 854, generally subordinate the first Communion of children in his parish to the condition of a previous examination. Nor will he repel from the sacred table a child who publicly but reverently asks for Holy Communion, because he doubts about his age or has himself demanded greater preparation. For such a child is not a public sinner or infamous. And public denial, especially if signs of impatience accompany it, will easily produce lasting or irreparable effects of timidity or aversion, even among other children who are witnesses of the matter. Yet it will be lawful for a pastor who doubts about a child to speak to him kindly and question him, and, if the case bears it, gently remove him from the sacred table.

[1] "The judgment of pastors concerning these children (whom because of a prudent doubt they have examined) must be stood by." Provincial Council of Mechlin, 1920, art. 188.

— **III. Required State of Grace.** The state of grace is required by divine precept. And he who is in mortal sin, under mortal sin, must confess before reception of the Eucharist, unless there is necessity of communicating and the opportunity of a confessor is lacking: the Church thus defined the proving which from St. Paul, 1 Cor. 11, is necessary, whether it merely declared the divine law, or completed it by its own authority. Cf. Trent, sess. XIII, ch. 7 with can. 11, and Code c. 856.

When the opportunity of a confessor is lacking was said above, n. 317, 2. But the necessity of communicating will scarcely be other than that of avoiding disgrace or infamy; and the almost sole case will be if you are already physically or morally at the Communion rail, and then remember a mortal sin committed after the last confession. Nor is he excused who rashly, conscious of evil disposition, has gone with his family to church intending to confess and communicate, and has not been absolved by the priest.

What shall we say about that wonder which, in more than one community, he will excite who, accustomed to communicate daily, on a certain day, especially if it has been more solemn, omits Communion?

Nor can we, from the general rule, grant Communion to him without confession first made. For either it concerns a very rare case, and then he has an easy opportunity of creating another impediment which he will narrate without shame, by breaking the fast; or it concerns a case not so rare. Then it was his part so to arrange his Communions that from the beginning he would be known as one not communicating daily. But if he neglected this, as a frail man he ought reasonably to have admitted the consequence of some suspicion, which nevertheless is not strictly infaming, since abstinence can also be attributed to scruples. But again consider the harms of a faculty conceded to laypersons, and even to youths, of approaching the sacred table after a mortal sin not remitted by

absolution: how much it would derogate from the reverence of the Most Holy Eucharist, how much it would diminish horror of sin, how much it would take away from the effort to extirpate a depraved habit!

But this is the reason why, especially in colleges, there must be holy liberty not only of communicating but also of abstaining from use of the Holy Eucharist; why confessors should prudently direct penitents in a strictly daily approach to the sacred table, and dissuade it from him who easily falls into grave sin and is not prepared to contemn the wonder of bystanders; why also, as far as can be done, daily opportunity of a confessor should be provided for a community where the pious use of daily Communion is accustomed to flourish.

Some also permit Communion without confession to him who otherwise would be prohibited from fulfilling the precept of paschal Communion.

But the precept of confessing immediately after, when in necessity you have omitted confession, obliges only priests celebrating, and therefore not a priest or layperson who has merely received Holy Communion.

— *Appendix X belongs to this section.* **IV. Required Fasting.** 1. Historical matters. Cf. Appendix X.

2. The law in force. "He who has not observed the natural fast from midnight cannot be admitted to the Most Holy Eucharist": this is the general rule of c. 858, §1, whose exceptions we shall soon weigh.

Whatever has been taken from midnight onward in the manner of food or drink, even for a medicinal end, breaks the natural fast. Nor does smallness of matter excuse. Thus the concordant opinion of Catholics.

Moreover three conditions are necessary for breaking this fast:

1. That the thing have the ratio of food or drink;
2. That it be taken from without;
3. That it be taken "in the manner of eating or drinking" (St. Alphonsus, 6, 280). And here intention can have some efficacy;
4. That it be taken from midnight onward.

1. A thing is said to have the ratio of food or drink which is digestible, or in itself, for what happens accidentally because of the condition of the stomach is not to be considered, is altered in the stomach, broadly accepted. Wherefore what is chemically demonstrated to be in no way capable of being converted within into something else, but to pass through the body unchanged, for example paraffin, can be taken before Communion without fault. And even if it is altered, that also can be taken which in common estimation is not thought to have the ratio of food or drink. Thus says a truly probable opinion, since in a sacramental matter common estimation is accustomed to have very great force.

Hence the ratio of food or drink is not had, or is judged not to be had, by metal, though certainly by iron powder or the like, not rarely prescribed by physicians; glass; little stones; hairs; silk or woolen

thread, though certainly linen thread does; well-cleaned little fruit-pits; and probably fingernails, a little piece of dry wood, unless it is edible like rhubarb (*rabarbaro*, *rhubarbe*), glycyrrhiza, or liquorice (*regolizia*, *reglisse*), paper, wax, earth, chalk, and perhaps straw. Yet many deny this (cf. St. Alphonsus, 6, 281, end).

2. Taking from without is lacking in him who swallows the remains of food from a meal completed the previous day by chance, or even deliberately, since the rubric does not distinguish cases; who swallows, even deliberately, blood flowing from the teeth, tongue, or an ulcer inside the mouth, or flowing inward from the nose; who puts aromatics or tobacco leaves in the mouth or tastes something, provided that he transmits nothing into the stomach. But he takes from without who before midnight receives sugar or glycyrrhiza into his mouth so that he may gradually swallow them: there is had there a continued eating, just as in him who, with midnight imminent, takes food into the mouth which after midnight he breaks up with the teeth.
3. The following is not taken in the manner of food or drink: a) what at the same time, by chance, is drawn into the mouth while breathing, whether it is dust, a fly, or a gnat; b) what by chance is drawn through the nose, for example tobacco powder; c) what is swallowed mixed with saliva together with it: thus the small water with which you have washed the mouth, a particle of the tobacco leaf which you have chewed, a few little drops of blood or a little skin taken from the exterior lips; d) what of water perhaps remains in the stomach, which you wished to wash by means of a gastric siphon, provided you have not externally anointed the siphon with oil or an edible ointment; e) the smoke of tobacco or another fumigation.

Vomiting after eating does not destroy this, either because there will not be complete evacuation, or because by the eating itself you have broken the fast.

Observe that the response about a thing mixed with saliva or drawn in on the occasion of breathing does not hold unless it has been mixed or drawn in apart from intention.

4. As we said in the earlier part, the time of midnight can be chosen either as the usual time, or the true or mean time of the place, or legal, or regional, or another extraordinary time (c. 33): and various clocks which are not established to be in error are admitted in themselves as good authorities, which make a probable opinion. And they agree that in receiving the sacred banquet it is lawful for you to be content with probability of fact.

Yet this probability is destroyed by a certain indication of the hour, which, for example, in the City is given at midday.

According as clocks announce by their sound the hour already completed, as most do, or the hour imminent, one must cease from eating from the first or from the last stroke. Yet what you have received in the mouth before the stroke of the clock you are permitted to swallow, because the Church does not seem to impose on you the rusticity of spitting it out; and without doubt clocks are not lacking which sound a tiny bit later, so that it is not established that the fast has been broken. Thus Lehmkuhl, II, 316.

— In a doubt, whether positive or negative, whether or not you have taken something after midnight, since Communion is a most favorable thing and it concerns the exclusion of an impediment, not the acquiring of a positive quality, it is lawful to communicate. But it is not therefore permitted to eat or drink at any hour of the night and then allege ignorance of the hour for communicating. The precept of the Church, as the very usage of the faithful demonstrates, does not bear this interpretation. Cf. Lugo, *Euch.*, d. 15, n. 42. In order that, in the night, you deliberately and licitly take something with the purpose of communicating, it is necessary, at least when means are at hand, that you probably judge it is not midnight. Cf. what was said in tome I, n. 374.

Wherefore they commonly keep away from Communion him who, lying down in the evening, has placed something in his mouth against hoarseness, unless he is certain that he transmitted nothing after midnight. Yet if it was in his mind to absorb the whole while awake, or to spit out the remainder, and by chance he was seized by sleep, the benign opinion which permits Communion to one ignorant of the hour of transmission can be admitted, and seems to us preferable. It can also happen that the thing is found so entire that nothing except perhaps a very tiny thing mixed with saliva has been absorbed. Access to the sacred table will be freely open.

For evacuating scruples, the better counsel will be that the nostrils be anointed with some oily material by which slightly humid air may be inhaled.

— **Exceptions to the Law of Fasting.**

1. When danger of death urges (c. 858). Therefore not only the sick but also those who because of an extrinsic cause are exposed to death are excused from the law. But for these the danger of death must be urgent, so that they cannot conveniently wait for another day on which they may communicate fasting (Cappello, I, n. 514); while the sick, from c. 858 and the former interpretation of the Council of Constance, strictly need no excuse of inconvenience. And in doubt about danger of death, one must respond in favor of the faculty of communicating. Cf. Genicot, II, 202.

N. B. The formula: "Receive, Brother (or Sister), the Viaticum of the body of Our Lord Jesus Christ," etc., is indeed to be used in itself, but it can be omitted if it is to be feared that the sick person may be disturbed by it.

And while the danger of death perseveres, after Viaticum, which is of precept, has been received, and even before, the Communion of the sick person who is not fasting can be repeated several times, on distinct days, according to the counsel of a prudent confessor, and therefore even daily (c. 864, §3).

2. Fear of death otherwise to be undergone, unless he is asked to do this in contempt of the precept or of religion, excuses the faithful person who communicates not fasting.
3. The Eucharist exposed to danger of profanation or loss can be received by one not fasting, even a layperson. Thus the canon itself excepts the necessity of providing for the reverence of the sacrament.

To this belongs the consumption of fragments after the ablution, in Mass. Therefore after the ablution, it is lawful for a priest, per accidens, for this is not to be done from a preconceived purpose, to receive smaller fragments pertaining to the same sacrifice, whether he is at the altar, or already in

the sacristy, provided that he has not yet taken off the sacred vestments. Fragments of another sacrifice are not to be received after the ablution, unless danger of irreverence has been added; as if, after the last Mass, you discover very tiny particles which cannot, without danger, be carried to the tabernacle, or the tabernacle is lacking. Indeed, as is probable, a priest can purify a ciborium which he immediately needs, although distractedly he has already received the purification of the chalice, because this consumption is judged to be one with Holy Communion itself. Lehmkuhl, II, 192, 4, does not admit this if it concerns whole hosts. And indeed these in themselves can be preserved in the purified pyx itself. Palmieri, t. IV, n. 947, also inclines to the opinion of Tamburini, *Exp. comm.*, §8, according to which a priest, as long as he is at the altar, can in strictness receive even fragments consecrated in another sacred action.

And by equal reason, "if a priest carries Communion to a sick person, in a hospital, and remains are left on the paten or in the chalice, the priest can receive them if he is still clothed in the sacred vestments for Mass. He can also give them immediately after the small host to the sick person, because it is judged one Communion." Cf. Roman Ritual, Order of administering Holy Communion.

N. B. The observance of the rubrics or an approved manner of acting liturgically must not be impeded by fear of a broken fast, because the Church, while it gives or approves these norms, tacitly dispenses, as far as is necessary, from the law of fasting. Thus the Sacred Congregation itself responded that salt placed in the mouth of a neophyte in the ceremonies of baptism does not obstruct Communion immediately following. Thus, that in a prior sacred action, while before the consumption of the blood fragments are gathered, small unconsecrated things are poured into the chalice and received together with the blood of Christ, this does not impede the following Mass of bination; and say the same about little unconsecrated drops which are mixed with the sacred blood. Thus he who on Friday in Parasceve, by drinking wine, has left part of the sacred host in the chalice, receives this with a safe conscience; and he who, in receiving the blood of Christ, has left a consecrated particle in the chalice, from the rubrics themselves of the Missal (*De defectibus*, X, 8), has the option of bringing it with his finger to the lip of the chalice, or of pouring in wine and receiving it. Thus finally when, according to received custom, after the species of bread has been received, wine to be drunk is given to children after first Communion or to newly ordained priests, they ought to be affected by no anxiety because they first swallowed liquid. For the manifest intention of the Church does not comprehend these things by its law of fasting. Some give this reason, that by the law it is forbidden that you receive anything before Communion, but by no means that together with Communion you receive something else. The reason given first seems to us more simple and adequate.

— **Dispensation by Law.** "The sick who have already been lying ill for a month without certain hope that they will quickly recover can, by the prudent counsel of the confessor, receive the Most Holy Eucharist once or twice in the week, even if they have previously taken some medicine or something in the manner of drink" (c. 858, §2).

This faculty was first conceded by a decree of Pius X through the Sacred Congregation of the Council, December 7, 1906, but then Communion twice in the week was not permitted except in houses where the Most Holy Eucharist was preserved, or Mass could be celebrated: outside such houses Communion was conceded only twice in the month; nor was solid medicine indulged.

This canon, since it derogates from a grave law, is to be interpreted strictly. Nevertheless usage has prevailed of benignly understanding the word "lying ill," so that even those sick persons who can carry themselves to church are permitted to use the faculty. Thus also Cappello, op. cit., I, 506.

But the other conditions are to be observed accurately. Therefore it is required:

1. That it concerns the truly sick. Such are those whose strength, whether by disease, by old age, or by weakness, has been truly broken, so that at least morally they can be called lying ill. There is no need of a grave or dangerous disease;
2. That they have already been lying ill, or laboring under infirmity, for a month. A month, from the Code, is a space of 30 days, which Rev. Fr. Cappello, loc. cit., understands morally of a space of 26 or 27 days. But in no way can it be admitted that the faculty be extended to those who are affected by a disease which is foreseen to be going to last at least thirty days. By an interpretation of this kind open force would be inflicted on the words, which are to be taken strictly;
3. That there be lacking certain hope of proximate recovery. Certain hope confers a certain moral certitude. Proximate recovery is that which will be obtained within a few days, three or four;
4. It is necessary that they act according to the counsel of a prudent confessor, such as every approved confessor is judged to be. In giving counsel, the spiritual dispositions of the soul are to be considered first; yet the confessor must also be solicitous that the conditions of the privilege have been fulfilled;
5. Communion is not permitted, after the fast has been broken, except once or twice in the week. It is not in the power of the confessor to permit more frequent Communion under any pretext. And this would be grave. Cf. also Cappello, I, n. 506, 4. Yet a probable opinion allows use of the privilege twice in the week to him who, on the other days, certainly with his own inconvenience, receives the sacrament fasting;
6. Only medicine, or something in the manner of drink, is permitted. Medicine can be solid, such as a little lozenge. Common sense will teach what has the ratio of medicine. It must have a direct order to healing some ailment. Therefore it cannot be confused with food which is used rather for strengthening the powers, although it can be said to have been taken in the manner of medicine. But in the manner of drink are also taken crushed solid fragments which float in a liquid. Hence already on September 7, 1897 the words "in the manner of drink" were so declared that it was lawful "to take broth, coffee, milk, or another liquid food, even if some substance has been mixed with it, for example light little pellets of flour (*semolino*), bread grated into crumbs (*pangrattato*), a diluted egg, etc., provided the mixture does not lose the nature of liquid food."

The egg itself in its natural state, or not cooked or very lightly cooked, is said to be drunk. But a little lozenge or sugar is not drunk, but eaten, although dissolved by the heat of the mouth it is then swallowed. For the usage of common speech is that attention is paid to the manner in which it is received in the mouth: at that moment, and not afterward, the thing is said to have been taken. Wherefore, that an uncooked egg is said to be taken in the manner of drink, we easily admit with

Rev. Fr. Cappello, I, n. 507; but we think one must respond otherwise about lozenges, sugar, etc., even if they are sent into the stomach completely dissolved by the heat of the mouth.

Now moral inability to observe the fast is not required. But unless some serious inconvenience is connected with observing the fast, the required counsel of communicating without the fast having been observed cannot be given by a prudent confessor.

N. B. It is sometimes conceded to bishops that they may be able to permit Communion to these sick persons three times in the week, after liquid or medicine has been taken. Moreover number 42 of the faculties of Nuncios or Apostolic Delegates allows that, even before the end of the month from which they have been lying ill, or even to sick persons not lying ill, they may concede Communion once in the week without the fast being observed as above. The faculties of Propaganda Fide give to bishops, Vicars, and Prefects Apostolic power to permit Communion to the sick lying ill, even before the end of the month, without the fast being observed, twice or three times in the week, indeed even daily if they are priests or religious.

— **Dispensation Through the Sacred Congregation.** To those who morally cannot observe the natural fast, the Sacred Congregation of the Sacraments, or, for religious, the Sacred Congregation of Religious, grants Communion even daily, after anything has been taken in the manner of drink. The faculty to be executed is usually committed to the Ordinary of the petitioner, by the counsel of the confessor, and sometimes to the confessor himself. Thus far the Sacred Congregation of the Sacraments does not permit solid medicine, but only what has the ratio of drink.

— **Various Things to Be Noted.** The strict prohibition is only of taking anything from midnight onward: but the reason of decency will counsel that a fitting interval be interposed from the last meal, unless an excusing cause is present. Wherefore not rarely in indults by which either Communion or nocturnal Mass is permitted, the condition of a reasonable interval of hours is attached.

And although no positive law forbids it, it is certainly counsel that you not take food before the species are prudently thought to have been consumed. To omit this without cause is held as venial irreverence by St. Alphonsus, l. 6, n. 283.

But one must beware lest, after Holy Communion, the stomach at some point be compelled to cast out food together with the species.

But sputum, since it does not flow through the esophagus, can safely be expectorated, unless some fragment of the sacred host adheres to the teeth; on account of which cause it will be better to wait somewhat.

— **V.** No stain of the body in itself impedes reception of the Most Holy Eucharist, since it has no bearing on moral goodness. How much less the hidden stain of menstruation. Wherefore today we judge it consonant with the mind of the Holy See that not even counsel be given about omitting Communion during the time of menstruation.

— Concerning involuntary pollution, concerning voluntary pollution but expiated by confession, concerning the use of marriage, a universal rule cannot be handed down, but the matter is to be committed to a prudent confessor. He will attend to the utility of Holy Communion, to the reverence due to the Most Holy Eucharist, to the internal disposition of the communicant, who can approach

either disturbed by carnal affection or, on the contrary, with a serene mind, and to the scandal which would be given by him who soon after sin committed with an accomplice should sit down at the sacred table. To those who are accustomed to communicate rarely, but not to those who communicate almost daily, the counsel can be given that on days of Holy Communion they not indulge in the carnal work. After a carnal sin has been committed, the very reason of reverence requires, in itself, some delay of Communion. Involuntary pollution is not a reason for dissuading Communion, unless the occupied imagination impedes devotion, or abstinence can contribute to the fervor of devotion. It is clear that a prudent confessor will not of his own accord speak either about the use of marriage or about menstruation.

— **VI.** The reason of reverence also requires that other signs of honor, although they are not strictly prescribed, be observed by communicants according to the custom of places and the ability which they have: for example, cleanliness of clothing, the custom of laying aside gloves and weapons, etc.

III. - The Frequency of Communion, Necessary or to Be Counseled

— **What the Necessity of Communion Is.** The more common opinion of theologians today, denying necessity of means, strongly vindicates only a necessity of precept of receiving the Most Holy Eucharist. For first grace is infused in Baptism and restored through Penance, so that the Most Holy Eucharist, destined for nourishing our spiritual life, can be supplied by other nourishments of that life. Yet the food of our soul ordained by God is to be received sometimes in the manner of food; and this is demonstrated both by the divine ordination itself and by the words of the Lord: "Amen, amen, I say to you: unless you eat the flesh of the Son of Man and drink his blood, you shall not have life in you" (John 6:54), in which at least a grave precept must be read. The same theologians also commonly think that Viaticum must be received in danger of death by divine precept. Yet they do not bring forward a compelling reason for this precept. They derive the chief argument from the supreme spiritual necessity in which man is then placed, so that man could neglect that assistance only by gravely derogating from charity toward himself. Moreover it is sufficiently established that a precept not much defined is to be regulated by the Church. Hence they well understand and explain how the discipline concerning the age of first Communion and concerning frequency of use could vary and has varied.

Things are conceived in a sufficiently dissimilar way if, with St. Thomas and the Roman Catechism and most ancient doctors, we profess that the Most Holy Eucharist is necessary by necessity of means, in reality or in desire, so that first grace itself, whether in Baptism or in Penance, is rather conferred from the desire of the Eucharist. This St. Thomas and also the Roman Catechism hand down in express words: "First grace is granted to no one unless they receive this sacrament itself by desire and vow" (2, 4, 51-52). And the reason is that the immolated flesh of Christ is at once the price of our redemption and the principle of our sanctification: to which it is wholly necessary to adhere (de la Taille, op. cit., p. 608). Then there is a genuine use of the words of the Lord just alleged: for less than a precept, they render a condition without which not. And because "a desire would be vain unless it were fulfilled when opportunity was present" (St. Thomas, 3 p., q. 80, art. 11, c.), at once there appears the obligation of sometimes receiving the Most Holy Eucharist as food of the soul, so that we may have life in us. The question concerning the grave obligation of divine law of Viaticum is then solved quite conveniently, limited to him who in danger of death has had to be truly

reconciled with God: for he must take care that before death he be refreshed by the Most Holy Eucharist, lest his desire be in itself fruitless.

Yet the explanation of the varied custom of the Church concerning the age of first Communion and concerning frequency of use then becomes less convenient. And a threefold way of solution can be entered upon. For either you contend that the rules most happily given by Pius X had always in themselves to be observed, but remained unknown until our progress in faith had detected them, which in a matter of use so universal and daily is scarcely credible; or you ascribe to obscurity brought in through heresy the cold severity about approach to the sacred table which everywhere prevailed for many centuries before Pius X; and that the Jansenian heresy had to be culpably and harmfully blamed, the pontifical documents on daily Communion signify not obscurely; or also here you place in the power of the Church the establishing of norms, according to the common good, concerning the first and necessary approach to the Most Holy Eucharist, just as the Church also establishes how recourse must be had to Penance, whose necessity of means is denied by no Catholic. And this explanation pleases us more. The Church could, because of better preparation of intellect and soul, in another epoch have delayed first Communion, while today there is a twofold cause why even before the age when the dangers of grave sin are accustomed to be greater, it has defined that one must approach the sacred table: that is, the invading neo-paganism whose attacks must be resisted strongly through supernatural life; and the diffusion of literary education, which brings it about that young people can sooner be refreshed with due devotion by the sacred banquet.

Now he who uses or abstains from the Most Holy Eucharist according to rules approved or commanded by the Church fulfills his desire of receiving the Eucharist in a reasonable manner: which is required for salvation and suffices.

Thus far concerning necessity in itself. Practically, besides, the more frequent use of the sacraments of Penance and the Eucharist becomes, not so rarely, a morally necessary means for overcoming temptations, when there is scarcely hope of obtaining such a use of other remedies as would suffice for carrying off that victory. Wherefore, although it does not seem opportune that this frequency be strictly imposed as per accidens necessary for many, because in strictness other means are at hand, and to the languid a remedy would be prescribed in vain which they would refuse or neglect to take, still by every reason, youths and many unmarried persons are to be brought, especially if they are given to softness, to strengthen themselves as frequently as they can by this sacred banquet.

— **I. Communion Prescribed to the Healthy.** "Every faithful person of either sex, after he has arrived at the years of discretion, that is, at the use of reason, must once in the year, at least at Easter, receive the sacrament of the Eucharist, unless perhaps, by the counsel of his own priest, for some reasonable cause, he has thought he must abstain for a time from its reception" (c. 859, §1).

By this canon the precept already promulgated in the Lateran Council is confirmed, an opportune explanation being added.

1. And first, by the present discipline all are held by this precept who have arrived at the use of reason, even if they have not yet completed the age of seven years. This age of seven years supplies a certain presumption, which always yields to the truth. Having attained the use of reason, they will not have to communicate as soon as possible; but since from possession of

the use of reason they are held by the common law, they do not seem able to defer Communion beyond the next Easter.

2. "Once in the year, at least at Easter": by these words it is shown that the precept is virtually twofold: of communicating once in the year, and of communicating at Easter, so that he who has not wished or has not been able to communicate at Easter is held by the obligation of annual Communion, unless already in the same civil year he has worthily received Holy Communion (cf. c. 859, §4). For although from the decree of Eugene IV, July 8, 1440, the year seems to be computed from Easter to Easter, nevertheless some, among whom is Lugo himself, *Euch.*, d. 16, n. 19, permit civil computation. But then it is necessary that the Christian be constant in that computation, and not wish so to join each that he is refreshed by the sacred banquet only once in two years, as if Communion is made at Easter 1922, and then only in 1924, also at Easter. The obligation of receiving Holy Communion as soon as possible after Easter is not had unless special law has defined the matter otherwise.

The paschal time for satisfying the ecclesiastical precept is vainly anticipated, unless by him who foresees that he will be impeded throughout the whole paschal time, and wishes to compute the year from the first of January.

3. One's own priest, that is, either the pastor or confessor, can give counsel of deferring Communion beyond the paschal time. Therefore they obtain the faculty of quasi-dispensing for a time in this precept, for the utility of the faithful person, reasonably understood. For the utility of the faithful person, I say, for counsel is not given except about a better thing. Therefore it is not a faculty of dispensing properly so called, for a cause almost excusing: they can concede only a spiritually useful dispensation. And scarcely any reason is conceived to be other than that which is gathered from present indisposition or lesser disposition, as if someone remains doubtful in faith.

But the time is defined by the utility itself. If faith must be restored, it could even be quite long.

Practically, however, this faculty is benignly accepted concerning a true dispensation, which, even outside the sacrament of Penance, is conceded by the confessor. Without a dispensation made, even a small delay is judged grave.

— The paschal time regularly runs from Palm Sunday to Low Sunday inclusive. Yet it is lawful for local Ordinaries, "if the circumstances of persons and places so require, to anticipate this time even for all their faithful, not however before the fourth Sunday of Lent, or to prorogue it, not however beyond the feast of the Most Holy Trinity" (c. 859, §2). This requirement will arise, for example, from received usage, or even from a lesser supply of confessors. For one must strive greatly that fitting time can be spent in hearing those who only once in the year, or rarely, are accustomed to use the sacraments, so that they may receive true refreshment of soul.

Therefore, in the manner of a synodal or particular law of that place, the paschal time can be enlarged by the bishop within the said limits. This law, according to general principles, will also benefit travelers.

— **The Place of Paschal Communion.** Now, what is notable, the precept of paschal Communion can be satisfied in any place. Yet the faithful are to be counseled that "each should satisfy it in his own parish; and those who have satisfied it in another parish should take care to make their own pastor certain concerning the fulfilled precept" (c. 859, §3).

The word "take care," placed absolutely, signifies a command, which however the context shows to be light. Nevertheless some already, for example Cappello, I, n. 475, make the matter one of counsel.

The words "in one's own parish" in themselves have a broader force than "in the parochial church," especially since they are opposed to satisfaction in another parish, which certainly, from §1 itself, where no place is defined for fulfilling the precept, is understood of every oratory of another parish. Therefore the legislator seems to intend this: that by Communion made in one's own domicile, a good example be given to the other inhabitants; and they will lack this edification if the sacraments are received outside the parish.

— **The Office of Parents, etc.** Prudently and most opportunely the Code warns that the obligation of the impubes also and especially "falls upon those who have care of them"; and it names parents, to whom the Christian instruction of children has been divinely committed; tutors, who must take the place of parents; the confessor, insofar as he is at the same time a spiritual father, or at least from charity must warn penitents concerning their obligation; teachers, both as neighbors bound by fraternal correction, and as delegated by parents; the pastor, as shepherd to whom, in c. 854, §5, this care has been specially mandated by law (c. 860).

— You will ask how, concerning the age at which children are to be admitted to first Communion, ecclesiastical discipline could vary so greatly.

Many explain the matter because the use of the Most Holy Eucharist does not have necessity of means; but the obligation of a grave precept immediately divine is not demonstrated before the age in which there are many dangers of mortal sin, such as the age of puberty is accustomed to be; and the determination of the beginning of the obligation, just as the determination of frequency, was left to the Church by its Spouse and Author. Cf. Lehmkuhl, I, 200 sqq. We have preferred to say that true necessity of means, in reality or in desire, does not prevent the Church from placing on real reception the conditions required by the common good. The means is then satisfied at least in desire. Cf. n. 402.

N. B. They report in the periodical *Hostia*, Jan.-Feb. 1921, a response of His Eminence Cardinal Gasparri, from which the use of reason in cc. 854, 859, and 906 is to be understood as such as suffices for committing venial sin, and the capacity for mortal sin is not required. Thus indeed it will have to be said by those who think each capacity can be separated: which we see denied by St. Thomas in 1, 2, q. 89, art. 6.

— By express canon 861 we are warned that the precept of receiving Communion is by no means satisfied by a sacrilegious Communion. How this is combined with the doctrine which denies that interior acts can be commanded by the Church, we saw in tome I, n. 254, b.

— **Communion in the Mass of Ordination and on Thursday in the Supper of the Lord.** 1. In the Mass of ordination, those advanced to a major order must communicate.

2. The Code says it is expedient that on Thursday of the greater week all clerics, even priests who on that day abstain from offering the sacred sacrifice, be refreshed by the most holy body of Christ in the solemn or conventual Mass (c. 862). And in truth, by a general Communion of this kind, a pious representation of the Supper of the Lord is obtained.

By this counsel the obligation which some clerics can have from liturgical law, of receiving Communion from the bishop, is not removed.

— **Frequency to Be Counseled to the Healthy.** "Let the faithful be excited to be refreshed frequently, even daily, by the eucharistic bread according to the norms handed down in the Apostolic decrees; and let those assisting at Mass, being rightly disposed, communicate not only by spiritual affection but also by sacramental reception of the Most Holy Eucharist." Thus c. 863, which therefore: 1. wishes the frequent, indeed daily, use of the Most Holy Eucharist to be commended by priests; 2. inculcates that the norms handed down in the decrees of the Apostolic See be observed: among which the decree *Sacra Tridentina Synodus*, December 20, 1905, of the Sacred Congregation of the Council, holds the chief place. To that decree are added: the decree of May 30, 1905, conceding indulgences to prayer for the propagation of daily Communion; the decree of the Sacred Congregation of Indulgences, February 14, 1906, dispensing from the condition of weekly confession as many as use quasi-daily Communion; the encyclical letter of the Sacred Congregation of Indulgences, April 10, 1907, concerning a triduan supplication to be celebrated yearly for spreading the use of daily Communion; the encyclical letter *Editae saepe*, May 26, 1910, on account of the secular solemnities of St. Charles Borromeo, in the second part [1]; 3. but especially confirms and authentically interprets c. 6, sess. XXII of the Council of Trent as a true desire: "The holy synod would indeed desire that in each Mass the faithful present should communicate not only by spiritual affection but also by sacramental reception of the Eucharist, so that a more abundant fruit of this most holy sacrifice may come to them."

[1] All these are had in *Per.*, II, 68-70; IV, 177; III, 80-84; V, 152-154. Cf. also the dissertation, II, 77-88.

— But the moral norms to be observed seem able to be brought together briefly in this way: a) the question concerning special dispositions required for communicating daily has been raised inopportunely. For that doubt takes its origin from diminution of piety and the Jansenian plague; it has had the effect of distancing from the sacred table; and pious and learned theologians have taught that "there is no precept of the Church concerning greater dispositions for daily Communion than for weekly or monthly Communion" (decree *Sacra Trid. Syn.*, III, 3); b) the right mind necessary for eucharistic use is this: that a supernatural reason induce one to communicate, not however some human respect, which would impel one to Communion because others do this, because thus the custom of the house bears; or vanity, by which praise or fame of devotion or piety would be sought. Although a substantially pure intention can be mixed with some human consideration; c) that purity suffices by which one is immune from mortal sins. Nor are those few to be heard in any way who, contrary to what both the immediately preceding and immediately following words demonstrate, interpret the sentence n. IV, 3°, "it suffices nevertheless that they be free from mortal sins, with the purpose of never sinning in the future," as if there were required a purpose of fleeing every sin, even venial. The whole spirit, as it were, of the decree abhors this interpretation, by which flight from venial sin is said to be the fruit of daily Communion, far from being the prerequisite disposition; d) according to the powers, condition, and offices of the one receiving the sacred banquet, careful

preparation and suitable thanksgiving are to be employed; e) for counsel, one's own confessor is to be approached, "so that frequent and daily Communion may be done with greater prudence and be increased by more abundant merit" (*Sacra Trid. Syn.*, IV, 5°).

Here also return the things already said concerning the necessity of taking care that everywhere it be intact for all to consult their own devotion, and to approach the Most Holy Eucharist or abstain from it, and that an easy opportunity of confession before Communion be supplied to all.

— **Frequency Necessary or to Be Counseled to the Sick.** 1. Concerning the sick who are not dangerously lying ill, the things said above, nn. 387, 396, return. In themselves no special rules about these are to be proposed. By the twofold canon concerning the secret carrying of the Most Holy Eucharist, and concerning the use of the Most Holy Eucharist after drink or medicine has been taken, the frequent refreshment of the sick has been rendered much easier. And because the sacraments are for men, so great a solace of the afflicted, which true and complete worship in itself accompanies, is to be preferred to the greater exterior honor which the Most Holy Eucharist before obtained from public carrying. Moreover it is necessary that we conform ourselves, our own persuasion having been laid aside, to the discipline which recent instructions of the Holy See favor.

2. Concerning those lying dangerously ill, or even concerning those who because of a cause foreign to disease are placed in danger of death, the Code, c. 864, decrees or permits these things: a) it sanctions or confirms the precept of receiving Holy Communion; b) the controversy which existed about this matter having been suppressed, it permits, indeed greatly counsels, that he who, free from danger, has received Communion, should communicate again on the same day, when brought into danger of life; c) but on distinct days it permits and says it is becoming that Holy Viaticum be administered several times, according to the counsel of a prudent confessor. Several times, and therefore even daily, if the confessor judges this expedient. And in itself daily eating of the heavenly bread is to be urged more for those who must be comforted by the proximate hope of heaven; d) by a most opportune warning, it forbids that Holy Viaticum be deferred too much; and it commits to the careful vigilance of those who have care of souls that the sick be refreshed by Viaticum while fully in possession of themselves (cc. 864, 865).

— Yet the sick can be prohibited from Communion by a certain or probable danger of exterior irreverence. The Roman Ritual, t. 4, c. 4, n. 4, warns that care must diligently be taken "lest Viaticum be given to those from whom, because of continual coughing or some other similar disease, some indecency with injury to so great a sacrament can be feared." Wherefore it is not lawful to give Communion to those who suffer from vomiting, unless a skilled man or experience has taught that serious danger of vomiting up the sacred species is absent. If a skilled man is lacking, an interval of some hours, for instance six, seems to be awaited. With those delirious, experience can be taken by first handing over an unconsecrated particle. St. Alphonsus, l. 6, n. 292.

But the species rejected by vomiting, if they have remained incorrupt, are to be adored; and being again received, they again confer grace, since there is a new eating of the body of Christ. Lugo, *Euch.*, 12, 53.

But if because of nausea they are not received, carefully separated, they are to be kept in a sacred place until, perfect corruption having occurred, they are thrown into the sacrarium. But that swifter

corruption may occur, it does not seem prohibited to pour some quantity of water over the sacred species.

But if, although they do not appear, the species could be contained in the vomit, "let the vomit be burned and the ashes be sent into the sacrarium." Rubric, *De defectibus missae*, n. 14. How long the species can remain incorrupt in the stomach, cf. immediately below.

A different reason of indecency arises a) from lack of exterior penance, in a scandalous sinner who has been seized by a sudden disease: conditional absolution indeed, and conditional Extreme Unction, can be given, and in themselves are to be given, but not the Most Holy Eucharist; b) from the infamous place where even a sick person excellently disposed lies: then at least open ministration is forbidden because of the reason of reverence.

— Sacramental grace is conferred from the first eating, even of the first part, since the whole sacrament consists in any eating.

But as long as Christ is present in him, there are some who think that the sacramental grace itself grows in the faithful person, provided he renders his actual disposition more perfect. An increase of disposition is required, because the sacraments give grace according to the disposition of the subject, and it concerns one reception of the sacrament morally. With disposition increased, grace seems to be increased, because the Most Holy Sacrament, in the manner of food, seems to profit more the more it is applied to the subject. But better disposition effects greater application. These things are admitted by many; yet we would not wish to call them certain. Cf. Palmieri, *Op. theol.*, t. IV, nn. 872-875.

Wherefore, in the same opinion, not only he who, having received part of the wine or host with evil disposition, then receives another part well disposed, but also he who disposes himself before the species are consumed, is thought to receive sacramental grace. What obstacle there is, however, we said in n. 208.

Nor is the devotion of him to be faulted who receives a larger matter to be consecrated, with the mind that the species may not be consumed so quickly in the stomach. Yet singularity must be abstained from, and we doubt concerning the sensible efficacy of the means, when it concerns the species of wine, after which has been received, moreover, the corruption of the species of bread is accelerated.

But what must not be doubted is that the intimate presence of the author of all grace brings this about, that the force of impetration *ex opere operantis* is greatly amplified through that time. Lehmkuhl, II, 151 and cf. 210.

But how long the species can remain incorrupt in the stomach depends greatly on the "digestive" power, so that there are sick persons who reject them almost incorrupt after hours. Nor in a healthy man is the matter plainly established. Today they do not think a great distinction is to be made between a layperson who receives only a smaller host, and a priest, who indeed eats a larger one but together with the species of wine. For the consumption of a small host, they require at least half a quarter of an hour. Dr. van Olfers affirms that the species of wine always perish hardly as soon as they have been received into the stomach. Dr. Capellmann denies this, and therefore thinks that species which have been rejected within half an hour after Communion can never be thrown outside

the sacrarium, even if no visible particles are discerned in them. Cf. *Medicina pastoralis*, pp. 124, 125, 4th Latin ed.

— What is it to eat? Nor is this fully established. Dr. van Olfers thinks that what is received into the mouth is already eaten. Yet for most, eating is the vital transmission of food into the stomach. Therefore eating has begun from the time when food or drink has passed that part of the throat from which ordinarily it can no longer be recalled. From that moment grace seems to be given, although some defer the conferral of grace until some part of the species has been received into the stomach. Cf. Palmieri, *Op. theol.*, t. IV, n. 872.

Hence they counsel that the species not be kept longer in the mouth, that is, not so long that they perish completely in the mouth, which according to several, while others contradict, happens quite quickly. Yet one may doubt about the force of the inference. For he is not thought to eat who spits out at once what he has taken into the mouth; but, in moral estimation, we indeed eat what, put into the mouth in a solid state, we swallow only after it has been dissolved and perhaps chemically changed.

— That greater grace is given in Communion under each species than under one alone is not improbable, although it is rather denied. Cf. Lugo, *Euch.*, d. 12, s. 3.

— **Concerning Spiritual Communion.** Mere material reception by a non-baptized man, or by an adult communicating involuntarily, having been omitted, the Council of Trent itself, sess. XIII, *De Euch.*, ch. 8, distinguished merely sacramental reception, which belongs to him who, capable, receives the sacrament indisposed or with the obstacle of sin; sacramental and spiritual reception at once, belonging to him who, rightly proved, approaches this divine table; and spiritual reception only of those "who, eating by desire that heavenly bread set before them, by living faith, which works through love, perceive its fruit and utility." Besides a common act of charity, this practice contains a special reason of cultivating the Most Holy Sacrament, and hence merits peculiar praise.

Moreover three things compose spiritual Communion: an act of living faith in the real presence of Christ; an act of charity or also, as the case may be, of contrition; and observe that in him who is conscious of mortal sin, an act of charity cannot be true unless it has passed into formal contrition; finally, an act of desire of receiving Christ sacramentally, if it could be done, and of intimately uniting oneself to Christ. Lest the desire be nugatory, it is necessary that something, at least in a broad sense, obstruct present sacramental use. Nor can he with an absolute will desire the sacrament or the fruit of the sacrament who, at least by the help of perfect contrition, has not acquired for himself the state of grace. With a conditioned will, not even a sinner is prohibited.

This devotion, so greatly commended, can be exercised very frequently. It is done especially usefully during the Communion of Mass: then the circumstances themselves foster apt dispositions, and he who, while he cannot in reality, communicates at least by affection, can hope for himself those more abundant fruits of the sacrifice which the holy Synod of Trent, sess. XXII, ch. 6, affirms to remain in those who communicate sacramentally (cf. Lehmkuhl, II, 194).

— 1. Strictly, no one communicates in favor of another, since no one eats for another, and the *opus operatum* of every sacrament benefits only the subject. But for another living person, one can offer Holy Communion in this way, that by the good and therefore meritorious and satisfactory act of approaching the sacred table he wishes to help him spiritually, or, after sacramental reception, to

pour out prayers for him, which then are poured out with greater fervor and efficacy. But for the deceased one can communicate insofar as, by way of suffrage, he offers for him his own act *operantis* as impetratory and satisfactory, or applies to him the indulgences joined with Communion. Cf. St. Thomas, 3 p., q. 79, art. 7.

Summary

— **I.** The sacramental grace of the Most Holy Eucharist is for the refreshment of our soul, to be transformed into Christ through charity, whose habit it increases and whose acts it excites.

II. Conditions of Approach. 1. The baptized who are not unworthy and who approach decently have a right to this spiritual refreshment. Solicitude for the common good has led the Church to require of children, even in danger of death, that they distinguish the body of Christ from common food and reverently adore it; but outside danger of death, that they know at least the mysteries to be believed by necessity of means, and, according to the measure of their age, approach devoutly. These children not only can, but also must, be admitted. They are held by the paschal precept; and when parents or tutors are negligent, the violation of that precept is imputed to them. Confessors, parents, or those who hold their place judge concerning the sufficient disposition of children, while the office of watching is committed to the pastor, lest the unprepared approach, and so that those disposed may communicate as soon as possible.

2. The state of grace is required by divine precept; and by at least ecclesiastical precept it must be procured through confession, unless, with a confessor lacking, necessity of communicating urges.

3. The natural fast is to be observed from midnight, so that from without nothing which has the ratio of food or drink is taken in the manner of eating or drinking, not of breathing or attraction through the nose. Intention, which generally changes nothing, is to be attended to where a thing is drawn in or mixed with saliva. The Missal, *De defectibus*, IX, 3, also tolerates a little drop of water which, in washing the mouth, apart from intention, has entered the throat and stomach. And in a positive doubt, or a negative doubt on each side, whether something has been taken from midnight onward, it will be lawful to communicate.

The law ceases for the sick who are in danger of death; indeed for the healthy who are placed in urgent danger of death; and for those who otherwise cannot protect the Most Holy Eucharist from danger of profanation or loss. To this belongs the consumption of fragments in Mass, after the ablution and in the sacristy, as long as the priest is clothed in the sacred vestments.

The Code (c. 858, §2) allows that by the prudent counsel of the confessor, those who for a month have been truly sick without certain hope that they will quickly, within three or four days, recover, communicate once or twice in the week, after they have taken some medicine or something in the manner of drink. Broader concessions are made through the Sacred Congregation of the Sacraments or of Religious.

Neither a stain of the body, nor involuntary pollution, nor the use of marriage in itself impedes Communion. But external signs of honor in clothing, etc., are owed to the reverence of the sacrament.

III. Necessity of Communion. 1. From the words of Christ, "Unless you eat the flesh of the Son of Man... you shall not have life in you" (John 6:54), there is gathered a divinely imposed necessity of receiving the Eucharist sometimes, not of precept alone, but also of means, in reality or in desire. Yet not a few admit only a necessity of precept. And the common opinion urges a necessity of divine law of receiving Viaticum in danger of death. This is more certain if life had to be resumed after mortal sin. Besides, the more frequent use of the sacrament becomes practically necessary for overcoming temptations.

2. From the precept of the Church, which according to reasons of the common good can define the beginning and frequency of the obligation, all who have attained the use of reason must once in the year, at least in paschal time, worthily receive Holy Communion. One's own pastor or confessor, because of the utility of the faithful person, can permit delay beyond the paschal time. That time regularly runs from Palm Sunday to Low Sunday; but local Ordinaries can, because of the utility of the flock, enlarge the time, so that it is extended from the fourth Sunday of Lent to Trinity Sunday.

The paschal precept can be fulfilled in any place: nevertheless Communion in one's own parish is counseled; he who has acted otherwise should take care to make his own pastor certain concerning the fulfilled precept.

3. Those promoted to major orders must receive Holy Communion in the Mass of ordination.

IV. Counsels. 1. Canon 862 desires that clerics, and also priests who on Thursday in the Supper of the Lord do not celebrate, be refreshed by the most holy body of Christ in the solemn Mass.

2. Canon 863 wishes priests to commend frequent, indeed daily, Communion to the faithful, especially in the Mass at which they are present. For the faithful, purity from mortal sin suffices, without necessity of special disposition. Yet the confessor is to be approached for counsel; he will be solicitous about preparation and thanksgiving, and will also take care that a frail penitent not begin to frequent the sacrament of the Eucharist in such a way that by some human fear he is placed in danger of communicating sacrilegiously. Nor do special rules bind the sick, except the care of exterior reverence, which can be impeded by lack of exterior penance in a scandalous sinner, by the infamous place where someone lies, and by bodily disease.
3. But it is to be desired that an occasion of Communion even daily be offered to the sick themselves. Holy Viaticum, which must be received by all in danger of death even extrinsic, is not to be deferred long, and can be received on the same day on which, while still free from danger, someone has already communicated.

V. 1. Spiritual Communion means the desire of worthy reception of the sacrament, and of spiritual refreshment, in him who is at least broadly impeded from the sacrament.

2. Although no one communicates for another, nevertheless someone can fruitfully help another living person by the good work of Communion, and apply to the dead the indulgence of Holy Communion.

Chapter IV: Circumstances of Holy Communion

— **I. At What Time.** 1. On what day. Except Friday in Parasceve, on which only Viaticum may be carried to the sick, on all days it is lawful in the Latin Church to distribute the Most Holy Eucharist. On Holy Saturday, however, "Holy Communion cannot be ministered to the faithful except during the solemnities of Masses, or continuously and immediately after they have been completed" (c. 867, §§1-3).

The Viaticum which alone it is lawful to distribute on Friday of the Greater Week must be understood as prescribed Viaticum, or that which is received for the first time in danger of death, for example, by a priest who had celebrated the sacred function healthy and then was brought into danger of life; but not that which, while the danger continues, is laudably repeated. On Holy Saturday, because it is an aliturgical day, only that Communion is permitted which is joined with Mass by a continuous connection. Moreover, Communion seems sufficiently joined with the solemnities when, immediately after the sacred action, from the very altar where it was celebrated, it is carried to the sick enclosed under the same roof. Nor is the prohibition of other Communion so grave that a cause would not excuse from it such as, not so long ago before the Code, the Sacred Congregation of Rites itself approved. For it declared it lawful that, for men who had completed spiritual exercises and could not wait for the solemnities of Masses, Communion be dispensed on Holy Saturday quite early in the morning (Ferreres, *La Communion frecuente y diaria*, nn. 176-177).

2. At what hour. "Holy Communion is to be distributed only at those hours at which the sacrifice of Mass can be offered, unless another reasonable cause counsels otherwise" (c. 867, §4).

The canon, in this favorable matter of Holy Communion, can be understood in such a way that the privilege of anticipating Mass is extended to Communion. And such is the style of the Sacred Congregation of the Sacraments. Moreover, a reasonable cause permits an exception, so that he who has remained fasting for a long time, even after midday, in order to receive it, should never be deprived of the sacred banquet. When the function of Thursday in the Supper of the Lord has been celebrated, Masses can no longer be said in the same church; in reality, from that hour the faculty of distributing Holy Communion there also seems to cease, especially since the sacred species must be removed. Yet a reasonable cause also suffices for derogating from this rule.

"Holy Viaticum can be ministered at any hour of the day or night" (c. 867, §5).

By this canon the prohibition of the Ritual, t. 4, c. 10, by which, except in necessity, nocturnal carrying of the Eucharist was prohibited, is removed. Since secret carrying is rather easily permitted, the very reason for the prohibition now no longer seems to subsist.

— **II. In What Place.** Wherever Mass can be celebrated, there also Holy Communion can be distributed, even in a private oratory, "unless the local Ordinary, for just causes, in particular cases, has prohibited this" (c. 869).

The power of the Ordinary to forbid dispensation of the Holy Eucharist is circumscribed by private oratory; nor would it be lawful for a bishop to prohibit Communion in private oratories by a general statute; but it is necessary that particular causes counsel that this be done in a particular case. Not

even paschal Communion in itself is prohibited from being made in a private oratory, with the notification to be given to one's own pastor from c. 859, §3 being preserved.

— **III. By What Rite.** 1. A priest must always minister Holy Communion by his own rite, even to faithful of another rite. Yet, in urgent necessity, if a priest of a different rite is lacking, it is lawful for an Eastern priest who uses leavened bread to minister the Eucharist in unleavened bread, and conversely, for a Latin or an Eastern priest who uses unleavened bread, to minister in leavened bread; but each must preserve his own rite of ministering (c. 851, §2).

Observe that the faculty is made not of consecrating a different species, but merely of ministering it. But necessity is not circumscribed by Viaticum. Therefore it will be had whenever a faithful person would be morally impeded from Communion on that day unless a priest ministered to him a species of a different rite. Suppose that in a place there is one church, which preserves leavened species. In the absence of a priest of the Eastern rite, a Latin priest will be able, by his own rite, to offer from the ciborium the leavened species to those who otherwise could not communicate. Yet he will not be able to do this if he has the opportunity of consecrating matter of his own rite.

2. In the Latin Church, dispensation under the species of wine is prohibited (c. 852), even, as they commonly understand, if the necessity of Viaticum cannot otherwise be provided for. Yet Cappello, I, n. 451, thinks that the divine precept of receiving Viaticum can be preferred to the ecclesiastical law, if no inconveniences are foreseen.

3. The communicant: a) is permitted to consult his own devotion, so that, for the sake of piety, he can receive a sacrament confected in another rite; b) is counseled to receive paschal Communion in his own rite; c) but the dying person must receive Viaticum in his own rite; yet, when necessity urges, he can receive it in any rite (c. 866). But the minister must follow his own rite in ministering.

— 4. In dispensing the Eucharist, the sacred minister, and in receiving it the faithful communicant, must exhibit to the most august sacrament the reverence which reason and the canons require, so that it is better to abstain from ministering the sacrament than to admit positive irreverence.

Therefore:

a) Within Mass it is not lawful for the celebrant to distribute the Eucharist to faithful so distant that he himself loses sight of the altar (c. 868).

Places so distant can be had even in a great basilica. Yet we saw the moderation admitted in hospitals at n. 321, 3;

b) He must put on sacred vestments and use a light. The omission of light is judged venial; nor is the omission of the stole alone or of the surplice alone thought grave, but certainly the omission of every sacred vestment is, unless necessity urges. But what must in itself be observed in secret carrying, we saw above, n. 387, d). Yet these rules do not oblige under mortal sin. Thus it is also reputed venial to omit sacred vestments and a light in carrying the Most Holy from one altar to another.

Outside Mass the color of the stole can be that of the day or white;

c) He must proceed with a moderate step. Scandal being set aside, however, several permit that the priest run. From necessity it is lawful to use a gentle horse, or a carriage, even an automobile. It does

not seem becoming, unless it is excused by the necessity of Viaticum, that the priest use the instrument commonly called a bicycle or motorcycle. The Sacred Congregation, when asked about this matter, abstained from an absolute prohibition, but warned that this manner was unusual. Here attention must be paid to episcopal statutes;

d) The Most Holy Eucharist is to be carried publicly with head uncovered. Dispensation outside cities was permitted to bishops; within a city it is reserved to the Holy See. Yet in a case of true necessity, by epikeia, they allowed that the priest cover his head, unless he could provide in a better way. But the better way now is secret carrying;

e) Holy Communion is to be given by one's own hand, and indeed by thumb and index finger. To use other fingers seems venial; from which the reason of not depriving the dying person or several healthy persons, why not one?, of Holy Communion will excuse. Yet if another priest is present, let him distribute Communion with thumb and index finger rather than another with other fingers.

And if the sick person cannot receive or swallow the host otherwise, they permit that, not too frequently, a particle of the host be offered to him in a spoon, with wine or water, provided scandal and danger of falling to the ground are absent. Something similar can be done to avoid danger of contagion;

f) Neither a larger host nor several smaller ones at once can be handed to one communicant: to do this would be venial. But lest one or another wait long, part of the host of the sacrifice can be detached; larger hosts can be consecrated and distributed divided into smaller parts. Where there is need, the smaller hosts themselves can be divided into two, at most three, parts;

g) A minister is required under light obligation. If he is lacking, the priest can do all things by himself. Except for the responses, a woman cannot supply the minister; nor is it the custom that in church a woman recite the *Confiteor*. Yet a nun or sister in the cloister or in the room of the sick person is accustomed to recite the prayers;

h) The *Confiteor* with absolution is required under light obligation. The blessing at the end is also prescribed, unless you are clothed in black paraments. The other prayers of the Ritual also now seem to be prescribed. Cf. Ritual, 1913, and Cappello, I, n. 453;

i) A burse of a color similar to the stole is to be used, with a corporal: a pall does not suffice;

j) Communion cannot be ministered at an altar where the Most Holy Sacrament is exposed. Wherefore, where there is only one altar, it will be better for a few moments to cover the Most Holy Sacrament with a veil, as is done while a sermon is held.

But it is tolerated that a priest clothed in vestments for Mass, when there is no easy supply of another priest, distribute Communion at another altar than that at which he has celebrated or is about to celebrate;

k) In itself, unless for a special cause the Ordinary has forbidden it in a domestic oratory, Communion can be distributed where it is lawful to celebrate (c. 869; cf. n. 421). And from there the Most Holy Eucharist can also be carried by any celebrant for "devotional" Communion to the sick who are lying in a room of a hospital or house;

l) As we have already said above, n. 401, various signs of honor are not strictly prescribed, but nevertheless are piously to be observed, such as laying aside weapons, gloves, etc.

— **Concerning Defects.** The rubrics of the Missal, ch. *De defectibus* in the Missal itself, are to be approached if something extraordinary happens. We shall note only these things.

If the species of bread has fallen, the host with the fragments being reverently collected, the place is to be marked, afterward to be washed with water to be poured into the sacrarium. St. Alphonsus, l. 6, n. 250, thinks the washing is required under grave obligation if the place is trodden by feet. Yet if it is morally established that nothing of consecrated matter remains there, we judge this to have been said too severely. And a washing which would move wonder is to be omitted, as in the beard of a man. If some host has fallen into the lap of a woman, let her herself draw it out separately and reverently and restore it to the priest.

But if a drop of blood has fallen, let it be absorbed, if it can be done, and the linen is to be washed three times. But if it has penetrated all the way to stone or wood, these things must be scraped somewhat, the scrapings burned, and the place washed three times. At least some washing, to be poured into the sacrarium, must be done under grave obligation.

Summary

— 1. Viaticum can be given on every day; Holy Communion on days other than Friday in Parasceve; on Holy Saturday only during the solemnities of Masses or continuously and immediately after they have been completed.

2. At the same hours at which Mass is offered, Holy Communion can be dispensed; but a reasonable cause permits an exception.
3. Where Mass is celebrated, Communion can be given. Yet the local Ordinary can prohibit this in a private oratory, in particular cases.
4. The Most Holy Eucharist is to be dispensed by one's own rite. Yet in urgent necessity a priest will be able to take a species of another rite already consecrated and offer it, by his own rite, to one about to communicate. Except for Viaticum, one can receive Communion of another rite.
5. Reverence in ministering is to be provided for, and therefore the rules must be observed concerning distance from the altar for the celebrant, vestments, light, movement, uncovered head, use of one's own hand, form of the host, the minister, the prayers of the Ritual, etc. And in the Missal itself the rubrics *De defectibus* explain what is to be done in an extraordinary case.

Chapter V: On the Custody and Cult of the Most Holy Eucharist

— 1. **In What Places the Holy Eucharist Must or Can Be Reserved.** Canon 1265, §1 prescribes the general conditions of custody, so that, if these are lacking, the obligation ceases or the license is taken away. Therefore it is necessary that a priest have care of it, such as the rector of a church is judged to have by the office itself; and that regularly, at least once in the week, Mass be celebrated in the sacred place. These things being posited:

2. Custody of the Most Holy Eucharist is prescribed in a cathedral church, in the principal church of a quasi-diocese, in any parochial or quasi-parochial church, in a church annexed to a house of exempt religious, whether of men or of women. As quasi-parochial seem able to be had subsidiary churches which in remote parts of a parish are governed by some cooperating vicar or prefect who is accustomed to perform parochial functions in it.
3. It is permitted, with the license of the local Ordinary added, in a collegiate church and in the principal oratory, whether public or semi-public, both of a pious or religious house, and of an ecclesiastical college which is governed by secular clerics or by religious.
4. Elsewhere an apostolic indult is needed. Yet to a church or public oratory the Ordinary can concede this license from a just cause and by way of an act (c. 1265, §§1 and 2).

Observe, therefore, that no faculty is given by the Code for reserving the Eucharist in the principal oratory of a monastery or even of a regular house. But that this may be done licitly, it is necessary that there be either an apostolic indult, or immemorial custom, which Benedict XIV, Constitution *Quamvis iusto*, said was necessary, or a positive faculty of the local Ordinary, which now, from c. 1266, §1, 2°, he can concede even habitually to every religious or pious house.

5. "It is lawful for no one to keep the Most Holy Eucharist with himself or to carry it with himself on a journey" (c. 1265, §3).

For no one, not even missionaries in a region of infidels. An exception requires such a cause as excuses from a grave prohibition, for example, to provide for the safety of the Most Holy Eucharist in some calamity or persecution. The Holy See is less opposed to reservation in the house of a pastor or priest, if at some time the Most Holy Eucharist cannot be reserved decently in a church (cf. response of the Sacred Congregation of Propaganda Fide, August 23, 1852, *Collect.*, I, 751).

— **In One Oratory.** Every contrary privilege having been revoked, the Most Holy Eucharist cannot be reserved except in the church or in the principal oratory of a religious or pious house; nor among nuns within the choir or the enclosures of the monastery (c. 1267).

The authentic declaration of June 2-3, 1918, of the Commission for the Interpretation of the Code being considered, the force of this canon comes to this:

a) Whether by privilege, or by faculty of the local Ordinary, the Most Holy Eucharist can be reserved in the principal oratory of a religious community, pious house, or ecclesiastical college;

b) If, besides the principal oratory, a religious or pious house has an annexed church, which the community does not use for fulfilling its ordinary exercises of piety, that church can also enjoy its own right, if it has any, for example because it is annexed to a house of exempt religious, of reserving the Most Holy Eucharist. For individual religious families, common law, any contrary privilege having been suppressed, has ratified nothing more;

c) But if several distinct families occupy the same material building, to each an oratory with custody of the Most Holy Eucharist can belong, whether from privilege or from the license of the bishop. Thus, without doubt, the community of a seminary and the community of Sisters who perform their work in the seminary are distinct and separate families. On the contrary, novices, because of their separation from the professed, are not for that reason judged to pertain to a formally distinct house [1]. It would have to be said otherwise if they inhabited distinct buildings, although contiguous, even if there was one Superior of each house, like a pastor who is placed over two parishes. But in a college the boarders quite easily constitute a community formally diverse from the religious one, as if the religious are partly assigned to other ministries. Wherefore in the oratory in which the boarders are accustomed to assemble for performing their exercises of piety, the Most Holy Eucharist seems able to be reserved, whether by privilege of the religion or by license of the local Ordinary, the right of preserving the same in the oratory of the religious remaining unharmed. Moreover temporary indults for reserving the Most Holy Eucharist in a second oratory, whether from the Sacred Congregation of the Sacraments or from the Sacred Congregation of Religious, according to the quality of the petitioners, are conceded without great difficulty (cf. *Per.*, IX, p. 154).

[1] Yet in *Monitore ecclesiastico*, 1918, p. 240, note, a more benign response was given.

— **Access of the Faithful.** "Churches in which the Most Holy Eucharist is reserved, especially parochial ones, should be open to the faithful daily, for at least some hours" (c. 1266).

This warning is most opportune, whether you consider its argument, since a church is destined for the faithful and custody of the Most Holy Eucharist is permitted for the convenience of adorers, or the habits of sacristans, who with too much haste are accustomed to close many churches. How much better it is, with inner gates arranged near the door, to permit free access to the church throughout the whole day to devout persons, without necessity of special vigilance.

— **In One Altar.** "The Most Holy Eucharist cannot be kept continuously or habitually except on one altar only of the same church" (c. 1268, §1).

Care must also be taken that the noblest place, and therefore regularly the main altar, be reserved for the Most Holy Sacrament. An exception is permitted, indeed counseled, in cathedral, collegiate, and conventual churches, where choral functions would be impeded by the cult of the Most Holy Eucharist; but even there the rectors of churches must take care that the altar on which the Most Holy Sacrament is reserved be adorned before all others, "so that by its very furnishing it may move the piety and devotion of the faithful more" (c. 1268).

— **Concerning the Tabernacle.** "The Most Holy Eucharist must be reserved in an immovable tabernacle, placed in the middle part of the altar."

"The tabernacle should be skillfully constructed, solidly closed on every side, decently adorned according to the norm of the liturgical laws, and empty of every other thing" (c. 1269, §§1 and 2).

Therefore the tabernacle in itself cannot be at the side in a wall, nor in a little tower, even a most elegant one, near the altar, yet with the right of immemorial custom preserved. Nor is a portable or movable tabernacle admitted in itself. It must be so empty that not even the holy oils can be reserved in the tabernacle, lest any confusion of cult be feared. But the liturgical laws wish that inwardly it be clothed with a silk cloth, unless however it is gilded, and that it be blessed (Sacred Congregation of Rites, June 20, 1899 ad IV, *Decr. auth.*, n. 4035). Besides, it must be covered with a canopy of either white color or a color suited to the office, the black color excluded, for which violet is used. Nor is the law dispensed because the tabernacle is made of silver, gold, or another precious material (Sacred Congregation of Rites, August 7, 1880, *Decr. auth.*, n. 3520). Yet sometimes the very form of the tabernacle, and examples had in the City itself, for example in the Vatican Basilica, do not permit use of a canopy. At least then, if there is supply, let the canopy be supplied by a large little cloth hanging from above, a baldachin, by which the altar is protected: this, writes Palmieri, t. 4, n. 906, can hold the place of a canopy. Above the tabernacle, besides the image of Christ crucified, nothing, not even relics of the holy cross, can be placed as upon a base.

— **Exceptions to the General Law.** 1. The Ordinary, by way of an act and from a just cause, can concede license of reserving the Most Holy in a church or public oratory where by common law it cannot be reserved.

Yet very useful would be a broader general faculty, not circumscribed by public oratory, given to the Ordinary, so that, for example, during the days of spiritual exercises, he could permit custody of the Most Holy Eucharist in the house where they are being given. But generally this will be a pious house, in which habitual reservation also can be had from the license of the local Ordinary.

2. Nocturnal reservation, because of a grave cause approved by the local Ordinary, in a safer and decent place, upon a corporal, with a lamp lit, is not reproved (c. 1269, §3).
3. The law of the unity of the altar is not violated by the fact that on certain days, for example feast days, for a few hours the Most Holy Eucharist is also reserved at another altar, so that Holy Communion can be distributed more conveniently.

— **The Manner of Reserving.** 1. Any little vessel containing the Most Holy Eucharist is to be placed upon a blessed corporal or pall [1]. 2. The pyx must be well closed with its own lid and covered with a white veil. And it is to be purified whenever the sacred species are renewed; nor are recent species to be mixed with older ones. 3. The little lunette is to be made in such a way that it can easily be purified, and so that the gilded circle itself, not however the glass plates, touches the sacred species (Sacred Congregation of Rites, December 4, 1871, but it is lacking in *Decr. auth.*). 4. Before the tabernacle "at least one lamp should shine continuously day and night, to be fed with olive oil or beeswax; but where olive oil cannot be had, it is permitted to the prudence of the local Ordinary that it be changed for other oils, as far as can be done, vegetable oils" (c. 1271).

To neglect that light for 24 hours, or for some whole nights, is judged mortal.

Not once only has the Sacred Congregation of Rites forbidden illumination from "gas" or "electricity" above the altar or within the tabernacle; it prohibited stearine candles themselves (*bougies*), but wished that candles "be all of wax, as many as are used above the table of the altar or in any way overhanging it" (Sacred Congregation of Rites, general decree, April 3, 1821, *Decr. auth.*, n. 2613). Yet

during the recent war, the Supreme Pontiff permitted the very use of electric light for the lamp and Mass to the judgment of bishops. And the use of electric light around altars is spreading in the City itself. Wherefore attention will have to be paid to recent responses, if any new ones are made.

5. "The key of the tabernacle... must be guarded most diligently, the conscience of the priest who has care of the church or oratory being gravely burdened" (c. 1269, §4).

Therefore the Code no longer prescribes what the Sacred Congregation of Rites attempted to urge more strictly, that the key be kept by the priest himself, but the most diligent custody of it is committed to his care.

[1] Yet in administering Holy Communion, the pall cannot be placed upon the altar in place of the corporal (Sacred Congregation of Rites, February 17, 1847).

— **Concerning Exposition of the Most Holy Eucharist.** Exposition is distinguished as private, which is done with the pyx: and this can be done for any cause, without the license of the Ordinary; and public, or with the monstrance. This "can be done on the feast day of Corpus Christi and within the octave in all churches during the solemnities of Masses and at Vespers; but at other times only from a just and grave cause, especially a public one, and with the license of the local Ordinary, even if the church belongs to an exempt religion" (c. 1274, §1).

And at the same time we are warned in §2 that the minister of exposition or reposition is a priest or deacon; but of Benediction, only a priest; yet in the case in which, furnished with due license of the Ordinary or pastor, a deacon has carried Viaticum to a sick person, Benediction with the pyx can be imparted by the deacon himself.

The rubric forbids that the pyx which is exposed be drawn outside the tabernacle. Therefore in churches where the sacred pyx is proposed on a certain throne, we shall call the exposition private and at the same time irregular.

The Sacred Congregation of Rites, March 14, 1861 (*Decr. auth.*, n. 3104), denied that the custom of exposing the Most Holy Sacrament without the license of the bishop could be preserved. Yet tacit consent suffices, such as can support accustomed expositions.

And Wernz, III, 553, note 235, thinks it probable that exposition for a regular community alone can be done from the license of its own exempt Prelate.

Observe also that public exposition can be permitted by the local Ordinary even for a non-public cause. But a public cause in general is spiritual utility, greater devotion of the people, for example, lest they spend the whole day or a great part of a feast day in profane things; but in particular, the solemnity of a feast, especially the feast of the Most Holy Body of Christ; difficult causes of peace and of public necessity or utility.

Both in public and in private exposition, according to the usage of places, at least six wax candles must burn on the altar. In the Clementine Instruction at least 20 are required.

During public exposition, there can be on the altar no relics or images of saints, except of adoring angels; but the cross, according to the custom of places, can remain or be removed. Nor can statues or images of saints be placed before the altar of exposition.

— **Concerning Mass with Exposition.** Except on the feast day of Corpus Christi and within the octave, at the altar where the Most Holy Sacrament is exposed no Mass in itself can be said, without necessity or grave cause or special indult. Sacred Congregation of Rites, April 17, 1919, *A. A. S.*, XI (1919), p. 246, by which the earlier decrees are confirmed. Yet Gardellini in *Instr. Clem.*, §12, n. 6, and the Sacred Congregation of Rites itself, May 22, 1883, apud *N. R. Th.*, XV, 138, warn that contrary custom should not be removed if it is immemorial, or if the faithful would be affected with grief because of its suppression.

— "The supplication of the Forty Hours is to be held yearly in all parochial churches and others in which the Most Holy Sacrament is habitually reserved, on days established with the consent of the local Ordinary, with as great a solemnity as can be done"; in places where grave inconvenience and perhaps the very reverence owed to so great a sacrament stand in the way, "let the local Ordinary take care that at least for some continuous hours, on fixed days, the Most Holy Sacrament be exposed by a more solemn rite" (c. 1275).

Thus in Belgium the so-called "perpetual adoration" takes the place of the exercise of the Forty Hours.

— It is not lawful, for the sake of veneration only, to carry the Most Holy Eucharist to the sick who cannot receive it. Cf. Lugo, *Resp. mor.*, 1, 11, 3; and Roman Ritual, *De commun. infirmorum*, n. 5. This is understood of carrying from the church through the streets. Cf. Ballerini-Palmieri, IV, 895. But it seems that the pious desire of a sick person can be satisfied who, prohibited from Communion, lying ill in a house in which the Most Holy Eucharist is reserved, desires at least to adore Christ in the Sacrament.

— Finally, piety toward the Most Holy Eucharist, frequent assistance at Mass, and visitation of the Most Holy Sacrament are greatly commended by c. 1273.

Summary

— 1. Custody is prescribed, the general conditions being observed of a priest having care and of at least weekly Mass, in a cathedral church, or the principal church of a quasi-diocese, in a parish or quasi-parish, in a church annexed to a house of exempt religious, whether of men or of women.

It is permitted, by license of the local Ordinary, in a collegiate church and in an oratory, whether public or semi-public, both of a pious or religious house and of an ecclesiastical college which is governed by clerics or religious.

The Ordinary himself can concede custody by way of an act in a church or public oratory.

Elsewhere an apostolic indult is needed, which is also required so that in a religious or pious house it be reserved not only in a church, if it has the right, and in a distinct principal oratory, but also in another oratory, unless several distinct families in the same house have their own proper oratory. But it is lawful for no one to retain the Eucharist with himself or to carry it with himself on a journey. Churches, especially parochial ones, in which the Most Holy Eucharist is reserved should be open daily to the faithful for some hours.

2. The Eucharist can be reserved habitually in only one altar of the same church, and in an immovable tabernacle skillfully made and empty of every other thing. Yet nocturnal

reservation, because of a grave cause approved by the Ordinary, in a safer and decent place, upon a corporal, with a light lit, is not prohibited.

3. The manner prescribed by the rubrics is to be observed: under every vessel containing the Eucharist a blessed corporal or pall must be placed; a lamp must shine continuously before the altar, to be fed with olive oil or beeswax, or at least with oils, especially vegetable ones, which the local Ordinary has permitted.

The key of the tabernacle is to be guarded carefully.

4. Private exposition of the Most Holy, or with the pyx, can be done for any cause, with the license of the rector; public exposition, or with the monstrance, besides the feast of Corpus Christi and within its octave, requires the license of the local Ordinary, to be given from a grave cause, especially a public one.

With the same days excepted, without necessity, grave cause, or indult, in itself it is not lawful to celebrate Mass at the altar of exposition or to distribute Holy Communion from it.

Everywhere exposition of the Forty Hours or a similar kind of public adoration is to be procured.

The minister of exposition is also a deacon; of Benediction, only a priest. Yet a deacon who has carried Communion to a sick person can impart ritual Benediction with the pyx.

All manner of piety toward the Most Holy Eucharist is to be commended, for example by frequent assistance at Mass and visitation of the Most Holy Sacrament.

Let the most holy and most divine Sacrament be praised forever.

Treatise V: On Penance

(cc. 870-910)

— *Appendix XI belongs to this section.* **Historical Introduction.** Cf. Appendix XI.

This will be the order of speaking: first we shall treat of the essence and necessity of the sacrament of Penance, then of its minister; then of its subject, then of its various circumstances. In the chapter on the minister, we shall examine the case of one absolving an accomplice; in the chapter on the subject, the obligation of denouncing a solicitor.

Finally, imitating the canonical Code, we shall add to the treatise a chapter on indulgences.

Utility. Not only a distinct knowledge of the essential parts of this sacrament, which pertains to the necessary learning of the confessor, insofar as he must reconcile men with God, but also the force and value of the formulae which are added to the essence, will help the physician of souls not a little in procuring spiritual health.

Title I: On the Essence and Necessity of the Sacrament of Penance

— 1. **Notion.** The Sacrament of Penance is the sacrament instituted by Christ in which, using the power of remitting and retaining sins, a suitable minister, by a judicial sentence, remits sins committed after Baptism to a faithful person sincerely penitent and confessing his guilt.

The conferred power is read openly in the Gospel of St. John 20:22 sqq.; but the Council of Trent, sess. XIV, defined that Penance is a sacrament properly so called, instituted by Christ, distinct from Baptism, and that the words, "Receive the Holy Spirit; whose sins you shall forgive, they are forgiven them, and whose sins you shall retain, they are retained," which the Catholic Church from the beginning has always understood of the power of remitting and retaining sins in the sacrament of Penance, cannot be twisted to the authority of preaching the Gospel.

A suitable minister is a priest endowed with jurisdiction, as will be explained afterward.

Use is made both by absolving, and by binding, whether to fulfilling a satisfactory work, or to a new subjection to the power of the keys.

To a faithful person sincerely penitent and accusing his own guilt. For three things are required in the penitent for the integral and perfect remission of sins: contrition, at least that which is called by the special name of attrition, confession, and satisfaction; so that contrition and confession are required for the very validity, but satisfaction for the integrity and plenary effects of the sacrament. All these things are also established by the Tridentine canons concerning this sacrament. Yet that attrition itself suffices has not been defined.

Sins committed after Baptism. For by Baptism alone both original sin and sins committed before Baptism are remitted. Wherefore only a baptized man can validly receive this sacrament of Penance.

Nor is remission obtained by another sacrament, even if at the moment of Baptism, lack of attrition concerning prior sins wholly or partly impeded the effect of Baptism at that time. Wholly, I say, if because of prior grave sins not retracted, sanctifying grace could not be infused; partly, if a persevering affection toward prior venial sins prohibited guilt and penalties from being remitted by Baptism. For when the fiction recedes, the sacrament of Baptism confers sanctifying grace; when venial sins have been retracted, these, without any remaining expiation of penalties, will be blotted out. But if new grave sins require perfect contrition or use of the sacrament of Penance with attrition, then, when the act of perfect contrition has been elicited, or when the priest gives absolution, by the force of the prior Baptism, or of the permanent character, grave sins prior to Baptism will be taken away. But if someone, not even before death, has not sufficiently retracted certain venial sins, departing from this life in the state of grace and with the habit of charity, he will immediately after death retract these perfectly; and by force of the baptismal character, he will have no penalty to be paid for these sins, insofar as they are prior to Baptism.

By a judicial sentence: for that sacramental absolution is a judicial act was defined in canon 9, sess. XIV of the Council of Trent.

He remits to the disposed penitent, because he must use his power not according to his own judgment, but according to the rules to be declared afterward.

— What concerning sins which are committed in the very reception of Baptism, and concerning the sin of fiction, or of Baptism received with an obstacle?

Sins which are committed in the very reception of Baptism are remitted by Baptism, provided they were committed before the sacramental sign was placed, or before the infusion of water under the words of the form. And the same must be said about sins which, committed before Baptism, indeed exist at the moment of Baptism but merely habitually. If after Baptism they again become actual, for example because of a renewed will, it is clear that these are now remitted only by the means of post-baptismal Penance.

But concerning fiction, as Cardinal Billot skillfully observes, *De Sacramentis*, th. 30, this is special: that it is properly consummated if, at the moment at which grace was to be infused, someone consciously, through mortal sin either then committed or not retracted, placed an obstacle to grace. Wherefore, since the infusion of grace, or the reality of the sacrament, is by nature posterior to the sacramental sign and the impression of the character, the sin of fiction itself is necessarily, at least by nature, posterior to the sacrament. And therefore, properly speaking, the sin of fiction, as St. Thomas says (3 p., q. 69, art. 10, ad 2), will be remitted not through Baptism, but through Penance, in reality or in desire. But if you suppose a man who, forgetful of his indisposition, received Baptism, or if in good faith, with only an estimated attrition, he approaches the sacrament of Baptism, he will have no formal sin of fiction to be accused. And also a prior will of sacrilegious reception of Baptism, which is not formally consummated in Baptism, will be remitted through Baptism. Cf. St. Thomas, art. cit.; Suarez, in 3 p., d. 28, art. 5; Lugo, *Paen.*, d. 15, s. 1; Lehmkuhl, II, 356.

— **Acts of the Penitent.** Contrition, confession, and satisfaction are called by the Council of Trent, sess. XIV, ch. 3, the quasi-matter of this sacrament. And this matter is proximate. But the remote matter is sins, posterior to Baptism, about which those acts are concerned; and this indeed in such a way that mortal sins are necessary matter as long as they have not been directly remitted sacramentally; but venial sins are sufficient matter and in themselves not necessary. In themselves, I say, because he who has no other matter to bring must accuse at least one venial sin with sorrow, if he wishes to use the sacrament.

But whether the acts of the penitent are true matter from which, together with the form, the sacrament is made, or whether the whole essence of the sacrament consists in absolution, so that the acts themselves of the penitent are nothing except matter about which: this is controverted. The more common opinion, of St. Thomas and the Thomists, embraces the former part, yet in such a way that satisfaction itself, excepting the necessary will of satisfying which is contained in contrition, is not held as an essential element, but only an integral one. Yet the different opinion of Scotus is not improbable.

For the remaining things which pertain to the acts of the penitent, cf. the chapter *On the Subject*.

— **The Form of the Sacrament** is the words of absolution, which in the Latin Church are: "I absolve you from your sins, in the name of the Father and of the Son and of the Holy Spirit. Amen," pronounced by voice upon a man present.

The word "I" is not essential; and the words "In the name of the Father," etc., now do not pertain to the form, as is demonstrated from ancient Rituals. More probably these suffice: "I absolve you"; or "I absolve from your sins." Yet because of doubt concerning this matter, under grave obligation at least

these words must be said: "I absolve you from your sins"; and absolution is to be repeated under condition where anything from these has been omitted.

As is established from the proposition condemned and the usage absolutely proscribed by Clement VIII through the decree of the Holy Office, June 20, 1602, and the subsequent declaration of Paul V, July 14, 1605 (Denzinger, n. 1088), the form must be pronounced by mouth, and, on the part of the one absolving, bear the appearance of direct speech with the penitent. Wherefore absolution given in writing is invalid, or from a place so remote that the words could not be perceived, even if by some sign you manifest the absolution while it is being conferred. And Clement VIII prohibited absolving an absent person under penalty of excommunication. And although it is not necessary that the penitent truly hear the words of the confessor, or that he himself be perceived by sense by the confessor, who can be blind, nevertheless, so that there be no doubt from the side of distance concerning the value of absolution, it is necessary that the confessor and penitent not be separated by such a distance at which men, using an ordinary though somewhat louder voice, could not or would not be accustomed to hold conversations: which distance St. Alphonsus, VI, 429, thinks is contained within 20 paces. Yet at a longer distance, those are judged present who are part of a multitude whose first ranks are near. Thus an army can be present in the manner of one, provided the last ranks can perceive the voice (Noldin, III, 239). And the value remains probable as long as the penitent, the impediment being removed, could perceive the absolution in some way. Wherefore a priest will absolve under condition one whom he has seen or heard dying at a distance. But outside necessity, he will not hold as present someone who is in a room which does not communicate with the place where the confessor is, unless the walls are such that they allow the possibility of mutual conversation. But a departing penitent he will recall, if it can be done conveniently and prudently, or he will absolve until he is not farther away.

Absolution given through the telephone would be very doubtful, so that outside a case of necessity this means cannot be attempted. The question concerning the use of the telephone in extreme necessity, the Sacred Penitentiary, July 1, 1884, judged unworthy of a response. For to the proposed doubt it wrote back: Nothing is to be answered.

From the present discipline at least of the Latin Church, the form of absolution cannot be a deprecation, but must be decretory. And in the Constitution *Etsi pastoralis*, May 26, 1742, Benedict XIV, §5, commanded that Italo-Greeks, when they absolve Latins, use the indicative form prescribed in the Council of Florence: "afterward, if they wish, let them say that deprecative prayer which they had been accustomed only to say as the form of this absolution" (*Coll. P. F.*, n. 338). Cf. also n. 966, response of the Holy Office, June 14, 1843. Concerning the theoretical question, cf. the historical introduction and the dogmaticians.

Invalid would be an absolution given under a condition concerning the future. Cf. above, n. 185.

Therefore the form would be doubtful: "May God absolve you," or "May Christ absolve you." It is clear that it does not harm validity if instead of "you," you say: "your Majesty."

— **The Complete Ritual Formula of the Sentence of the One Absolving:** 1. also embraces prayers before the essential words: "May almighty God have mercy on you, and, your sins having been forgiven, lead you to eternal life. Amen." Then, with hand raised, he continues: "May the almighty and merciful Lord grant you pardon, absolution, and remission of your sins. Amen";

2. A conditional absolution from censures by a twofold condition: of power in the one absolving, of necessity in the penitent: "May Our Lord Jesus Christ absolve you, and I, by his authority, absolve you from every bond of excommunication, suspension, if he is a cleric, and interdict, insofar as I can and you need";
3. Absolution, with decretory or absolute words: "Then I absolve you from your sins, in the name of the Father and of the Son and of the Holy Spirit. Amen." While he names the divine Persons, he makes the sign of the cross.

It is concluded with a deprecation: "May the Passion of Our Lord Jesus Christ, the merits of the Blessed Mary Virgin and of all the Saints, whatever good you have done and evil you have suffered, be for you unto remission of sins, increase of grace, and reward of eternal life. Amen." Now:

The prayers *Misereatur* and *Indulgentiam*, from Trent, sess. XIV, ch. 3, are laudably added. But canon 885 warns us: "Let them not be omitted without a just cause." Both lack of time and a multitude of penitents easily furnish this cause (cf. Noldin, III, 237).

Nor is it established that he sins who has omitted: "May Our Lord Jesus Christ absolve you," etc., if there is no suspicion of censure, and the form of absolution from sins, by the intention of the one absolving, is referred also to censures and bonds connected with sins, if perhaps there are any. Then, even if the penitent is bound by a certain censure, the omission will not be grave. But it would be mortal to wish to absolve first from sins rather than from a censure which takes away the legitimate use of the sacraments, such as excommunication, and sometimes interdict.

Whether the word *Deinde* belongs to the black or red text is not so certain. At least it is better to pronounce it. Thus usage has it, and in the latest typical edition of the Ritual it is written in black letters. In the Ritual of Paul V, the word *Deinde* does not pertain to the text; Benedict XIV inserted the same into the text (cf. Hanssens, *Per.*, XII, p. [41]).

To omit the Persons of the Most Holy Trinity is thought venial.

The formula "May the Passion of Our Lord Jesus Christ," etc., is indeed not imposed as to be used under sin, but it is better to use it because of the spiritual utility of the penitent. For it joins with the good acts of the penitent a special satisfactory value, which some equate with the power of sacramental penance.

These words are thought by others merely to express the prayer by which, in the name of the Church, the priest prays God that he grant abundant actual graces by which the penitent may perform works very meritorious and satisfactory. They are then a certain useful sacramental: this interpretation agrees more with the natural signification of the words. But others attribute to the same words the power of elevating all the good works of the penitent to the dignity of sacramental satisfaction, not indeed indefinitely, but until the faults accused and remitted in the Sacrament have not been fully expiated (cf. Noldin, III, 259). Many grave authors judge this, and St. Alphonsus, l. 6, n. 507, thinks it more probably and more commonly affirmed. That a greater power of expiation of past fault accrues to good works from the aforesaid injunction is the opinion of St. Thomas himself, *Quodlib.* 3, art. 28.

Where there are many penitents to be heard, one could before the first absolution premise *Misereatur* and *Indulgentiam*, omitting the same in the following cases; but pronounce the formula "May the

Passion of Our Lord Jesus Christ" while the penitent is departing. The formula "May Our Lord Jesus Christ" is not regularly to be omitted.

When necessity urges, the Ritual teaches this very brief formula: "I absolve you from all censures and sins, in the name of the Father," etc.

What in the sacrament of Penance is the reality and sacrament, there is little agreement. St. Thomas, 3 p., q. 84, art. 1, ad 3, in passing places it in interior contrition. Cardinal Billot (*De Sacramentis*, th. VI) says it is the right to remission at least of guilt and eternal penalty; Rev. Fr. de la Taille (*Mysterium Fidei*, p. 581, note, and Xiberta, *Clavis Ecclesiae*) says it is "the extinction of debt toward the Church."

But the reality of the sacrament, as always, is sanctifying grace restored or increased, with actual helps for amending life, which constitute sacramental grace.

— **Necessity of the Sacrament.** For those fallen after Baptism into mortal sin, the sacrament of Penance is "necessary for salvation as Baptism itself is for those not yet regenerated" (Trent, sess. XIV, ch. 2). Therefore there is necessity of means, at least in desire.

Summary

— **I.** 1. By the Council of Trent, sess. XIV, we are taught that Penance is a sacrament properly so called, in which, through a truly judicial sentence, sins committed after Baptism are subjected to the keys by which the Church can remit and retain sins.

2. **Matter.** The acts of the penitent, contrition, confession, satisfaction, are called by Trent, sess. XIV, ch. 3, the quasi-matter of the sacrament; the more common opinion of St. Thomas and the Thomists holds them as proximate matter and sins as remote matter; yet the opinion of Scotus, which places the whole essence in absolution, is not improbable.

3. **Form.** In the Latin Church these are the words, pronounced by voice upon a man present: "I absolve you from your sins." Certainly the words suffice: "I absolve you from your sins"; more probably it is enough to say: "I absolve you"; "I absolve from your sins."

Written absolution would be invalid, or one pronounced upon an absent person; but the appearance of direct speech with the penitent is required. This seems to be lacking in the telephone, since those speaking in this way perceive a merely electric imitation of the voice.

Certainly present is he who is not more than 25 paces distant, or is part of a multitude whose first ranks are near.

From the present discipline at least, the form must be pronounced indicative, not deprecative.

The complete form of the Ritual embraces, before the essential words: a) the prayers "Misereatur... Indulgentiam..." which do not oblige under sin, yet are not to be omitted without a just cause; "May Our Lord Jesus Christ absolve you": nor is it established that these must be said under sin; b) conditional general absolution from censures, which is a vestige of reconciliation with the Church, necessary from the primitive discipline of the Church. They think this can today be omitted without sin if there is no suspicion of censure; and certainly it is omitted without grave sin, provided you do not wish to absolve from sins before absolving from a censure which takes away the legitimate use of the sacraments, such as excommunication, and sometimes interdict.

There follows the word *Deinde*, which is better pronounced than kept silent, since in the typical edition of the Ritual it pertains to the black text.

After the essential words, under venial obligation the Persons of the Most Holy Trinity are to be named. The formula is closed by the word Amen.

Through the added deprecation "May the Passion of Our Lord Jesus Christ," etc., a special satisfactory value is added to the good acts of the penitent. Wherefore, because of the spiritual utility of the penitent, it is better not to omit it.

When necessity urges, the Ritual teaches this brief form: "I absolve you from all censures and sins, in the name of the Father," etc.

Title II: On the Minister of the Sacrament of Penance

Section I: Canonical Norms

Utility. - For the sake of greater order, we have separated the canonical norms from the moral ones. But since the matter concerns the internal forum, which exists for the spiritual good of the faithful, a confessor who did not know the canonical sanctions very accurately would be ignorant of many means of helping the penitent, and would become not only less useful to him, but easily even positively harmful. First of all he ought to know how far his power extends, and what, when power is lacking, is nevertheless available to him for the good of the penitent.

Chapter I: The Power Required and Sufficient

— "The minister of this sacrament is only a priest" (c. 871). Besides the power of order, for the valid absolution of sins there is required in the minister the power of jurisdiction, whether ordinary or delegated, over the penitent (c. 872).

The power of order is required because it is a sacrament; the power of jurisdiction, because it is an institution after the manner of a judgment. Opportune is the warning given us by the Code that jurisdiction is something relative, not only with respect to the matter, as the power of order itself is, but also with respect to persons. Wherefore the discussion is of jurisdiction over the penitent. Moreover, priestly order is required only for the absolution of sins. Jurisdiction for removing censures or ecclesiastical penalties can validly be granted by a competent ecclesiastical Superior to any cleric, indeed, by the Supreme Pontiff even to a non-cleric. To this pertain certain absolutions which in the time of St. Cyprian some deacons conferred.

The Council of Trent, sess. XXIII, ch. 25 *De regularibus*, in order suitably to compose the privileged jurisdiction of regulars with the authority of the local Ordinary, began to require, for validly absolving seculars, either a parochial benefice or approval from the bishop. This approval, strictly taken, as distinct from jurisdiction, implied, besides a judgment concerning suitability, the consent of the local Ordinary that one could use his jurisdiction. Often, however, the bishop intended at the same time to grant jurisdiction to the confessor whom he approved, so that most regular confessors drew jurisdiction from a twofold source: from the source of pontifical privilege, through their proper Superiors, and from the source of the diocesan prelate. Concerning approval which must be joined to jurisdiction the Code says nothing expressly. Yet from the tenor itself of c. 874, §1, it is sufficiently evident that this is the mind of the Code: that not even exempt religious should have any jurisdiction available for commonly absolving seculars without the faculty of the local Ordinary. Nevertheless a formal and express revocation of the privilege by force of which regular Superiors conferred jurisdiction for absolving seculars is read in no canon. But because of the perpetual necessity of diocesan jurisdiction, it has become so useless that it seems to be among those things which are to be abrogated by desuetude.

Because jurisdiction is required, the power of the Church to prescribe the manner of exercise even for the very value of the act is made more manifest.

— This jurisdiction, moreover, can be either ordinary or delegated.

Those who possess ordinary jurisdiction can absolve subjects everywhere in the world; while in delegates there is required jurisdiction given by the Ordinary of the place where confessions are heard, unless the penitents can be absolved by force of jurisdiction communicated by a religious Superior as such. The priest also whom either a Cardinal or a bishop, even titular, has chosen as confessor for himself and his household obtains by the law itself, everywhere, jurisdiction available for hearing them (cf. c. 239, §1, 2°, and 349, §1, 1°).

But, contrary to the general statute of c. 199, §1, ordinary jurisdiction for sacramentally absolving penitents can be delegated only by those whom cc. 874 and 875 indicate as delegators.

This was gathered from the mind of the legislator, and now it is authentically established concerning pastors and vicars of pastors, from the response of the Pontifical Commission, October 16, 1919, ad 3 (*A.A.S.*, t. XI, 1919, p. 477).

But jurisdiction, both ordinary and delegated by the local Ordinary, is valid for hearing vagi, travelers from another diocese, and Catholics of the Oriental rite (c. 881).

— 1. Ordinary jurisdiction ceases for all by loss of office; and by excommunication, suspension from office, and interdict, but only after a condemnatory or declaratory sentence has been issued against him who is subject to these penalties (c. 873, §3).

And so, before a sentence of this kind, one excommunicated validly hears and absolves penitents; and licitly if he is tolerated and is requested by a member of the faithful (cf. c. 2261 and n. 211). In danger of death, every priest validly and licitly helps the dying person who asks.

2. Delegated jurisdiction is extinguished when the mandate has been completed, when the time has elapsed, or when the number of cases for which it was conceded has been exhausted; when the final cause of the delegation ceases (as if someone is delegated to supply for a sick chaplain, and he, before the arrival of the delegate, recovers and resumes the office); by revocation directly intimated to the delegate, or by renunciation directly intimated to the delegator and accepted by the same; also when the right of the delegator is resolved, if nevertheless this appears from the clauses, or the power was made only for sacramentally hearing persons expressed in the rescript or indult, and the matter is still intact (cf. cc. 207 and 61). Thus jurisdiction conceded "at our good pleasure," from c. 73, and more clearly "as long as I live," or "during my office," ceases by the death of the delegator; but not that which is conceded "until revocation."
3. Nevertheless, a priest validly absolves who inadvertently uses jurisdiction after the time has elapsed or the number of cases for which he had it has been exhausted (c. 207, §2).

— Revocation or suspension of jurisdiction is not to be done without a grave cause. If, nevertheless, this exists, the Ordinary can prohibit the office of confessor even to a pastor or penitentiary, with recourse in devolutive effect to the Apostolic See remaining safe. But, without consulting the Holy See, it is not lawful for a bishop to take jurisdiction away all at once from all the confessors of a religious house, if the house is formed (c. 880, §3).

This canon is written in such a way that it leaves untouched the authority of Ordinaries, who therefore always validly take jurisdiction away, even if the revocation is prohibited. For it permits only recourse in devolutive effect to the pastor or penitentiary himself who has been revoked or suspended from hearing confessions, so that, until the Holy See has admitted the recourse, the episcopal decree produces its effects. Toward religious, however, the bishop is prohibited from exercising only a collective revocation, if it concerns a formed house. Nothing prevents the bishop, for grave causes, from suspending several confessors of the same religious house successively and individually, even if none should now remain endowed with diocesan jurisdiction.

— "Delegated jurisdiction or the license of hearing confessions can be conceded circumscribed by certain limits. Let local Ordinaries and religious Superiors beware, however, lest without reasonable cause they restrict jurisdiction or license too much" (c. 878).

The most usual limitation is had in reservations of cases, about which we shall treat below. By reason of younger age, many Ordinaries also are accustomed to concede jurisdiction to priests who are not yet 30 or 35 years old for hearing only men. It also happens that for hearing girls boarding with religious women, a special jurisdiction is required which is required for nuns and Sisters.

A local restriction is sometimes made in this way, that jurisdiction is conceded for hearing confessions in a certain church or in a few certain defined churches, so that the circumstance of place is to be held as a predefined condition for having jurisdiction. But it would be foreign to juridic reasons to require the circumstance of place for the value of a confession received by a priest to whom jurisdiction over persons is simply granted. Finally, the most frequent limitation is temporal, by which jurisdiction is conceded for a year or several years.

— Of itself, jurisdiction or license of hearing confessions is to be conceded only to those "who shall have been found suitable through an examination," unless it concerns a priest whose theological doctrine local Ordinaries and religious Superiors "have otherwise ascertained." And after jurisdiction or license has been conceded, if they "prudently doubt whether a priest previously approved by them still continues to be suitable, let them subject him to a new test of doctrine, even if it concerns a pastor or canon penitentiary" (c. 877).

Again, however, by canon 871 local Ordinaries are warned not habitually to concede jurisdiction to religious whom their proper Superior has not presented; but, to those presented, with the proof of examination remaining safe, not to deny the same without a grave cause.

Observe that the same prudence is prescribed by the canon to the local Ordinary who confers jurisdiction and to the religious Superior, even when he merely consents to the use of conceded jurisdiction. And that the examination which the bishop imposes upon regulars themselves who wish to hear the confessions of seculars must be undergone by them is now in no way doubted. But by cc. 877 and 878, too, controversies are cut away concerning the right which regulars would have had so that, having been found suitable, they might be approved absolutely and could not be recalled to an examination. For from c. 878 the bishop remains free to circumscribe the faculty of receiving confessions by time.

When this space has elapsed, the bishop will be permitted, in order to concede a new faculty, to impose the reasonable condition of examination. But if he shall have given a perpetual faculty absolutely, a positive suspicion of incompetence will indeed be necessary so that he may licitly require a new examination; nevertheless he always acts validly, since, from c. 880, he can always efficaciously remove the jurisdiction itself, with recourse in devolutive effect to the Holy See remaining safe.

— For the very value of confessions it is necessary that jurisdiction be expressed in writing or in words. The concession, moreover, must be gratuitous (c. 879).

And so a tacit concession is not sufficient, which easily labors under ambiguity, and much less a presumed one concerning the future, since this is not true, but only would be true if it were sought. Nevertheless an intimation of the concession is not required. Wherefore, in an urgent case, jurisdiction can, as they say, be presumed concerning the present; that is, one who is morally certain concerning the petition received by the bishop by which he asks for jurisdiction, and concerning an affirmative response given either to his procurator or by letters, can, in urgent matters, even before

the letters are received or before the return of the mandatary, receive confessions. And the mandatary can through a telegraphic message make the petitioner certain that the prayers have been heard. Nor is an explicit formula required, but a formula suffices which explicitly, for example by referring to appointment or mission, signifies from law or usage the concession of jurisdiction joined with appointment or mission.

Summary

— I. In the minister there is required the power of order together with jurisdiction, since at the same time he administers a sacrament and pronounces a judicial sentence.

Jurisdiction can be ordinary or delegated.

Ordinary jurisdiction can be exercised everywhere over subjects; nevertheless it can be delegated only by those whom cc. 874 and 875 indicate as delegators.

Delegated jurisdiction must proceed from the Ordinary of the place where confessions are heard, unless the penitents can be absolved by force of jurisdiction communicated by a religious Superior as such.

By both ordinary and delegated jurisdiction, vagi, travelers, and Catholics of the Oriental rite can be absolved.

II. Ordinary jurisdiction ceases for all by loss of office; and besides, but after a condemnatory or declaratory sentence, by excommunication, suspension from office, and interdict.

Delegated jurisdiction ceases when the mandate has been completed, when the time has elapsed, when the number of cases for which it was conceded has been exhausted; when the final cause of delegation ceases; by revocation directly intimated to the delegate; by accepted renunciation; when the right of the delegator is resolved, if this appears from the clauses, or the power is only of hearing persons expressed in the rescript or indult, and the matter is still intact. Thus, by the death of the delegator, jurisdiction conceded through the words "at our good pleasure" ceases, but not if it is said "until revocation."

Validly, from c. 207, §2, he absolves who, after the time has elapsed or the number of cases has been exhausted, inadvertently uses jurisdiction.

III. Revocation or suspension of delegated jurisdiction, made by the Ordinary, is valid; but it demands a grave cause in order to be licit; nor, without consulting the Holy See, is it lawful for a bishop to deprive all the confessors of a formed religious house of jurisdiction.

The Ordinary can also prohibit the office of confessor to the penitentiary and to the pastor, with recourse in devolutive effect to the Holy See remaining safe.

IV. For a reasonable cause, jurisdiction or the license of hearing confessions can be circumscribed by certain limits: of persons, of time, of place. The most usual restriction is made by reservation of cases.

V. Jurisdiction and the license of hearing confessions is regularly to be conceded only to those who have been found suitable through an examination; and they can be recalled to a new test of doctrine.

It is recommended to Ordinaries that, in approving religious, they conduct themselves according to the reasonable will of Superiors.

VI. Jurisdiction is not validly conceded unless expressed in writing or in words; an implicit expression nevertheless can suffice.

The concession must be gratuitous.

Chapter II: Who Have Ordinary Sacramental Jurisdiction or Can Delegate It

— Those have ordinary power of hearing confessions:

1. for the universal Church: a) the Roman Pontiff; b) Cardinals of the Holy Roman Church. Their jurisdiction extends to all persons, even nuns, and to all cases, "except only censures reserved in a most special manner to the Holy See, and those which are annexed to the revelation of the secret of the Holy Office" (cc. 873, 239, §1, 1°);
2. each for his own territory, the local Ordinary, the pastor, and those who are in the place of the pastor; for the same territory of the Ordinary, the canon penitentiary of the church, whether cathedral or collegiate, with the power "of absolving also from sins and from censures reserved to the bishop, strangers also in the diocese, and diocesan persons also outside the territory of the diocese" (cc. 873, 401, §1).

Concerning individual persons or cases a few things are to be observed:

a) by the name of local Ordinary are understood, besides the Roman Pontiff, each for his own territory, the residential bishop, abbot or prelate nullius and their vicar general, administrator, vicar and prefect Apostolic, and those who, when the aforesaid are lacking, succeed in the meantime in governance, according to the prescription of law or from approved constitutions (c. 198. Cf. above n. 70-74, 81-85);

b) usage has it that a pastor, unless the contrary is expressly established, is considered competent for the whole diocese, so that he enjoys ordinary jurisdiction over parishioners, but delegated jurisdiction over all the faithful confessing in the diocese. This delegation is from the law, by force of c. 881, as regards those who confess in the parish; it proceeds from the local Ordinary as regards penitents who confess outside the parish. And so the appointment itself of a pastor signifies at the same time diocesan delegation. If you ask how this concession is sufficiently express, as c. 879 requires, we answer that by words or writings is expressed whatever, from usage, they are judged to signify. To pastors (cf. n. 77) are equated quasi-pastors (n. 86), parochial vicars (n. 78) if they are endowed with full parochial power.

In the place of the pastor are the vicar oeconomus who governs a vacant parish, the cooperating vicar who assumes the governance of the parish before the appointment of the oeconomus (cc. 471-473); the vicar adjutor given to a pastor unequal to his duties, if he supplies the place of the pastor in all things (c. 475); the vicar legitimately substituted for an absent pastor (cc. 465, 474);

c) power over things reserved to the bishop, when it is conferred without distinction, embraces both the cases which the law reserves and the cases which the bishop reserves to himself;

3. for their own subjects, exempt religious Superiors, according to the norm of the constitutions (c. 873).

— Those delegate, if we attend to the words of the Code:

1. for hearing the confessions of any persons whatever, whether seculars or religious, priests both secular and religious, even exempt: the Ordinary of the place in which the confessions are received (c. 874, §1).

And so it is now established, what we were already writing (*Per.*, VII, p. 27-28), that even exempt religious, when they confess before a secular priest, are absolved by diocesan jurisdiction, which therefore is affected by diocesan reservations, unless the confessor at the same time has obtained regular jurisdiction from the exempt Superior. It is also established that travelers are absolved by the jurisdiction of the Ordinary of the place where confessions are received, so that the jurisdiction of the one absolving is subject to the cases reserved in the place of confession. This is now confirmed by the response of the Pontifical Commission, November 24, 1920, *De reservationibus*, *A.A.S.*, XII (1920), 575. The Ordinary also can grant the faculty of subdelegating.

Observe that by him who has ordinary and delegable power, the faculty of granting jurisdiction for confessions can also be delegated to any cleric. And he can also permit, to a person not capable of ecclesiastical jurisdiction, for example a religious Superiorissa, in a general or particular way, the designation of priests whom the Ordinary himself, with that condition posited, intends to delegate for confessions. Thus he could establish: Whatever priests you admit for saying Mass in your chapel, I render fit for hearing confessions there.

2. For hearing the confessions of the professed, of novices, and of those who dwell day and night in a religious house for the sake of service, education, hospitality, or infirm health: the proper Superior of an exempt clerical religion, according to the norm of the constitutions, delegates subject priests and also priests from the secular clergy or from another religion (cc. 875, 514, §1).

And so beyond doubt is placed the power of an exempt Superior validly to grant jurisdiction, for hearing his own, to any priest, whether secular or religious, even those whom his proper Ordinary has not approved.

3. For hearing any religious women and novices, the local Ordinary where the house of the religious women is situated confers peculiar jurisdiction. Grave sickness, or accidental approach to a confessor approved for women, being excepted, concerning which cases cf. the things to be said below, this peculiar jurisdiction is necessary for validity for all, even pastors, if you except Cardinals (c. 876, §1).

The words of c. 876, §1, "for receiving the confessions of religious women validly and licitly," of themselves allow room for doubt whether that peculiar faculty is required for validity itself or only for liceity. For the canon can be explained literally thus: in order that confessions be received at the same time validly and licitly, a special faculty is necessary. For this proposition to be true, it is enough that without such a faculty the confessions remain illicit. Nevertheless, that the faculty is required for validity is established both from the sufficiently manifest mind of the legislator, who wished by a universal disposition to sanction the already quite universal usage of requiring peculiar approval for the very value of absolution, and from the words themselves of the canon, which require peculiar jurisdiction. For jurisdiction, from c. 872, is necessary for the value of absolution.

— 4. By delegation of common law, any priests absolve any penitents whatever in danger of death from any sins or censures whatever validly and licitly, even if an approved priest is present. Nevertheless the absolution of an accomplice, outside the case of necessity, remains illicit even then on the part of the confessor. The burden of recurring, which is imposed upon a convalescent penitent absolved from certain censures, is explained below, n. 473.

— The same common law, by its delegation, also extends the jurisdiction of priests who undertake a maritime journey. For those delegated either by their proper Ordinary, or by the Ordinary of the port in which they board the ship, or by the Ordinary of an intermediate port through which they pass on the journey, can during the whole journey receive in the ship the confessions of any of the faithful whatever sailing with them (c. 883, §1).

Whenever the ship stops on the journey, they can receive the confessions both of the faithful who approach the ship for any reason, and of those who, when they themselves call briefly at land, ask to confess, and they can validly and licitly absolve them even from cases reserved to the local Ordinary (c. 883, §2).

By this canon, in almost the same words as in the decrees of the Holy Office, August 23-24, 1905, and December 12-13, 1905, a faculty of superior law is confirmed and extended, while nevertheless the ambiguity of certain words has been dispelled. For in the decree of the Holy Office, August 23-24, the approval to be obtained was said to be "from the proper Ordinary from whose diocese they depart." That condition of departure, which labored under obscurity and made difficulty, has now happily been omitted. Moreover, the limitation which in the decree of 1906 was rendered in these words has been suppressed: "Provided that there be no approved priest in the place, or only one, and the local Ordinary cannot easily be approached."

Because the question concerns an Ordinary who must give jurisdiction for hearing any persons whatever, the proper Ordinary must be understood as the local Ordinary (so also Ferreres, *Comp. theol. mor.*, II, 654), who for a religious is the Ordinary of the place of the convent to which the religious belongs. Besides, in the decree of the Holy Office, August 23-24, 1905, by the name of proper Ordinary, the local Ordinary was manifestly designated, since there was added "from the proper Ordinary from whose diocese they depart." Since the later words were ambiguous, they have been removed, but the words which remained have not changed their signification.

Jurisdiction is not conceded except on the journey: therefore neither in the port from which the ship departs, nor in the port where the journey has its end. These notions must be taken relatively, with respect to the priest absolving. The Neapolitan port will be intermediate for a priest who boards the ship at Marseilles; for a Neapolitan it will be the port from which the ship departs.

On the high sea, since the ship is then outside every diocese, no diocesan reservation touches it.

— By its delegation, common law also supplies jurisdiction in common error or in a positive and probable doubt, whether of law or of fact (c. 209).

1. **On Common Error.** Common error is the error of many, whether they are many absolutely, say 200, or are many relatively to the number of the faithful who compose the parish or community. And since already, Reiffenstuel being witness, L. V, t. 1, n. 249, and Ball.-Palm., *Opus theol.*, VII, n. 150, ten persons can make a people, we, receding from the stricter opinion

which we proposed in *Epitome iuris*, II, n. 154, now judge the common error of a religious house which consists of ten persons sufficient. But common error is not the error of one or another, but the error of those who, with attention to the extent and nature of the people, can by a moral judgment be called many. Many, however, at least in an extensive community, can be constituted even by a smaller part (cf. R. P. Jombart, S.J., *L'erreur commune, Nouv. Rev. Theol.*, April 1923, p. 172). Nor is it required that the many erring wish to use that estimated jurisdiction, for example that many approach for confession; but it is enough that in the place where the confessor receives confessions he is commonly thought to have jurisdiction, as if he habitually occupies a confessional of a public church.

Since error means a judgment of the mind, is it necessary that it truly be commonly thought that jurisdiction belongs to such a priest? With Jombart, l.c., p. 173, and Cappello, *De Matrimonio*, n. 665, we think it enough that the foundation of the error be public or known to many, that is, that the elements of an erroneous judgment concerning the jurisdiction of such a priest be in the minds of many. For then they can already be said to err. But, in our opinion, it is not enough that a few err because of a cause which would deceive others also. For then no common error is present; but such an error would be present if, an announcement having been given concerning the approaching arrival of a missionary to preach a mission, both a true missionary who begins the mission without jurisdiction, and a priest who, arriving, is falsely thought to be the announced missionary, can, on account of common error, validly receive confessions. But the fact that an unknown and not commonly expected priest is asked by a member of the faithful to hear a confession, and actually hears it, even in the confessional of a church, does not for that reason mean that jurisdiction will be supplied by the Church, since no error is formally or fundamentally common.

Because, however, the Church then supplies jurisdiction for the common utility, we think this must be added: that the error ought to be such as could of itself harm many. Wherefore, unless it concerns an action which directly affects the community itself, it is necessary that the error be concerning habitual power or jurisdiction. For if it is terminated by one act toward a private person, it is not of itself the concern of many. We shall see the application of this rule in the treatise on Matrimony.

In the confessor no good faith is required.

But what if someone does not share the common error? Schmalzgrueber, *De iudiciis*, denies this case of common error, since then he is badly disposed. If, nevertheless, the error is truly common, accidental knowledge will not stand in the way of the value of jurisdiction, since the canon does not limit its benefit to those erring, and it can be very troublesome to be deprived, on account of knowledge, of an occasion perhaps rare, indeed unique, for making confession. (Against this, however, Ferreres, II, n. 651).

Finally, the question concerning common error can give place to a doubt of law or of fact. To these doubts, if they are positive and probable, c. 209 itself, in its other disposition, can be applied.

Let us recall from tome I, n. 840, 852, that doubt is had when the mind suspends assent between two or more opinions (doubt strictly so called), or when it makes only an opinative judgment, with serious fear of the opposite (doubt broadly so called). The doubt is of law if its object is the meaning or even the existence of a law; of fact, when the fact itself to which the law is known to be applicable is uncertain. A doubt concerning jurisdiction will be positive if there is a reason for affirming

jurisdiction; and it is furthermore probable if the reasons for affirming are grave or of some moment. A positive and probable doubt of law will be had if grave authors affirm that jurisdiction is had in such a case, or, for example, that the conditions of c. 522 have been fulfilled, although other grave authors contradict them. A probable doubt of fact will be present, for example, if, not having occasion to read the diploma conceded to me, and doubting about its extension, from the usage of the curia I opine that it was conceded to such a day. But a doubt of fact will have been negative if I doubt whether my jurisdiction ceases on the 5th day or the 15th day of the month, and I can bring forward no reason for either part.

And so, every necessity of a title or cause which might seem to grant jurisdiction to me being set aside, if, in fact, they commonly think me furnished with it, or if my jurisdiction is probable (by fact or by law), I validly place an act of jurisdiction, that is, in the case, I validly confer absolution. Yet this difference exists between the two cases: in common error, the Church merely provides for the spiritual utility of the faithful, lest they be deceived; while in a positive and probable doubt of my jurisdiction, the Church wishes to render me secure, so that also in my favor, as a precaution, it supplies jurisdiction.

In negative doubt, since the Church supplies nothing, the validity of the act depends on the truth alone of the matter which is unknown.

Observe finally that the benefit of c. 209 is not proper to sacramental jurisdiction, but common to every use of jurisdiction, for example for dispensing; and indeed of jurisdiction accepted broadly, for example that which is necessary for assisting at marriages.

— By disposition of common law, it is lawful for Cardinals and bishops, even titular, to choose for themselves and their household a priest who thence, by jurisdiction delegated by common law, obtains jurisdiction over those persons, which he can exercise everywhere (cf. 239, §1, 2°, and 349, §1, 1°).

Moreover, by household members here are understood those who pertain to the family or house of the Cardinal or bishop, especially by reason of service, as secretary, servants.

The Supreme Pontiff himself confers upon his confessor jurisdiction for absolving himself.

— No other person delegates sacramental jurisdiction: not a Cardinal, as such; the open mind of the legislator prevents us from extending to the conferring of jurisdiction the very ample ordinary power which he received for hearing confessions. The legislator cannot be judged to have made for them the incredible power of delegating throughout the whole world any priests whatever for absolving any persons whatever even from cases especially reserved to the Holy See; and the privilege of choosing a confessor for themselves would be useless for them if they could render all priests suitable for receiving confessions. Nor the canon penitentiary, from whom the faculty of delegating is formally excluded by c. 401; nor the pastor, concerning whose power of delegating the Code indeed was silent, yet in such a way that from the canons compared we gathered certain arguments for denying this power. But now, from the response of the Pontifical Commission, October 16, 1919, ad 3, it is authentically established that pastors or their vicars, or others delegated for the universality of causes, can neither delegate jurisdiction for receiving confessions, nor extend for approved priests jurisdiction beyond the limits of place or persons within which it had been circumscribed according

to the norm of c. 877 §1, but that they need for this a special faculty or mandate of the local Ordinary (*A.A.S.*, XI, p. 472).

Wherefore not even to another pastor can a pastor concede jurisdiction for hearing confessions.

Summary

— I. Those have ordinary power:

1. for the universal Church, besides the unlimited faculty of the Supreme Pontiff, Cardinals of the Holy Roman Church, for all persons, even nuns, and for all cases, except those reserved in a most special manner to the Holy See and those which are annexed to the revelation of the secret of the Holy Office;
2. each for his own territory, the local Ordinary, the pastor, and those who are in the place of the pastor; for the same territory of the Ordinary, the canon penitentiary, with power of absolving from sins and censures reserved to the bishop. And, with attention to custom, pastors are considered competent for the whole diocese, unless the contrary is expressly established;
3. for their own subjects, Superiors of exempt religion, according to the norm of the Constitutions.

II. 1. Common law delegates:

a) any priests whatever for absolving any penitents whatever in danger of death from any sins or censures whatever, even with an approved priest present, with the necessity remaining of recurring to the Superior or privileged confessor, imposed upon the convalescent, for censures reserved in a most special manner or reserved by man, and with the prohibition also remaining of absolving an accomplice outside necessity;

b) priests approved either by their proper (local) Ordinary, or by the Ordinary of the port in which they board the ship, or by the Ordinary of the intermediate port, for absolving, through the whole maritime journey, any of the faithful whatever on the ship itself, indeed also those who ask to confess when they themselves briefly call at land: these also they can absolve from cases reserved to the local Ordinary;

c) priests for whom jurisdiction must actually be supplied, either on account of common error, or on account of a positive and probable doubt of law or fact concerning their jurisdiction;

d) a priest chosen for himself and his household by a Cardinal or bishop, even titular.

2. The Ordinary of the place of confession delegates, for hearing the confessions of any persons whatever, whether seculars or religious, priests both secular and religious, even exempt.

The same confers the peculiar jurisdiction which, for hearing religious women and novices, is of itself necessary even for pastors and canons penitentiary.

3. The proper Superior of an exempt clerical religion delegates subject priests and also seculars or priests of another religion, for hearing the confessions of the professed, of novices, and of

those who dwell day and night in a religious house, for the sake of service, education, hospitality, or infirm health.

No one else, neither a Cardinal, nor a canon penitentiary, nor a pastor, can delegate sacramental jurisdiction.

Chapter III: On Reservation of Cases

— Reservation of a case is its calling away to the judgment of an ordinary Superior, by which at the same time the power of inferiors is limited (c. 893, §1 and 2).

By this genuine definition, the notion of reservation is restored; it is not, at least principally, a penalty, but directly says a restriction of jurisdiction, so that it directly affects the confessor, not the penitent.

Wherefore, concerning the subject of reservation, the Pontifical Commission on the Code, November 24, 1920, *De reservationibus*, prudently responded that travelers are bound by the reservations of the place in which they are staying (*A.A.S.*, XII, p. 575). For, from c. 881, §1, they are absolved by the jurisdiction of the diocese of the place where they confess. But the absolving confessor possesses this jurisdiction restricted by reservation. In what way, therefore, could he use jurisdiction toward travelers beyond the limits within which he has it?

The reason which we have just added, however, excepts the case in which a traveler, in a foreign diocese, confesses before his own Ordinary or pastor, whose jurisdiction is not affected by the reservation of the foreign diocese. Nor in that case will the pastor have to attend to the reservations of his own diocese, since reservation does not exceed the limits of its own territory.

— The power of reserving cases belongs to all those who by ordinary right can grant the faculty of hearing confessions or inflict censures. Nevertheless, the power is denied to the capitular vicar; while the vicar general needs a special mandate (c. 893).

Indeed, by canon 896, in exempt clerical religions it is expressly assigned to the Superior General alone. Yet we think this is said with respect to the other Superiors, since the canon begins with these words: "Among Superiors." And so we judge that the power of a chapter or general congregation, in which the supreme jurisdiction of the Order exists, remains untouched.

— **On Ignorance of Reservation.** It is customary to ask whether ignorance excuses the penitent from reservation or not. With attention to the genuine notion of reservation, which subjects graver causes to a more mature judgment, so that it limits the jurisdiction of the inferior and is not numbered among canonical penalties, it seems that a certainly negative response must be given. This is confirmed not a little by the declaration just alleged concerning travelers. For these generally are ignorant of the reservations proper to a foreign diocese, nor are they bound by its penalties; and nevertheless it has been denied, without any distinction, that the simple confessor of the place where he confesses can of himself absolve them from reserved cases. Yet we do not yet dare to reject the extrinsic probability of the more benign opinion. For this, supplied with its reasons, cf. in the study of R. P. Fuster, S.J., *Los reservados episcopales segun el nuevo Codigo*, in *Razon y Fe*, t. 52 (1918), p. 510 sqq.; t. 53 (1919), pp. 103, 216, 510 sqq. Nevertheless, nothing prevents the one reserving from reserving only sins which were committed with knowledge of the reservation. The Ordinary will be able to signify this mind either expressly, by a declaration added to the reservation, or tacitly, for example if an excuse on account of ignorance is taught in his seminary. Therefore we shall never say, "ignorance excuses from reservation"; but rather we shall admit that knowledge of reservation is sometimes to be counted among the conditions of a reserved case.

— Sins and censures can be reserved. Both are called by the common name of reserved cases, so that power given over reserved things or over reserved cases, of itself, embraces both powers over reserved sins and reserved censures. But when a sin is at the same time punished by a censure, reservation can affect either the sin alone or the censure alone or both. But if the censure itself impedes the legitimate use of the sacraments, absolution from the censure must formally be placed before absolution from sins. Wherefore if then the reservation affects the censure alone, the sin is nevertheless called reserved by reason of the censure. But in the chapter on Penance, the Code treats almost only of reserved sins. We think we shall consult the utility of students if we immediately join the connected matter concerning reserved censures, so that first concerning reserved sins, then concerning reserved censures, we may propose the disciplinary rules summarily.

I. On Reservation of Sins

— **Those Reserving.** 1. The single sin reserved to the Holy See by reason of itself is false accusation, by which an innocent priest is accused of the crime of solicitation before ecclesiastical judges (c. 894).

Nevertheless, c. 2363 punishes a false denunciation of this crime, made to Superiors, with a censure specially reserved to the Holy See. How these things are composed, we shall say below.

— 2. The Ordinary of places is warned not to reserve sins unless, either from discussion made in synod, or after the cathedral chapter and some selected parish priests have been heard, the true necessity or utility of the reservation has been proved (c. 895).

3. Among religious Superiors, only the Superior General of an exempt religion, or the abbot of a monastery sui iuris, each with his own Council, can reserve sins, as above. Yet by this reservation they are forbidden to restrict the power of the ordinary confessors of the religious house; nor can they validly restrict the faculty of a confessor approved by the local Ordinary whom a religious has approached (cf. cc. 896, 518-519).

With his own council, that is, after that Council has been heard; for thus we judge that this clause must be interpreted. This interpretation is confirmed from the immediately preceding parallel place. For the local Ordinary is merely commanded to hear his chapter.

Since c. 896 expressly intends to define which Superiors, with others excluded, can reserve cases, and has declared the competent Superior to be one with his own council, he is to be judged not competent without such council, so that consultation of the Council seems necessary for the very value of the reservation.

— These laws are prescribed for Ordinaries:

1. few cases, three at most or four, from the graver and more atrocious external crimes only, specifically determined, are to be reserved (c. 897);
2. reservation is not to remain in force longer than the extirpation of some inveterate vice or the restoration of collapsed discipline demands (c. 897);
3. Ordinaries are entirely to abstain from reserving to themselves sins "which are already reserved to the Apostolic See, even by reason of censure; and regularly from those also upon which a

censure, even one reserved to no one, has been imposed by the law" (c. 898).

The first condition, while it requires specific determination, demands that a genus, for example concubinage, not be reserved for attaining the species, but wishes that the case be circumscribed by those notes or circumstances which demand reservation: for example let adulterous concubinage be reserved, if on account of that circumstance it is to be reserved.

Today, indeed, not in every region can it be hoped that a vice can be extirpated by reservation. But if it impedes the propagation of the vice, we judge that this is already enough for the reservation to have the utility which is required according to the wishes of the Holy See.

Canon 898 prohibits Ordinaries from reserving sins even as such (or independently of censure) to which a censure reserved to the Holy See is annexed, even if the sin is reserved to the Holy See only by reason of the censure. For example, from c. 2351, duel is punished by a censure simply reserved to the Holy See. On account of ignorance not to be blamed, the guilty person could have escaped the censure, so that the sin is now not reserved to the Holy See. The Ordinary is prohibited from reserving the sin to himself even for such a hypothesis. Since, however, no invalidating clause is added, the reservation would be valid.

— **Cessation.** Any reservation lacks force, from c. 900:

1. when the sick who cannot leave the house confess, or betrothed persons for the sake of entering marriage;
2. 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 cannot be sought from the legitimate Superior without grave inconvenience of the penitent or without danger of violation of the sacramental seal;
3. outside the territory of the one reserving, even if the penitent has departed from it only to obtain absolution.

And matters stand equally whether there the confessor of the place or the pastor of the penitent gives absolution.

These rules, proper to sins which are reserved by reason of themselves, are laid down in such a way that a statute either of a bishop or of a religious Superior contrary to them would be destitute of value.

On account of the word "any," they also fall, as it seems to us, upon the single sin reserved to the Holy See by reason of itself. But in absolution, the conditions required by the very nature of things according to the mind of c. 2363 will have to be observed.

On account of the benign mind of the legislator, we judge that by the sick can be understood all those who by bodily infirmity, for example a broken foot, are detained at home; not, however, any persons whatever who are shut in the house, for example a prison, even for another reason, such as on account of guilt.

And the exception profits also those, for example religious, who are in a house where confessors dwell.

Betrothed persons, however, are whoever confess in order to a proximate marriage; that is, all those about to marry, although they have made no formal espousals.

A grave inconvenience of the penitent is, for example, a grave difficulty of returning to the confessor, the necessity of celebrating, difficulty of abstaining from Communion without some mark or suspicion; indeed, if we are not mistaken, the notable detriment itself of the soul which he would suffer on account of less good will, if it is to be feared that he may depart indisposed.

The danger of violating the seal will be present if, on account of the circumstances, it is to be feared that the Superior may come into suspicion of the person for whom the faculty is sought. But under this name does not come the danger that the penitent himself, by approaching a privileged confessor, may expose himself to that suspicion: for the penitent cannot violate the seal by his own deed. But such danger will have to be numbered among grave inconveniences.

Since, moreover, the faculty denied by the Superior, sought in a determined case, is conceded by the law itself, the force of reservation is reduced finally to this: that a penitent who has committed something reserved is compelled to approach a simple confessor twice; and thus he is advised to seek more mature confessors whom he can deservedly presume to be furnished with faculties. Moreover, promulgation of the reservation opportunely warns subjects concerning the gravity of the guilt, concerning its opposition to the reason of their state. Cf. *Nouv. Rev. theol., De l'utilite des reserves dans les Ordres religieux* (Besson), 1921, p. 24.

Since the reservation itself ceases, the absolution given is beyond doubt direct.

— **The Efficacy of Reservation.** 1. Ordinaries of places must take care that they bring their reservations to the knowledge of subjects; nor should they impart to anyone whatever and indiscriminately the faculty of absolving from reserved cases (c. 899, §1).

2. Nevertheless the law itself grants the faculty to the canon penitentiary; and it wishes that it be imparted habitually at least to vicars forane or deans, with the faculty of subdelegating added, especially in places more remote from the episcopal see, as often as confessors of their district recur to them if and when, for some more urgent case, they do so (c. 899, §1).

3. Besides, by the law itself, from cases which Ordinaries have in any way reserved to themselves, pastors, or others who in law come under the name of pastors, can absolve during the whole time useful for the paschal precept; individual missionaries, while missions are being held for the people (c. 899, §3).

By this canon, while it commands the publication of reservations and warns that reserved cases not be communicated to anyone whatever and indiscriminately, the legislator intends to provide for the efficacy of reservation. Yet from this let us not think that it is consonant with his mind that the faculty over reserved cases be delegated to no one or to only a few. He expressly wishes that the cases be few; but nowhere does he say: "Few should be able to absolve from them." Indeed he himself indicates several to whom he wishes an habitual faculty, with the power of subdelegating, habitually to belong. But when he cautions "lest it be given to anyone whatever and indiscriminately," he intends this one thing: that the faculty be committed to selected confessors, both secular and religious, a faculty which, according to the mind of the legislator himself, seems rather to be granted than denied.

From canon 451, under the name of pastors come quasi-pastors who govern quasi-parishes into which a Vicariate or Apostolic Prefecture has been divided (c. 216, 2, 3), and parochial vicars, if they are endowed with full parochial power (cf. n. 455).

Moreover, the time useful for fulfilling the paschal precept is that which is established either by common law or by the statute of Ordinaries using the power made for them; finally also, if we are not mistaken, that which has legitimately been extended for someone. Nor is it required that the confession be made for fulfilling the paschal precept. But the time itself is privileged, in which even those who have already satisfied the paschal precept can obtain from pastors absolution of cases which the Ordinary had reserved to himself.

Because the law is favorable, missions can be understood also as spiritual exercises, provided they are given to some people, that is, under a collective aspect. For the law does not require missions made in a church. And for the same end of conversion and spiritual renewal, both missions and spiritual exercises are given, except that in the latter a more active cooperation of the people or recipients is supposed.

II. On Reserved Censures

— **Various Notions.** Censures (for example excommunications) are some reserved, others not reserved.

1. A censure ab homine is always and everywhere reserved to him who inflicted the censure or issued the sentence, or to his competent Superior or successor or delegate (cc. 2245, 2247).

Among censures a iure, some are reserved to the Ordinary, others to the Holy See simply, in a special manner, or in a most special manner (c. 2245).

2. The reservation of a latae sententiae censure does not bind in a doubt whether of law or of fact (c. 2245), nor outside the territory of the one reserving, "even if the censured person departs from the territory to obtain absolution" (c. 2247).

Since departure in fraud of the law now certainly does not harm, travelers everywhere can be absolved from the censures of their own diocese by any confessor. But they are not subject to the censures of other dioceses, unless they are added to a particular law which consults public order, or to a general law. But a general law will scarcely have to be fortified by a censure by the bishop, since the common law has sufficiently provided for this. (Cf. cc. 2226, 898).

Vagi, however, in a diocese are subject to the censures of the territory where they are actually staying.

3. "Reservation of a censure impeding the reception of the sacraments (that is, of excommunication and personal interdict) imports reservation of the sin to which the censure is annexed; but if anyone is excused from the censure or has been absolved from it, the reservation of the sin entirely ceases."
4. "If a censure is reserved to the Apostolic See, the Ordinary cannot validly impose another censure reserved to himself upon the same delict" (c. 2247, §1).

5. Absolution given by a confessor ignorant of the reservation is valid, unless it was a censure ab homine or reserved to the Holy See in a most special manner (c. 2247, §3).

And because the fault of the confessor cannot harm the penitent, matters stand equally whether the confessor labors under culpable or excusable ignorance.

But what if the penitent, conscious of the contracted censure, deliberately approaches a confessor whom he knows to be ignorant?

If this penitent is otherwise well disposed and has perceived the probity of the ignorant confessor, he will validly be absolved from censures, since the conditions of the canon are perfectly fulfilled.

We require probity, lest the penitent have to fear that absolution has been given out of malice, so that he cannot be secure.

6. If a general absolution is conceded to a penitent bound by several censures, this also has value for those withheld in good faith, but not for a censure reserved to the Holy See in a most special manner; a particular absolution has no value except for the cases expressed (c. 2249).

— **Absolution.** 1. Any confessor can impart absolution from censures reserved in any way whatever in the sacramental forum:

1° if the penitent is constituted in danger of death;

2° in more urgent cases: namely, if for the time necessary for the competent Superior to provide:

a) latae sententiae censures cannot be observed without danger of grave infamy or scandal; or

b) it is hard for the penitent to remain in the state of sin.

Here, therefore, the question concerns one excommunicated or personally interdicted; otherwise, one rightly disposed can be absolved from sin, the censure, for example of suspension, remaining firm.

2. In a more urgent case, the burden remains for the penitent of recurring within a month "at least by letter and through the confessor," under penalty of reincidence, to the competent Superior and of standing by his mandates, provided that this can be done without grave inconvenience, and the name having been withheld (c. 2254).

In danger of death, the obligation of recourse binds only for censures ab homine or by law reserved to the Holy See in a most special manner (no longer specially, as formerly): it is to be made after the penitent has recovered, that is, within a month after, the danger having been removed, he has sufficiently recovered strength so that he can easily complete the matter himself.

Danger of death can be understood as probable; grave inconvenience will be present if neither the confessor (for example because he must depart before a response is received and while absent the response cannot safely be communicated) nor perhaps the penitent himself, unskilled, can send a letter, and it is hard for the penitent to approach another confessor (cf. response of the Holy Office, November 9, 1898).

And because the burden of repeating confession before another is supposed to be grave, the confessor, after showing the great utility of liberation from the state of sin, can bring it about that it

is hard for the penitent to remain in the state of sin even for a day, so that in practice almost always, under the burden of recourse, he can absolve from reserved censures.

3. The competent Superior in censures imposed a iure is the Sacred Penitentiary or a bishop or Superior endowed with due faculty (cc. 2252, 2254, §1, 2).

If recourse to the Holy See is impossible, recourse must be had within a month to the Legate of the Roman Pontiff, to the bishop or Superior (not confessor) endowed with due faculty. For they are expressly named; and so the opinion is excluded which would terminate the obligation of recourse at the reserving Superior alone. Moreover, we are warned with the same clarity that recourse also to the bishop is to be made by letter, nor is the opinion of those now to be admitted who thought that the use of a letter, as an extraordinary means, was to be employed only in recourse to the Holy See.

By delegable power, the Legate of the Roman Pontiff (that is, the Nuncio or Apostolic Delegate) can also in the external forum absolve from all censures a iure reserved either simply or specially to the Roman Pontiff.

But the bishop, by ordinary and delegable power, can absolve from censures in occult cases which are not reserved to the Apostolic See in a most special or special manner.

4. No one is obliged to approach a privileged confessor, but it is always lawful for all, even after recourse before the Superior has been introduced. In this case, the accusation of the delict at least being repeated, one must stand by the mandates of the confessor alone (cc. 2252, 2254, §1, 2).

This repeated confession of the delict is necessary so that the confessor may impose suitable mandates. For we think that the absolution of the sin is direct in every urgent case, since power over the reserved censure is conceded by the law itself.

— "But if in some extraordinary case this recourse is morally impossible, then the confessor himself... can concede absolution, without the burden of which above, nevertheless imposing the things to be imposed by law and imposing a suitable penance and satisfaction for the censure, so that unless the penitent, within a suitable time to be set by the confessor, has done penance and given satisfaction, he falls back into the censure" (c. 2254, §3). The case of absolution of an accomplice is excepted.

Here the question concerns a case in which recourse immediately appears or is prudently foreseen to be impossible. For if after absolution it becomes impossible, during the impediment, but not beyond it, the penitent or confessor will be immune from that burden. Recourse is morally impeded, for example if from it there arises a probable danger of violation of the seal or great detriment to reputation. As we have already said, the recourse of which the canon speaks is to the competent Superior, not to a privileged confessor. From the favor here conceded the priest (penitent) excommunicated on account of absolution of an accomplice is expressly excluded; but one suspended on account of solicitation to shameful things is not excluded. For in the first edition of the Code, c. 2368 is cited by mistake for c. 2367, §1.

— But the absolution which a competent confessor has given from a reserved censure has value even if the confession was null or sacrilegious, provided the penitent accused the reserved matters. If this

accusation was omitted in good faith, not a few think that even then the censure was removed, since the confessor is thought to wish to use his power efficaciously as much as he can.

And these things hold also concerning reserved sins.

In a jubilee, however, valid use of jubilee faculties cannot be made in a sacrilegious confession.

— Observe:

1. reincidence into censure, by common law c. 2254, is established only for him who within a month does not recur or does not present himself to the confessor to receive mandates, but not for him who, after he has recurred, does not execute the mandates (unless this penalty is established in the rescript). Although such a person for the most part will be in a bad state;
2. now that the distinctions between those who are impeded for a short or a long time have been suppressed, absolution given in a more urgent case is direct, so that it removes the burden of repeated sacramental accusation. Therefore he who, after worthily received absolution, has omitted the required recourse, will have to accuse only this omission as a sin.
3. If, in some rare case, a simple confessor cannot use can. 900 for absolving a penitent from a sin reserved without censure, Ferreres, II, 679, thinks that it is lawful for him to absolve with the burden of recurring, as if the case were with a reserved censure: there is parity of cause, and in the decree of 1888, whence c. 2253 is taken, absolution even from a reserved case without censure is contained. Yet the matter is little demonstrated by these arguments.

Summary

— I. Reservation of a case is its calling away to the judgment of an ordinary Superior, by which at the same time the power of inferiors is limited (cf. c. 893, §1 and 2). Wherefore it principally says not a penalty but a restriction of jurisdiction.

Cases are reserved, of themselves, by all Ordinaries. Yet the capitular Vicar cannot reserve cases, nor, without special mandate, the vicar general. In a clerical religion, among Superiors, only the General or the abbot of a monastery sui iuris, each with his own council, can do this.

Knowledge of reservation can be placed among the conditions of a reserved case; but, standing by principles, ignorance does not excuse from reservation. We would not wish to exclude the extrinsic probability of the more benign opinion.

II. Sins and censures are reserved. Reserved things, or reserved cases, embrace censures and sins. When a sin is punished by a censure, reservation can affect only the sin or only the penalty, or both. Yet if the censure impedes the legitimate use of the sacraments, absolution from the censure must formally be placed before absolution from the sin; wherefore the sin is then called reserved by reason of the censure.

III. Reservation of sins. 1. On those reserving. The single sin reserved to the Holy See by reason of itself is false accusation before ecclesiastical judges of a priest as guilty of solicitation to shameful things in the sacrament of Penance. The local Ordinary is warned not to reserve sins without proved necessity or utility, proved through discussion in synod or after the chapter has been heard together with selected priests.

Alone, among Superiors, the General of an exempt religion or the abbot of a monastery sui iuris, after each has heard his own council, reserves sins. By this reservation they cannot licitly limit the power of the ordinary confessors of the house, nor validly the power of confessors approved by the local Ordinary.

2. On sins to be reserved. Few cases, at most three or four, from the graver external cases, specifically determined, are to be reserved, as long as the extirpation of vice or restoration of discipline demands it.

Ordinaries are entirely to abstain from reserving sins which are already reserved to the Apostolic See, even by reason of censure; and regularly those also upon which a censure, even one reserved to no one, has been imposed by law.

3. Cessation. Any reservation lacks force: a) when the sick who cannot leave the house confess, or betrothed persons, for the sake of entering marriage; b) when the Superior has denied the faculty sought for a definite case; c) when, in the prudent judgment of the confessor, the faculty cannot be sought from the legitimate Superior without grave inconvenience of the penitent, or without danger of the sacramental seal being violated; d) outside the territory of the one reserving.
4. Connected rules. Ordinaries must take care that they bring their reservations to the knowledge of subjects; nor should they impart the habitual faculty to anyone whatever and indiscriminately. Nevertheless it is necessary that it be granted habitually at least to vicars forane, with the power of subdelegating the faculty added as often as a confessor of their district recurs to them for a more urgent case.

Habitual faculty over reserved cases is delegated by law to the canon penitentiary; then, during the whole time useful for the paschal precept, to those who in law come under the name of pastors; and to individual missionaries during missions or spiritual exercises made for the people.

IV. Reservation of censures. 1. Rules concerning reservation. a) A censure ab homine, that is, one which has been brought by a particular precept or by a condemnatory judicial sentence, is always and everywhere reserved to him who inflicted the censure or issued the sentence, or to his competent Superior, or successor or delegate (cc. 2245, 2247). A censure a iure is sometimes reserved to no one; another is reserved to the Ordinary; another to the Holy See, and this simply, in a special manner, or in a most special manner (c. 2245).

b) Reservation of a censure a iure does not bind in a doubt whether of law or of fact, nor outside the territory of the one reserving.

When a sin is reserved by reason of a censure, this censure being excused or absolved, the reservation itself of the sin is removed.

In vain would an Ordinary impose a censure reserved to himself upon a delict which is punished by a censure reserved to the Holy See.

2. Rules concerning absolution. a) Absolution from censure and from sin, given by a confessor ignorant of the reservation, is valid unless it was a censure ab homine, or reserved to the Holy

See in a most special manner.

b) Particular absolution has no value except for the cases expressed in it; general absolution has value also for those withheld in good faith; not, however, for those reserved to the Holy See in a most special manner.

c) Any confessor can impart absolution from censures reserved in any manner whatever in the sacramental forum: a) to a penitent in danger of death; b) in more urgent cases, if, during the time necessary for the competent Superior to provide, latae sententiae censures cannot be observed without danger of grave infamy or scandal, or if it is hard for the penitent to remain in the state of sin.

In a more urgent case, there remains for the penitent the burden of recurring within a month "at least by letter and through the confessor," under penalty of reincidence, to the competent Superior, and of standing by his mandates, provided that recourse can be made without grave inconvenience, and the name having been withheld (c. 2254).

If in some extraordinary case that recourse is impossible, the confessor (unless there is question of excommunication on account of absolution of an accomplice) can simply absolve, imposing the things to be imposed by law and imposing a suitable penance and satisfaction for the censure: these will have to be fulfilled within the time to be defined beforehand by the confessor under penalty of reincidence into the censure.

In danger of death, the obligation of recurring binds only for censures ab homine or reserved to the Holy See in a most special manner; and recourse is to be made only after, the danger having been removed, the sick person has sufficiently recovered strength that he can easily complete the matter himself.

d) The competent Superior, to whom recourse must be had at least by letter, for censures imposed a iure, is the Sacred Penitentiary, or a bishop or Superior insofar as he is endowed with faculty. By ordinary and delegable law itself, the bishop can absolve from occult cases which are reserved to the Holy See neither in a most special nor in a special manner.

It is lawful for anyone, even after recourse before the Superior has been introduced, to approach a privileged confessor (the accusation at least of the reserved delict being repeated) and to stand only by his mandates.

Absolution from a reserved censure given by a competent confessor has value even if the confession was null or sacrilegious, provided the penitent accused the reserved matters. (Then the sin indeed will remain, but it will no longer be reserved.) Indeed, if this accusation was omitted in good faith, not a few think that even then the censure has been removed.

Does he fall back into censure who does not execute the mandates of the Superior? On account of the silence of c. 2254 this can be doubted and therefore denied.

Absolution given in a more urgent case is direct.

If there is need, Fr. Ferreres, II, 697, thinks that a sin reserved without censure can be directly absolved with the burden of recurring, as if it had been reserved with censure. This is less approved by us.

Chapter IV: The Sacramental Forum in Religions

— **Religions to Be Distinguished. The Extension of the Canons.** Clerical religions and lay religions must be distinguished, and these latter are some of men, others of women.

But the canons and the whole discipline of the sacramental forum fall also upon societies which live a common life without vows, from c. 675.

§ 1. On the Sacramental Forum in Clerical Religions

— The sum is this:

1. Several confessors, in individual houses, are to be deputed. How many in number? As many as the number of members demands. It is necessary, however, that individual religious obtain an option among several. And so the Superior could not constitute several confessors in such a way that one alone is assigned to the various parts of the community. And it is clear that a similar abundance of choosing must be given to household members, who besides enjoy greater liberty.
2. The constitutions are confirmed which command or recommend confession, to be made at stated times before determined confessors.

By what obligation? By the very obligation of the constitutions, which can command or merely recommend the matter. Nevertheless, with attention to the moderation immediately added, that precept cannot be grave.

3. "If a religious, even exempt, for the quiet of his conscience approaches a confessor approved by the local Ordinary, even if not numbered among those designated, the confession, any contrary privilege being revoked, is valid and licit" (c. 519).

If he approaches: understand, in a licit manner, according to the rules. For the right is not conferred on the religious that he may approach in any manner whatever, but, when an occasion is offered, within or outside the convent, he can use it. Wherefore, he can neither demand that the Superior call another, nor can he himself, for approaching the confessor, leave the convent for any other reason than that by which departure is permitted through the rules and constitutions. According to the various case it will or will not be expedient that the Superior concede departure or deny it according to the rules; but the faculty of departing cannot be denied for this reason, lest the religious approach another confessor.

For the quiet of his conscience. That condition is sufficiently fulfilled whenever the religious seriously wishes to open his soul to such a confessor. For every confession seriously made, in some true sense, tends to quiet of conscience; and serious choice of a confessor is directed to greater quiet of conscience; and besides, the reasonable mind of the legislator, who studied to promote quiet, must be that this condition, concerning an intimate matter, furnish no occasion for scruples.

But a confession of this kind does not of itself dispense the religious from observing the rules concerning confession to be made before designated confessors. For thus c. 519 itself has at the beginning: "The constitutions remaining firm which command or recommend confession at stated times before determined confessors."

4. For novices, a single ordinary confessor can be designated, who cannot be the master of novices or his associate (c. 891), or the Superior of the house, with attention to c. 518, §2. This ordinary confessor must dwell in the novitiate house itself. Besides, others are to be designated whom the novice, in particular cases, can freely approach. At least four times in the year, an extraordinary confessor is to be constituted, to whom all novices must approach, at least to receive his blessing. Finally, no less than for the others it is whole for novices to approach any confessor approved by the local Ordinary.
5. Confessors constituted by the Superior of an exempt religion must be furnished with habitual power of absolving also from cases reserved in the religion (c. 518, §1). But the confessor approved by the local Ordinary whom a religious approaches has from the law itself the faculty of absolving from sins and censures reserved in the religion (c. 519).

And so this is the difference between the two kinds of confessors: that the former, constituted by the religious Superior, do not have by the law itself that power over reserved cases which c. 519 grants to the latter.

Yet lest the discrepancy be strange, the power of absolving from reserved cases, of which c. 518 speaks, embraces the power of absolving from reserved sins and censures, of which c. 519 speaks. The latter more explicitly, the former more briefly, signifies the same thing.

6. Religious Superiors, neither by themselves nor through another, can induce any subject to confess sins before themselves (c. 518, §3). Nevertheless they can absolve subjects who spontaneously and of their own motion have sought their ministry. "But without grave cause let them not do this by way of habit" (c. 518, §2).

Can a Superior be appointed ordinary confessor in his own house? The question is not usefully posed except about that Superior alone who of himself does not already have jurisdiction: as, for example, about a minister or dependent Superior.

Regularly such a one cannot be appointed; but a grave cause, for example a scarcity of suitable men, can render this licit, provided that the complete liberty of the subjects has been safeguarded.

The subjects of whom there is question here are all those numbered in c. 514. And so resident students (outside vacations), but not external students, come under this name. Indeed, from c. 891, the prohibition of hearing resident students in confession sounds more severe: their Superiors cannot of themselves be habitual confessors.

7. As is sufficiently gathered from other canons, and is expressly said in cc. 874, 875, jurisdiction for hearing the confessions of persons of whom in c. 514 can always be conferred by the local Ordinary; in an exempt religion it is conferred also by those Superiors whom the Constitutions designate.

Moreover, jurisdiction conferred by a religious Superior, contrary to the jurisdiction which proceeds from the local Ordinary, is not affected by the reservations of the local Ordinary.

8. From c. 239, §1, 1°, Cardinals always have ready jurisdiction over all religious, however exempt, with ample power over reserved cases. Cf. n. 455.
9. Before the Code, religious belonging to an exempt clerical religion had to confess to a suitable companion on a journey. This disposition is not confirmed in the Code; so that without an express disposition of the Constitutions or delegation of the Superior, the companion, as such, is now furnished with no jurisdiction. For a tacit concession cannot suffice, by force of c. 879. But they can confess either to their Superior, or to the confessor of their house, or to any confessor approved by the local Ordinary.

§ 2. On the Sacramental Forum in Lay Religions

— A. **On Religions of Men.** The governance consists in these points, from c. 528.

1. Religious validly confess before any confessor approved by the local Ordinary.
2. One or several confessors are to be deputed for them, at the judgment of the local Ordinary, or of the Superior of an exempt religion.
3. Besides, an extraordinary confessor must be deputed. Religious, however, except novices, do not have to approach him, not even to receive his blessing.
4. A special habitual confessor is easily to be conceded by the Superior to those asking.
5. Jurisdiction proceeds from the Ordinary of the place in which the religious house is. In an exempt religion, the Superior proposes the confessor to the local Ordinary. Peculiar privileges, if there are any in this matter, are not abrogated.

— B. **On Religions of Women.** Although the canons do not yet grant to nuns and sisters that free option of confessors which, after the Council of Trent, was granted first to seculars, then to religious men, nevertheless the Code not only confirms but also somewhat extends the more benign norms which Pius X introduced, not without grave counsel, and indeed, as we have heard, from his own persuasion of mind, and which the very use of daily Communion seems to demand.

Moreover, since religious women can have ordinary, extraordinary, special, supplementary, and occasional confessors, and a greater option is left to Sisters gravely sick, it seems that first the various confessors, then the sick Sisters or nuns, must be spoken of in order.

— I. **On the Ordinary Confessor.** 1. For all religious women there is confirmed the principle which, with attention to common law, was for a long time proper to nuns, according to which a single ordinary confessor is to be assigned to individual houses of religious women (c. 520, §1).

Nevertheless, plurality of confessors is admitted on account of the number of religious women or another just cause (c. 520, §1).

Another just cause seems to us to be present if, on account of circumstances, the local Ordinary cannot change the ordinary confessor after stated intervals. But if because of a greater number of

religious women several ordinary confessors are constituted, nothing prevents the bishop from dividing the community among those several, so that to individual parts one alone is ordinary.

Besides, since in the canon it is not said "even in non-formed houses," words which are accustomed to be added when the matter could be doubted (for example in c. 597, on cloister), the response given by the Sacred Congregation on Religious, July 3, 1916, to the bishop of Liege, ad III: "There is no obligation of appointing an ordinary confessor for Sisters, if their community does not attain the number of at least six Sisters" (cf. for example *Archiv f. K. KR.*, t. 97, pp. 85-87) still seems to be in force, at least in this respect, that the Ordinary can then permit the Sisters to confess after the manner of seculars in a public church; in which case, no ordinary confessor is to be designated.

2. The ordinary confessor can be chosen from either clergy, supposing, for a religious confessor, the license of Superiors; he must be forty years old, "unless a just cause, in the judgment of the Ordinary, demands otherwise"; nor can he have any power in the external forum over the same religious women (c. 524, §1).

Wherefore the office of ordinary confessor is not to be committed to that priest to whom some power is attributed of moderating the Sisters, for example as mistresses of schools, prefects of a hospital.

This reason already advises that, in places where two or three Sisters instruct girls, the pastor not be formally appointed ordinary confessor of those Sisters. For although he is not strictly their Superior, nevertheless he is endowed with great authority in the Catholic school, and easy conflicts can arise between him and the Superiorissa. I would judge it more satisfactory, unless another more suitable person can be designated, that the Ordinary appoint no ordinary confessor, and simply allow the Sisters freely, in the parish church or another, to approach some confessor. Nevertheless the Ordinary, for whom there can be just causes of ordering the matter otherwise, must be obeyed.

Moreover, to every confessor, both ordinary and extraordinary, c. 524 §3 recommends that he in no way involve himself in the external governance of the community.

3. Jurisdiction proceeds from the local Ordinary. If, however, the house is subject to a regular Superior, he presents confessors to the Ordinary. But the Ordinary supplies for a negligent Superior (c. 525), by appointing without presentation.
4. Of itself the office of ordinary confessor of religious women is conferred for three years. Nevertheless a scarcity of confessors or the vote of the greater part of the religious women gives a just cause on account of which the Ordinary can confirm the confessor for a second, indeed for a third, three-year period. But the vote of the religious women must be expressed through secret ballots, even of those who in other affairs lack active voice, as, for example, lay sisters. If the vote was not unanimous, provision must be made otherwise for the dissenting, if they wish (c. 526).

Besides, an ordinary confessor cannot be appointed extraordinary immediately; nor, beyond the cases just enumerated from c. 526, can he again be deputed ordinary in the same community except after a year from the completed office (c. 524, §2).

That law concerning change after three years does not affect ordinary confessors of religious men, since these perpetually have greater option; nor the confessor of novices, if they have a proper one,

since the novices are going to depart after one or another year, so that he is never constituted beyond three years for the same persons.

If the confessor seems to be confirmed beyond the third three-year period, the Holy See is to be approached. It sometimes dispenses bishops from the law of varying confessors. Thus, by indult of September 2, 1913, the bishops of Belgium obtained for five years that they could confirm ordinary confessors of Sisters in office for the time well-seeming to them and without voting of the Sisters (cf. *Per.*, VII, 369).

But in the petition itself the petitioning bishops placed this clause: "all other dispositions for safeguarding the liberty of consciences being observed."

Therefore Sisters for whom the stability of the confessor is less acceptable must easily obtain a special confessor, according to c. 526.

5. For a grave cause, the local Ordinary can remove the confessor, after warning the regular Superior if the nuns are subject to regulars. The cause of removal is to be signified only to the Apostolic See, if it is required by it (c. 527).

— II. **On the Extraordinary Confessor.** 1. To every community of religious women an extraordinary confessor must also be given, endowed with the same age and qualities as the ordinary, who at least four times in the year approaches the religious house, and to whom all the religious women must present themselves, at least to receive his blessing (cc. 521 and 524, §1).

The very manner in which the canon is written demonstrates that it is of the mind of the legislator that one and the same priest offer himself as extraordinary at least four times in the year. The reason is added, that the Sisters, if they prefer, can be directed in spirit by the extraordinary in a sufficiently stable and continuous way. Nevertheless there are places where, suitable persons lacking, the local Ordinary is compelled to order the matter otherwise, and sends now this, now that priest for receiving confessions as extraordinary.

Nor does it seem to be contrary to the law that once in the year, for example during spiritual exercises, the priest who gives the exercises receives confessions as extraordinary.

But that the extraordinary, as such, should approach more than four times, the authority of the Ordinary is needed, to whom it belongs to define the greater frequency. Whenever, however, he fulfills his office of extraordinary confessor, all the religious women must present themselves to him.

2. Nothing prevents the extraordinary confessor from being immediately appointed ordinary of the same community (c. 524, §2); nor must he himself be changed after three years.

It is to be expected from the prudent zeal of the local Ordinary that he take care lest, through too many years, the Sisters have habitual supply of only two priests, so that, except for the interval now prescribed by the law itself, the ordinary and extraordinary confessors seem almost to exchange the office between themselves. We say this unless the exceptional gifts of the confessors bring it about that the very stability of persons is pleasing to all and truly desirable.

3. By the same reason as the ordinary confessor himself, the extraordinary can be removed by the local Ordinary (c. 527).

— III. **On the Special Confessor.** We call special confessor a priest, distinct from the ordinary confessor, to whom some Sister habitually confesses. To one asking for such a one, the Ordinary is easily to assent, provided that this seems to contribute either to the quiet of her soul, or to her greater spiritual progress. But at the same time abuses, if any creep in from this, are to be cautiously and prudently eliminated by the Ordinary, yet in such a way that liberty of conscience remains safe (c. 520, §2).

Therefore the Code does not wish that, on account of some abuse, the faculty be immediately taken away; but it advises the Ordinary that he study to compose all things prudently.

The special confessor is freely appointed by the Ordinary, whether secular or religious; nor must he be presented by the religious Superior; nor is a peculiar age required in him. And he can be the ordinary himself who has fulfilled the office (Sacred Congregation on Religious, April 20-22, 1917. *Per.*, VIII, p. 229).

— IV. **On Supplementary Confessors.** From c. 521 §2, in places in which religious communities exist, some priests must be furnished with habitual faculties, so that in particular cases they can be called without the necessity of approaching the local Ordinary.

A particular case can be that of some Sister who wishes once to confess to another, or of the community itself, as if the ordinary is absent or sick.

Whenever, moreover, some religious woman asks for either an extraordinary or a supplementary confessor, it is lawful for no superior "neither by herself nor through others; neither directly nor indirectly, to inquire into the reason for the petition, to resist the petition by words or deeds, or to show in any way that she bears it ill" (c. 521, §2).

We said: "whenever she asks for either an extraordinary or a supplementary confessor." For after it treated in §1 concerning an extraordinary confessor, in §2 concerning supplementary confessors, canon 521 in §3 says: "If some religious woman asks for any one of those confessors." Therefore these words are referred to both preceding paragraphs, so that the extraordinary is counted among those confessors.

And so the local Ordinary could not prohibit that a priest whom he stably gave as extraordinary be called as supplementary by some religious woman.

It belongs to the supplementary confessor to warn a Sister who has summoned him without reasonable cause; concerning external abuses, the local Ordinary is to be warned.

Supplementaries are freely designated by the local Ordinary, also for those communities which are subject to regular men. Nor must they have a peculiar age.

— V. **On the Occasional Confessor from c. 522.** Besides the ordinary, extraordinary, special confessor, and besides supplementary confessors, provision is made for the liberty of religious women, or rather for the security and tranquility of their conscience, by a new reason, by permitting that in certain circumstances they approach any confessor approved for women. For thus sounds c. 522, in almost the same words which canon 519 used concerning men.

"If, notwithstanding the prescription of cc. 520, 521, some religious woman, for the tranquility of her conscience, approaches a confessor approved by the local Ordinary for women, the confession made

in any church or oratory even semi-public is valid and licit, any contrary privilege being revoked; nor can the superior prohibit this or inquire about that matter, not even indirectly; and the religious women are bound to report nothing to the superior."

Concerning this canon we observe these few things.

1. The respect of the present concession is somewhat different from the respect on account of which the other options of cc. 520, 521, 523 were given. Here the legislator wished to provide for a more accidental anxiety; and the offered facility coheres sufficiently with the diffused use of daily Communion in all religious communities. Wherefore:
2. this approach is an accidental fact of some religious woman. The canon says: "If some religious woman." Therefore the Superiorissa could not ask any confessor approved for women to supply for her community an absent or impeded ordinary or extraordinary confessor. Confessions thus made would be invalid, since c. 876 requires special jurisdiction;
3. the religious woman has no right of demanding that the superior call such a confessor, unless she herself is gravely sick. In this point it again appears how this confessor differs from the supplementary one approved for religious women. For he, when a religious woman asks, must be called;
4. a priest whom the religious woman has approached without sufficient reason must warn her to conform herself to common discipline.
5. It has been doubted whether the circumstance of place was required for validity, or only for liceity. The Pontifical Commission for interpreting the Code, having been asked about the matter in these words: "Whether the words of canon 522, 'the confession made in any church or oratory even semi-public is valid and licit,' are to be so understood that confession made outside those places is not only illicit but also invalid," on November 24, 1920, responded thus: "Canon 522 is to be understood in such a way that the confessions which religious women make for the tranquility of their conscience before a confessor approved by the local Ordinary for women are licit and valid, provided they are made in a church or oratory even semi-public, or in a place legitimately destined for hearing the confessions of women."

Nevertheless not every controversy has been removed by this response. This will have to be observed if perhaps some new authentic declaration pronounces about the doubts more strictly or more benignly. Meanwhile:

a) there are not lacking those who, even after the response of November 24, 1920, think that the condition of place is not required for validity. For, so they say, while by the simple word "Affirmatively" or "Negatively," every doubt would have been removed, the Pontifical Commission seems to have declined a direct response, by asserting positively: that "the confessions are licit and valid, provided," etc. From this form of responding this one thing is strictly established: confessions made otherwise are at least illicit.

This benign opinion in the year 1922 was publicly defended at the University of Louvain, among theses proposed for attaining the grade of mastery; and in Rome it was said to be solidly probable by

R. P. Goyeneche, who brings seven authorities for it (cf. *Commentarium pro religiosis*, 1921, pp. 22 and 337).

Nevertheless it is sufficiently established for us that this was the mind of the Commission: that confessions outside the indicated places are to be held neither licit nor valid. Wherefore it employed the word *dummodo*, which, from c. 39, expresses an essential condition. Besides, in c. 876, by which peculiar jurisdiction is required for receiving the confessions of religious women validly and licitly, it is not doubted that the condition of special jurisdiction is required for validity. Why should we understand otherwise the force of that formula in canon 522 and in the response of the Commission? Ambiguity is excluded by usage itself;

b) the place legitimately destined for hearing the confessions of women is understood by not a few to mean only a place where secular women also can be heard, and therefore to exclude a confessional which is reserved for religious women. Thus Ferreres (*Inst. canonicae*, 1920, I, n. 832); Fanfani, O. Pr. (*De iure religiosorum*, 1920, n. 110, and in the Italian work of the same argument); and, in *Bollettino diocesano di Padova*, 1922, p. 5 sqq., R. D. Cerato, who still thinks that by the word "approaches" there are equivalently restored the words "outside her own house," which, placed in the decree *Cum de sacramentalibus*, February 3, 1914, were deliberately omitted in canon 522. For they observe that secular women are designated when there is question of a priest approved for women; therefore secular women also must be understood when there is question of a place legitimately destined for hearing the confessions of women. Besides, unless the faculty of c. 522 is so limited, the necessity of special jurisdiction solemnly affirmed by canon 876 practically vanishes.

But the first argument rather favors the opposite opinion. For what c. 522 permits to one simply approved for hearing secular women, by a stronger reason it permits to a priest who is also approved for nuns. Therefore, if the word women is to be taken with the same extension in both cases, what is said of a place where seculars can be heard will be said by an equal or stronger reason of a place where religious women and nuns are accustomed to confess.

Besides, why were the words "outside the house" omitted in the canon? This explanation offers itself spontaneously: so that religious women who never leave the house may also be able to use the benefit of c. 522. But cloistered religious women will not be able to do this (unless, as happens for example in Sicily, their confessor has his seat in the church itself) if you exclude by the faculty a place destined for hearing them. Moreover what of itself appears most probable has been confirmed to us by trustworthy testimony, that is, that this was the mind of those who prepared the Code: that even cloistered women might enjoy the benefit of an "occasional" confessor.

Besides, from the declaration of the Supreme Congregation of the Holy Office, November 25, 1874, ad 3 (*Collect. de P.F.*, n. 1424), confessionals furnished for cloistered nuns are judged also approved for outside women. They are therefore numbered among places legitimately destined for hearing the confessions of women, even if only secular women are understood.

Nor for this reason does c. 874 perish. For, as Noldin says (*De Sacramentis*, n. 350), there is question only of a confession which is sometimes undertaken for obtaining tranquility of conscience.

Wherefore with others, for example with Noldin, l.c.; Genicot-Salsmans (II, p. 303, ed. 9); Aertnys-Damen, of the Congregation of the Most Holy Redeemer (*Theologia mor.*, n. [OCR/print uncertain: number not visible after "Theologia mor."]), we think this broader interpretation is to be held.

Nevertheless the Vicariate of the City prefers and practically follows the stricter opinion, which excludes cloistered nuns, in their monastery, from the use of c. 522.

Finally, R. P. Maroto (*Comment. pro religiosis*, 1921, p. 36 sqq.) observes this: "if, according to the norm of c. 910, in a case of true necessity... a confessor approved for women receives the confession of some religious woman outside the confessional seat in a place where he would receive in a like case the confessions of secular women, that place is likewise to be judged legitimately destined, since it is chosen by the confessor himself and by the religious penitent, according to the norm of the law, that is, c. 910."

In the present cause, it must not be passed over how much greater facility of confession is necessary so that, without too much danger of sacrileges, the so laudable use of daily Communion in communities can prudently be urged.

— VI. **On Sick Sisters.** A nun or sister gravely sick, although danger of death is absent, can call any priest approved for hearing the confessions of women and, while the infirmity endures, confess to him as often as she wishes, "nor can the superior prohibit them either directly or indirectly" (c. 523).

A grave illness is one which greatly afflicts, or can easily become dangerous; an indication of a grave illness can be if it compels one to lie in bed for one or another week. Although an illness also can be grave in which one is prevented from lying down.

— VII. All Cardinals, from their promotion in consistory, enjoy the faculty of hearing confessions everywhere in the world even of religious of either sex and of absolving from all sins and censures even reserved, except censures reserved to the Apostolic See in a most special manner and those which are annexed to the revelation of the secret of the Holy Office (c. 239).

Summary

— I. In clerical religions, to individual religious, if you except novices, free option must be given among several confessors designated by the competent Superior. Rules or Constitutions can command or recommend that religious confess to those confessors; nevertheless all, even exempt and novices, can always validly approach any confessor approved by the local Ordinary. Confessors approved by the local Ordinary have by the law itself power over cases reserved in the religion; but those constituted by the Superior of an exempt religion must habitually be endowed with the same power.

For novices a single ordinary confessor can be designated, dwelling in the novitiate house itself, who cannot be the master of novices or his associate, or the Superior of the house. But others are to be designated whom the novices may freely approach in particular cases; and four times in the year an extraordinary is to be designated, to whom all must approach, at least to receive his blessing.

Superiors can induce subjects neither by themselves nor through another to confess before them; nevertheless they can absolve those who ask this voluntarily; but without grave cause let them not do this habitually.

II. In lay religions of men, jurisdiction proceeds from the Ordinary of the place of the convent. Nevertheless the Superior of an exempt religion proposes the confessor to the local Ordinary. One or several confessors are to be deputed, besides an extraordinary, whom nevertheless only novices must

approach. A habitual special confessor is easily to be conceded; and confession to anyone approved by the local Ordinary is always valid.

III. In religions of women:

1. A single ordinary confessor is to be designated for individual houses of religious women, unless the number of persons or another just cause advises plurality. He, to be chosen from either clergy, is forty years old (unless a just cause, in the judgment of the Ordinary, demands otherwise), free from every power of the external forum over the same religious women, and constituted for three years. On account of scarcity of confessors or on account of the vote of the community, then to be given by all Sisters, he can be confirmed by the Ordinary for another or a third three-year period. If the vote was not unanimous, for those dissenting, if they wish, provision is to be made otherwise. After the time has elapsed, the ordinary confessor cannot immediately be appointed extraordinary, or again, except after a year, be deputed ordinary in the same community. In a house subject to a regular Superior, he presents ordinary and extraordinary confessors to the local Ordinary, who alone gives jurisdiction, and also, on account of grave causes, can remove confessors, after warning the regular Superior if the nuns are subject to regulars.
2. Besides, an extraordinary is to be given, furnished with the same age and qualities as the ordinary, who at least four times in the year or more frequently, according to the direction of the Ordinary, approaches, and to whom then all religious women must present themselves, at least to receive his blessing.
3. To a Sister asking, a special confessor is easily to be given by the Ordinary, to whom she may habitually confess. Abuses in this matter are to be prudently eliminated by the Ordinary in such a way that liberty of conscience remains safe.
4. Besides, supplementary confessors are to be designated, who can be called in particular cases. Whenever, however, a religious woman asks for an extraordinary or supplementary confessor, no superior is permitted to resist that petition in any way.
5. Finally, from c. 522, a religious woman for the tranquility of her conscience is permitted to approach, in any church, in any oratory at least semi-public or in a place legitimately deputed for confessions of women, any confessor approved in the place for the confessions of women.
6. A gravely sick religious woman can, while the infirmity lasts, as often as she wishes, call any confessor approved for women and confess to him.
7. In danger of death, religious women can be absolved by any confessor, just like the rest of the faithful.

The faculty of Cardinals has already been recalled above.

Chapter V: The Right Use of Power

— 1. By c. 874, §1, religious priests are prohibited from using jurisdiction received from the local Ordinary without the license, at least presumed, of their Superior.

The degree of fault committed by one who hears confessions against the will of the Superior will be greater or less according to the Superior's opposition and the frequency of the transgression. Of itself, unless a precept of obedience is added, or a prohibition under censure, the matter does not seem grave. But a religious can freely use a faculty which the Holy See has given, unless something else is indicated in the indult itself.

2. "The master of novices and his associate, the Superior of a Seminary or college, are not to hear the sacramental confessions of their pupils dwelling with them in the same house, unless the pupils, from a grave and urgent cause, in particular cases, spontaneously ask this" (c. 891).

Therefore by this canon no jurisdiction is either granted or taken away. But its use is of itself prohibited to the master of novices, his associate, the Superior of a seminary or college, toward their pupils dwelling with them in the same house. Therefore the prohibition does not affect the higher Superior, such as the local Ordinary, who does not dwell in the seminary, nor the immediate Superior during vacations, if the pupils are then not members of the same household. And because a college is spoken of with respect to boarders, the prohibition is not with respect to externs, or those who do not spend the night in the college.

Nevertheless the confession of such a novice or pupil, which always remains valid, will licitly be heard if these concur: spontaneous petition; a grave and urgent cause; a particular case. A grave and urgent cause will be present if the penitent wishes to be heard for quiet of conscience and, because of circumstances whether external, for example imminent Communion or an absent confessor, or personal, does not find another to whom he can easily declare his scruple or sin. And he who spontaneously approaches a confessor is judged to have sufficient cause, so that this canon is to be observed at the same time sincerely and without scruple.

— 3. Religious Superiors who have ordinary or delegated power of hearing confessions can indeed hear the confessions of subjects who spontaneously and of their own motion approach them, "but without grave cause let them not do this by way of habit." And let them beware lest by themselves or through another, by force, fear, importunate persuasions, or any other reason, they induce any subject to confess sins before themselves.

— 4. In danger of death a penitent is licitly absolved by any priest, even of another rite, even by an excommunicate to be avoided whom the penitent has sought [1] (c. 2261, §3). Nor does the presence of an approved priest stand in the way. Only the absolution of an accomplice remains, on the part of the confessor, illicit outside the case of necessity (cf. below on absolution of an accomplice).

[1] Faulty administration of the sacrament, outside necessity, to those who are bound by censure remains illicit (cf. Noldin, III, 340, and c. 2261, §1 itself). Absolution cannot be sought from a heretic or schismatic using the rite of his sect, on account of forbidden cooperation in false worship.

— 5. The use of probable jurisdiction is simply licit. For the only cause of illicitness would be the danger of nullity, which is wholly removed by c. 209.

The use of negatively doubtful jurisdiction is illicit, unless a very grave cause, or notable detriment to the soul of the penitent (d'Ann., III, 311), demands that he be helped in the better way possible. For since the Church does not supply jurisdiction, the sacrament is exposed to danger of nullity and the penitent to grave harm of itself. Besides, you impose upon the penitent the burden of confessing the sins again to one having certain jurisdiction, at least if afterward it is discovered that jurisdiction was truly lacking. Indeed Busembaum, *De iurisd.*, and Ball.-Palm., V, 395, seem always to require a repeated confession, since the absolution is not probably valid. Wherefore he who absolves in necessity with doubtful jurisdiction must make the penitent more certain of the matter, so that he may at least provide for his own salvation by perfect contrition. But he will have to give absolution under an express or tacit condition: if I have jurisdiction. One thus absolved, if he wishes to use the other sacraments, of himself stands in the condition of one who doubts whether he has committed mortal sins or not.

A sufficient cause of using doubtful jurisdiction is judged to be present if the penitent who has not confessed for a long time either must communicate or celebrate, and does not have the supply of another; or if the precept of annual confession presses; or if the doubt occurs after the confession has already begun, unless perhaps the penitent can break off the confession without too much difficulty.

Observe, however, that there is no obligation for the penitent in these cases to confess to a priest who has only doubtful jurisdiction.

— 6. Although the Church supplies jurisdiction in common error, nevertheless she does not intend to permit a priest to procure jurisdiction for himself in this way, and, for example, relying on common error, omit to ask for a new faculty after the time has elapsed. Wherefore it is not only intrinsically illicit for someone to pretend that he is approved, or to provoke common error, but also of itself he cannot hear confessions who is conscious that jurisdiction is lacking to him, although he is commonly held to be approved.

Does he avoid the suspension, not reserved, *a divinis*, carried by c. 2366 against the priest who, without necessary jurisdiction, presumes to hear confessions or absolve? Cerato, *De censuris* n. 118, and Genicot-Salsmans, II, 331, deny this, because he truly usurps jurisdiction. Yet for the more benign opinion it can be said that, since the Church supplies, he does not lack the necessary jurisdiction.

Nevertheless in a grave necessity of the penitent, who would be without absolution for a long time, and in cases where they permit the use of doubtful jurisdiction, it seems also lawful that one who is conscious absolve the penitent in common error.

Indeed there are some today who do not seem to require a grave cause, in order that one may use the benefit of common error. Thus Noldin, III, 346, observes nothing concerning the use of common error; and to a priest who, while he is hearing confessions, remembers that the time of jurisdiction has already elapsed, he simply concedes that he may continue to hear the confessions. Others, on the contrary, have required a grave cause (cf. Lehmk., II, 504-506).

Common utility, such as can occur in public missions, when through a certain error jurisdiction has been sought neither by the missionary nor by the inviting pastor, seems plainly to suffice (cf. Jombart, art. cit.), with the obligation saved of obtaining the necessary faculties immediately.

— The obligation of hearing, by themselves or through others, the confessions of the faithful committed to them, as often as these reasonably ask to be heard, presses pastors and others to whom the care of souls has been entrusted by force of office (c. 892, §1).

Since the pastor is named expressly, several, for example Lehmk., II, 50, and deservedly, as it seems, since this pertains to his office, wish him to be bound personally, unless he has been impeded, or the subject is willing to go to another. Yet neither Suarez, *De Paen.*, d. 32, s. I, n. 5, nor Lugo, *Paenit.*, d. 22, n. 3, seem to require this, unless some spiritual necessity of the penitent demands that he be heard by the pastor. The Code does not seem to urge the matter except according to the benign opinion.

But the pastor gravely sins who provides his parishioners occasion for confession only on a few days in the month. For he renders burdensome and difficult the reception of the sacraments, which he ought to render easy (Lehmk., II, 50).

"When necessity is urgent, all confessors are held by the obligation from charity of hearing the confessions of the faithful; and in danger of death, all priests" (c. 892, §2).

Confessors are those who, since they have obtained jurisdiction which they are accustomed to exercise, now receive confessions as if from office. Wherefore I would not think them excused by grave inconvenience, if those asking are in grave spiritual necessity, or if, in paschal time, there is a common scarcity of confessors in the place where they dwell. But if the one asking confession is in danger of death, now any priest is bound, and indeed under grave obligation, if the necessity of the penitent is grave. For in the priesthood received by them, the Church recognizes the title of an obligation which c. 892 declares to be present from charity.

— "If the confessor cannot doubt concerning the dispositions of the penitent, and the latter asks absolution, absolution is neither to be denied nor deferred" (c. 886).

If we compare this canon with c. 870, we shall say that here the Code inculcates the right which one duly disposed has, that in the sacramental judgment he be absolved: for absolution is a just sentence due to the penitent, and therefore not to be deferred. Besides, this rule is commonly proclaimed: that absolution is to be denied to him who is certainly indisposed, but of itself to be conceded to him who is certainly disposed.

Yet no one's right is injured on account of a manner of acting to which the lord of the right is not reasonably unwilling. But there are certain cases where all say that it is expedient, for example for rendering certain the execution of a present obligation, that absolution be deferred even for a disposed penitent. They then affirm that it can be deferred for the utility of the penitent himself. Besides there are also approved writers in the Church who think that delay of absolution must be used as a remedy for correcting relapsing penitents. Their opinion indeed is attacked by others, as we shall see in the moral part.

But here the question is raised whether these opinions have virtually been reprobated by the Code or not. We think this must simply be denied, as being wholly foreign to the mind of the legislator. He

wished to eradicate a remnant of the Jansenist plague, that is, that abuse by which, in certain regions, confessors, moved by no peculiar utility of the penitent, were accustomed not to confer absolution except after two or three confessions or approaches to the confessor.

Therefore the controversies which were being carried on freely in the Church about this argument among Catholic theologians are not touched by this canon (cf. Ter Haar, C.SS.R., *De conferenda absolutione sacramentali iuxta c. 886 Codicis iur. can.*).

— Let the confessor "beware entirely lest he inquire after the name of an accomplice" (c. 888).

By this simple prohibition, c. 888 supplies for the excommunication formerly carried by the constitutions of Benedict XIV, *Suprema*, July 7, 1745; *Ubi primum*, June 2, 1746, and confirmed by the constitution of Pius IX, *Apostolicae Sedis*, October 12, 1869, among excommunications simply reserved to the Roman Pontiff, against those who have taught or defended as licit the practice of inquiring after the name of an accomplice under penalty of denied absolution.

The question concerns a penitent who has had an accomplice of his sin. To inquire after the name of that accomplice is studiously and from curiosity to seek that knowledge, whether, within confession, through interrogation of the penitent, or outside it, which would be much worse.

By the very law of nature we are prohibited from questioning the penitent concerning that name without a just cause. And it would be grave to do this under penalty of denied absolution, or if scandal or grave defamation is added: these things being excluded, it will be a sin of light curiosity.

But the penitent can be questioned concerning that name, insofar as there is need that the species or occasion of the sin be known.

The confessor will also be able, indeed of himself ought, to urge the obligation, if the penitent has any, of revealing or denouncing the accomplice outside confession; yet he cannot require that this revelation be made to himself, unless perhaps he is a Superior to whom alone the revelation can usefully be made. (This, however, St. Alph., n. 492, on account of the prohibition of Benedict XIV, does not dare to concede.)

But it is ill-advised for a confessor on his own initiative to assume the burden of denouncing someone for the penitent, indeed to agree to do this regularly. For the error by which perhaps the penitent is deceived will easily be imputed to him; so also the calumny which perhaps the penitent wishes to commit; and he can even come under suspicion of having violated the seal.

Summary

— I. 1. Religious priests do not licitly use their jurisdiction except from the faculty, at least presumed, of their Superior.

2. The master of novices and his associate, the Superior of a seminary or college, do not licitly hear the confessions of novices or of their boarder pupils, unless the pupils, from a grave and urgent cause, in particular cases, ask this.
3. Religious Superiors can hear their subjects who spontaneously approach them, but let them not do this by way of habit without grave cause.

4. In danger of death the sick person is licitly absolved by any priest, even of another rite, even by an excommunicate to be avoided whom he has sought, even when another priest is present. Absolution cannot be sought from a heretic or schismatic enrolled in a sect, outside necessity. The absolution of an accomplice remains illicit, on the part of the confessor, outside the case of necessity.
5. The use of probable jurisdiction is of itself licit. No one licitly uses negatively doubtful jurisdiction, or licitly absolves in common error, unless a cause altogether grave, of avoiding detriment, demands this. Concerning doubtful absolution the penitent must be warned that he may provide for himself.
6. Pastors and however many have care of souls entrusted to them must, from office, hear confessions as often as they are reasonably asked; the other confessors, who are accustomed to exercise jurisdiction, when necessity is urgent; and this from charity; in danger of death, all priests.
7. To a disposed penitent who asks absolution, absolution is neither to be denied nor of itself deferred.
8. But the name of an accomplice cannot be sought out by the confessor without a just cause.

Chapter VI: On Absolution of an Accomplice

— "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 according to the norm of the apostolic constitutions, and namely the constitution of Benedict XIV, *Sacramentum Paenitentiae*, June 1, 1741."

C. 884 remits to the Apostolic Constitutions by which this matter is governed. They are the above-praised Bull *Sacramentum Paenitentiae*, §§4 and 5, and the declaratory Brief *Apostolici muneris*, February 8, 1745, to which certain declarations of the Holy Office and of the Sacred Penitentiary are added.

The sum of the matter is handed down to us by c. 884 itself, whose words found certain or probable explanations.

Absolution of an accomplice. Looking at the end of the law, which is indicated at the beginning of the constitution *Sacramentum Paenitentiae* itself, that is, lest a confession of this kind should be an occasion of spiritual ruin for penitents, etc., Ballerini, *Op. theol.*, V, 410, did not wish a complicity preceding the reception of the priesthood to be comprehended by the severe law. "If you imagine, for example, two accomplices in sin in boyhood or adolescence, of whom afterward one, for example, having assumed the habit of the Capuchins, after twenty years hears the confession of his companion, by force of which he must absolve also from that sin, because, for example, he confessed invalidly, surely it is not credible that the faculty of absolving has been denied to this confessor."

Yet the Sacred Penitentiary, January 22, 1879, responded: that the confessor cannot absolve the accomplice with whom before the priesthood in a youthful age he acted shamefully, unless he is morally certain that the accomplice has already been directly and validly absolved from the sin of complicity by another confessor. And today morally all writers reject the distinction of complicity before or after the priesthood.

Of an accomplice in a shameful sin. On May 28, 1873, the Holy Office declared that not only touches are comprehended, "but all grave sins externally committed against chastity, even those which consist in mere conversations and looks which import complicity." Therefore a shameful sin can be either of action, or, what was formerly disputed, of words, or of sight, yet grave as external. And on account of the words of the Bull *Sacramentum*, repeated in the Brief *Apostolici*: "in a shameful and dishonorable sin," there is probably required a sin which is libidinous in itself, or, as Noldin, III, 369, says, "immediate complicity in the shameful action itself." Such complicity is not that of a pander to whom money is paid, but of the woman with whom, for example, fornication is committed.

True complicity is required besides, which can be absent in looks and even in touches, for example of a sleeping, drunken, or unwilling person. For complicity supposes the consent of two or more, expressed or tacitly signified, in the same sin. Complicity properly so called is not the connivance of one not impeding a sin which by office he was not bound to impede, or approval of speech already heard which does not excite other shameful speeches.

But any accomplice-person is understood, whether female, or male, or child, yet possessing the use of reason.

Absolution is invalid, at least as regards the sin of complicity in a shameful matter not yet directly absolved. After that sin has been remitted by another priest, contrary to what Ball., op. c., V, 415, and Pighi, *Cursus theol. mor.*, IV, 374, 2°, wrote, with the more common opinion we adhere to the sentence of Card. d'Ann. (III, 324, 37): "it is truer that, reservation having been consumed, the absolution is valid."

As regards the other sins of the same accomplice-person, jurisdiction does not seem to be taken away.

Noldin indeed, III, 370, now thinks a more severe response must be given, since the Canon declares invalid the absolution of the accomplice himself, and not only of the sin; but the Canon can be understood according to the preceding constitutions to which it remits. With us stand Pighi, IV, 374; Gen., II, 352; Arregui, n. 646.

Wherefore, as often as the penitent confesses in good faith, he is directly and validly absolved from the other sins, so that in a new confession he must accuse only the sin of complicity.

And the matter stands similarly if the confessor gave absolution while distracted, or did not recognize the penitent.

For which reason also, although, when the necessity of communicating or celebrating is urgent, it is much better that the accomplice dispose himself by perfect contrition rather than by making confession to the accomplice, nevertheless if he wishes to obtain security of received absolution, another confessor being lacking, he could be absolved from the other sins by the accomplice. If the latter warns the penitent concerning the confession of the sin of complicity to be repeated, he seems to escape the penalty of excommunication, concerning which immediately below. Gen., II, 352. Ball., *Op. Th.*, V, 415, who at the same time warns that this is not to be committed outside gravest necessity. And it is plain that it is by no means becoming that one, at least who has sinned while already a priest, act as confessor of his accomplice outside necessity.

But the case of can. 884 is not had if neither knew the other before the confession. Otherwise, you would easily oblige the priest to defame himself.

Here distinguish accurately the confessor who has known the accomplice and him who has not recognized the accomplice. He who knew the accomplice outside confession, but at the beginning of confession did not recognize him, must well warn concerning the defect of his jurisdiction: for by this he falls into no infamy.

By the use of that direct absolution as to other sins, provision is made for the necessity in which the penitent can be, in mission places or even in Europe, when, for example, while the paschal precept is pressing, reception of the sacraments cannot be omitted without infamy and scandal, and he is impeded from seeking a confessor in another place. Those who, like Noldin, think jurisdiction is taken away in a universal manner, are compelled, in the same circumstances, to recur to epikeia, by which then they also permit direct absolution from the sin of complicity. Cf. Noldin, III, 371 b. This, contrary to what Ballerini insinuates, l.c., n. 424, 425, in our opinion is not to be admitted outside danger of death.

What if the penitent knows the priest-accomplice by face, but not by name, and approaches the confessional of the accomplice as of an unknown priest? The confessor ought not reveal his name.

Therefore he will be able to absolve the penitent, if the latter brings other matter to be absolved, but the sin of complicity will not yet be directly absolved.

But absolution can be formal and true, although ineffective; it can be feigned or equivalently given.

— In danger of death itself, absolution of an accomplice is illicit outside the case of necessity. A case of necessity is had: if no other priest, even a simple one or one not approved for hearing confessions, either is present or can be called without grave scandal or infamy, whether certain or probable (and Ballerini, V, 422, notes that the probable suspicion itself of complicity is already gravely defaming and scandalous); if another who is present is unwilling to receive the confession of the dying or sick person, or the sick person refuses to make confession to another, so that there is danger of sacrilegious confession.

And because the question concerns a person who is endangered as to eternal salvation, that refusal of another confessor is not to be taken scrupulously; but a sick woman is already judged to refuse another confessor when, not ignorant that other confessors are available, nevertheless of her own accord she declares that she wishes such a priest (of whom she was the accomplice).

From Benedict XIV, the accomplice-confessor must under grave obligation procure that place be open to another confessor, for example by departing under some pretext, if nevertheless he can do this without his own infamy or without danger of sacrilegious confession.

If no one else is available except one notoriously suspended or excommunicated, it is not certain that this one must be preferred to the accomplice, since to employ one notoriously excommunicated is of itself very little becoming.

A well-begun confession can also be brought through to the end, whether another has arrived or the danger of death has ceased. But he who, on account of the impediment of illness, has been absolved after only an incomplete confession, will not afterward be able to complete it before the accomplice, unless the sin of complicity has already been accused with sufficient distinctness so that it was directly remitted in its species.

What if the danger of death, in which the accomplice was absolved by the priest, was merely apparent? Provided the estimation of danger was prudent, the absolution will be valid: for jurisdiction is reasonably understood to have been given for a prudently estimated danger of death.

Prudently also the Code declares the absolution illicit only on the part of the confessor, lest the penitent ever be troubled by a scruple of illicit petition.

— **Penalty of Excommunication.** From c. 2367, "One absolving or feigning to absolve an accomplice in a shameful sin incurs by the fact itself an excommunication reserved to the Apostolic See in a most special manner, and this even in the article of death, if another priest, though not approved for confessions, can receive the confession of the dying person without grave infamy and scandal about to arise, except the case in which the dying person refuses to confess to another."

Therefore, he is punished by excommunication who absolves, seriously, although ineffectively; who feigns to absolve, that is, not indeed he who by some gesture or some utterance of words hides from others, but not from the penitent, the absolution denied; but he who so acts that the penitent reasonably ought to think himself absolved. Whether he absolves a healthy penitent or one lying dangerously ill, he is excommunicated as often as, from what was said above, absolution then

remains illicit. Yet if the priest-accomplice, by abstaining from every action, merely did not cause another priest to be able to be physically present, with attention to the words of Benedict XIV, he does not seem affected by the excommunication. Or, to use other words, there does not seem to be prescribed for the accomplice under excommunication the positive action of physically calling another priest; but only that he avoid the infamy to be feared from another priest called, and take care that place be open to him.

Nor, from §2 of c. 2367, does he escape excommunication who absolves an accomplice not accusing the sin of complicity for this reason, "because he was induced to this by the accomplice-confessor either directly or indirectly." The indirect mode will be if the priest, after the deed, persuaded the other that the sin was not grave, or that the accusation was useless because the matter was already known to him. After the deed, I say; for, with attention to the common opinion, the case is not had if, deceived by the priest, the other truly, on account of his error, does not sin gravely.

But he escapes excommunication who absolves an accomplice spontaneously concealing that sin of complicity; indeed who, to one accusing that sin with others, declared that he absolved him only from the other sins, the burden remaining of accusing that sin to another confessor (Ball., V, 415).

Much more does he escape excommunication who, in the gravest difficulty of which above, licitly confers absolution. Finally he escapes who in good faith and not doubting judged that the case was not present although in reality it was present. For excommunication supposes grave fault.

But he does not escape excommunication who sins by crass or supine ignorance, since no temerarious audacity is required; and he also will be guilty of excommunication who, by his manner of acting, for example by spontaneous and undue visitation, is to be judged to have offered himself spontaneously to the dangerously sick woman as confessor of an accomplice.

What if the priest has sacrilegiously begun to hear the confession of a sick person in danger of death, but before absolution repents of the deed? The case is objectively controverted. If he can, it seems that even then he is held by the obligation of seeing that another be summoned, and that he is excused only by the danger of graver infamy, since he himself exposed himself to the danger. Subjectively, if he thought the judgment had to be completed by himself, he will avoid guilt and excommunication.

— That excommunication is most specially reserved. Yet the penitent priest will be able to be absolved by another in the circumstances indicated above, n. 473, with the burden of recurring at least through the confessor to the Sacred Penitentiary. This burden remains, from c. 2252, after convalescence, even if he was absolved in danger of death. Indeed, from c. 2254, §3, even if in an extraordinary case recourse is impossible at present, when opportunity is given recourse will have to be made, contrary to what is disposed concerning other censures even most specially reserved. Whence this case is treated with peculiar severity.

N.B. In the letters which the confessor has given to the Sacred Penitentiary, it is necessary that you distinguish the quality of pastor or of one having care of souls from the office of mere confessor (such as even a cooperating vicar is); that you indicate whether he absolved the accomplice only once, or twice, or several times. For according to these things the mandates of the Sacred Penitentiary are accustomed to vary. Besides, it is also useful that from the beginning the confessor enjoin what afterward will be prescribed, that is, that the delinquent no longer hear the accomplice-person

sacramentally, neither before the sin of complicity has been directly remitted by another confessor, as is clear of itself, nor even afterward, if nevertheless this can be done without scandal or danger of infamy; and that, if that person returns to him, he warn her concerning the nullity of the absolutions.

He who doubts whether the one confessing is his accomplice or not possesses doubtful jurisdiction. But lest he have to betray himself, he seems able to use it, and licitly impart absolution.

Summary

— I. Absolution of an accomplice in a shameful sin is forbidden.

Absolution is understood both formal and true, by a serious pronunciation of the form, and feigned, without intention or pronunciation of the form; also equivalently given, when, deceiving the penitent concerning the gravity of the sin committed or the necessity of accusing it, the priest directly or indirectly induces him to be silent about the sin.

An accomplice, according to the opinion common today, to which the Sacred Penitentiary adhered on January 22, 1879, is also the accomplice of one who afterward became a priest.

If neither of the two knew the other before confession, the case is not contained in canon 884.

Complicity says formal consent with the priest in the same sin.

In a shameful sin: whether of action, or words, or sight, which is grave as external, and, as is probable, libidinous in itself, or immediately shameful.

II. **Sanction.** 1. Direct absolution, given outside danger of death concerning this sin not yet sacramentally absolved, is invalid. It is illicit on the part of the priest, even when given to an accomplice in danger of death, outside necessity.

A case of necessity is had: a) if no other priest (even not approved, yet except one notoriously suspended or excommunicated) is present or willing; b) if another cannot be called without grave scandal or infamy, whether certain or probable; c) if the sick accomplice refuses to confess to another. This refusal does not seem capable of being understood rigorously, because, in that danger of death, the just severity of the Church must be reconciled with her solicitude concerning eternal salvation, which demands a confession wholly sincere and complete. But the accomplice-confessor must procure that place be open to another priest, and therefore must strive that the excuse of feared infamy be removed. Yet he does not seem compelled by any law to call another priest himself. The use of epikeia in gravest necessity is not altogether excluded by authors, for example in mission places, or when, without grave scandal, the reception of the sacraments cannot be omitted; but, in our opinion, outside danger of death, the first absolution from that sin will not be direct if it has been given by the accomplice.

2. The priest guilty of the delict is punished by excommunication *latae sententiae* most specially reserved to the Holy See, by which one absolving an accomplice even in danger of death is punished, if he is not excused by necessity, and therefore if he is morally to be judged to have inserted himself spontaneously into hearing that confession of the accomplice. Nor is excommunication avoided by crass or supine ignorance. One doubting whether the one confessing is an accomplice has doubtful jurisdiction, which nevertheless, lest he have to betray himself, he seems able to use.

Chapter VII: On the Sacramental Seal

— *Appendix XII belongs to this section.* **Historical.** Cf. Appendix XII.

— **Notion.** By his sacramental confession the penitent entrusts to the confessor a deposit inviolably sealed, whose seal can be violated directly or indirectly.

Direct violation is committed by him who narrates, with designation of the person to whom it pertains, a matter which is protected by the seal.

Indirect violation is of two kinds. Properly so called, or strictly taken, it is committed when that revelation is not intended but permitted, that is, when by speech or action diverse and directed to another end, danger is incurred lest what must be covered by the seal be manifested. This will be done when either the matter is narrated without open designation of the person, or the person is designated without indication of the matter, but with danger of manifesting the person, or of injecting suspicion of the matter.

Even with every danger of revelation excluded, every use of sacramental knowledge with a burden to the penitent is wholly prohibited to the confessor (c. 890, §1). This use can be referred to a certain more broadly so-called violation of the seal. And this will be committed when, on account of his accusation, the penitent suffers some burden distinct from suspicion of sin, whether he truly feels that burden, or at least it would be burdensome to penitents in general if such use of sacramental knowledge were lawful: as if someone, without the faculty of the penitent, should speak with him concerning sins accused.

But especially by c. 890, §2, every use for external governance is prohibited, of knowledge which has been had concerning sins in confession.

Finally an improperly so-called or analogical violation of the seal is had, without use of strictly sacramental knowledge, when something is revealed which brings a burden to the penitent, or renders confession odious, as if, in circumstances in which this is displeasing, you should say that such a one approached for confessing, or should reveal a defect of body or mind.

Less accurate modes of speaking have introduced no small confusion in this matter and have given place to various controversies. In the Code, on the contrary, c. 889 is destined to the seal strictly so called, whose obligation is distinguished in c. 890 from the prohibited use of sacramental knowledge with a burden to the penitent, or from the forbidden violation more broadly accepted.

If we comprehend every violation, even more broadly accepted, but not the analogical, we shall describe the obligation arising from the seal, or the obligation of the seal, as an obligation, inviolable in every case, of keeping silent, even after the penitent has died, concerning things said in order to sacramental absolution, whose revelation or manifestation would render the sacrament burdensome or odious.

— **Demonstration. Thesis.** By divine natural law itself, given the institution of the sacrament of Penance and of secret confession, there is imposed on anyone receiving knowledge of a matter signified by the penitent for fulfilling the burden of confessing sacramentally, the obligation of the

sacramental seal, by which it is prohibited absolutely, or without any exception, to reveal the knowledge thus received, indeed to use it by any reason of which the penitent, on account of some burden, could reasonably be unwilling.

For, for the immediate reconciliation of the Christian with God, Christ, the author of the sacraments, requires confession made to a priest, which at the same time he permitted to be made to him alone, as if to God. And he wished this to be for the remedy of every sin altogether. Therefore he instituted confession and made it necessary for the sole end of one's own salvation and of the grace of the sacrament, simply or better to be obtained through the ministry of the priest. But when a thing has been divinely instituted for one sole end, any use of the thing by which that end is even lightly impeded is an abuse of the thing substantially or accidentally against that end, and therefore intrinsically dishonorable. I say substantially or accidentally against that end, according as the end itself is substantially either corrupted or, although wounded, remains intact.

But every use of knowledge drawn from confession, which it can be in the interest of the penitent not to be made, unless it has been made from the full consent of the penitent, is at least suited to impeding that end, since it renders perfect sincerity, and access itself to the confessor, more difficult. Besides, the order in which sacramental reconciliation is placed is the order of man's relation to God, or quasi-divine. This excellence of order removes every reason for thinking that an exception has been divinely conceded, so that some human good may be consulted. On the contrary, it is established that a slight utility of a higher order must be preferred to every utility of an inferior order. Therefore by natural divine precept every law of the seal is sanctioned with that force which we have said.

This precept is of religion, since it immediately protects man's relations to God. The obligation of justice is also added. For from the fact that he permitted, indeed commanded, that all baptized sinners use that sacrament and therefore make secret confession, Christ gave to all of them an absolutely inviolable right, transcending the order of natural justice, of attempting this remedy by doing whatever seemed to be demanded by them for its perfect use. Therefore the knowledge which was their own before confession, after communication in confession remains their own for every non-sacramental use, and this by force of a sacred right which can be destroyed by no contrary human right, since every human right is of an inferior order. Wherefore neither the safety of the people nor the malice of the penitent removes or diminishes that right.

Thus Christ, while he instituted secret confession according to the discretion and dominion of the penitent, at the same time gave to every penitent a royal safe-conduct, by which at the same time he promised perfect security from every inconvenience or burden extrinsic to confession.

But that this security affects whatever the penitent thinks must be said or manifested for accusing himself is gathered from the manifest intention of the divine Author. For Christ wishes men to use his remedy in the best way. But the more fully the accused manifests himself, by so much the more perfect of itself he permits the account of judgment which is in that sacrament to be. Therefore the law of the seal has the extension which we have described in the formula of the thesis.

Most with us hold that the obligation of the seal is natural, which follows upon the institution of the sacrament; and they think that the root of the absolute and perpetual obligation must be sought in the superior order of that knowledge. But others, with Richard, think that in forbidden

communication the guilt of a lie must be detected, since the priest as man knows nothing; others, the guilt of violated fidelity and of a secret tacitly committed; others, the guilt of sacrilege, on account of the sacred nature of that knowledge, or on account of injury done to the sacrament, from which men would be drawn away, if in any case it were lawful to manifest matters accused. This is held by Suarez, *Paenit.*, d. 13, s. 1, n. 7; Lugo, *Paenit.*, d. 23, n. 8-15; d'Annib., III, 358 (8); Ball.-Palm., V, n. 591. - Vasquez, in 3 P., q. 93, art. 4, d. 1, n. 9.10, with whom Coninck, q. 9, d. 2, n. 34, and Tamburini, *De sigillo*, c. 1, n. 2, agree, think that the rigor of the obligation cannot be explained without a positive precept which Christ added to the natural force of the institution.

There is also one, like Lehmk., II, 586, who seeks help from the danger of hallucination, which we judge superfluous. We do not think that we disagree with St. Thomas. For in *Suppl.* 3 p., q. 11 art. 1 ad 2 and ad 4, he indicates the source of the obligation in the divine precept which follows the sacrament, and seeks the argument from the quasi-divine nature of the knowledge had by the priest who acts in the place of God.

A fuller explanation of the seal flows down an easy channel from the demonstrated thesis.

— **Subject of the Seal.** By the seal is bound:

1. The confessor. If he is questioned concerning a matter heard in confession, he can deny, even with an oath, that he knows or has heard the matter, since every question naturally ought to refer itself to his human knowledge, not to quasi-divine knowledge; but if the one questioning maliciously extends it to sacramental knowledge, he cannot expect a serious response, and we are outside formal conversation.

But what if from the denial of the confessor they infer that the confession was not integral? If anything of this kind is to be feared, the confessor should decline a direct response, by saying, for example, that the penitent accused his sins and that he himself fulfilled his office; or, better, if it can be done, he should rebuke the questioner concerning his rash or imprudent interrogation; or simply recall that outside confession he must always be ignorant of what perhaps he heard within confession, so that whether he heard it or not, his response must be the same.

For this reason also, if in a hospital he is asked whether the sick person whose confession he heard is to be communicated or not, let him regularly remit the questioner to the penitent, who has first been taught by him concerning the response to be made, so that he may declare whether or not he wishes to be refreshed by the sacred food. If the sick person asked him that the confessor himself should wish to take care of Communion, let the confessor narrate this mandate of the penitent, while he asks Communion for him;

2. The Superior to whom one to be absolved, or one absolved, from a reserved thing presents himself, or from whom license of absolving is sought;
3. An interpreter, whose help the penitent uses in confession, or he who, within confession, has written the accusation for an uneducated person. Some extend the obligation to him who before confession wrote the sins of an uneducated person, which we think must rather be denied, because he offers his work, which besides is not prescribed, outside confession, nor can confession be judged to have been begun before him;

4. One who by chance, even without fault, has heard something covered by the seal. He who has deliberately raised his ears has already acted against the seal.

They would not be held who heard a confession which the penitent wished to make public. But if, which God forbid, a preacher should violate the seal before the whole multitude, Suarez says, with Lehmk., II, 596, 7, approving, that all are so held to the seal that they cannot even speak among themselves concerning the matter heard;

5. All to whom something has been sacrilegiously or imprudently revealed against the seal;

6. A doctor or another who is consulted with the permission of the penitent; for knowledge is given to him for the end of obtaining absolution rightly. Thus the more common opinion. Some opine otherwise, since the knowledge of that doctor is not from confession. This license given by the penitent permits several conversations until the judgment has been completed (St. Alph., VI, 648).

Wherefore if someone is to be approached to whom restitution must be made, or with whom peace is to be concluded, it will be expedient that the confessor obtain a greater faculty by which the matter may remain sealed only by natural secrecy; and regularly he should accept the burden of such a mandate only under that condition (cf. Lugo, *Paen.*, d. 23, n. 29; Lehmk., II, 596).

Yet he whom the penitent himself consults about making confession is held only by natural secrecy, unless, on account of a manifested will subsequently to confess to him, the consultation seems to put on the account of a begun confession;

7. He who reads a written confession while the penitent is actually using it for confessing.

Several say the same, if one left in the confessional is read. But here I think a distinction must be made. One left by the confessor is without doubt matter of the seal, for it is as it were the revelation of another's confession; but one left by the penitent after received absolution is as it were a new narration of sins, which, whether it was voluntary or involuntary, does not beget the obligation of the seal. If it is not known who left it, the reader will have violated the seal, because he accepts the danger of reading what is truly enclosed by the seal. But the reason which is everywhere given, that the paper in which the sins of a completed confession are contained is as it were a permanent confession, if it was left in the confessional, otherwise if outside, seems to us to be a comparison rather than a reason, and to introduce an arbitrary distinction. Nor, if it is read before use for confession, will there be sin against the seal. For the privileged seal of sacramental confession cannot be extended to non-necessary means which precede confession. It would have to be said otherwise if in confession itself an uneducated person dictated his sins to someone. Cf. Lehmk., II, 597, who nevertheless says that the paper on which the penitent wrote his sins is protected by the seal if the writing is a necessary means for the penitent of making an integral confession. But the penitent is never compelled to make writing before confession. It is manifest that the things which are read on such a paper are protected by natural secrecy, which obliges under light or grave obligation, according as light and not defaming things, or, on the contrary, gravely defaming things, are thus illicitly known (cf. Noldin, III, 410; Gen., II, 384, VIII).

But letters by which absolution from reserved things is sought are protected by the seal.

What if someone confesses to a layman whom he thinks to be a priest? Many hold that that deceiving layman is obliged by the seal, because the penitent opened his conscience in order to confession. That he did this with the intention of confession is not to be doubted. But the order to confession is objectively none without a minister; nor does the intention of a sacrament cause that the sacrament is had. But the seal is destined to the sacrament, not merely to the intention of the sacrament. Therefore the case is different from that of one who hears what is narrated to another confessor in the true use of the sacrament (cf. d'Ann., III, 357).

But without doubt there falls under the seal what is accused to a priest lacking jurisdiction. For that confession may be completed by valid absolution, it is enough that that minister be furnished with jurisdiction.

N.B. 1. By force of c. 1757, §3, 2°, "priests are incapable of bearing testimony as regards all those things which have become known to them from sacramental confession, even if they have been released from the bond of the seal; indeed things heard by anyone and in any way on the occasion of confession cannot even be received as an indication of truth."

And in the civil forum also, the confessor can refuse testimony concerning every matter heard in confession: which for the most part, even if he has obtained permission from the penitent, it will be expedient to do.

The penitent himself is not held by the seal, but he is bound by a graver office of natural secrecy than others, when the matter requires that things said by the confessor be pressed down by silence. Therefore he sins mortally who, excused by no just cause, "betrays those things from which the honor of the confessor is notably injured" (cf. Ball.-Palm., V, 611).

— **Object of the Seal.** Under the seal fall:

1. all things which the penitent accused as his own sins or purposes of sinning, material or formal, whether rightly or erroneously he judged them such;
2. sins of an accomplice, whether prudently or imprudently detected, in the accusation of one's own sins;
3. denied absolution, without addition, since this virtually betrays a grave accusation. It would be otherwise if, following the custom of some region where it still survives, you were accustomed to hear all three times before absolution, and said: I did not give absolution because he was approaching for the first time;
4. the penance imposed, unless it was very slight, such as is customarily given for the smallest sins: three *Ave* or *Gloria*;
5. circumstances of sins, which clothe the narration of sins, unless they were said presuppositively, and it does not matter to the penitent that they be known. Thus if it was an occasion of sinning, very extrinsic to the sin itself: for example, a penitent, attracted by a strange spectacle, therefore omitted Mass. What strange thing happened in the street, you know from it, and you will be able to narrate it without violation of the seal. But you will not be able to narrate illegitimate birth which rendered him irregular and was related in

confession. One must proceed cautiously in this matter, lest any suspicion of sin arise. Wherefore let it not be said that the matter was known from the confessional;

6. things which deservedly or undeservedly are added by the penitent so that he may perfect his accusation: thus even virtues and graces received, by which the penitent wishes to show himself fragile, ungrateful.

The common reason is this: because one's own sins are the principal object and the intrinsic end of the obligation of the seal; but full security about accusing sins secretly would not be given, if the obligation did not comprehend all things which the penitent deservedly or undeservedly judged could opportunely be added for manifesting his guilt.

— Sins committed in confession, for example vain glory conceived from very rare faults accused, from the congratulation of the confessor, of themselves are not matter of the seal. For they are not accused. Yet their revelation would contain an indirect violation of the seal: for example, anger revealed, blasphemies of the penitent inject suspicion of a correction on account of grave faults, which gave place to anger.

Still less of themselves are natural defects of the body matter: stench, stammering of the tongue, dullness of mind.

What about scruples and scrupulosity? Certainly, he will have sinned against the seal who said: Titius has these or those scruples, for these were accused as sins. On the contrary, he will not have violated the seal who said of a penitent: he is so good that he sees sins where they are not; for this redounds to the praise of the penitent, and does not betray morbid anxiety. Finally if you merely say that someone is scrupulous who from another source can be known as such, you reveal only a natural defect, nor are you the cause of suspicion or defamation. But if, as many are, he is known as scrupulous from confession alone, because he knows well how to conceal his anxieties, you make use of knowledge drawn from confession which brings a burden to the penitent: which is opposed to the seal. Berardi, *Praxis*, n. 4947, thinks that for the most part the seal is violated by him who reveals that a penitent is scrupulous.

That virtues and merits do not fall under the seal except by that reason which was recalled in n. 508 is clear of itself.

— The approach made for confessing sometimes will not be able to be narrated without grave sin, but properly, since the very knowledge of such approach precedes confession, it is not matter of the seal. Confession is a fact of which the confessor is a witness, but he does not receive the knowledge from the penitent.

— The condition of the seal is sacramental confession, that is, directed to absolution, at least begun, even if it remained imperfect.

But the manifestation of conscience for obtaining spiritual counsels does not suffice. Nor can any mutual pact or sworn promise, or quality of him to whom the matter is entrusted, press the obligation beyond the terms of a rigorous committed secret (cf. St. Th., *Suppl.* 3 p., q. 11 art. 2 ad 2).

Much less is a confession merely simulated or made for extorting alms, or for laying snares, protected by the seal. In the latter case, it will be best to rebuke and repel the shameless tempter in a loud

voice. But if the hope of alms is an extrinsic end of a confession otherwise sincerely and rightly made, there is no doubt that this is enclosed by the seal.

Nor is protected by the seal the revelation which the penitent has made after the priest has clearly protested that he wishes to receive nothing sacramentally (Suarez, *Paenit.*, d. 33, s. 2, n. 5).

— **Obligation of the Seal.** 1. Which acts are prohibited has already been declared from the thesis itself in n. 506, and it will be more evident from the examples to be added below.

2. The obligation of the sacramental seal is inviolable (c. 889), and that absolutely, that is, on account of no public or private good to be procured, or evil or damage to be averted, do there become lawful either direct revelation, with the penitent indicated, of a matter which falls under the seal, or the use of sacramental knowledge with danger of such revelation, or the use of the same knowledge with a burden to the penitent. Yet while the use of that knowledge with danger of revelation is simply prohibited, use without danger is not prohibited except with some true burden of such a penitent, or of penitents in general, as is explained in n. 519.
3. Direct revelation admits no smallness of matter. The reason is because every direct revelation contains a substantial perversion of the order divinely sanctioned: that of secret confession. For direct revelation is, from its very notion, an action against the secret.

There is added then the motive which is customarily brought forward: that the faithful would be not a little drawn away from the complete use of that sacrament if they knew that small sins could be narrated, especially since some are easily a cause of ignominy or ridicule, on account of which they would prefer a grave sin of theirs to become known.

4. When there is question of direct or indirect violation more strictly accepted, no use of probable opinion is permitted. The reason is because the sanctity of the royal safe-conduct demands a broad interpretation, but severe opinions which are probable show us how far a broad interpretation extends; and because probable opinion immediately leaves the danger of material violation, which here, on account of the superior order to which that law pertains, cannot be evacuated by a reflex principle. To use other words, here nothing is lawful except what immediately, directly, morally is established to be lawful.

For this reason neither in the present case is there made a derogation from the principles of probabilism, but we are outside the matter to which it is applied: lawful and unlawful. It is not lawful probably to say what a probable opinion says is against the seal, either directly, or by that indirect reason which generates danger of revelation of the sin of the penitent.

5. But in indirect violation, or when the danger of revelation or the burden is very slight and uncertain, it is commonly admitted that there is light matter.

— The seal, introduced for sanctioning the right and security of free secret confession, is constituted in the power of the penitent, who therefore can always effectively or validly give license of speaking outside confession concerning matters accused or narrated in confession, provided:

1. the license is formal. Interpretative license does not suffice, nor presumed license even about the present, on account of the danger of error or imprudence; and virtual or tacit license must be used cautiously. The case is commonly brought forward of a penitent who speaks with the confessor about sins accused in confession: it can happen rather easily that, with the at least tacit assent of the confessor, he wishes as it were to resume the confession protected by the seal. St. Alph., l. 6, n. 151, insinuates that this is rather to be presumed, appealing to Lugo, *Paen.*, d. 23, n. 131 and 133, whose testimony, however, is ambiguous. I said with the assent of the confessor; for just as after the judgment has been completed the confessor cannot without the license of the penitent wish to perfect his judgment (Lugo, d. 33, n. 141), so, that he may resume confession, the penitent seems to need the assent of the confessor.

Applications

— **Applications.** 1. Conversation with the penitent about a preceding confession within a new confession, or immediately afterward, when the judgment is still morally judged to endure, is never opposed to the seal, because the matter is treated in the same sacramental forum, and the prudent administration itself of the sacrament not rarely demands the faculty of recalling former sins to the penitent. Besides, received usage so has it.

Nevertheless, without a reasonable cause, this is not to be done; and if there is only a slight cause for doing it, let the admonition be omitted if annoyance of the penitent is feared.

Conversation outside confession, without the permission of the penitent, is a prohibited use of sacramental knowledge.

— The confessor commits an indirect but strictly accepted violation of the seal: a) who, not from the very beginning of the confession, but when it has already been prolonged, says in a loud voice to a deaf penitent: "Return" or "How often?"; b) who, sitting in the confessional, rises and in a manner which bystanders can observe reads the table of reserved cases; c) who by a visible gesture, by a groan, manifests wonder or sadness; d) who, after hearing confession, immediately leaves the church, in no way solicitous about the penitent's Communion, which, before confession, seemed likely; e) who, of two penitents, for example two brothers, praises one alone, or says that by him only venial sins are brought (cf. d'Ann., III, 262). For he injects suspicion of serious matter, or of grave sin, or of indisposition.

— An indirect violation, broadly or strictly accepted (according as suspicion of grave sin is avoided for the penitent or not), is committed by the confessor who reveals sins heard in confession of some group or place, when some suspicion affects individual persons and therefore the penitent himself; when the reputation of the community itself or of the place is injured. Wherefore he sins who says that in such a monastery, or even by a religious of such an Order, a sin has been committed from whose nature the esteem of the monastery or Order is diminished. Much more, if he should say that there such a crime is frequent. For observe: although no one is ignorant that fragile persons occur everywhere, and that in the most fervent community there can be a traitor, much greater detriment happens to the community when a general and indefinite conjecture is strengthened by the most grave testimony of the confessor.

— Sometimes the quality of the person to whom a thing is said will cause the communication made to be burdensome and unpleasant to the penitent, or not. We always suppose that no suspicion of

crime or sin falls upon the penitent himself.

> For some more easily than others wonder that such or such things have happened, or, on account of the fault of a few, hold many more lightly suspected. Experience of men will teach an older confessor in no way to esteem the clergy or a monastery less because some have committed lustful acts, while, on the contrary, to learn this will not a little harm the reputation of priests or religious before a layman who did not even suspect that these things could happen in the sanctuary.
>
> If two confessors who together receive confessions of the same part of the clergy, so that they have heard the same class of men, communicate to each other their judgment about their moral condition, neither will add anything to the knowledge of the other, so that that conversation, certainly never to be advised, can be immune from every violation of the seal; on the contrary, the same conversation held before those who have not heard those penitents would lessen the esteem of that clergy.
>
> But even with the danger of violating the seal excluded, the very account of a certain equity and grateful charity sufficiently exhorts us not to abuse another's confidence for mingling conversations which are contrary to the order or family of our penitents.

— As to the defamation of a place: today in several regions there is so great a diversity of religion and morals, or of thinking and acting, that they seem to lack as it were their own name or reputation, so that the crime of one, even enormous, in no way infects the other inhabitants.

Yet it will be more shameful if you say that a hidden vice, a venereal disease, dominates there. Formerly, under this respect, they distinguished from larger places those which numbered fewer than three thousand inhabitants.

Nevertheless it is lawful from things heard in confession to take occasion for inveighing against vices which exist everywhere in some degree, for example lust. Yet to manifest hidden things with detriment of the place is wicked. Therefore practically it is never opportune that by the aid of confession the arguments of sermons be selected. For vices not hidden are known from elsewhere; hidden vices, however, are corrected not without danger.

By equal reason he who, as pastor or confessor, is questioned by a preacher about the vices which are especially to be remedied, should give information according to those things which he has learned by human knowledge, but should not give reports which he has acquired for himself only as the minister of Christ. He will act more prudently, he will avoid scruples and anxieties for himself, and he will obey more the direction of the Holy See (cf. Lehmk., II, 602; Ball.-Palm., V, 657).

— Even with every danger of revelation or detriment to reputation which the community or place would suffer excluded, nevertheless, outside confession, every use of the knowledge of confession with a burden to the penitent is prohibited (c. 890, §1).

And this absolutely, as is clear from the proposition prohibited by Innocent XI, through a decree of the Holy Office, November 18, 1682 (Denz., 1220). But the burden must be understood either as that which the penitent truly and formally experiences, or as that which he would connaturally experience if he had known that that use of knowledge had been made. Wherefore:

1. the Code itself, c. 890, §2, forbids every use which for external governance would be made of reports about sins had in confession, "both by Superiors existing at the time and by confessors who later shall have been appointed Superiors";
2. unless a faculty has been obtained, it will be against the seal to deny a vote to him whom from confession alone you know to be unworthy, or to remove the same from office; to dismiss a servant, a fellow boarder; to commit to someone a difficult and unpleasant task; to show a harsher face to the penitent, or because of things heard in confession (not strictly on account of a natural defect known otherwise than from the accusation of sins, for example stammering, an obscure manner of speaking) to decline him, and no longer admit him to making confession.

— Within confession the confessor can indeed impose those things which must be imposed on the penitent by every confessor, but nothing beyond. Wherefore he cannot order a thieving servant to leave his house.

When asked to hand over a certificate about confession having been made, the confessor can hand it over, and of itself should, to anyone who at least seriously began confession. Yet denial of the certificate will not be against the seal, except in rare external circumstances in which, on account of comparison with other penitents to whom it is given, suspicion is injected of denied absolution (cf. Ball.-Palm., V, n. 601-605).

— On the contrary, it will not be against the seal, not even indirectly, to do those things which, without any danger of revelation, cannot but be pleasing to the penitent, as to act with him more gently, mildly, benignly.

> Lugo, *Paen.*, d. 23, n. 308, thus solves the case, which he calls common, of a priest who from confession knows that snares are being prepared for him, so that he may be killed the following night, or that there is poison in the wine with which he must celebrate: he can flee or omit Mass without doubt, "when that action or omission would not show others the knowledge of the sin, nor bring any damage to the penitent which would render confession odious or burdensome: for then he could indeed flee under another pretext or omit the sacred rite." With the same conditions posited, he who from confession has learned the harms of his negligence could in an ordinary manner render himself more cautious in domestic administration.
>
> Concerning the certainly metaphysical case of a confessor who confesses to another confessor, his penitent, that he is not a priest, and yet wishes to continue hearing confession, Lugo, in the same place, n. 105, has these words: if from the use of that knowledge there would result at least some indirect revelation or also some dishonor or inconvenience of my penitent, "I would be bound... to confess seriously to another, but to him only externally or certainly with the intention only conditionally of obtaining absolution, namely, if he is a priest."
>
> You could also, with Tamburini as witness, c. 6, §2, provided the penitent himself is not impeded or feels inconvenience from it, place certain ordinary impediments to sins: for example, close a door, windows, through which you know someone is to go out for sinning.

But, lest any wonder of the penitent arise, do not do these things unless the permission of the penitent has been obtained in the confession itself.

Can the confessor warn the Superior that he should watch? The circumstances will have to be weighed very prudently.

Wherefore it will be preferable to ask permission from the penitent, which he, if he is well disposed, will easily concede.

Cases of the penitent who perseveres in the will of committing a crime against the confessor can offer a different solution, if the circumstances certainly reveal that the penitent has come not for accusing sins but for tempting the confessor.

— Yet only the exterior use of sacramental knowledge is prohibited. For the Lord did not wish to impose on the confessor a function of unbearable weight. Wherefore internally to remember or think over the sins accused, to acquire experience of men and dexterity of acting from confessions heard, will be opposed to no account of the seal.

Nor is there use of knowledge where the knowledge is merely the occasion. Wherefore he will sin by curiosity, not by sacrilege, who, after hearing confessions, asks the sacristan about the name of the person who approached for confessing, unless from that a suspicion of some grave sin could easily arise.

Nor is the seal violated by saying what all know, or what by the very fact of approaching the confessor the penitent virtually betrays, as if you say that Peter accused his venial sins. But to define the venial sin accused (for example, his lies), or to indicate that they were grave or serious, would be a direct violation of the seal.

— An impatient, scrupulous, tedious manner of acting in the confession itself will not be against the seal, but it can be sinful by another reason, even gravely, if it renders the use of the sacrament odious, or has given cause or occasion of abandoning the sacraments.

— **Canonical Sanctions.** 1. We have already recalled above, n. 507, N.B., the prudent disposition by which c. 1757, §3, 2° makes confessors incapable of judicial testimony.

2. The confessor who shall have presumed directly to violate the sacramental seal is punished by excommunication reserved ipso facto most specially to the Apostolic See. He who shall have violated the seal only indirectly is liable to penalties *ferendae sententiae*, of suspension, incapacity, privations, indeed, in the graver case, of degradation itself (cc. 2369, §1 coll. with 2368, §1). I understand indirect violation as more strictly accepted. For the Code, c. 890, distinguishes the use of knowledge acquired from confession from the violation of the seal, of which c. 889 treats.
3. Rash, and therefore conscious, violation of the seal committed by other persons is said to be punished, according to the gravity of the guilt, by a penalty which can even be excommunication (c. 2369, §2).

— **N.B.** 1. The older authors must be read cautiously about this argument, since they less considered as contrary to the law of the seal the use of sacramental knowledge which, even if it should give no

suspicion of sin, nevertheless brings a burden to the penitent. Thus St. Thomas himself, *Suppl.* 3 p., q. 11 art. 1 ad 3. Cf. St. Alph., l. 6, n. 656, 657.

2. Although we must be very cautious, nevertheless it is always necessary that our obedience remain reasonable. Wherefore we can give no place to a probable conjecture of the sin of some penitent; yet we ought not to avoid "all conjectures which clever and malicious men are accustomed to pursue" (cf. d'Ann., III, 362; Ball.-Palm., V, n. 672; St. Th., *Quodlib.*, 5, art. 13).

3. Because every danger of reluctance of the penitent, or of wonder of hearers, which things in this matter must especially be attended to, is absent, Berardi, *Praxis*, 4959, seems to us deservedly not to disapprove him who, after hearing a public sinner in danger of death, in order to console the family, should say that the sick man confessed with great contrition and many tears, although these words prove indirectly that great sins were accused (cf. Tambur., *Praxis exped. conj.*, c. 3, n. 15).

— 4. By the Instruction of June 9, 1915, which was promulgated by mission to the individual Ordinaries, and is founded on the presumption of danger and of easy scandal of the faithful, the Holy Office disapproved the manner of acting of those who, even with the danger of every revelation of the penitent excluded, narrate cases had in confession, even those which can serve for edification. For the faithful who hear these things come to less esteem for the sacramental seal; it is easy that among the bystanders someone may think that his own case is being recounted, so that the sacrament in some way becomes odious to him. Therefore the Sacred Congregation commands that the Ordinaries of places and Superiors restrain abuses of this kind; and for the future take care "that priests subject to them be taught never to touch anything pertaining to the matter of sacramental confession under any form and under no pretext, not even in passing, neither directly nor indirectly, neither in public nor in private conversations, especially on the occasion of missions and spiritual exercises."

Nevertheless necessary or useful consultations are not prohibited on this account.

Therefore to this seem to pertain these most grave warnings of the supreme Congregation: a) that priests abstain from those conversations by which, among themselves, at table, they mingle discussions about strange cases heard in confession, about sinners who had not confessed for many years, and this especially in missions, where there is an easier occasion of imprudence of this kind; b) that in sermons they report nothing as heard in confession, unless they expressly mention the permission given; c) that they not publicly narrate things which seem able to be known through confession alone, unless adding that the things were known to them by another way.

Summary

— I. The sacramental seal can be called a sign divinely imposed on secret confession, by which it is protected from every violation.

The obligation of the seal is the obligation, inviolable in every case, of keeping silent, even after the penitent has died, concerning things said in order to sacramental absolution, whose revelation or manifestation would render the sacrament burdensome or odious.

Direct violation is made by the open narration of a thing which is protected by the seal, with designation added of the person to whom the thing pertains.

Indirect violation is committed by a speech or narration which, made for another end, creates danger of manifestation of this kind: whether the matter is indicated without designation of the person, or the person without indication of the matter, but with danger lest the one from the other somehow be known or conjectured.

Every use also of sacramental knowledge is prohibited which either the penitent himself, or penitents in general, would bear unwillingly. Therefore the obligation of the seal extends beyond the obligation of preserving a secret. This use pertains to a certain account, more broadly accepted, of indirect violation.

An analogical violation of the seal is contained in the manifestation or revelation of a thing which indeed is not protected by the seal, when that manifestation brings a burden to the penitent or renders confession odious.

The obligation flows from divine natural law itself, consequent upon the institution of the sacrament of Penance and of secret confession: it pertains to religion and at the same time to justice.

II. By the seal are bound: the confessor, the Superior to whom one to be absolved, or one absolved, from a reserved thing presents himself, or from whom, either orally or in writing, permission of absolving is sought; an interpreter, or he who, within confession, writes the accusation for an uneducated person; one hearing by chance something closed by the seal; all to whom a thing has been wickedly revealed; a doctor who, with the permission of the penitent, is consulted; he who reads a written confession, at least while the penitent uses it for confessing.

The penitent is not held by the seal: yet he would sin mortally who by indiscreet words notably injured the honor or reputation of the confessor.

III. The object of the seal is: 1° all things which the penitent rightly or wrongly thought had to be accused, not excluding graces and virtues mentioned for showing fragility or for disclosing an ungrateful soul; 2° sins of an accomplice, accused at the same time in one's own accusation, directly or indirectly; 3° circumstances of sins, unless, extrinsic to the sin and said for supplying some useful prior knowledge of a non-secret thing, they can be manifested without any inconvenience of the penitent; 4° all indications of grave or special sin: as denied absolution, penance, unless it was very slight. This is said so that full security may be made firm for the penitent.

Thus sins themselves committed in confession, even if of themselves they are not the object of the seal, will have to be concealed lest indirect revelation be feared. Defects of the body are not matter of the seal; scruples easily can be, as if someone is known as scrupulous from confession alone.

Access for confessing is not matter of the seal, but sometimes it is protected by grave natural secrecy.

IV. The condition of the seal is confession made, or at least begun, in order to absolution.

V. Firmness. The obligation of the seal is absolutely inviolable, so that on account of no public or private good does revelation, whether direct or indirect, become lawful.

Nor does direct violation admit smallness of matter, since every such violation is against the divinely sanctioned order of secret confession. Nor, when there is question of direct or indirect violation (properly so called), is any use of probable opinion permitted; because, in this matter of a superior

order, the danger of material violation cannot be evacuated by any reflex principle. In indirect revelation smallness of matter is admitted.

VI. Cessation. The obligation of the seal can be removed by permission of the penitent which is formal, free, not revoked. Permission can be indefinite or circumscribed to certain persons. Nor is use beyond the end for which it was conceded permitted. Yet the obligation fully ceases if the penitent repeats completely outside confession the things said in confession, or has declared that he wishes all things to be known as if outside confession.

Immediately after confession, or in another confession, the confessor speaking with the penitent about his confession does not violate the seal, but he could be guilty of imprudence.

VII. By revealing sins of a place or community, the confessor can indirectly violate the seal, if suspicion from that reaches the penitent himself. And if from that the reputation of the place or community is injured, the confessor has illicitly used knowledge from confession. The quality of the person to whom certain things are indicated can cause the communication to be or not to be burdensome or unpleasant to the penitent. It is lawful also to take occasion from confession for inveighing against vices which exist everywhere in some degree.

Use which cannot but be pleasing is not opposed to the seal, with danger of revelation excluded: as if you act more gently with the penitent.

Finally only the exterior use of sacramental knowledge is prohibited.

VIII. Sanction. The confessor who shall have presumed directly to violate the seal is punished with excommunication *latae sententiae* most specially reserved to the Holy See. Indirect violation, strictly accepted, renders the confessor liable to various penalties. Rash, and therefore conscious, violation effected by other persons is punished by a penalty which can even be excommunication.

Priests are incapable of judicial testimony as regards all things which they know from sacramental confession; indeed, not even as indications can any things be received which have been heard by anyone and in any way on the occasion of confession.

IX. The Holy Office, by the Instruction of June 9, 1915, wished to take care lest priests mingle conversations among themselves about strange cases, about conversions; lest they publicly report certain things as heard in confession, unless mention is made of the permission obtained; or seem publicly to narrate things which they have known from confession alone, unless they could indicate another source of knowledge.

Section II: Moral Norms

Utility. - From the moral section of this treatise, that most excellent fruit is to be gathered: that the confessor may know how to direct all canonical rules to the spiritual good of penitents, and may be helped in acquiring for himself that supernatural prudence by which it will come to pass that he can happily discharge the office of the good Samaritan.

Chapter I: The Persons and Qualities of the Confessor

— **I. The persons of the confessor.** "Let the priest remember that in hearing confessions he sustains alike the person of judge and physician, and that he has been constituted by God minister at once of divine justice and mercy, that he may consult the divine honor and the salvation of souls" (c. 888, §1).

The confessor must furnish some things insofar as he is confessor, others insofar as he is neighbor. The things which he owes from his function, or insofar as he is confessor, he owes under graver imputation and with greater inconvenience; and insofar as they oblige toward another man, they must be furnished from justice and with the burden of restitution; while the remaining things which are positively to be furnished are ruled by the obligation and norms of charity. The former are to be done of themselves, and by the confessor alone; the latter accidentally, insofar as necessity occurs, and by every man placed in the same circumstances. The former introduce a new species of sin in the confessor who is to be blamed; not so the latter.

Therefore the Code assigns to the confessor two formal accounts of office to be fulfilled: that of judge, because the absolution or retention of sins is a judicial sentence; that of physician, because that judgment has been instituted for healing the wounds of sins. Therefore the former person is gathered from the nature of this sacrament, the latter from its end. Wherefore they do not stand in the same order: the function of judge is more intrinsic and essential; the office of physician, insofar as there is question of medicine superadded to absolution, seems rather to pertain to the integrity than to the essence of the function. Insofar, I say, as there is question of medicine superadded to absolution, for absolution itself makes the sinner substantially sound.

Thus far the things said regard the specific account of this sacrament. From the generic account, however, the priest must act as the person of minister, and by this title take care for valid and decent administration of the sacrament.

> Authors have often spoken rather confusedly about these offices. St. Alph., l. 6, n. 426, ascribes to the confessor the person of judge, father, physician; Aertnys, C.SS.R., l. 6, tr. 5, c. 4 art. 1, the person of teacher, physician, and judge; while most think that the four functions of father, teacher, physician, judge belong to the same. The Code followed St. Thom., 4 S. d. 19 after all the questions; Lugo, d. 22, n. 19 and 14, n. 171; d'Ann., III, 329. Lehmk., II, 541, acknowledges the office of judge as the single essential proper office, to which he adds the others as accessory.

— From the double person to be sustained, the Code infers that the confessor has been "constituted by God minister of divine justice and mercy, that he may consult the divine honor and the salvation of souls." Therefore regard for the salvation of souls, although principal, is not the only regard; but it is necessary that the confessor suitably reconcile his solicitude for saving with care for the divine honor.

— As minister of the sacrament, lest he be sacrilegious, he must take care for the validity of the sacrament, by teaching the penitent the things which are necessary to be known for valid reception,

and by denying the sacrament to the unworthy.

The good disposition of the penitent must be morally known to him. This moral knowledge consists in prudent probability (Ball.-Palm., V, 528), with the exclusion of a grave contrary reason (St. Alph., VI, 460; d'Ann., III, 335; Lehmk., II, 123). For this, and not more, can be humanly demanded. Wherefore if from the circumstances a grave prejudice against the disposition of the penitent arises, other arguments must accede by which that suspicion is dissolved or sufficiently weakened. Yet let the confessor beware lest he imprudently explore or test the disposition of the penitent by asking whether, with loss of goods or of children, he will keep his resolutions. And finally, in this judgment, one must stand by the affirmation itself of the penitent, which seems to be sincere.

Whom he notes to be ignorant of necessary things, for example, things necessary for salvation, he must, as there is opportunity, instruct and admonish concerning the duty of procuring for himself greater erudition in the faith. He must also admonish him who from vincible and mortally culpable ignorance is in an evil state, because otherwise neither the sacrament nor the penitent is consulted. For such a penitent is indisposed.

But the good faith of the penitent must be prudently explored, rather by general questions, whether or not he has remorse of conscience about some grave matter (Lugo, d. 22, n. 23), lest from the things heard he be constituted in doubtful or bad faith.

— As judge, lest he be guilty of injustice toward the penitent, he must bring the cause begun to an end, as much as is from himself, give absolution to the disposed, confer a valid sacrament (or a valid sentence), give a suitable penance.

To the penitent who adheres to a probable opinion, absolution of itself must be given: for he is disposed. Indeed it is enough for this that, on account of the extrinsic authority of approved doctors, they conceive a judgment concerning the honesty of the action, since the priest cannot impose his own opinion to be followed. And he can of himself be absolved (if nothing from elsewhere stands in the way) who follows an opinion indeed improbable, yet covered by sufficient appearance of probability, so that the penitent can be judged to be in good faith. It must be said otherwise of the penitent who resists the confessor by mere obstinacy.

— As physician, he will sometimes defer absolution even for the disposed; he will endeavor to dispose well the doubtfully disposed; he will leave in good faith one whom he cannot instruct without danger, provided no preponderating reason obliges to admonition; he will give penances not only suitable but salutary; he will add counsels for amendment. Therefore:

1. Although sometimes absolution of him who can licitly be absolved is usefully deferred, yet this is to be done rarely, and almost only with the penitent consenting, because it can turn to grave danger or damage of the penitent. The chief utility will be had when the penitent must actually fulfill some difficult obligation, and the delay is not too grave for him, or, as some wish, less grave than the obligation to be fulfilled (cf. Reuter, *Neoconfessarius*, n. 34).

For time, place, persons, the manner of acting will vary; in doubt what is expedient, for the most part absolution will be conferred more justly and more safely (d'Ann., III, 334).

2. He is doubtfully disposed against whom there remains, not sufficiently dissolved, a founded reason arguing a defect of disposition, that is, of sorrow or purpose.

Such a one, regularly, especially today, the confessor clothed with the bowels of charity will endeavor to bring to a more certain disposition, at least in the present. "But if he neglects to furnish this, certainly he himself is no more ready for hearing than others are for approaching to confess" (Leo XII, Const. *Caritate Christi*, December 25, 1825, §5, which contains most beautiful warnings).

If by this effort he shall have profited nothing, for a time, using most humane words, he will have to defer absolution, until the penitent is suitably disposed, unless, however, the case has been one of absolving the same conditionally: concerning which matter it will soon be treated below.

3. He who in good faith errs about his obligations is regularly to be admonished, from charity both toward other persons whose interest it is, and toward the penitent himself, since observance of the divine law always profits. And when from an erroneous conscience he thinks sin to be where there is none, or grave sin where there is light, he must always be untaught, especially if there is danger of formal sin, because no goods are to be procured through evil. Yet let the confessor propose this in such a way that he in no way seems to approve what is light, or at least dangerous; indeed let him not omit to dissuade from dangerous things, and to exhort to better things. But if the penitent is not solicitous about true obligations, he will have to be admonished if hope of fruit is had and graver inconveniences are not feared. If fruit is not hoped for, or graver inconveniences are to be feared, the confessor must not and cannot admonish the penitent, since the good of the penitent must be procured by the confessor himself. And consequently he also licitly advises that he act according to his ignorance: for example, that Caia render the debt to Titius whom in good faith, although falsely, she judges to be her husband. Nor does some prejudice of a particular third party stand in the way.

Yet admonition will have to be made: a) if the silence of the confessor seems about to harm the common good; b) if the penitent himself doubts and asks, because then to keep back the truth would be to approve error. Yet the confessor must not say more than he is asked. Asked about the honesty of rendering the conjugal debt by him who, for example on account of a vow of chastity, can render but not ask that debt, he will pass over the asking of the debt with prudent silence; c) if the ignorance is foreseen soon to be going to become vincible or culpable, or the ignorance itself is spiritually harmful: as if it induces a proximate occasion of sinning formally, or confirms a depraved custom of doing things which are shameful.

Finally, in doubt whether admonition will be profitable or not, the importance of the matter must be compared with the degree of hope or fear, and those parts must be chosen which are judged to preponderate.

Yet no anxiety is to be had about a small excess. And let us hold the principle of St. Alph., VI, 610, 616 at the end: regularly formal evils rather than material ones are to be avoided. Wherefore d'Ann., III, 316, judges that regularly, in doubt, silence is to be kept.

Yet if the scandal (or sin) of the penitent will be brief and momentary, and there is hope that soon he will acquiesce, admonition regularly is to be made, especially if an account of the common good

accedes; but this will better be done after absolution, lest the penitent be deprived of the fruit of the sacrament received.

Finally an admonition which, now useless or harmful, is foreseen later to be more useful and efficacious, will be able laudably to be deferred to a more opportune time.

These admonitions, insofar as they confer to the spiritual health of the penitent, pertain to the function of physician; insofar as they repair or impede the damages of others, they are to be given by the priest as neighbor, as will be said here immediately.

To procuring a good disposition there also pertains that the confessor help the penitent in perfecting the examination of his conscience, through suitable questions and indications.

4. From c. 887 itself, the penances to be given are to be salutary and suitable, adapted to the quality and number of sins, and to the condition of the penitent. Cf. below n. 545 ff.

— Sacramental confession affords the confessor a most propitious occasion of exercising the office of fraternal correction. This, as neighbor, for the common or private utility of the penitent or of another, he must fulfill from charity.

Wherefore, according to the norms of charity prudently weighed, the confessor will admonish the penitent concerning the obligation of laying aside hatred, of restoring honor, reputation, or goods unjustly injured; of removing for others an occasion of sinning; of removing or repairing scandals; of correcting delinquents; of helping the needy; of denouncing crimes or delinquents on account of the common good or of the innocent, etc.

This will be of greatest moment where there is question of penitent Prelates and of those who bear a public person.

Now we must speak a little more distinctly about the individual parts of the function. But before this, let us briefly explain with what qualities the confessor must be furnished.

— **II. The qualities of the confessor.** 1. While he receives confessions, the confessor must, in the first place, be constituted in the grace of God, at least through an act of contrition. Yet called unexpectedly to help a dying person, if he cannot so quickly recollect himself for eliciting true contrition, or in good faith judge himself contrite, although he is not in grace, he will not sin by absolving.

But of itself he who from his function is obliged to administer several sacraments frequently must already for this reason be in the habitual state of grace, lest he be opposed to a proximate danger of sinning mortally.

2. He also must be such that, in exercising this ministry, he is not placed, on account of his ignorance or fragility, in a proximate occasion of mortal sin.

As was said, t. I, in the treatise on Sins, n. 435, the number of sins can be estimated probably from the number of sessions in the tribunal of Penance.

— 1. For the confessor to absolve sins validly, it is enough that he know them at least under the confused account of sin. Nor is it necessary that he judge concerning all of them whether or not they

are sins. Cf. Lugo, *Paenit.*, d. 21, n. 71; St. Alph., l. 6, n. 627.

2. But for him licitly to exercise that ministry, that knowledge is required by which he can bear prudent judgment in this forum. Wherefore it is required: a) that he can suitably solve the more common cases, sufficiently distinguishing mortal sins, venial sins, and species, and knowing reservations and censures of more frequent application; b) that concerning graver and rarer cases he know how to doubt prudently, and to consult more learned men or theological books.

This competence is to be estimated relatively according to the diversity of places and penitents, as is evident; and also according to the abundance or lack of suitable priests.

For in necessity, the salvation of the faithful must be provided for in the better way in which it can be. Therefore for small towns and in less cultivated regions, learned men being lacking, the less learned both will licitly be deputed and will licitly hear confessions, provided that, according to their moral powers, they are zealous gradually to acquire for themselves suitable knowledge.

To the knowledge of the confessor it pertains to know several practically probable opinions, so that he can, according to the diverse condition and utility of penitents, now prescribe one, now another, if not to be followed, at least to be advised.

3. Prudence also is required in the instruction, admonition, questioning, and spiritual care of the penitent.

— Both priests who approach unprepared for hearing confessions sin, and Superiors who, without necessity, appoint or tolerate such men, when they can correct them.

But in doubt about his own suitability, a subject can well stand by the judgment of a Superior who, from familiar acquaintance itself, has sufficiently ascertained his character and doctrine: which easily happens in religious institutes.

Summary

— I. **The Persons of the Confessor.** 1. From the generic account of the sacrament the confessor must sustain the person of minister of the sacrament; from the specific account, the person of judge and physician: of judge, because absolution or retention of sins is a judicial sentence; of physician, because the judgment has been instituted for healing wounds. The function of judge, which is gathered from the nature of the sacrament, is more intrinsic than the function of physician, which is gathered from the end of the sacrament. And when there is question of medicine superadded to absolution (which makes one substantially sound), it pertains to the integrity of the person to be borne rather than to its essence.

Besides, as neighbor, according to the norms of charity, he must help the penitent according to his necessity and circumstances. But the parts of the function must be fulfilled under graver imputation and with greater inconvenience; indeed, insofar as they create an obligation toward another, they bind the confessor from justice and with the burden of restitution.

As minister of divine justice and mercy, he must consult the divine honor and the salvation of souls (c. 888, §1).

2. Corollaries. a) As minister of the sacrament he must, lest he be sacrilegious, take care for the validity of the sacrament, by teaching the penitent the things which are necessary for the value of the sacrament; by admonishing him who from vincible ignorance is in an evil state, and therefore, prudently, by questions that are rather general, by exploring his good faith; finally by denying the sacrament to the unworthy. The good disposition of the penitent must be morally known to him: morally, that is, by prudent probability, to which no grave reason is opposed, and which of itself is already begotten by the serious affirmation of the penitent; b) as judge he must, from justice toward the penitent, bring the cause begun, as much as is from himself, to an end through valid absolution, with a suitable penance added. He preserves the right of absolution who adheres to a probable opinion; he can of himself be absolved who in good faith follows an opinion not solidly probable, but which is covered by a sufficient appearance of probability. One doubtfully disposed cannot be absolved except conditionally, in a case of moral necessity, or of grave detriment to be avoided; c) as physician, he will endeavor to dispose the doubtfully disposed; he will help the penitent in perfecting the examination of his conscience; he will add counsels for amendment; he will give salutary penances; sometimes, but rarely, and almost only with the penitent consenting, he will defer absolution for the disposed, yet inclined rather to giving than to deferring absolution; d) as neighbor, for the common utility or the proper utility of the penitent or of another, he will exercise the office of fraternal correction, of which he has of itself a splendid occasion.

One erring in bad faith is to be admonished. One erring in good faith will prudently be untaught errors by which he too much increases his own obligations, so that he neither approaches dangerous things nor deserts better things. One erring about a true obligation will be admonished if hope of fruit is had without fear of graver inconvenience. If fruit is not hoped for, or greater evils are to be feared, the confessor will abstain from admonition, unless by his silence he seems to approve error, or is about to harm the common good, or is more harmful to the penitent himself, for example on account of a strengthened bad custom. Sometimes admonition will laudably be deferred to a more opportune time. In doubt, without anxiety, advantages and disadvantages must be weighed, yet so that formal sins rather than material sins are avoided.

II. **Qualities.** The function of confessor demands: the state of grace, procured at least through contrition; and the habitual state of grace in him who is accustomed to minister the sacraments; flight from proximate occasion of sin, from ignorance or fragility; knowledge, by which he knows how to solve the more common cases suitably, and concerning others to doubt prudently and to consult. To this knowledge also it pertains that he know several probable opinions. Yet for valid absolution it is enough that he know the things accused under the confused account of sin; and the required knowledge varies according to circumstances and the abundance of confessors; prudence, in the instruction, admonition, questioning, and spiritual care of the penitent.

Those who are not suitable and exercise the function sin; in doubt they can stand by the judgment of the Superior by whom they are known. Superiors who approve unsuitable men sin.

Chapter II: The Action of the Confessor

§ 1. With Regard to the Three Parts of the Sacrament

I. - With Regard to the Accusation of the Penitent

— 1. The confessor, as minister, physician, and neighbor, must take care that the penitent make a morally complete accusation. For as minister he must procure the integrity of the sacrament; as physician, perfect healing; as neighbor, the spiritual alms of instruction.

2. Yet his obligation is less grave than that of the penitent. For to the penitent belongs of itself the diligent accusation of all grave sins; only accidentally does it belong to the confessor. Wherefore they do not judge that a confessor sins gravely who, in a series of confessions to be received, once or twice omits a necessary question.

3. But the confessor must supply the examination, not such as the confessor himself would have to procure in his own cause, but such as the penitent can make according to his quality and instruction without excessive inconvenience. Therefore inquiry will have to be made only about those species which the penitent, according to his condition, easily distinguishes. Numerical calculation will have to be obtained such as, for the elapsed time and the more or less confused state of conscience, is morally possible.

And attention must also be given to the spiritual fragility of the penitent. Therefore care must be taken lest our diligence become too burdensome to the penitent, and render confession hateful to him. For thus we would sin against the primary rule of acting of a good confessor, which is that he act in that manner which the salvation of souls seems to demand.

The confessor "should beware lest he detain anyone with curious or useless questions, especially concerning the sixth precept of the Decalogue, and especially lest he imprudently question younger persons about those things which they do not know" (c. 888, §2).

For unless our questions are few and cautious, we can give occasion to accusation or suspicion, imprudently dissipate or offend ignorance, and expose ourselves or the penitent to danger of sinning.

4. When the penitent himself has in some way prepared his confession, let the confessor allow the penitent to narrate his matters in the order and manner which the penitent himself has chosen, lest, disturbed, he already be unable to say from memory the things which he had prepared, and thus depart less integrally confessed and less content. Wherefore also let him interpose nothing except a very brief little word to which an answer is most easily given. For example, if the penitent says that he sinned with women, it will be possible to ask: even married women? Therefore the confessor himself will endeavor to note in his mind the things which then will have to be asked, certainly with some danger of forgetfulness; but this will be abundantly compensated by the hope of a better and fuller confession on the part of the penitent.

Nor from the beginning are circumstances to be sought which afterward will easily be detected, for example, that the penitent is married, or is bound by some vow.

— 5. These things especially come into use in hearing a general confession. A general confession which is made from devotion must be distinguished from one which is necessarily to be made.

When it is made from devotion, the penitent should immediately be admonished about the faculty left to him of keeping silent about what he wishes, with the counsel added that he say in few words those things which can beget greater confusion, so that a richer fruit of humility may be received.

But if it is necessary, the cause is sometimes one single sin besides which other grave sins were not committed. Then sufficient accusation is made most easily, with that sin declared and with the frequency of the sacraments added, if any were received sacrilegiously.

But if many grave sins from a long time must be accused, the more expeditious method will be that the course of life be divided into several parts, each of which is of a sufficiently homogeneous tenor. Then let the penitent say what chiefly happened in the individual spaces of time. Or let him also describe his life by the week, or the month. From this it will sufficiently become known what he did in other weeks or months, through which he led a sufficiently similar life. Then let the confessor ask the penitent whether he perhaps thinks something must be added.

If, warned by the penitent or because of another indication, the confessor knows or suspects that there is something which the penitent is especially ashamed to reveal, let him give him courage to accuse it at once, so that, relieved of the burden, he may make an exomologesis grateful and full of solace. Otherwise, it must be feared lest in the course of confession he yield to timidity and confess sacrilegiously. Not so rarely an experienced confessor can conjecture a shameful matter sufficiently certainly. It will help then that the confessor himself indicate the matter and thus spare the penitent a longer explanation. If he suspects someone studiously to be mixing old sins with recent ones, let him act, and regularly let him keep his own suspicion silent.

At the end of such a confession rightly made, let the confessor not omit, for the more perfect quiet of the penitent, to make him more certain: a) concerning the remission of all sins, even of those which have fallen from memory, so that these alone, if they are restored to mind, must be accused; b) concerning the faculty which he has of no longer repeating examinations, since it is enough that he wish to declare the things not yet accused which occur of themselves; c) concerning the legitimate presumption of a completed confession, especially since the confessor often in confused accusation has touched individual things sufficiently so that nothing now has to be repeated. But he who has made a general confession twice or three times should be forbidden now to examine his conscience about past things, but should indicate only those things, if any occur, which are certainly mortal and most certainly not accused. For too frequent general confession would remove peace of soul and impede spiritual progress, while from Christ's institution that sacrament ought to strengthen peace and help us that, with expanded heart, we may run the way of the commandments of God.

N.B. Lacroix, n. 1882, observes that there are some who would be terrified by the name of general confession, and from whom, nevertheless, almost without their knowing it, a general confession can be elicited by the help of questions.

II. - With Regard to Absolution

— **The Various Sentences of the Sacramental Judge.** 1. He can grant, deny, or defer absolution.

Whether absolution is granted or denied, the examination of the cause is finished, and the confessor has discharged his function: of itself he is not bound to admit the penitent again. But if absolution is deferred, the judgment is suspended; the right remains to the penitent of returning to the confessor, who, from justice, must hear him and bring the cause through to the end. Thus it is seen what difference there is between denied and delayed absolution, although the penitent is held by the same material obligation of obtaining absolution from his grave sins, and enjoys the same liberty of changing confessor.

2. The granting can be conditional, or without a condition added.

A condition concerning the future, for example "if you will restore," no less than in other sacraments, and for the same reason, is excluded (cf. n. 180 and 184). Reasonable addition of a condition concerning the past or the present, when it regards either the present competence of the confessor, or the words of absolution well pronounced, or a fact extrinsic to the judgment itself and presupposed, "if the penitent lives," is subject to no difficulty. But if it regards the object itself of the judgment, that is, the disposition of the penitent, to many it has seemed inept and illicit, for example to Cajetan, *Summula*, word Absolution (p. 3, ed. 1571). This question was moved in the fifteenth century. And it can be objected that by a conditional sentence the matter is left in the state of doubt from which it ought to escape through the sentence. This difficulty would be serious enough, if the sentence ought merely to declare some fact. But concerning a sentence which gives a right, it must be said otherwise, provided he to whom it pertains can know whether the condition has been fulfilled or not. Thus, in Roman law, the praetor (magistrate) by his formula gave to the other party a conditional right, the condition which the judge of fact then examined. But since nothing lies hidden from God, the sacramental sentence can usefully be subordinated even to the condition of sincerity or interior sorrow.

By a certain opposite excess, Ballerini, *Op. theol.* V, 21, judged absolution to be intrinsically always conditional, or to be borne, "if in reality the required dispositions are present, which God alone knows with certainty, but the confessor more or less probably." Yet this agrees little with the nature of the institution. Why has the accusation of the penitent been prescribed? why has the right of questioning been given to the confessor, unless so that, judging about disposition in a human manner, he might pronounce the sentence simply, certainly subject to error like every sentence of a human judge, but not therefore conditional?

The confessor assuredly does not have the will of giving absolution through right and wrong, just as a priest consecrating has no positive will of consecrating inept or illicit matter. Yet the sentence or consecration does not become conditional on that account. But, after prudent examination has been premised, it is consecrated and pronounced absolutely. Nor is the matter practically indifferent. He who administers a sacrament conditionally posits the sacramental sign itself only conditionally; wherefore, the condition failing, nothing has been done, nor could the sacrament be valid and unformed. But he who administers a sacrament

without condition wishes to posit the sacramental sign simply, and indeed efficaciously, insofar as depends on himself.

Wherefore, since we admit, on the part of the penitent, that it suffices for validity that he accuse sins with some true supernatural sorrow (provided he is in no bad faith concerning the degree of sorrow above all things), it can further be asked to what condition of disposition the validity of absolution must be subordinated, when the sacrament is administered conditionally. And to no other, unless we are mistaken, except to that which suffices for the validity itself. Therefore the condition about which we now treat will have to be explained thus: "if, the accusation and attrition having been considered, he can validly receive absolution," although, on account of the deficient quality above all things, grace is not going to follow immediately. Another manner of understanding the condition would beget many anxieties.

3. Absolution can remit sins directly, or give place to indirect remission, which they are accustomed to say more briefly: absolution can be direct or indirect.

Those are directly remitted which, after sufficient accusation, are remitted to a disposed penitent by virtue of the keys; but those are indirectly remitted which are not remitted by virtue of the keys, but only because, one mortal fault remaining, sanctifying grace could not be infused, to which infusion, however, the penitent, considering his disposition and the absolution received, has an immediate right.

Of itself the Lord could have so ordered that sacrament that mortal sins would be absolved singly by one or several confessors, so that the former absolutions would merely give a title to grace and reconciliation with God, which would be perfected by the last absolution. But now one grave sin cannot be absolved without the others, so that the cause must be submitted completely to one confessor from the beginning. Yet if any things, because of forgetfulness or just cause, have in no way been declared, these nevertheless are remitted indirectly to a disposed penitent, with the burden remaining of confessing the same things in the next following confession, unless the same obstacle impedes this. Nor is it repugnant that the same sin be remitted directly and indirectly. Suppose that a penitent remembers that a sin has not yet been accused by him, which he knows to be grave, yet in such a way that he is ignorant of its species. That sin, under the generic account of grave sin, will be directly remitted by absolution, but indirectly insofar as it is such a sin, so that the obligation remains of accusing the species. For only direct remission obtained through this sacrament removes the burden of accusation.

— **Common norms concerning the ministering of absolution.** Come then, these brief rules concerning the administration of absolution are commonly proposed: to the disposed penitent absolution is to be given; to the indisposed it is to be denied; for the doubtfully disposed it is to be deferred (cf. c. 886, about which we have already spoken above). Therefore:

To the disposed, absolution is to be given, and indeed of itself immediately, so that the disposed penitent who asks it has the right of obtaining it without delay, as we are taught by c. 886 itself.

Yet no one denies that there are just causes for deferring the same for the spiritual utility of the penitent. And we have indicated as a just cause the opportunity of urging, before absolution, the

execution of a difficult obligation, which otherwise would scarcely be fulfilled.

— But a particular question is moved concerning those in occasions and recidivists. And concerning those in occasions, or those who are placed in an occasion of sin, the matter is dispatched in few words. What an occasion is; how it is distinguished; what and how great the obligation of deserting an occasion is, has been said in I, 452-456. Therefore either the penitent has a grave obligation of deserting the occasion, or he is held by no certain obligation. He who, bound by a grave obligation, does not wish to fulfill it, is not worthy of absolution, unless he is in good faith, and the confessor judges that admonition must prudently be omitted or deferred. But if he is held by no certain obligation, he preserves his right to receiving absolution. Nor is it in the power of the confessor to add a new obligation by some precept of his own.

Nevertheless, if a permanent occasion, or one which stands in being, can and must be deserted, and the penitent has an easy faculty of returning, regularly it will be expedient that the penitent, before he is absolved, remove the occasion. This, at least when the penitent is not unwilling, must be done gently by the confessor as physician. In some parts (but by no means everywhere), even when there is question of an occasion not to be approached, absolution can usefully be deferred, until the penitent by some reason has demonstrated his constancy in purpose.

If, on the contrary, the penitent who had to dismiss the occasion has deceived trust in this matter several times, then often he cannot prudently be judged disposed by the confessor as judge, before he has executed the obligation, so that absolution must be deferred for him, or given only under condition (when this is lawful). And unless grave necessity stands in the way, the confessor as physician will then have to recur to that remedy.

— **Concerning recidivists.** 1. The custom of sin itself of itself does not effect a special difficulty. Indeed, since it increases fragility, the presumption of unworthiness which relapse begets is more easily destroyed in the customary sinner than in another relapsing person.

2. A recidivist, by force of the word, is he who repeats a sin, especially after amendment proposed in confession. But in the present matter, he is treated strictly as one "who after confession, although admonished, relapses into the same sins without any or almost any amendment" [d'Ann., III, 338 (9)].

If he has so relapsed that his present disposition has become doubtful, and at the end of confession he does not seem better disposed in soul, absolution will have to be deferred for him, unless there has been place for conditional absolution. St. Alph., VI, 459, denies that a recidivist who returns with the same depraved habit can be absolved unless he brings extraordinary signs of his disposition.(1)

If in the present he has demonstrated himself sufficiently disposed, or he has relapsed from intrinsic fragility, from the very force of custom, etc., all wish that he be treated benignly. Nor should suitable exhortation and admonition ever be omitted. And regularly he is to be absolved, unless from a penitent well known to him the confessor can have a prudent persuasion that from delayed absolution no damage is going to arise and that hope of greater horror of sin will be born. To this end, he could test what the threatened denial of absolution effects. Yet let him have greater hope in the sacraments, according to those words of St. Thomas, *Suppl.*, q. 25, art. 1 ad 4: "It must be said

that a greater remedy is furnished against sins to be avoided from grace than from the habituation of our works."

Or he has relapsed because of a voluntary occasion in which he remained. Then the things said in 542 return.

Or he has relapsed from a necessary occasion. If apt remedies have not yet been prescribed, they will have to be prescribed.

If remedies were prescribed but were not applied, their use will have to be efficaciously urged, unless the penitent in rigor can desert the occasion, and prefers to desert it. Many here teach that delay of absolution must be employed. And we shall not deny that this can sometimes profit. Yet it seems preferable, unless the penitent is opposed, that he indeed be absolved, but that there be imposed on him (under grave or light sin, according to the case), as penance, a new confession after a brief time, in which he may give an account concerning the very use of the remedies. For thus, besides the stimulus of good will, he will meanwhile enjoy sacramental grace.

But if progress made gives hope of amendment, let the confessor take care that he depart absolved and made more erect for the fight. This progress is held by St. Alph., II, 460, for an extraordinary sign of disposition. Concerning progress of this kind St. Leonard of Port Maurice writes: "If on the days assigned for return penitents fall somewhat more rarely than usual, grant them absolution... When they have furnished this little bit of better fruit, it is verified that hope of amendment is now present." (In Berardi, *De recidivis*, n. 136.)

> But what if the use of remedies seems fruitless, and better remedies in the concrete are not at hand? The supposition admitted, which Ball.-Palm., V, 119 ff., think rather must be denied, some then deny the obligation of deserting the occasion, either by their very silence or by express words. For if, thus they say, the penitent "could be absolved the first time, he will be able also the second" (Tamb., *Exped. conj.*, III, 3, 10, who thinks this probable), since sorrow and purpose are no more lacking in the second case than in the former, and because in a physically necessary occasion, all ought to be content with this present disposition. Thus approximately Lugo, d. 14, n. 156, who inclines to this opinion. Others, not few, oblige to deserting the occasion, because formal flight of the occasion alone then gives hope of amendment, and Christ said: "If your eye scandalizes you, pluck it out," etc. Others, as Suarez, in 3 p., d. 32, §2, St. Charles, *Instr. conf.*, deny that a general rule can be given. Gury, n. 631, thus distinguishes: flight of the occasion must be commanded if practically it seems easier to desert the occasion than to remain in the same without sin. Berardi, in some rare case, in which the confessor, having known the moral strength of the penitent, judges the means proportioned to his powers, thinks that flight of the occasion must be imposed, notwithstanding great inconvenience.
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> Thus therefore we shall say: as often as the matter seems possible in some way, flight from the occasion itself, or the safer parts, should be advised to be followed by every effort. And unless a most grave inconvenience stands in the way, this flight seems of itself to have to be imposed: for, considering the gravity of spiritual ruin, the necessity of the occasion seems eliminated, so that it is morally converted into a free occasion (cf. the notions handed down, I, 452). Yet with most grave inconvenience of life, fortune, etc., the confessor does not seem able strictly to

impose flight, since, because of disagreement among authors, the obligation cannot be called certain (cf. Lugo, *Paen.*, d. 25, n. 115).

N.B. Let delay of absolution, where it seems expedient, be very brief: for hours, one or another day, eight days, at most fourteen. For of itself it is grave that someone remain in the state of mortal sin. Yet St. Alph. says that a greater delay, for the sake of experiment, is sometimes necessary. We greatly doubt that this can be valid today.

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(1) These signs are numbered by him: greater sorrow disclosed through tears, sighs, and cordial words; a lesser number of sins, in the same difficulties; longer abstinence from sin, or resistance to temptation; zeal applied toward amendment; solicitude concerning remedies to be known and applied; spontaneous confession; an extraordinary reason by which he was brought to confessing; more accurate accusation; reparation of damage; greater horror of sin conceived and demonstrated, or fear of divine vengeance.

— **Conditional absolution**, that is, given under a condition not concerning the future, but concerning the present or the past: "if you are capable or disposed; if I have the faculty," can be conferred when great utility or a certain necessity will advise it. Wherefore, unless certainly efficacious absolution can be procured, he is to be absolved under condition:

a) who is placed in danger of dying without absolution: in grave illness, before a long voyage, dangerous use of the scalpel, etc. Nor in this case does it matter to distinguish whence the doubt arises: whether from uncertain life, doubtful presence, received baptism, disposition of the penitent, or from jurisdiction of the confessor or absolution perhaps already conferred;

b) who, unless he were absolved, would remain long in mortal sin, or would be deprived long of sacramental grace; or who is pressed by necessity of receiving a sacrament of the living: Confirmation, the Eucharist, Matrimony. This certainly must be done, if opportunity is lacking for the penitent to dispose himself better.

Hence children and the half-witted, in doubt about sufficient discretion, are to be absolved conditionally whenever they bring matter probably grave, and sometimes in the year, according to the prudent estimation of the confessor, indeed as often as they wish to confess, with moderate frequency. So also those from whom an accusation of certainly sufficient matter about which they are sorry is obtained with difficulty: both if they accuse a doubtfully grave sin (then from St. Alph. you must confer absolution), and several times in the year (then from St. Alph. this can be done but need not be done; and he himself permits monthly absolution). Yet for the most part certain matter is easily obtained if the confessor himself positively suggests defects to which morally all of us are liable.

Hence he who truly doubts about absolution rightly given, which the penitent probably needs, will repeat it; and we shall use doubtful jurisdiction with sufficient cause.

He will be absolved conditionally who, while he judges himself disposed, is doubtfully disposed, and unless he is absolved seems about to profane Confirmation, Matrimony; or concerning whom it is to be feared lest he desert confession and waste away in sins, which is easily to be feared in those who in Paschal time have with difficulty been brought to confession.

N.B. On account of the controversy about valid and unformed confession, the condition, as we have already warned in n. 540, should be referred to the disposition necessary for the validity of confession.

III. - With Regard to Sacramental Satisfaction

— **The account of penance.** From the most ancient time, this was the doctrine of the Church: that sins after baptism are no longer fully, that is, as to guilt and punishment, of themselves remitted except laboriously, that is, with suitable expiation offered for the temporal debt. For the temporal debt, I say, for the eternal is always and necessarily taken away gratuitously together with the fault. At the same time the Church recognized in herself the power of binding the guilty by penalties and fully loosing the same even from temporal debts: which power, however, since it has not been given for dissipating, is subject to prudent use.

Whether in the first age there was the formal intention of the Church that through the grave and long-lasting penances which were then imposed, with the proper force of her absolution added, insofar as there was need, she should certainly free penitents from every debt of punishment, this historically is by no means certain (cf. d'Ales, *La doctrine des indulgences*, *Etudes*, t. 145, p. 40 ff.). But for many centuries certainly she no longer intends to join the full remission of sins with far milder sacramental penances.

That discipline is most clearly demonstrated in St. Thomas, *Quodlibet* III, art. 28, and formally approved in Trent, Sess. XIV, c. 2, 3, 8, 9; Sess. XXV, Decree on Indulgences. But indulgences have been annexed to pious works to be performed freely, which can suffice for extinguishing temporal debts.

Therefore the constant tradition of the Church has been of absolving, from the power of jurisdiction, even from punishment, with a payment offered partly from the works of penitents, partly from the merits of Christ and of the saints. Yet formerly the principal payment was customarily sought from definite penances, while today non-commanded works seem to have obtained the principal place, and indulgences are expressly available to all as supplements. Therefore today, by a formally double use of jurisdiction, by which she imposes sacramental penances and grants indulgences, the Church works toward the perfect remission of sins more gently, more fully, and more perfectly than formerly through penitential discipline. More gently, I say, because without so much coercion, and partly through voluntary acts; more fully, for Christians formerly were as it were left to themselves for less grave sins; more perfectly, because in a greater light there shine both the various accounts by which the Church can bind and loose, and the sacraments and their power, and the merits of Christ and of the saints, and the communion of saints, and the various dignity of works and the excellence of the spirit of love and charity.

— **Obligation and rights of the confessor.** The principle is placed by canon 887: "For the quality and number of sins and the condition of the penitent, let the confessor enjoin salutary and suitable satisfactions."

Therefore: 1. The confessor must impose penance: a) as minister of the sacrament, that he may take care for the integrity of the sacrament, of which satisfaction is an integral part; b) as judge,

constituted by God and by the Church, that he may observe the order of divine justice, to which the Church necessarily conforms itself; but divine justice does not gratuitously remit temporal punishments to be paid for sins committed after baptism; c) as physician, solicitous about the spiritual health of the penitent, who is to be freed from punishments and preserved from sins.

Nor, on the occasion of gaining a plenary indulgence, is the obligation of imposing penance removed: today this is beyond controversy, after Benedict XIV (Const. *Celebrationem*, January 1, 1751, §65), on the occasion of the jubilee itself, confirmed the necessity of giving penance.

2. The confessor imposes penance by using his jurisdiction, as judge, not as priest. He can create this obligation alone; other obligations he does not effect but declares. He can impose this both before absolution and immediately after, when the judgment is not yet morally finished. Yet it is better that he impose it before absolution.

3. The sacrament demands penances by which provision is made for its honor and dignity; divine and ecclesiastical justice wishes that penances correspond to the accusation, that is, to the sins accused and to the disposition of the penitent, which can be excellent, truly good, and scarcely sufficient; harmless and salutary medicine is demanded.

But by grave words by which he explains the excessive indulgence which, because of the penitent's infirmity, he uses, the confessor can provide for the honor of the sacrament; and he observes the order of divine and ecclesiastical justice, if he does not intend to remit punishments beyond the merit of the work performed, so that he can principally attend to imposing salutary penances (cf. Galtier, S.T., *La penitence a imposer*, *Nouv. Rev. Theol.*, 1923, p. 1 ff.).

Hence it is understood how today the custom of imposing modest satisfactions has grown strong. For those which today are reputed grave should rather be called light in themselves. For today that penance is judged grave by which a work is imposed which, if it were a common precept of the Church, would have to be furnished under grave guilt. Thus assistance at Mass, fasting or abstinence for one day, recitation of the third part of the Rosary. (Yet the recitation of any little hour of the breviary would not be a grave penance, since the omission of a little hour is imputed under grave obligation to those who are held by the obligation of the breviary, not on account of quantity alone, but on account of peculiar considerations.)

4. Even today the confessor must regularly impose a grave penance, in the present meaning, for grave fault, and must have some account of the quality of the faults. Yet, on account of the difficulty of the matter, proportion between degrees of fault and degrees of penance is now not customarily observed so accurately.

We are taught this by the sufficiently common usage itself of approved confessors. But these at the same time know how efficaciously to procure true interior penance.

For venial faults the confessor cannot impose a penance, whether it was light or grave, under grave obligation; while he can bind under light obligation to doing a grave penance imposed for grave faults.

For grave faults to enjoin a very slight penance (without an excusing cause) would be grave. But they judge that a confessor sins venially who imposes no penance on one accusing light things.

5. A work already commanded can be enjoined, a mental work, a work to be defined by the choice of the penitent, a bestowal of money; a work cannot be imposed by which the things accused in confession are in some way revealed, as if one should command a young man that, after confession, he ask pardon from his parents for his disobediences. Counsel of doing thus could indeed be given. But a grave penance which the guilty person executes gladly can usually be found without trouble.

6. The same confessor can always, as if perfecting his judgment, commute the preceding penance; another must first sacramentally know the cause and therefore absolve. Therefore, standing by principles, a simple confessor does not seem able to commute a penance enjoined for reserved things: yet the matter is controverted (cf. Lehmkuhl, II, 475).

But the penitent himself cannot commute the work enjoined, not even into something better. But if by two confessors whom he successively approached in numerically the same cause two diverse penances have been imposed, he has the option of either one.

7. Causes of lessening penance can be taken from the fervor of the penitent, from the occasion of gaining an indulgence, from the physical infirmity of the penitent; from his moral infirmity, as if he is not going to accept a greater one; from his spiritual utility, if from this he is enticed to more frequent use of the sacraments; from the will of the confessor to satisfy for the penitent.

— **Counsels concerning salutary penance.** That penance may truly be salutary, care must be taken not only lest by its weight it turn the penitent away from the use of the sacraments, but also: a) lest by its lightness it deceive the penitent about the gravity of his faults and draw him to relapse more easily; b) furthermore care must be taken lest, from negligence of the confessor, excessive punishments to be paid in the future life remain to the penitent who would now have preferred to expiate his debts; c) finally, it must be procured that penance prepare a stable conversion of the penitent, and by this reason also be truly medicinal.

Now: a) a minimal penance simply imposed for grave faults would of itself lessen the consciousness of grave guilt. Wherefore of ourselves we cannot be content with imposing such a one. But what is desired in penance can be supplied through admonitions and exhortations.

b) In sacramental penance there is a satisfactory value which surpasses the value of similar works freely done by the faithful. Wherefore pious penitents themselves can usefully be advised to ask greater penances from the confessor, by which they may satisfy more abundantly and thus in some way exercise what St. John Berchmans had proposed to himself: "for small defects to do great penances."

But many today are little solicitous about this great utility. At least let us exhort them to gain indulgences which are offered abundantly, and to multiply pious works. Besides, with these freely done works the confessor can join the value of penance, by saying, for example: "Whatever good you shall have done for two days will be to you for penance."

c) Medicinal penances, or remedies against relapses, can be recalled to three heads: some lessen the force of the occasion or temptation, as consideration of eternal truths, access to the confessor before a danger which recurs after fixed intervals, flight from idleness or from a person attracting to sin;

others weaken the force of passion, as interior and exterior mortifications; others increase spiritual strength, as almsgiving, prayer, more frequent invocation of the Sacred Heart, of the Blessed Virgin Mary, of the guardian Angel; purposes renewed with great soul, indeed, in certain circumstances, vows, sometimes fenced about with a penitential clause; more frequent approach to the sacraments. If this can be obtained, it will greatly help to advise a purpose in the morning, for example before the image of Christ crucified, and an examination in the evening, with thanksgiving for progress, if there was any. Penances which beget a pious custom of renewing acts of faith, hope, and charity are also very profitable.

Among these, today the following seem especially to be commended: more frequent use of the sacraments; frequent renewal of acts of faith, hope, and charity; almsgiving, whose efficacy for redeeming sins the Sacred Scriptures themselves teach. Let the designation be left to the penitent to define; let the utility of deputing a part to the celebration of Masses be suggested.

Penance is too uniformly reduced to a certain recitation of prayers: this custom seems to have to be corrected by a prudent but constant effort.

Finally let us observe these things. If in part it is understood in what way today it has come about that, in the administration of the sacrament, penance occupies a secondary place, nevertheless its true place must be preserved for it: especially where there is question of penitent priests. Certainly the stricter discipline of the Sacred Penitentiary is by no means destitute of its efficacy, when grave crimes are referred to it.

Certainly care must be taken that the penitent truly accept the penance; which, where it is doubted, can be learned by a courteous question. This good will can be helped by the addition of some intention, for example of praying for the deceased of the family. But we ought to be less moved by fear of inculpable forgetfulness. It is better that the sinner become forgetful of the penance than of the gravity of his sin.

Therefore the confessor who indiscreetly always imposes the same small penance can in no way be approved, nor does he obey the laws of the Church; but it is necessary that, taught by zeal and experience, he know at once to oppose at least certain remedies to vices.

Excessive facility of confessors diminishes the name and efficacy of Christianity.

§ 2. With Regard to the Persons of Penitents

— The uneducated, even those who are found to have examined themselves negligently, are not to be dismissed[(1)] so that they may perfect their examination, since no moral hope is given that they will return better prepared, but rather they are to be helped by the confessor so that, by questions adapted to their capacity, he himself may procure sufficient integrity of confession.

And observe that several men, more cultivated in other matters but of modest piety, or immersed in business, are theologically uneducated or must be equated with the uneducated; they think that they have satisfied their obligation, and if dismissed would care for nothing more, but would be cast into bad faith or perhaps would desert the sacraments. The confessor, after making prudent inquiry, has fulfilled his parts; the penitent, from ignorance of his obligation, approaches disposed; imprudent recollection of the obligation is to be avoided.

Nor are the uneducated to be disturbed who confess words and works contrary to chastity, but deny thoughts which, nevertheless, the confessor will probably judge that they have had and admitted. For they answer thus because they do not attend to these things.

The things said are to be transferred by stronger reason to the half-witted, concerning whom we have already treated before.

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(1) To dismiss such persons on this account was called by Fr. Segneri, *Il confessore istruito*, with St. Alph., VI, 607, approving, an intolerable error.

— With children let the confessor especially take care: that they confess sincerely, and therefore by paternal benignity win confidence for himself; that they confess sorrowfully; wherefore, by conversing rather than by a long exhortation during which they may wander in soul, let him hold a manner of aptly proposing to them the motives of contrition; that they have a right conscience by which they are taught to discern grave sins from light ones in such a way that nevertheless they abhor these also; that they confess without danger. Therefore they will have to be questioned by a brief word in such a way that the confessor has their conscience ascertained and detects the beginnings of a depraved custom, yet at the same time they are not instructed before the opportune hour in those things which they more happily do not know. Therefore it will be best that they become accustomed to set forth their doubts candidly to the confessor; that occasions of sin be removed, by effecting, as far as can be done, especially among parents, that under the pretext of poverty children, especially of different sex, already seven years old, not use the same bed. But he will take care lest particular counsels of modesty suggest to them occasions of malicious arts to which they were not attending. For the norms of modesty are not uniform in various homes; imprudently admonished by confessors, they will now begin maliciously to revolve in mind things which they were doing ingenuously, or to do with scruple what nevertheless, for example on account of the authority of parents, they do not dare omit.

— Penitents of little piety and rarely approaching the tribunal of Penance, for example only at Paschal time, must be treated by the confessor with that dexterity by which, in a few moments, he knows how to question them sufficiently, bring them to sincere contrition, and render them, by paternal counsels, more pacified, instructed, and content about the confession made.

Such persons, if they are doubtfully disposed, are to be absolved under condition rather than dismissed with the danger that now they omit the sacraments entirely.

What if, stained by many harmful things, they are foreseen soon to relapse?

Let the confessor discharge his office with all zeal and charity. When he has done this: a) either they appear certainly indisposed, for example because they do not wish to fulfill a grave obligation of which they are conscious: then, as if unwilling, let him deny absolution, indicating the manifest reason of the sentence and adding how gladly they would be received better disposed; let him not neglect to cast seeds of this disposition. Rarely, except sometimes with priests or with the uneducated full of faith, will harsh severity profit anything; b) or they sincerely grieve and resolve: let the confessor absolve them, obtaining, if it can be done, more frequent use of the sacraments; c) if the disposition is doubtful, let him absolve them under condition, with a paternal admonition added, in which he recalls the uselessness of absolution given to him whom God knows to be indisposed.

Thus he will help as much as he can. There is hope of absolution efficaciously given; at the beginning at least sins will be committed less frequently; the soul will not be turned away from religion or the sacraments; and perhaps great scandals will be impeded.

Doctors agree that the greatest indulgence also must be used with those who at the end of a mission approach the sacrament of Penance.

Concerning recidivists and those who are placed in a proximate occasion of sinning, cf. the things said above, n. 543, and the things to be said in the chapter on the penitent.

— Pious penitents must prudently but zealously be brought to following more perfect things, and to exercising the apostolic mission entrusted to every Christian already in these divine words: "That they may see your good works and glorify your Father who is in heaven" (St. Matt. 5:16).

Wherefore:

1. Let the confessor not always, after hearing confession, absolve such persons without any exhortation; nor let this be only about the time or feast occurring, but also about amending such or such a defect, about applying such or such an effort.

Yet lest the confessor anticipate the action of interior grace, but rather prepare and then follow that action, he will abstain from untimely suggestions which beget weariness or less confidence in the penitent. Wherefore it is necessary that he himself know how to discern the various spirits. By opportune praise let him add courage to souls, with the temptation of vainglory or worse pride at the same time avoided. Let him instill a greater esteem of virtue and of the fulfilled office of state than of exterior exercises which, under the appearance of devotion, can foster self-love itself. Let him strive to make the will firmer, with dependence on sensible fervor removed, so that they become accustomed to act more from deliberation than from a sudden impulse of soul. Let him induce the penitent himself to propose more perfect things to be approved or moderated by the confessor, rather than merely execute things indicated by the confessor. In works of exterior mortification, let him rather subtract something from the exercises proposed by the penitent than increase them in quantity, so that the penitent may perform them with a more joyful will and bear a consciousness of relatively complete liberality and fortitude. Let him direct each one according to each one's own state, character, grace, but not according to the confessor's own pleasures. Let him dissuade vows taken without counsel or without the judgment of the confessor having first been asked. Let him effect that penitents with due reverence and contrition accuse past or present venial faults, yet in such a way that they are not scrupulously troubled about the number but rather disclose their habitual disposition. Let him carefully abstain from every command which he has no right to make, and from matters which do not pertain to the use of the sacrament or to spiritual direction. Especially with women let him avoid more prolonged conversations; and, occasion being given, let him always declare that it will be pleasing to him if they should prefer to approach another confessor also (yet to the scrupulous he will commend unity of confessor).

2. Let him exhort nuns and Sisters that they bring every zeal to preserving vows and rules, cultivate due obedience toward Superiors, especially foster mutual charity, removed from every

envy and jealousy. Let him not furnish easy ears to complaints, nor rashly carp at the manner of acting of others. Let him carefully unteach whatever things can favor vanity or self-love, yet let him break no effort toward more sublime virtue. Let him hear patiently one reporting portentous or marvelous things, nor show himself moved and curious as about a thing not customary. Let him neither prohibit an extraordinary way of prayer, nor immediately approve it.

But rather let him explore in a discreet manner the solid virtues of the one praying, and, without excessive attention given to extraordinary causes, foster the fervor of true reason. Let him also remember that it easily happens that a confessor, by his very questions, renders persons of this kind persuaded either about marvelous things or about sins. Let him in no way show himself eager for food or drink, but constantly superior to these lowest things. And in all his conversation let him preserve for himself holy authority, such as conciliates fruitful confidence and prevents familiarity.

3. There are men who attempt as it were to redeem suspect arts of conducting business by exercises of piety. It is necessary that the confessor in no way connive at them.

— The sick and the dying must be helped and comforted with the greatest care. "It is expedient that every recently ordained priest compose for himself methods and manners of helping the dying and of acting with the sick." Thus Lacroix, l. 6, p. 2, n. 1864. St. Alph., *Praxis confessarii*, Appendix II; Reuter-Lehmkuhl, *Neo-Confessarius*, etc., can be approached. Thus the confessor will strive to act so that he is troublesome to no sick person, and at the same time endeavors to increase the merits of the sick person, by frequent reception of the sacraments, by renewed acts of the theological virtues, by joyful acceptance of the divine good pleasure, for example according to the formula commended by Pius X and Benedict XV, by recalled sorrows of the Blessed Virgin Mary, by proposed union of one's own trial with the Passion and death of Christ, by brief little prayers repeated opportunely.

If he has been present in mind, it will help, says St. Alph., op. cit., §5, to confer absolution on him as often as a brief confession can prudently be obtained. But if he has been destitute of senses, the confessor "must direct himself from the conscience which he has known of the sick person. If he had been habituated in depraved thoughts, if he dies from some wound or is entangled by some passion of hatred or impure love, if the illness is too bitter and he himself does not suffer with willing soul, then absolution can be given rather often; but otherwise it suffices that a space of three or four hours intervene; more frequently, however, if he is now about to die. But it will not be beside the matter to admonish the sick person, while he is strong in mind, that, if he cannot speak, he give some determined sign when he seeks absolution, or when the priest wishes to confer it on him; for example, that he close or open his eyes, raise his hand, incline his head, and the like" (St. Alph., l. c.). But scarcely anything will help more than to raise the soul into vivid hope, founded on the mercy of God and the merits of Christ, of which as pledges there are the protection of the Blessed Virgin Mary, and the power of the sacraments, especially of the sacrament which gives Christ to be possessed, and of Extreme Unction, which takes away the remains of sin.

But lest the visitation of the priest seem as if to portend proximate death, let the priest to whom souls have been committed take care that from the beginning of illness he visit also those sick

persons who are hoped to be going to arrive at convalescence.

— **General Counsels.**

"To hear confessions," St. J. B. de Rossi used to say, "is, of all ways to heaven, the shortest way"; yet it supposes not a few things in the confessor, that it may bear all the fruits which are deservedly expected from so great a sacrament of mercy. May some general counsels profit him; we have thought fit to add them here.

1. By his own piety and sanctity of life the confessor, as is clear, will be helped very much. But in carrying out this function let him take the greatest care for the purest intention of soul, most remote from every human end. This removes the dangers of temptations; this preserves a holy liberty of responding according to truth, without human respect; this procures great peace of conscience and security, even after errors have been committed. Nor, in his conversation with the penitent, let him foster or tolerate any affection other than supernatural. A safeguard against temptations also will be furnished by consideration of the angels who protect the little ones, and by the persuasion that the matter is conducted between souls, and not between bodies which are informed by the soul.
2. Let him beware lest, deceived by the facility of many confessions, he now neglect the study of moral theology, which, according to the opinion of St. Alph. (*Praxis confessarii*, n. 17, 18 at the end), is the work of an entire life.
3. Let him hold the golden rule commended by learned and pious men: let the confessor strive, insofar as is lawful for him, to render less difficult for Christians the execution of that office which is among the more difficult things prescribed in the law of grace.

But the use of confession is rendered more difficult not only by him who torments the penitent with importunate questions or by his impatience and anger, but also by him who renders inconvenient for him the revelation of a grave fault which especially dishonors his state.

Therefore, to a person unknown to him, even a religious person or one frequently communicating and confessing, let him allow time for declaring all things, nor from the beginning let him show that he lacks leisure. He will be able to dispatch more quickly a penitent who shows himself scrupulous and fearful.

Nor by any word or manner of acting let him suppose that nothing grave is to be revealed; but, gently extolling the advantages of perfect sincerity, let him bring forward the good occasion which is present for opening the heart fully. But let him begin by saying that the internal state of the penitent is entirely unknown to him, so that he himself does not know whether or not anything is to be supplied.

It sometimes happens that a thing must be opened which a person of the other sex is greatly ashamed to report in a concrete manner, nor dares to press down by silence without fear of culpable reticence. If the confessor advert to this or suspect it, and it does not pertain to the good of the penitent that he himself know the manner, let him declare that the matter is sufficiently understood by him, and that there is no need that more be declared, that the penitent is truly dispensed from

every further explanation. And in truth, in the matter of the sixth and ninth precepts, we are persuaded by c. 888, §2 itself to act thus.

4. Because grave authors testify to us that very many confessions are sacrilegious on account of culpable reticence, let us not deny or practically neglect the office of questioning; yet let us fulfill it circumspectly, so that we do not disturb souls and inject into persons who enjoy interior peace a suspicion of former confessions badly made.
5. Let the confessor remember that the principle about not disturbing good faith by admonitions is not fully brought forward unless the word "uselessly" is added.

But the utility can be: a) of the penitent, who, not admonished, may contract a depraved custom, who may lead a life of less integral honesty; b) of another person whom the penitent harms either by his manner of acting or by the manner in which he will interpret the silence or connivance of the confessor; c) of the Christian community, which, with Christianity languishing, is infected too much.

6. Let the first and as it were supreme rule of the confessor be the salvation or greater spiritual utility of the penitent. According to it let him absolve, retain sins, moderate penance. Hence also in doubts about positive obligations, for example of restoring, which have no direct spiritual utility, let the confessor embrace the more benign opinion, which nevertheless is probable.
7. As Lehmk., II, 607, notes after Gobat, a later confessor ought to presume that the former one discharged his function well. Wherefore concerning past confessions, imposed obligations, let him not be solicitous, unless he certainly discovers that the former confessor erred.
8. Let the confessor not be content with necessary absolution having been given, but let him have at heart the spiritual progress of the penitent; and with tireless zeal let him exhort and stimulate him to seeking nobler and more perfect things, which at the same time are more blessed.
9. After confessions have been heard, let the confessor recollect in soul how he acted and how he could have acted better; about doubtful solutions let him question someone more skilled. Let him not trust his own prudence so greatly that he judges that nothing is to be learned by him from others. On the contrary, let him despise no aid, neither divine nor human, so that he may be able better to consult "the divine honor and the salvation of souls" (can. 888, §1).

§ 3. With Regard to Repairing Defects

— These principles must be held. 1. No violation of the sacramental seal is excused by the necessity of repairing a defect. But of itself he does not violate the seal who merely admonishes the penitent that an invalid absolution was conferred by him from error; or who, on account of a grave cause, simply asks from the penitent the faculty of adding something to the things said in confession.

2. Every defect which can be repaired without inconvenience must be repaired, and this under grave obligation, if grave damage is to be averted.

But if reparation brings inconvenience, the quality of the obligation must be weighed: of justice or of charity; the gravity of the inconvenience to be sustained; the damage to follow from omission, which damage can be of the sacrament, or of the penitent or of a third person. But the obligation will have to be estimated from the rules of justice or charity, while observing that the obligation varies according to the diverse fault or excuse of the confessor. But fault varies not only in gravity, but also in manner, according as it was committed by acting positively, or negatively, by omitting something owed.

— **Rules to be followed.** Defects are to be distinguished as damaging or non-damaging; damaging defects can be such to the penitent or to another person; they can render the confession invalid, or not remove the validity of the confession.

1. From a tacit pact with the penitent, the confessor owes it from justice to procure for one rightly disposed a valid confession and absolution. Therefore reparation of invalidly given absolution is an obligation of justice, and grave indeed if grave spiritual damage is to be feared for the penitent, as if the dying person cannot receive another sacrament. This obligation of justice itself will press more strictly or less strictly, according as the error was culpable or not culpable. For a culpable error will have to be repaired even with equal damage of the confessor, and will be removed only by a truly graver one. But reparation will also be able to be made outside confession, by supplying the absolution invalidly given. Yet if some interval of time has intervened, it will not be lawful to absolve the penitent again unless a new confession has been premised, when new grave sins are prudently to be feared. But when another confession has been made, that damage of valid absolution not received, at least as grave, has been morally certainly removed; and pious reception of a sacrament of the living probably effects the same. Therefore, if the confessor will easily be able to bring the invalidly absolved penitent to a new confession, he will repair the damage even without any admonition of the penitent. But if the damage of the penitent was only light (for deprivation of absolution is always in some way damaging), the confessor for the most part will be excused by the inconvenience itself of admonishing.
2. If the error was about the integrity of confession, reparation is owed rather to God than to the penitent, since of itself all damage of the penitent consists in the obligation not known. Yet the confessor who positively deceived the penitent (by saying what is false), according to the more common opinion, must correct the error even outside confession, after obtaining the penitent's permission, unless he is excused by grave damage or scandal. And because for the most part this will not be done without notable damage, and from elsewhere the penitent in other confessions will have a probable occasion of knowing the error committed, this obligation scarcely seems in practice to be urged. But in confession it will have to be fulfilled prudently (cf. Ball.-Palm., V, 558-561).

In confession also it will be enough that the integrity of the former confession, which was wanting because of the negative negligence of the confessor, be prudently procured.

Prudently, I say, because also, as Ball.-Palm., V, 562, notes, it will be little pleasing to the penitent to observe the tenacious memory which the confessor bears concerning sins accused to him. Therefore

it will be good, if a sufficiently long time has elapsed, that the confessor explain that this memory is to be attributed to a special cause.

3. An error otherwise damaging to the penitent, as concerning the obligation of deserting an occasion of sinning, will have to be repaired from justice, if the confessor was culpable for the positively committed error; which also seems to have to be said when without fault of his own he positively deceived; but then the obligation will be excused by a lesser inconvenience. If the confessor merely neglected to admonish the penitent, the obligation will be from charity alone. This does not oblige with a relatively grave inconvenience.
4. An error damaging to another person will not be imputed to the confessor from justice unless it was committed by positive action, and that culpable, or unless the omission of diligence in correcting the error of a positively given response was culpable. For he is held by no positive office toward another person.

Those errors of which in n. 3 and 4, both outside confession, with the law of the seal preserved, and within confession, if the occasion is had, must be repaired. But as often as it can be done, it will be better to reserve the correction for a following confession.

— You ask about the connected obligation of restitution.

The confessor himself must repair damage, even by restitution: a) which he did to a penitent whom with grave fault he unduly obliged to making restitution. And even if grave fault was absent, after he has known the error, he must correct it from justice insofar as he can furnish this without grave inconvenience;

b) which he did to another, while he positively declared the penitent immune from a certain obligation of restoring: whether then he was gravely culpable, or with grave fault of his own he did not retract even an involuntary error.

But what if the penitent, by denying the faculty of speaking about confession, impeded retraction?

Then the confessor himself is dispensed from retracting an error that was not culpable; but he will continue to bear the damages of a positive and culpable error. I say damages. For if the penitent, admonished, does not seem to have been going to make restitution, the error now will not be damaging to another person.

Summary

— **The action of the confessor.** I. **With regard to the three parts of the sacrament.**

1. With regard to the accusation of the penitent. As minister, solicitous for the integrity of the sacrament; as physician, for complete healing; as neighbor, as giver of spiritual alms, the confessor must take care that the penitent make a complete accusation. Yet he himself is held to this accidentally and secondarily. The examination must be supplied such as the penitent, according to his quality and instruction, can make without excessive inconvenience, attending to the fragility of the penitent, for whom confession is not to be rendered odious, abstaining from curious or useless questions, especially about chastity, and taking care lest the ignorance of younger persons be imprudently dissipated.

Let the penitent be allowed, for the most part, first to set forth his state in his own manner, with interruption which disturbs memory avoided.

If a general confession is made from devotion, let the penitent be admonished about his faculty of keeping silent what he wishes, with the counsel added of saying in few words the things which may beget the fruit of greater humility. In a necessary general confession, let the sin, if perhaps the only one on account of which it is commanded, be declared, with the frequency of sacraments added which perhaps were received sacrilegiously. If many sins must be accused, it will be better to divide life into various epochs. Let the confessor make effort that as soon as possible there be indicated by the penitent what he would declare with more difficulty, by giving him courage, or even by conjecturing concerning what kind of cause there is question. At the end let him strengthen peace of soul, by admonishing that those things which have slipped from memory have now been remitted, that examinations are no longer to be repeated, that the presumption of completed confession favors the penitent. He who has confessed generally twice or three times should be prohibited from a new discussion of conscience, lest, contrary to Christ's institution, peace of soul be removed by the very remedy of peace.

2. With regard to absolution: a) that absolution is called conditional whose condition, on account of reverence toward the sacrament, is expressly, at least mentally, conceived; b) just as by absolution granted, so by absolution denied, the cause is finished, while by absolution delayed it is suspended: then the right remains to the penitent of approaching the confessor, who is held from justice to hear him through to the end; c) in direct absolution, sins are remitted by force of the keys. They are indirectly remitted through grace owed to the disposed penitent, which cannot be infused unless all mortal sins are taken away. But then the obligation remains of submitting to the keys, in the next confession, the sins thus remitted; d) to the disposed penitent absolution is to be given, and of itself immediately. For the spiritual utility of the penitent it can be deferred.

Absolution under a condition concerning the present or the past (never concerning the future): "if I have the faculty, if there is present to the penitent the disposition necessary for validity," can be given on account of great utility or necessity, for example to him who is placed in danger of dying without absolution, or who would remain long in mortal sin, or who is pressed by necessity of receiving a sacrament of the living; or who, if absolution were deferred, seems about to desert the sacraments. Thus, besides several penitents of little piety, children and the half-witted in doubt about sufficient discretion will have to be absolved conditionally; penitents who do not bring certain matter about which they are sorry, when they bring matter probably grave, or sometimes during the year.

3. With regard to sacramental penance, a) the confessor, as judge, must impose penance either immediately after absolution or, and this better, before. And he can create only the obligation of penance; b) regularly he must impose a grave penance for grave fault, and have that account of the quality of faults which our times permit. That is judged grave which corresponds to reciting the third part of the Rosary. To enjoin a very slight penance for grave sins would be grave, an excusing cause excluded; c) every work, even one already commanded, can be imposed; not, however, one by which the things accused are in some way revealed; d) the same one who gave it can always commute the penance, as if perfecting his judgment; another must

first know the sacramental cause, and therefore absolve. Not even into a better work can the penitent commute the penance; e) the highest account of the penance to be imposed is that it be salutary; therefore, lest the confessor lessen the consciousness of grave sin, nor leave too great a debt to the penitent; and that it be medicinal, insofar as it either breaks the force of occasion or temptation, or weakens the force of passion, or increases spiritual strength. Care must also be taken that the penitent truly accept the penance.

Finally, the confessor cannot be approved who always indiscreetly imposes the same small penance on all.

II. **With regard to the persons of penitents.**

1. Different action for different persons. The confessor must adapt his action to individual persons. These things can be stated generically: a) theologically uneducated persons, such as several are even cultivated in other matters, are not to be dismissed unprepared, but are to be helped so that, questioned, they may furnish, according to their capacity, sufficient confession and sorrow. This is much more valid concerning the half-witted; b) it must be procured that children confess sincerely and sorrowfully, and form for themselves a right conscience; that they confess without danger; that they be taught simple modesty, not scrupulous or suspicious modesty. And occasions of sin must be removed from them; c) pious penitents are to be brought to more perfect things and apostolic zeal; d) observance and solid virtues are to be inculcated in religious; e) the sick are to be visited in time, so that the dying can be comforted and well helped; f) those of little piety are to be treated dexterously, so that in a few moments they may sufficiently accuse themselves and, fortified by paternal counsels, depart more pacified, instructed, and content. These, unless they are certainly indisposed, should be absolved under condition rather than dismissed; g) those in occasions who must and can desert a permanent occasion, and have a sufficiently convenient faculty of returning, are regularly to be gently induced to dismiss the occasion before they demand absolution. If they have several times deceived trust, they are to be deferred until they have executed the obligation, unless it is a case of absolving them conditionally; h) concerning recidivists these things are to be observed.

They are called recidivists who, after confession, although admonished, relapse into the same sins in the same morally equivalent manner.

A recidivist from intrinsic fragility is to be treated benignly, and regularly absolved, if, in the present, he demonstrates himself sufficiently disposed. The remedy of delayed absolution can be tried, at least in some regions, if a greater horror of sin, a greater effort against temptation, greater constancy of purpose can prudently be hoped for from it. The confessor could also use a threatened denial. Yet let us have greater hope in the sacraments and in more frequent confession or Communion, which can be imposed on him.

A recidivist from a voluntary occasion is to be treated as we were just saying about those in occasions.

A recidivist from a necessary occasion, if he has made some progress, is to be absolved, with exhortation and congratulation added, by which he may come out more upright for the fight. If there

is no amendment, opinions vary. The safer parts, or flight from the occasion, which is possible in some way, should altogether be advised; indeed, unless a most grave inconvenience stands in the way, of themselves they should be imposed. With most grave inconvenience, they do not seem able to be strictly imposed.

2. General rules. Let the confessor carefully procure for himself, in this ministry, the purest intention, empty of every human consideration; let him strive to render confession easier for all; let him question so circumspectly that he promotes sincerity, yet disturbs no good faith, renders no soul anxious. If he judges that absolution is to be deferred, let the delay be very brief, for hours, for a day, not beyond fourteen days, since of itself it is grave to remain in the state of sin. Not content with absolution, let him arouse penitents to more perfect things; let him cultivate the seeds of a more sublime vocation and have the spiritual utility of the penitent for his supreme rule.

After confessions have been heard, after examination has been made, it will help to study progress in his art.

III. **With regard to repairing defects.** 1. Principles. With the seal uninjured, every defect must be repaired, an excusing inconvenience excluded, and this under grave obligation, if grave damage is to be averted. If reparation has inconvenience, the quality of the obligation, the origin, the inconvenience of repairing, the damages of omitted reparation will have to be weighed.

Reparation is better made in confession, if the occasion is had. This lacking, let it be made outside confession, after asking, where there is need, permission to speak about confession. If this has been denied, the confessor is dispensed from retracting an error which was not culpable; but he will continue to bear the damages of a positive and culpable error. For he must repair, even by restitution, damage which with grave fault he inflicted on a penitent whom he unduly obliged to restitution, or on another, if he badly declared the penitent immune from the obligation. The same is valid if, with grave fault, he omitted to retract even a non-voluntary error.

2. Applications. Absolution invalidly given is to be supplied from justice, with confession premised, if after the confession new mortal sins are to be feared. Yet the damage of the penitent has already probably been removed after a sacrament of the living has been received, and morally certainly after a new confession. An error about integrity will rarely have to be repaired outside confession. In a new confession this will have to be done prudently, especially if the penitent has been positively deceived by the confessor.

An error otherwise damaging to the penitent or to another will have to be repaired from justice if the confessor positively deceived the penitent; and it will urge more gravely the confessor who is culpable. Mere omission of admonition will have to be repaired from charity. But the obligation will be stronger toward the penitent than toward an outsider, to whom the confessor owed nothing from office.

Chapter III: On the Extrinsic Adjuncts of Hearing Confession

— I. **Concerning the place.** 1. The proper place of confessions is a church or at least a semi-public oratory (c. 908).

Nevertheless, the confessions of men can also be heard in private houses (c. 910, §2).

It sometimes happens that, even for women, for example nuns, another place, on account of a just cause, has legitimately been designated, for example an open sacristy or a room contiguous to an oratory. The determination of the Ordinary can be adhered to. The case is indirectly foreseen by c. 909, §1 itself.

2. "The confessional seat for hearing the confessions of women is always to be placed in an open and conspicuous place, and generally in a church or public or semi-public oratory destined for women.

"The confessional seat is to be furnished with a fixed grate, finely perforated, between penitent and confessor" (c. 909).

3. "The confessions of women are not to be heard outside the confessional seat unless from cause of infirmity or another true necessity, and with the safeguards which the local Ordinary will have indicated as opportune" (c. 910, §1).

Therefore diocesan ordinances are to be consulted. They judge it grave of itself, necessity excluded, to hear the confessions of women outside the confessional seat or without a grate interposed; to hear them in a place not open does not of itself exceed venial sin.

From the response of November 24, 1920, of the Pontifical Commission of the Code, even the confessions of men, when they are heard in a church or public oratory, are not of themselves to be heard outside such a seat. Yet it is clear that this is a light prohibition. A special seat came into use after the thirteenth century.

— II. **Concerning the vestment to be used.** The vestment to be used of itself is a surplice and a violet stole.

Nevertheless the Ritual adds: "according as time or the custom of places bears." But on August 20, 1628, the Sacred Congregation of Rites declared "that a bishop can compel secular priests to hear confessions with cotta [surplice] and stole, and regulars with stole only."

Having been asked about tolerating a custom of using nothing except a stole or nothing except a surplice, the Sacred Congregation of Rites, March 23, 1882, ad 3, responded: "Let the Roman Ritual be observed" (*Decr. auth.*, n. 3542). The same response was given to a sufficiently similar question on July 7, 1877, ad IV (*Decr. auth.*, n. 3426). But on August 31, 1867, ad II, it responded: "It is fitting that in church the stole be used, according to the decrees of the Sacred Congregation of Rites" (*Decr. auth.*, n. 3658).

Therefore a rubric of this kind is directive, yet not therefore to be neglected.

— III. **Concerning the time.** Confessions can be heard on every day and hour; yet care must be taken that they are not heard in darkness.

Summary

— The place proper for hearing confessions is a church or at least a semi-public oratory; and, in a church, even for men, a confessional seat. On account of a just cause, another place, open and conspicuous, with the Ordinary approving, can be deputed. Men can also be heard outside sacred buildings.

The confessional seat is to be furnished with a fixed and finely perforated grate. Women (c. 909, §2), outside a cause of necessity, are to be heard only in that seat. Wherefore they judge it grave to hear them without a grate interposed. And diocesan ordinances, in this matter, are to be observed by all.

II. From the directive rubric, in church a surplice and stole, or at least a stole, is to be used.

III. On every day and hour, though not in darkness, confessions can be heard.

Title III: On the Subject of the Sacrament of Penance

Chapter I: On the Licit and Necessary Use of the Sacrament

— 1. The suitable or capable subject of the sacrament of Penance is every baptized wayfaring man who has sinned after Baptism. He licitly seeks in this sacrament absolution from venial sins, and from mortal sins even already directly remitted by the power of the keys; but he must subject to the sacramental keys mortal sins committed after Baptism and not yet directly remitted through the keys of the Church.

2. As to the time of executing this obligation, it is urgent both in danger of death, in which case he would sin gravely who voluntarily exposes himself to grave danger of dying before confession has been completely made and absolution received; and, from the law of the Church, at least once in the year, for all who have come to the years of discretion.
3. From c. 901, which for the general obligation requires mortal sins committed after Baptism, compared with c. 906, which defines the time of fulfilling that obligation, it is now established, concerning what used to come into controversy, that only those are bound by the precept of annual confession who have committed mortal sins.
4. The year can be computed either as civil or from Easter to Easter, as was said concerning the precept of annual Communion, n. 403. Yet per accidens he will have to confess again who, having already confessed before the Paschal time, has committed some new mortal sin from which he is to be absolved so that he may be able to satisfy the precept of Paschal Communion.
5. Per accidens also he will be bound to make confession to whom use of the sacrament is a necessary means of avoiding grave sins. But the necessity itself either will not be demonstrated or will not be apprehended by the faithful person, so that the constant use of this remedy cannot prudently be declared by the confessor to be strictly necessary. Most opportunely, however, the confessor will exhort the sinful penitent to frequent confession. And that a custom may be generated, it will be best that, according to the gravity of the faults, as sacramental penance, he enjoin a new use of the sacrament, for example after a month, and that once or twice or three times, according to the good will of the penitent.
6. Finally, by c. 907 we are taught that the precept of confession is not satisfied by him "who makes a sacrilegious or voluntarily null confession."

A voluntarily null confession will for the most part at the same time be sacrilegious. Yet a case can be imagined of a man who, unjustly compelled to approach a definite priest, then does not wish seriously to receive the sacrament. The fault of the frustrated sacrament seems in that case to have to be imputed to the unjust compeller.

— Must mortal sins committed before Baptism be subjected to the keys of the Church by one whose Baptism is repeated under condition?

The matter is not free from controversy. Most say that these sins are necessary matter of confession. For, so they say, the conditional repetition of Baptism, which is permitted for the sake of security,

does not prevent that common rule, "In doubt one must stand for the value of the act," from holding for participating in the obligations of Christian society. Wherefore he who probably is a citizen of the society is bound by all its obligations (cf. D'Ann., III, 252 [13]; Lehmk., II, 424). They confirm the response, both from the declaration of the Holy Office made in the case of Charles Wippermann, in Germany, June 14, 1715, and from the response of the Holy Office of December 17, 1868 (*A. S. S.*, IV, 320), by which the neoconverts of England were commanded to confess integrally.

Wherefore Lehmk., II, 424, judges that the more benign opinion of Lacroix, l. 6, p. 1, n. 324, and of others, who contend that after doubtful Baptism there remains only a doubtful and therefore practically null obligation of accusing sins committed before the repeated Baptism, must now be altogether abandoned. Yet in his learned investigation, Ill. D. Mannaioli[1] confesses that the controversy has not yet been authentically removed, not even by way of discipline. He himself also thinks the arguments of Reuter and Lehmkuhl weak: for Baptism doubtfully valid certainly lacks a possessor, nor is that certain subjection to the laws of the Church demonstrated by which Lehmk. burdens him who certainly does not participate in the rights or benefits of the Church. Add that the internal forum is not governed by presumptions which are necessary in the external forum. Nevertheless, the learned writer judges that the obligation of observing all the precepts of Christians, and therefore of confessing all sins, is demanded by the public good of Christian society, and consequently is sanctioned by divine law, by the very force, I say, of "the divine law by which ecclesiastical society is constituted and governed." But it is demanded by the public good on account of the very grave disturbances which the contrary liberty would bring. For the neoconverts themselves would go on considering themselves immune from all laws of the Church, and Catholics themselves would be inclined to doubt about their Baptism so that they might escape the positive obligations of Christians. But what if, relying on doubt about the value of his Baptism, a bishop were to reject the law of celibacy? Yet these things do not seem so greatly to be feared. Neoconverts, shortly after conversion, are accustomed to receive certain Baptism, so that they would not enjoy any long-lasting immunity; that doubts about Baptism would frequently arise among Catholics from hope of declining obligations is not at all likely, since a simpler way of declining the yoke of the Church is open to badly disposed men; and the extraordinary scandal which a putative bishop would give by marrying a wife can be met otherwise through secret departure into a distant region. Nor would the difficulty be less if the bishop should discover that he had certainly been invalidly baptized, or if the very conferral of Baptism were doubtful: yet then the illustrious author abstains from imposing any obligation.

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[1] *On the Proper Obligations of Christians by Which, in General, the Doubtfully Baptized Are Bound, and in Particular on the Integral Sacramental Confession to Be Made by Divine Law by Heretical Neoconverts and by Catholic Adults Who Are Rebaptized under Condition. A Theological-Moral Investigation.* Rome, 1913.

Thus the matter seems to us to have to be stated briefly.

1. In England, for which the decree of the Holy Office was issued, and in the United States of North America, to which it was extended by the Council of Baltimore, the discipline of integral confession is to be observed (insofar as these decrees bind after the Code), but as ecclesiastical, so that it is to be prudently urged as other ecclesiastical laws. Nor say with Lehmk., II, 424, that there is had there an authentic interpretation of divine law, since the

Church cannot make some matter necessarily to be accused. For it is not so established that a reasonable condition of this kind, of a confession probably necessary, cannot be imposed by the Church as a law by which she reconciles heretics to herself; and those responses could have been given on account of the moral certitude of the value of Baptism in the concrete case. For in the petition concerning converted Anglicans, the bishops as petitioners alleged that the younger Anglican clergy consult the validity of Baptism with great diligence. And thus we approach the intrinsic response.

2. Since Baptism is repeated under condition even for a slight cause, we judge that the causes must be distinguished. If there was a grave reason for doubting about the value of the prior Baptism, there exists only a probable obligation of confessing sins, which certainly cannot be urged unless, in danger of death, confession alone gives security. If truly Baptism is repeated because of a slight doubt, the other obligations of the baptized cannot therefore be shaken. Therefore the obligation of making integral confession will then be morally certain.

— Free choice of a legitimately approved confessor is permitted to any faithful person, even if the confessor belongs to another rite (c. 905).

This reason seems to us to be grounds for interpreting rather strictly the laws which restrict the liberty of religious and Sisters, since they derogate from a faculty commonly granted.

How absolution can be direct or indirect we saw above, n. 510, 3. And it will be indirect on account of a twofold cause: on account of defect of jurisdiction over certain sins; the case will not occur unless an accomplice in a shameful sin is to be absolved outside danger of death; on account of an incomplete accusation excused by forgetfulness or just cause.

Since no infusion of grace formally accompanies absolution from censure, absolution from censure can only be direct.

— But the penitent, at least one who is sane, in order to receive the sacrament of Penance fruitfully, must make a sorrowful accusation of his sins. Hence now the acts of the penitent must be treated distinctly.

Summary

— I. The suitable subject of Penance is every baptized wayfaring man who, after Baptism, has sinned. He can subject venial sins to the keys, which he will do usefully, on account of sacramental grace and the remission of punishments; and mortal sins already remitted by force of the keys. But he must subject mortal sins not yet directly remitted, either in danger of death, in which it would be mortal to expose oneself to grave danger of dying without absolution, or, from the precept of the Church, once in the year. The year is computed as civil, or from Easter to Easter. By sacrilegious confession the precept is not satisfied. Per accidens he is obliged at Paschal time who then must be absolved so that he may be able to make Paschal Communion; and also at another time, he to whom use of the sacrament would be a necessary means of avoiding grave sins. And repeated use of the sacrament is to be counted among the best sacramental penances. Defect of jurisdiction over certain sins or incomplete confession are causes why, in a good confession, certain sins are remitted only indirectly.

If at any time, on account of a doubt that is not slight, Baptism must be repeated conditionally, it is not established that there is a general law which obliges to integral confession of sins which were committed before Baptism repeated under condition.

But choice of a confessor, even of another rite, is permitted to any faithful person.

Chapter II: On the Acts of the Penitent

§ 1. On the Required Contrition

— Contrition, commonly understood, is sorrow and detestation for sin committed, with a purpose of amendment (Trid., s. XIV). Perfect contrition, which is called contrition absolutely, is elicited from a motive of charity on account of God loved above all things; and this already of itself alone restores grace, yet with the vow of confession which then is to be made. Imperfect contrition, which is called attrition, is conceived from an inferior motive, yet one referred to God.

As will be said in the treatise on the theological virtues, perfect contrition is not to be judged difficult for him who has efficaciously renounced sin, since the love of God above all things is itself in its own way natural to every creature, and experience teaches that men are often moved more by the goodness of God offended and contemned, or by the Passion of Christ, than by fear of punishments. The difficulty is that of triumphing over evil passions; after this victory has been won, conversion easily becomes perfect from imperfect.

But the proper reason of perfect contrition is explained in its own place, where we treat of charity.

— For the fruitful reception of the sacrament of Penance there suffices and is required at least attrition which is:

1. formal, because it is the sacrament of Penance; and because, if it is a question of necessary matter, true charity necessarily becomes formally penitent in him who is conscious of mortal sin not yet remitted. Therefore virtual attrition does not suffice. Yet Ballerini, V, 47-55, judges that virtual sorrow contained in an efficacious purpose can suffice. Before confession, let us not abandon the more common opinion; after the fact, let us not be anxious about the matter;
2. supernatural, that is, with the help of supernatural grace, on account of a motive which directly or indirectly says order to God: for the offense of God, which is sin, must be abhorred as such.

It is controverted whether or not it must be known by the light of faith. The necessity of that condition, posited by several, is not demonstrated.

Moreover, motives of conversion are accustomed to be apprehended by Christians by their faith. And since grace does not fail us from the mercy of God, we must be solicitous only about the quality of the motive, lest it be merely human.

Now good motives of attrition return to fear of punishments, to be inflicted or already inflicted by God, even in this life; and to the turpitude of sin contrary to the honesty of virtue which is regulated by the law of God. This turpitude itself can be common to every sin, or special to certain sins, for example lust, injustice in goods. Consideration of ingratitude toward God, indeed of divine goodness contemned, is reduced to the common deformity of sin.

When there is only fear of punishments of this life, care must be taken that attrition be efficacious; on that account it will be safer before confession to direct attention also to other punishments;

3. appreciatively supreme, in this way: that sin is estimated as a greater evil than every evil which must be undergone in order to avoid sin, and therefore excludes the will of sinning in every true or possible hypothesis.

Sometimes it is asked in vain whether we ought to be prepared to sustain the punishments of hell rather than offend God. For to love God and by hatred of hell to be separated from Him are repugnant to each other. These absurd things are not to be thought.

Nor even are improbable evils prudently proposed to the imagination as an argument of sincerity. It is enough that in a universal manner we conceive an absolute detestation of sin. If then God permits that we must remain in the way of virtue with heroic fortitude, He Himself will know how, "with the temptation, to make a way out,"[(1)] so that we easily perform the things which now seem to be above our strength. Therefore it suffices that, if such things come into mind, we repeat the word of Abraham: "God will provide,"[(2)] and reject sin by the present will in every hypothesis.

[(1)] 1 Cor. 10:13. - [(2)] Gen. 22:8.

You ask, how can the attrition of one who remained in adulterous concubinage as long as the life of the spouse was an obstacle to legitimate marriage be above all things?

Certainly a more perfect attrition is required than that which was contained in the purpose of changing life after the difficulty had been removed. Yet it helps our psychology that, with the difficulty absent, we are less struck by it. Wherefore, with the confessor exhorting, and with the grace of the mercy of God assisting, such a penitent will be able, not with so much difficulty, to be led even to sincerely and absolutely detesting the former manner of acting.

But observe that, even for the remission of venial sin, absolute detestation, or detestation above all things, is necessary;

4. universal, as to mortal sins, because individual mortal sins cannot be remitted without the others, and none is pardoned without sorrow above all things. On the contrary, since venial sins can be remitted separately, attrition about these sins does not have to be universal.

— **On a valid and unformed sacrament.** If someone, unconscious of the defect, approaches without attrition above all things, yet not without some lesser attrition which excludes the will of sinning in some way, even if not absolutely, he is not proximately disposed to receiving grace; yet he seems validly to receive the sacrament, which therefore will be unformed, but will confer grace as soon as the fiction has departed, that is, after the disposition, for example in Holy Communion itself, has become more perfect. The reason is that attrition enters the sacrament only insofar as it is sensible, since the sacrament is a sensible sign. But by the sincere accusation and protestation of the penitent there is revealed of itself a true detestation, but not the supreme degree of attrition. Moreover, if attrition appreciatively supreme were required for the very validity of the sacrament: a) the usage of absolving at Easter sinners who scarcely confess once in the year, provided they are shown to be sincere in affirming their attrition, and of not then demanding a repeated accusation of faults absolved in this way, would not be so easily explained; b) the confessor who, after hearing the accusation, tries to bring the penitent to more intense contrition would have to be solicitous about the degree of contrition obtained, and would have to seek a new manifestation of sorrow.

That the sacrament can be unformed is admitted by Cajetan, who thus interprets St. Thomas, Suppl. 3 p., q. 9, art. 1; St. Antoninus, several Thomists; Ballerini, V, 41, 42, 45, on account of the things he has about supposed attrition; and especially C. Billot, *De Sacramentis*, II, th. 16. Yet several, after Suarez, *Paen.*, d. 20, 15; Lugo, d. 14, s. 6; Lehmk., II, 401, 402, defend the opposite parts. These do not admit that this sacrament can be valid and unformed, unless when sufficient sorrow, elicited from a particular motive of some sin, has lacked universality. This case alone also is proved by St. Alph., l. 6, n. 441.

Nor are there lacking those who, with D'Ann., III, 210 (18), deny that appreciatively supreme attrition can remain particular, so that they contend that the sacrament is always received either fruitfully or invalidly. From this they also argue that sorrow is required which excludes the will of sinning. But even if someone demands that the purpose be virtually universal, detestation of committed sin can be of less extension than the purpose concerning future sins to be avoided. For someone can have a firm will of not repeating an act concerning which nevertheless he is not sorry at all.

Therefore penitents who have confessed in good faith, provided they have conceived some true sorrow, are not to be compelled to repeat confessions.

— **The relation of sorrow to the sacrament.** 1. According to the more common opinion, sorrow for accused sins must by the will of the penitent itself in some way be directed to the sacrament. Thus Suarez, d. 20, s. 4, n. 29. Yet this can be doubted, since the penitent is not the minister of this sacrament; but it seems enough that the minister find apt matter (Lugo, d. 14, n. 41 ff.); and thus we absolve at least conditionally heretics who are sorry for sins and are ignorant that Penance is a sacrament.

2. But it is in no way required that sorrow itself have been conceived from intention of the sacrament. For without a preceding intention of this kind, attrition has all the qualities which the Council of Trent, s. XIV, c. 14, requires: it can be a true detestation, excluding the will of sinning with hope of pardon, having joined to it the vow of furnishing the other things which are required for the due reception of this sacrament. And by the very fact that it accompanies confession, sorrow enters the sacrament sufficiently.

Wherefore he who, in making an examination of conscience, has stirred up contrition, and after several hours, indeed after an entire day, accuses sins, must in no way be anxious about his contrition, although he has not renewed this act and has confessed coldly. For affliction shared by the senses is not demanded; but in the sincere accusation itself there is virtually contained and expressed sorrow which has persevered in the habitual will, which we suppose meanwhile not to have been changed.

And he who, after receiving absolution, remembers an omitted sin and accuses it, is fruitfully absolved, even though the formal act of contrition has not been renewed: it was virtually included in the accusation itself (cf. Ball.-Palm., t. V, n. 76-80).

— **The distance of absolution from the acts of the penitent, and the perseverance of attrition.** 1. After sufficient attrition has existed in the sacrament itself, the absolution of the priest will be able to be distant even for a long time from the acts of the penitent, provided the dispositions of the

penitent have habitually persevered. The reason is that a sentence can be separated by a long time from knowledge of the cause, and the sacrament was instituted after the manner of a judgment. Moreover, in a new approach to confession, sorrow is almost necessarily renewed.

2. Attrition, at least that which is required for fruitful reception of the sacrament, does not habitually persevere but is retracted by every new mortal sin; but when it is a question of venial sins alone, or of venial sins together with a mortal sin accused, sufficient attrition is not retracted as to all sins by a new fault committed, even if it was conceived from a universal motive. For sins, according to their different gravity, are opposed unequally even to a universal motive: God is offended more by an enormous sin than by a less grave one; mortal and venial sin are opposed to the love of God in different ways. Then a man, even by a universal motive, is rarely moved according to the full force of that motive; often we detest sin because it is such, so grave, so fruitless an offense of God. And even when the motive exercises its full power upon us, nevertheless we detest the opposed sins unequally, but abhor more the things which fight more against such a motive. Finally, our act, subjectively one, becomes virtually multiple on account of the several motives to which it is terminated. Wherefore a partial retraction of the act is well conceived. Therefore nothing demonstrates a universal retraction of attrition on account of a new sin committed (cf. Lugo, *Resp. mor.*, I, 29).

— Must confession itself be joined with sorrow, or can these exist separately in the sacrament?

Indeed a sacramental accusation is required, that is, one made for the purpose of obtaining absolution. A confession of this kind will always be informed by at least some true attrition. Yet let us suppose someone first confessing with sacrilegious intention, then afterward being brought by the exhortation of the confessor to perfect repentance before absolution. Must the accusation be repeated? This is not established. The accusation gave the confessor sufficient knowledge of the cause; the subsequent attrition makes the penitent disposed. But before absolution this can become sensible by another sign besides confession, at least "by humbling himself before the priest and seeking or awaiting absolution." Laymann, *De Paen.*, c. 4, n. 4. Wherefore, says Ball., t. V, n. 90, "there is no reason why sorrow should have to be joined more with confession than confession with absolution."

— Attrition about venial sins does not have to be universal even virtually. Therefore it suffices that you be sorry from a particular motive, for example on account of the special turpitude or gravity of certain of them, or that you be sorry for the frequency or collection of these sins. This sorrow will fall indirectly upon the sins which are affected by this circumstance. St. Alph., l. 6, n. 449. Yet it will be better to be sorry about certain sins definitely, or at least about sins deliberately committed, if there were any (cf. Lehmk., II, 393).

— One conscious of insufficient sorrow for the fruitful reception of the sacrament, or who knows that he does not possess sufficient attrition about all the grave sins which he has to accuse, or about any venial sin, will be guilty of grave sacrilege, even if he has committed only venial sins. The opinion of certain men, otherwise rigorous, who thought it a light irreverence to frustrate the sacrament in a light matter, is altogether false (Ball., V, n. 58).

But he who is sorry for one thing will not sin gravely if he confesses other venial sins without attrition.

Nor will he sin at all who warns the confessor about the matter, or who simply declares all things so that he may be better directed, and does not positively affirm that he wishes to be efficaciously absolved from each thing.

— Putative contrition is not required for fruitful reception of the sacrament, nor does putative attrition or a velleity of not sinning suffice. Nor does it suffice to be sorry that you are not sorry. For these things of themselves allow affection for sin to subsist. Yet for the most part, with that act by which "he is sorry that he is not sorry," the penitent joins true sorrow for his sins, which he does not discern; or in that accusation he merely reveals that he lacks sensible sadness, which is not necessary.

— Formal acts of faith and hope are not required, but in the very approach to the sacrament of Penance, so that salutary pardon may be obtained *ex opere operato*, they are necessarily included and sufficiently exercised, since no argument demonstrates that more is to be demanded.

Nor even in a man who seeks reconciliation with God, or wills divine friendship restored, is there wanting that beginning of this love which Trent declares to precede perfect justification,[1] whether you place that beginning in the love of hope, as some say, or better in charity not yet perfect (cf. Lehmk., II, 391).

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[1] "But they are disposed to justice itself when... and when, understanding themselves to be sinners, from the fear of divine justice, by which they are usefully shaken, by turning themselves to considering the mercy of God, they are raised into hope, trusting that God will be propitious to them on account of Christ, and they begin to love Him as the fountain of all justice; and on that account they are moved against sins through a certain hatred and detestation" (Trid., s. 6, c. 6, *On Justification*). In s. 14, c. 4, there is speech only about hope of pardon, with exclusion of the will of sinning.

— **Counsels about this matter.** Several things just said pertain to this, that they may cut off an occasion of anxiety and repel the long-sought difficulties which theologians, more subtly than usefully, have begun to raise about this sacrament to be used very frequently.

But by our counsels we shall strive to obtain better and more perfect things. Wherefore we shall advise that a formal excitation to contrition, and indeed perfect contrition, be joined to the discussion of conscience; we shall exhort the penitent that, while he receives absolution, he renew the act of contrition; by a few words we shall try that he do the same if, after absolution has already been received, he wishes to complete the accusation. Yet here always observe that in an accusation so made attrition is virtually contained and sufficiently signified.

N.B. If it is a question of one gravely sick who is absolved several times, care must be taken that to each absolution, according as opportunity is present, there be prefixed a general sorrowful accusation which is as it were the matter of the sacrament.

§ 2. On Purpose and the Occasion of Sin to Be Fled

— 1. An absolute purpose of not sinning any more, or a purpose so firm that from the present affection it excepts no circumstance or time, is necessary for the remission of every sin, and therefore, for the worthy and fruitful reception of this sacrament, is required about at least some sin or reason of sin accused. For without a firm purpose of this kind, sin is not fully retracted. But sin is not remitted unless retracted.

2. Because it cannot happen that any mortal sin be remitted to a soul defiled by other sins, and firm purpose is necessary not from a superadded precept but from the very nature of the matter, firm purpose about mortal sins must be universal, insofar as it excludes every will or deliberate affection of sinning.
3. Every attrition above all things virtually contains the firm purpose of not committing the sins about which it is had; but attrition conceived from a universal motive virtually contains the firm purpose of not sinning in the future, at least mortally.

Now the purpose included in attrition conceived from a universal motive seems to suffice for fruitful use of the sacrament, so that a formal and explicit purpose is not required. For Trent, s. XIV, c. 4, demands only attrition which "excludes the will of sinning"; and from the nature of the matter, the act of the virtue of Penance regards future things not formally but only consequently, insofar as sincere detestation of sin brings in the will of avoiding sin thereafter. Wherefore the penitential judge does not need an explicitly known purpose in order to be able to judge about prudently administering absolution (cf. Desan, *De Paenitentia*, c. 11, 3 dub.). This more common opinion can be called morally certain, although not a few, with Bellarmine, l. 2, *Paen.*, c. 6, contradict it. Yet Suarez, for example, *Paen.*, d. 4, s. 3, and D'Ann., III, 313, require a formal purpose in him who thinks about the life to be led in the future and about the danger of relapsing, as a criterion of true penitence.

Therefore one who did not think about making a formal purpose is not at all to be disturbed about past confessions.

But must a formally universal purpose be elicited by him who is sorry for mortal sins from a particular motive alone? Certainly in that attrition a strictly universal purpose is not contained even virtually. But if a particular purpose concerning committed mortal sins is joined with a habitual aversion from every other mortal sin, we do not see what further thing is required, either of itself or from the Council of Trent.

Yet this opinion is that of few; for it Lehmk., II, 399, cites Aversa, Hurtado, Platel; by very many it is plainly rejected as openly false. Cf. Suarez, d. 4, s. 3, n. 5; Lugo, d. 14, n. 51 ff.; St. Alph., l. 6, n. 451, 2°. These judge a positively universal purpose about mortal sins necessary.

Concerning virtual purpose, cf. Ball.-Palm., V, n. 92-99.

— Concerning venial sins, a purpose about the venial sins accused suffices, at least about one of the accused; indeed a purpose of avoiding deliberate venial sins, or indeliberate ones as far as human frailty permits, or of lessening them. For in every purpose conceived in this way there is contained an absolute purpose of avoiding some venial sins.

— **On the efficacy of purpose.** They are accustomed to add that purpose must be efficacious. That we may treat distinctly of this quality of purpose, a twofold efficacy is to be discerned: one immediate, principiative, which affects the very will of the penitent then when he is converted to God, simply or in a certain respect; the other subsequent, effective, which constancy of execution demonstrates. The former rather connotes the sincerity of purpose; the latter, its virtue.

— I. **On principiative efficacy.** A will is called efficacious which embraces the means, both negative and positive, necessary for attaining the end. Therefore, in the present cause, it will be the will of

applying the necessary means for not sinning in the future. To this belongs flight from the proximate occasion.

What an occasion is and by what obligation it is to be fled, we saw in I, 452-456.

— II. **On subsequent efficacy, or efficacy of fact.** 1. Relapse into sins, even frequent relapse, demonstrates a changed will, not necessarily a defect of the preceding will. But this one thing is essential: that from the will which the penitent has then when he is absolved, he does not wish to commit sin in any hypothesis.

2. Nor does founded fear, indeed a morally certain foresight of a new grave sin, always argue a defect of purpose. A penitent who asserts such things is to be raised into hope, which he ought to conceive not from his own powers but from the grace of God. Wherefore, provided he now wishes to choose a firm purpose, he is disposed and is to be absolved; but certain precautions against temptations are to be required from him, which he will have to confess to be in his own power.

If it is a question of a vicious custom of blasphemies or imprecations, which easily removes actual deliberation, let the penitent also be taught that he is bound only to this: that he beware of faults which are committed knowingly and strive to amend the depraved habit (cf. St. Thomas, 3 p., q. 84, art. 10 ad 4).

3. Uniform perseverance in sin, in a certain occasion, can sometimes argue a defect of present disposition. For apt remedies are always at hand by which, with the grace of God, perfect amendment may be prepared. Whether material flight from the occasion itself must be commanded to him who, after applying opportune remedies, relapses in the same way, we saw above, n. 542 and I, 455. Here the confessor has need of great prudence.

§ 3. On Confession

— Confession is required to be integral at least formally.

For integrity is distinguished as material and formal.

Material integrity, strictly taken, supposes an accusation so completed that it embraces all mortal sins truly committed and not yet directly remitted. But because no obligation is imposed except one tempered to human powers, he satisfies the obligation of material integrity who confesses all mortal sins of which, after diligent discussion, he has consciousness, with the circumstances which change the species (c. 901). He is said, in the broader sense, to make a materially integral confession.

And by a similar reason, formal integrity properly belongs to any penitent who truly accuses the sins to be accused by him, so that he who fulfills the obligation of material integrity furnishes at least formal integrity. But more strictly, a formally integral confession is often understood to be one which is knowingly but legitimately incomplete. Therefore it is furnished by him who, on account of a just cause excused from complete confession, makes the accusation which here and now he ought to make.

— **On material integrity.** Therefore the following must be indicated of themselves:

1. The lowest theological and moral species of sins. It suffices to indicate these spontaneously, with circumstances, even enormously aggravating ones, omitted. This now is clearly established from c. 901 itself, which is silent about these, while the controversy which remained before the Code was not unknown to the legislator. And besides, once the species has been declared, the whole substance of the sin has been accused.

And observe that species not known are not contracted and therefore are not to be accused.

But it is within the power of the judge to perfect his knowledge of the cause by opportune questions. Therefore, when asked about an aggravating circumstance, as about the quantity of theft, about a custom of sin, the penitent will have to confess it sincerely, and this under grave obligation, unless the slight utility of the question is evident to him. He who does not know or does not remember the lowest moral species should state the higher species or the genus which he knows.

2. The certain number. If this is not established, let the probable number be stated, adding more or less. He who has thus declared the number afterward does not have to repeat the certain number, unless it was notably greater.

St. Alphonsus estimates the matter thus: "about three is understood as two or four; about 10, as 8 or 12; about 30, as 27 or 33; about 100, 95 or 105; about 1000, 950-1050."

But these things are not to be taken rigorously, but are to be left to the judgment of the prudent man. Thus from Lehmk. himself, II, 407, "about a hundred" can perhaps but at most be understood as 90-110. If not even a probable number can be had, let there be stated the custom of sinning, the time, the frequency usual in a day, week, month, year. This is often more expedient with a habitual sinner. Nor let us torture penitents about stating the number, especially since little faith is to be had in the more certain numbers which, pressed by the confessor, they recite. Indeed a habitual sinner who sinned very frequently will be able to satisfy by indicating the space of time during which he was accustomed daily, on any occasion, to consent to sin.

And besides, when guilt consists only in the negligence by which a custom, for example of blasphemies, is maintained, because the individual acts are only material sins, solicitude is not to be had about their number.

Nor is it lawful to increase the number. Yet he who in good faith has increased it will not have to repair the error.

The more difficult accurate accusation is, the less is required: for the obligation must remain human, nor can confession become a "butchery" of souls. Wherefore concerning a prostitute some, for example Navarrus, *Summa*, c. 6, n. 5, judged it sufficient that she indicate the time during which she had exercised her trade. Yet something more can be furnished easily enough, by indicating the usual frequency, the principal species (whether with married persons, with sacred persons, and how often the rarer species occurred). Concerning internal sins it will be enough to indicate the time. By a similar reason the following will satisfy: one who everywhere lusts after women meeting him; one who fosters hatred or shameful thoughts; one who keeps a concubine at home; one who is accustomed to abuse marriage onanistically; one who habitually converses about shameful things; one who is a habitual thief.

3. Material integrity supposes diligent examination, according to the capacity of the penitent, according to the distance from the last confession, and according to the other circumstances. Moderate diligence suffices, such as a prudent man applies in serious affairs, or such as, morally speaking, learned and timorous persons are accustomed to have, even if you know that with greater diligence you would find more things. Confession can be rendered odious or too troublesome to no one. Wherefore today we require from no one an examination prolonged through several days, and we judge that a diligent examination for an hour suffices even for those who have not confessed for many years.

How the penitent is to be prudently helped by the confessor in this matter, and often also is to be left in good faith, we saw above, n. 539.

Already Lugo himself observed that "it can happen that a confessor finds that a penitent needs a general confession because of preceding invalid confessions, and yet the person is such that he can immediately be examined and heard about the whole life, because there is no hope that, left to himself, he will make a better examination than that which, with the confessor helping, he will be able to make there" (cf. Lugo, d. 16, n. 593; d. 22, n. 20).

— **On completing confession.** 1. He who, having forgotten a grave sin which he in no way accused, afterward remembers the same, will have to accuse it with the others in the next following confession. Meanwhile, however, he will be able to approach the sacred table, nor on that account does he have to make a new confession sooner.

2. But he who applied moderate diligence in examining conscience ought in no way to think back over his former life. Indeed, if something occurs which merely seems not to have been explained in confession, he can act as if the thing had been accused, from the presumption of confession integrally made.
3. He who has confusedly manifested the state of conscience as, morally speaking, he could according to the things said above, afterward does not have to accuse more distinctly the sins whose number and species he remembers, because in that confused narration those sins were sufficiently understood by the confessor (cf. Reuter, 4, 313). Wherefore there is no obligation that a theologian repeat the confessions which, as an unlearned youth, he made according to his former capacity.

For this reason also a prudent confessor will be able to render secure a penitent who, after many sins, would scarcely dare to open his soul to another in such a way that he would be exposed to making a sacrilege: that nothing now has to be declared to another, "since he himself by his questions has procured so complete a confession that it needs no supplement. This is morally certain. If any necessity seems to arise, it will not be true but supposed from the ignorance of the penitent."

— But that confession will have been invalid and of itself sacrilegious which, from mortally culpable ignorance or negligence, was not integral.

If the negligence was light, or was not apprehended as mortal, the confession will be valid, at least on account of good faith, yet in its own time to be perfected by a better examination (cf. Suarez, d. 23, s.

4). Indeed, if the negligence was truly light, even then it seems to suffice that those sins be accused which recur to memory without a repeated examination.

— 1. Sins doubtfully committed are not necessarily to be accused, because concerning these there is no consciousness. Yet their accusation will have to be advised to those to whom in this way greater quiet of conscience will be obtained.

2. Sins certainly committed but doubtfully grave do not of themselves produce a certain obligation of accusation. In practice, from presumption, the lax penitent will have to be directed to accuse them, but the timorous one to consider himself immune from obligation.
3. Sins certainly grave and probably accused, and directly remitted, need not meanwhile be subjected to the keys, since in practice there must be said to be no obligation which you have probably satisfied. But if they cannot be judged probably accused and directly remitted, the obligation of accusation must be urged, since this has remained morally certain.

Several who do not know how to estimate these things prudently are driven by practical necessity to proposing their doubts, except the scrupulous, to whom accusation of things which are not most certain, like 2 + 2 = 4, must often be prohibited.

— **On formal integrity.** Integral confession is not essential to this sacrament, but is divinely prescribed. That positive precept admits its exceptions, at least in this way, that an accusation which at present cannot be made complete, or which would be too burdensome, can be deferred to another subsequent confession.

Therefore formal integrity suffices:

1. in those who labor under physical impotence of confessing integrally, either simply or through ordinary means.

By such an impediment are excused the mute, unless they confess to a priest with whom they can speak by signs, which occasion they ought of themselves to use; the deaf or half-deaf, whose accusation prudently, with the law of the seal attended to, cannot be completed by questions of the confessor in the course of confession, but from the beginning are of themselves to be brought to a more secret place; those ignorant of the language, who have some necessity of confessing; the dying, who are deprived of use of the tongue.

And note that, according to a probable opinion, writing and an interpreter are placed among extraordinary means, which no one is compelled to use. And if someone confesses through an interpreter, it is enough that he declare one venial sin. Yet there is a way of obtaining a complete accusation without an extraordinary means, if one who knows the language, turned to the other side, recites the individual precepts, and the penitent by a sign first defined indicates to the confessor that he has sinned and how often, for example by a nod of the head or by pressing the hand. In a similar way someone could, in a public place, for example in a hospital, even with a loud voice question the penitent; let the questions be read from a book, lest they seem to have been adapted to the conscience of the penitent;

2. in those who are impeded from material integrity by moral impotence, that is, when either danger of life threatens the confessor or the penitent, which does not permit materially integral confession.

Cases are: a sick person who, after one or another sin has been stated, fails or is in danger of failing; a sick person who, wishing to confess while Viaticum is being brought to him, is discovered to have made many invalid confessions, if the gravity of the illness does not allow delay of absolution; a priest who, placed in danger, seems about to die before the penitent is absolved; in time of plague, if the confessor, lest he be infected, asks only an incomplete confession; when a conflict or destruction of many is imminent, for example in shipwreck. Then it is enough that, turned to soldiers or to those soon about to perish, the confessor ask from them some external sign of penitence, for example by striking the breast or by lifting the hand, and then absolve them with common absolution: "I absolve you from all censures and sins," unless time is at hand for pronouncing the complete form collectively. Yet it is better, if it can be done, to hear individuals even incompletely.

The case can also happen in foreign missions, if Christians who are rarely visited by a missionary present themselves to the confessor in too great a number for the individuals to be able to be heard before the one Mass, during which they wish to communicate. Then it will be better to hear several; then, with Mass pressing, to absolve others generally, and to take care that in following visits those confess distinctly who could not use the preceding occasion;

3. in those who from materially integral confession have grave damage to be feared either for themselves, or for the confessor, or for another: the divine but positive precept concerning confession does not oblige with so great an inconvenience.

Understand inconvenience not as connected of itself with the confession of such a sin, as would be confusion, blush, the reproof of the confessor, but as extrinsic to confession.

Let examples be: a founded fear of violation of the seal of confession, if, for example, the confessor, having been warned, goes on speaking too loudly, so that by his questions he seems about to reveal to bystanders the genus of sins; danger of spiritual ruin, of consenting to depraved delectation on account of examined sins of the flesh; founded danger lest the confessor, from the sins heard, be incited to depraved solicitation. But the dangers of the confessor are not to be easily imagined. Wherefore it rather pertains to the confessor to restrain the penitent lest he turn certain matters over for too long; grave danger to reputation, if from peculiar, not common, adjuncts, for example from an urgent necessity of communicating or celebrating, a lengthy confession would be an almost certain argument of several sins; danger or grave damage of life or of temporal good to be feared, for example from the grave exhaustion of a sick person (D'Ann., III, 305 [33]); danger of violating the seal in accusing a sin, if ever there is such a case. For that he may accuse his own sin, it is enough that, the species of the sin having been manifested, the priest add that he is besides guilty of sacrilege in the administration of the sacrament. For example, one who unduly excused someone from restitution should say: I sinned gravely against justice and in exercising the office of confessor. For another example, cf. Ball.-Palm., V, 252.

4. On account of moral impotence understood more broadly, those are excused from material integrity who have a reserved case from which the confessor cannot directly absolve, namely

the sin of an accomplice in a shameful matter; the scrupulous person concerning past confessions or faults; one who, before confession is finished, is absolved by an impatient confessor.

N.B. 1. That someone may confess incompletely, some necessity of confessing must be present: from the precept of annual confession or Communion, if the penitent has other grave sins or doubts about his perfect contrition; from the necessity of communicating or celebrating, to avoid scandal or disgrace; from a longer privation of the sacraments; from the great spiritual utility which the sacraments bring, for example lest the penitent be deprived of indulgences; from the inconvenience of remaining in the state of sin even for one day (St. Alph., l. 6, 490).

2. If the damage or inconvenience depends on the person of the confessor, it is required that opportunity of another priest be lacking, for example on account of distance, to be estimated from the various adjuncts (cf. D'Ann., III, 305 [36]).

3. One who, conscious of mortal faults, cannot confess integrally, must first, in secret confession, set forth necessary matter, that is, what falls under the precept, but he is not compelled, among grave matters, to choose the graver ones, since they are equally affected by the law of confession.

— What if a sin cannot be accused without defamation in the eyes of the confessor either of an accomplice or of another person?

Since defamation in the eyes of one discreet man is not of itself grave, and one sinning tacitly permitted confession to the accomplice of the sin, confession seems to have to be made integrally: a just cause is present for permitting this light detriment. And the mere consolation of confessing to a confessor whom one venerates then suffices so that another does not have to be sought. In a case of extraordinary defamation, if the cause is altogether special why the revelation of sin, made to such a one, is very hateful, then with the other probable opinion we shall respond that the natural precept of not defaming prevails over the positive precept of integral confession. For the opinion is twofold and probable: one commands, the other forbids this revelation, unless nevertheless it is necessary for spiritual direction. But often penitents disclose an accomplice without scruple.

— **On free matter.** Although, by that reason which we stated in t. I, n. 448, venial sins, even outside confession, in one who is in the state of grace, are remitted through formal penitence, or the opposite act of charity or of another virtue, nevertheless use of the sacrament of Penance always has these utilities: a) of increasing sanctifying grace *ex opere operato*; b) of conferring sacramental grace for avoiding sins in the future; c) of remitting temporal punishments.

— **On sufficient matter.** The penitent ought of himself to bring matter certainly sufficient for absolution. Such is a sin already directly absolved, since in this forum nothing prevents the same cause from being judged twice, and a new absolution always profits the penitent. Such is not a doubtful sin. Wherefore then the penitent should add a general accusation of the sins of his former life. Although the general formula, "I accuse the sins of my whole life," added to the present accusation, suffices, yet it is better, so that attrition may be more certain, to indicate some species. The confessor will usefully suggest this to the penitent according to his condition or the knowledge which he has of him, lest the penitent hesitate in doubt.

It also seems sufficient to accuse simply in a general way one's whole life, with no sin indicated. Yet this is alien to received usages. Wherefore, outside necessity, it is better that the confessor demand some distinct accusation in order to give absolution.

Even positive imperfections, if such exist, are not in themselves sufficient matter. Yet we will not therefore prohibit pious penitents from declaring them, both on account of the venial sins very often mixed in, and on account of a fuller manifestation of themselves.

— **On the remaining qualities of confession.** 1. On account of the usage of the Church, which several, at least before the Code, judged to oblige gravely, let confession be vocal, unless a just cause is present, for example difficulty of confessing otherwise than in writing or by nod or another sign. Yet this obligation is pressed in silence in the Code; and confession is already vocal enough if the penitent, after handing over a written confession to be read, adds by voice: "I accuse all these things."

2. That it be secret is the right of the penitent, so that in the very article of death the penitent can be content with accusing a venial sin, if he cannot confess mortal sins secretly.

3. Let it also be true. Yet not every lie committed in confession is reputed a grave sin, by which confession becomes sacrilegious. But it would be grave in substantial and necessary matter, as if you deny a mortal sin to be accused, or state it so low that you are not heard. It would also be grave to deceive the confessor in a notable matter, when the confessor, as judge or physician, asks something about past sins or about a custom of sin or time of sin as necessary for the present confession.

Of itself, indeed, he cannot be reprehended, at least gravely, who deliberately mixes recent and old sins in a general confession. But one who positively declares recent matter, and that grave, to pertain to past confessions seems to us the author of a grave deception and therefore gravely sacrilegious. Yet there is one who judges more benignly the case of one lying about time, when it does not matter for knowing a custom or relapse.

N.B. Already in the time of St. Thomas, Suppl., 3 p., q. 9, art. 4, 1 obi., the sixteen qualities of confession were rendered in these verses:

> "Let confession be simple, humble, pure, faithful, And frequent, naked and discreet, willing, shamefaced, Integral, secret, and tearful, hastened, Strong and accusing, and let it be prepared to obey."

On Repeating or Completing Confession

— **On repeating confession.** 1. **On necessary repetition.** It is not only confession invalidly made that must be repeated as to grave sins not directly remitted by force of the keys; indeed, in another confession there must be repeated sins accused in vain, because the confessor did not hear them or could not directly absolve the same.

A confession will have been invalid and sacrilegious if it was made in bad faith to a confessor half-asleep or unaware, or by him who, in making confession, deliberately concealed a censure which was impeding the licit reception of the sacrament. A confession of this kind must be repeated whole.

On the part of the confessor, absolution will be invalid if it was given without jurisdiction, or with a substantially vitiated formula, or by a priest who understood nothing. To have understood nothing distinctly does not impede validity, since absolution can fall upon a general accusation. Yet that absolution will be illicit outside a case of necessity, or unless the priest can conjecture sufficiently that the penitent is guilty of no grave fault.

Indeed the absolution is valid, but confession must be repeated in part, if, without fault of the penitent, it was not perceived wholly because of deafness, sleep, or distraction, so that certain mortal sins were not understood.

If the penitent knows with moral certitude which they were, it is established that these alone and all of these must then be repeated. But if he does not know which they are, a brief confession must be repeated; a long one, according to Tamb., whom several approve, is not to be repeated, both because, if many things were accused and few not understood, the individual sins can probably be said to have been accused, and also, which seems the better reason, from a certain equity, lest the penitent have to bear twice the grave burden of accusing all things. Then it will be enough in another confession to say that certain sins were not understood by the confessor: for in the same way you would have accused sins which were known to you only by genus; but in the present case, the sins to be accused again are known only by genus. Yet if you hesitate among a few species, these will have to be indicated. Lugo, d. 16, n. 610.

But a penitent who has uttered a clear accusation can presume that the same was perceived, so that he ought not to be solicitous about this matter, unless it is morally established to him that the matter escaped the confessor. Nor, because the confessor erred in his judgment, judging light what was grave, is the burden of a new accusation therefore imposed on him. Yet if, concerning a connected obligation of denouncing or restoring, the sentence of the confessor was gravely suspected by him of error, then prudence will demand that he seek counsel from a skilled man, especially if the confessor is not of outstanding doctrine.

— You ask, what memory of the accusation must the confessor bear at the moment of absolution?

All agree that it is not necessary that he distinctly remember the sins accused, but that a confused knowledge either preserved or then resumed suffices (cf. Lugo, d. 16, n. 639; St. Alph., l. 6, n. 502; D'Ann., III, 327 [II 10]). And because he could judge about the individual sins when they were being declared, nothing more seems to have to be required except that the confessor know that absolution is to be given, that a connected obligation, if there is any, is to be imposed, and that such a mode of penance is opportune.

Indeed, although several, St. Alphonsus and D'Ann., l. c., contradict it, if someone has distinctly narrated his sins to a priest as to a friend and then confesses to the same priest, Lugo, d. 16, n. 638, appealing to received usage itself, judges that the confused accusation which the penitent refers to the memory which the confessor had of those sins previously distinctly heard is sufficient. This will certainly be able to come into use if the priest, while he was hearing the narration, already thought in some way about a probable confession. For then the narration gave judicial knowledge to the recipient.

— **On the manner of repeating an invalid confession.**

1. Before another confessor the accusation previously made in vain must be repeated from the beginning. This is manifest. - 2. But before the same confessor, on account of the reason just explained in n. 594, it is enough in a few words to recall the sins previously known to him, provided the confessor has preserved a confused knowledge either of the sins, or of the state and tenor of life, or remembers the penance given by him (cf. St. Alph., l. 6, n. 502). Indeed several, to whom Ball.-Palm., V, n. 276, adheres, think it enough that the priest "know that he has already formed the judgment and judged that absolution was to be given." St. Alph., l. c. dub. 3, does not admit that the penitent can thus be absolved by a confessor who does not remember at least the penance given. Yet even in this case the reason which the holy Doctor himself gives for the prior cases seems to have force: "The ratification of the preceding confession, which was sacramental, while the penitent then in general accuses himself of the faults confessed, joined with the knowledge antecedently had by the confessor, is reputed well sufficient."

But if the confession was invalid because it was made to a confessor not yet a priest or lacking jurisdiction, then it is necessary that the confessor have retained at least a confused memory of the distinctly made accusation, so that this, at least through confused recollection, can direct him to a truly sacramental judgment now first to be effected. Therefore to such a confessor who has preserved no memory of the past confession, a distinct accusation will have to be made. Cf. Suarez, *Paen.*, d. 22, s. 6, n. 6; Lugo, *Paen.*, d. 16, n. 141; Ball.-Palm., V, n. 275.

But legitimate confessions which were made in good faith after an invalid confession, as is clear, are in no way to be repeated.

Finally observe: since in doubt one must stand for the value of the act, confession is not to be repeated unless it is morally established that the former was invalid. And, on account of the difficulty of the matter, those who in good faith think that they have confessed rightly are for the most part not to be disturbed.

— **On the manner of supplying an incomplete confession.** 1. It is established that it suffices for omitted things to be supplied. Wherefore if a circumstance changing the species was omitted, the sin which it surrounded is not to be repeated if the specific malice can be declared without mention of that sin. Wherefore, one who, bound by vow, sinned against the sixth precept will be able to supply the defect by accusing either personal sacrilege or a grave violation of a certain vow; but one who violently knew a married woman will not be able to accuse the circumstance of violence separately, since this is specified by the very right violated.

He who accused a sin merely in genus will have to accuse the species which he afterward remembered; but nothing is to be supplied by him who indicated the few species among which he was hesitating in doubt. For in the latter case the true species was indicated as doubtful and was directly absolved; the contrary holds in the former case.

Nor does a habitual sinner who accused his sins confusedly as he could afterward have to accuse more distinctly the species which could sufficiently have been understood by the confessor in the confused narration.

If, what is not to be presumed, it is established that confessions were made by an unlearned person whose life was sufficiently uniform in such a way that certain species were not perceived, a prudent confessor, from a present confession of one month, or half-year, or year, will easily gather what the penitent did through the rest of life.

— **On general confession to be prudently advised.**

General confession, or repetition of all or several confessions, is useful and to be commended: a) when it seems likely to bring greater peace and quiet to a non-scrupulous penitent to whom a grave doubt has occurred about the value of past confessions; b) so that past things may be more perfectly expiated; so that, from more perfect knowledge of oneself, greater fervor may be conceived; so that, before acts of greater moment in which an immense outpouring of graces is deservedly hoped for or is more necessary, a man may dispose himself better and adapt himself to the grace to be received.

Wherefore in the principal periods of life, before first Communion, before the assumption of a state, in dangerous illness, a general confession of the whole life is prudently advised: this counsel is strengthened by the authority of the Code itself for those entering religion.

That greater fruit may be gathered, let it be made as if it were going to be the last: this, at the point of death, will be a great consolation. Yet confession of the whole life does not seem to have to be repeated more often.

But it is better after stated intervals, for example after individual years, to make a general confession from the last general confession.

Approach to a new confessor furnishes no cause for repeating an accurate confession of the whole life. Insofar as it helps spiritual direction, certain principal notes can usefully be indicated.

But a general confession will be harmful if it would be for a penitent prone to anxiety a cause of disturbance or scruples, or if, for one tempted, from past facts being rubbed raw again, it would nourish passions.

Asked for counsel, the confessor should inquire why the penitent wishes to make a general confession. Then he will decline or admit the proposal. If it is made for the sake of devotion, let him immediately warn the penitent that he is held by no necessity to declare all things.

— 1. Concerning the manner of making a general confession, cf. the things said above, n. 539. Several, after Gobat, tr. 6, n. 498, who transcribes Stoz, advise that he who has led a life of sufficiently uniform tenor consider three times: one weekday, or week, what he did in it; similarly one feast day; extraordinary times of journeys, business, weddings, banquets, occasions. Often it will profit to divide life into a few stages, and to explain what kind he was in each, noting if anything extraordinary besides occurs (cf. Lehmk., II, 442).

That it may be briefer, let it be made in an ordered way according to the precepts and offices; that he may perceive the consolation of a confession completely made, let the penitent help his memory by certain written notes.

2. In a less extensive accusation, let the penitent "consider thoughts, words, works, in order to God, neighbor, himself." Lehmk., II, 449.

3. By the sick a less complete examination is to be made than by the healthy; indeed, sometimes, on account of weakness of head, they are to be relieved from every preparation of examination.

4. To the timorous a graver sin will occur of itself if any has been committed. Wherefore they have no strict obligation, if they confess frequently, of an examination properly so called. Yet they are to be exhorted that they piously discuss conscience and signify habitual propensities. Nor is it of itself to be tolerated that habitually, every accusation of present life having been omitted, they merely accuse past faults against some virtue. Gen., II, 262, judges that a confessor sins venially who permits this to happen, since he habituates penitents to receiving the sacrament perfunctorily.

— **On absolving a dying person.** 1. A dying person possessing the use of the senses is to be treated according to his disposition. If he is a non-Catholic who cannot prudently be warned about the error of his sect, let him be stirred up to eliciting an act of perfect contrition; then let him declare himself a sinner before God and the priest, and, with sorrow conceived, let him also declare that it is pleasing to him that the priest, insofar as he can, help him. This done, let him be absolved under condition. Those acts which the penitent makes absolutely are judged better and more useful than a conditioned will expressed thus: "if I knew that this was necessary, I would wish to confess and be absolved" (Lehmk., II, 651). Yet the non-Catholic will be helped more certainly by perfect contrition and Extreme Unction.

2. A dying person deprived of the senses, if others can testify to an express will of absolution from him, can be absolved absolutely, although the condition "if you are capable" can also be added. For he is judged to have confessed as it were through interpreters. From present usage, all other Catholics must be absolved under condition. And even those who rejected the sacraments, or baptized non-Catholics, can be absolved under condition.

In the age of Suarez, Lugo, etc., they denied that, with accusation lacking, an absolution of this kind, given to him who had made no confession, could have validity or be conferred. They explain the present usage in various ways: often there is present a sign of confession not perceived; confession, in that case of impotence, is not of the necessity of the sacrament; but in these extreme matters, a lesser probability suffices for administering the sacrament licitly.

§ 4. On Satisfaction, or Sacramental Penance

— **The substantial obligation of the penitent.** One approaching to confess mortal fault must, under mortal obligation, be prepared in soul to accept and execute the penance which will be reasonably imposed on him.

This acceptance is a laudable and meritorious act of humility.

And if a grave penance has been imposed because of grave faults, the penitent who does not fulfill it will sin mortally.

Nor is it in his power to substitute even a better work in place of the thing enjoined, since the substituted work cannot pertain to the sacramental judgment.

But he who is not content with the imposed penance as harder or more difficult has the right either of returning to the same confessor so that he may temper or perfect his sentence, or of approaching another confessor, who, briefly, with the cause known at least from the penance which the former imposed, can commute the penance. If the same confessor is approached, only the new penance remains due, because the former sentence was virtually taken away; on the contrary, the option is given to the penitent of fulfilling either penance which two confessors successively gave because of the same accusation. For neither could abrogate the sentence of the other, since in this sacrament all are judges and, as such, are to be held in equal place. But the penitent ought not to satisfy twice for the same accusation of sins.

He who has perfectly forgotten the imposed penance is relieved of every obligation.

Yet if the confessor can conveniently be approached again, and prudently is thought to remember the penance imposed by him, he seems to have to be approached again so that he may renew the memory of the penance.

— **Circumstances of execution.** 1. He substantially satisfies his obligation who fulfills the penance in the state of mortal sin; nor is it established that this is a venial sin, especially since several judge that the fruit of that penance is obtained after the state of grace has been recovered.

For absolution gave a right to obtaining, once the penance has been fulfilled, a certain remission of temporal punishments. Therefore, with the obstacle of mortal sin removed, that right will become efficacious, so that the work revives as satisfactory, though not as otherwise meritorious.

2. If the confessor has expressly or tacitly determined the time, a notable delay will be grave when the obligation itself of the penance is grave.

Thus fasting or abstinence prescribed for individual weeks cannot be deferred beyond a week; and the delay is judged grave, especially since it changes the very form or figure of the penance. Yet, when the time has elapsed, the obligation of penance does not therefore cease, unless a different mind of the confessor appears. Thus he who prescribed a weekly fast is not judged to wish that the fast be observed through a continuous series of days. But one obliged to fast on Friday does not sin gravely if he defers the fast by one day; or if he defers by only six or eight days the monthly Communion imposed on him.

But there is no obligation to fulfill as soon as possible, or before the next confession or Communion, a penance given without a day, provided the danger of forgetfulness is avoided.

3. Nor is an express intention of satisfying required, provided the work is done.

4. That mode can and ought of itself to be observed which is established for the same work that is prescribed by the Church. Thus fasting will admit the little supper and foods permitted in the region on a day of fasting; recitation of an enjoined psalm can be done with a companion. By the same work someone can fulfill penance and gain indulgences.

Penance is to be fulfilled by the penitent himself, unless the confessor has permitted more (cf. proposition 15 condemned by Alex. VII). And sometimes a confessor can, with fruit of edification, impose a light penance on a sinner and take on himself a greater one for the penitent, with a

declaration of the matter made to the penitent. Then he, by consenting to vicarious satisfaction, effects that the work performed by the confessor is part of the sacramental penance.

— It is not mortal but venial to neglect the penance imposed for venial fault; or a light penance enjoined even because of grave faults.

§ 5. On the Accidental Obligation of Denouncing

— "According to the norm of the apostolic constitutions, and by name of the Constitution of Benedict XIV, *Sacramentum paenitentiae*, June 1, 1741, the penitent must, within a month, denounce the guilty party of the delict of solicitation in confession to the local Ordinary or to the Sacred Congregation of the Holy Office; and the confessor must, with his conscience gravely burdened, warn the penitent about this burden" (c. 904).

Besides the obligation, which can flow from natural law, of denouncing certain guilty persons, there must be recalled in this place the peculiar obligation of positive law, to be interpreted from the monuments of the earlier law, of which we must hand down this brief summary.

Besides the Constitution of Benedict XIV, there must also be consulted the earlier Constitution of Gregory XV, *Universi*, August 30, 1622, which Benedict XIV almost carried over into his Constitution, but did not suppress. And in the Constitution *Etsi Pastoralis*, May 26, 1742, §9, n. 5, Benedict XIV declared that Latins and Greeks are equally bound by these laws. To the prior Constitution of Gregory XV there were added various responses of the Holy Office, especially the 16 responses of February 11, 1661, and the instruction to bishops, February 9, 1867. By the decree of Alexander VII, September 24, 1667, two propositions pertaining here, n. 6 and 7, were proscribed; this decree was also confirmed by Benedict XIV.

I. Who Is to Be Denounced and Why

The guilty person to be denounced is the confessor as such, not the penitent, even if he were a priest, nor a lower cleric or layman, who cannot be confessors except fictitiously; but the confessor, even one deprived of jurisdiction, and of whatever grade or dignity, provided he abuses, in relation to the exercise of the sacrament of Penance, the power of order with which he truly is endowed.

For the Code abstained from the word "priest," which Benedict XIV used in his Constitution; and since, already before the Code, not a few wished bishops to be comprehended, the studied omission of that word "priest" in cc. 904, 2363, and 2368 furnishes us a certain argument of the mind by which the Legislator wishes no soliciting confessor to be excepted from his decrees. Besides, the reason which they brought forward for excepting bishops now has no force. They used to say that a bishop is not subject to inquisitors, to whom, if the bishop was lacking, denunciation had to be made. But now denunciation can easily be made to the Nuncio or Apostolic Delegate and to the Holy Office.

Moreover the very practice of the Supreme Congregation stands against the more benign opinion of several: Noldin, III, 376 note; Arregui, 653; Ferreres, II, 692, etc., who even now judge that an obligation, at least positive, of denouncing a bishop is not established.

Therefore the words of c. 904, "according to the norm of the Apostolic Constitutions," are to be referred not to the person to be denounced, but to the delict which gives place to denunciation.

That guilty person must have solicited; but he is not excused by the mutual solicitation which the penitent made, indeed which the penitent began. Yet mere consent, given by an exterior sign, does not seem to be solicitation, although most respond more severely (cf. St. Alph., VI, 681; Bucceroni, *Opusc. in C. Sacramentum Paen.*, n. 29, which Palm., V, 727 note, does not dare to disapprove). But mutual solicitation is had if both do the things which are forbidden, even if one does them after being invited.

— Solicitation can be made by words, signs, nods, touch (upon one's own or another's body), by writing itself either then or afterward to be read. Words which do not clearly contain solicitation will have to be estimated from the adjuncts or from the subsequent event. Thus words in praise of beauty, or these words said: "I shall come into your house; promise me that you will do what I wish," are already sufficiently suspect in themselves. But these other words: "Wait for me in such a place; I have business to treat with you," will be judged an inchoate solicitation if in that meeting no serious business to be done is shown, and the one inviting has solicited.

Nor does it matter, provided the other requisites are present, to distinguish whether the penitent was solicited immediately or mediately, or another person through the work of the penitent, or whether it is to sin with himself or with another.

Yet it is necessary that moral certitude be had concerning the depraved affection of the confessor.

— Although solicitation need not yet appear in itself a grave external sin, nevertheless, for the case to be had, it must be directed to grave, external sin against the sixth precept of the Decalogue.

That sin can consist in actions, in dealings, in conversations. Here dealings are counsels, deliberations, pacts (*delle trattative*, *des machinations*) about a shameful matter to be done then or afterward, whether they are proposed by the confessor alone or by both.

Therefore he is to be denounced who mixes in, concerning the present, in the required adjuncts, even when provoked, shameful conversations, or words gravely illicit and contrary to chastity.

— **Required adjuncts.** Yet not every solicitation is touched by the positive obligation of denouncing, but only that which is made "in confession" (c. 904). These words, however, have received a broad signification from the confirmed constitutions. Therefore he is to be denounced who made or began the solicitation described above:

1. in the act of sacramental confession, and it does not matter that the sacrament was then interrupted or remained incomplete;
2. before or after confession, but, in either case, immediately. If some other thing truly intervened in the middle, the case is not had. Here, however, confession is supposed.

What if the penitent is solicited while he asks for confession or wishes to confess? If the formal or virtual petition is made while the penitent is in the act and state of confession, for example the confessor is seated, the penitent is not merely among those standing around his confessional, but is already kneeling at his feet, then confession is virtually begun, and the priest is to be denounced. This is much more established if the confessor assents to one thus seeking confession, although, on account of the solicitation itself, the penitent afterward now does not wish to confess. If he is not yet in the state and act of confession, he does not seem to have to be denounced by force of this clause.

3. On the occasion of confession, or when confession is the cause per accidens of soliciting the confessing person. The case is had properly when the confessor hands to a penitent whom he wishes to solicit a note to be read afterward by him, and which contains solicitation.

Yet the clause is extended to the case which we just solved, of a penitent who is solicited in the state of one confessing, while he was at the point of beginning the accusation.

Besides the fact that the matter is of most difficult use and proof, it is not established that a confessor is to be denounced who abuses knowledge drawn from confession, for example the fragility of the penitent, to solicit him. For the occasion is less strictly confession than knowledge had from confession (cf. Palm., note to V, 718).

N.B. But he is not, by positive law, to be denounced who hands to a servant confessing a note to be carried to another person, not a penitent, whom the confessor solicits, if the servant himself is in no way an accomplice. For then the penitent is solicited by no pact.

Is he to be denounced who, asked to hear confession, turns aside to other things and solicits, not yet sitting in the manner of a confessor nor having the person kneeling before him? St. Alphonsus, l. 6, n. 678, reports that this is commonly affirmed. But against that severity stands the fact that the solicitation was made rather on occasion of the petition of confession than on occasion of confession (cf. Ballerini, *Op. Th.*, V, 717, and Palmieri in the note, where the more benign solution is confirmed by the very response and practice of the Holy Office).

4. Under pretext of confession, even when confession has not followed. To pretext confession is to give to solicitation the color of confession, to cover it with the veil of confession. But the confessor must pretext; and he will especially have done this who, led by a depraved intention, enters into shameful conversations in confession itself, as if these were useful or necessary for a complete accusation.

Yet it is not required that the penitent himself be deceived by the pretext. And since not only he who provokes to evil, but also he who actively consents to sin, is understood to solicit, he also solicits under pretext of confession who, while confession is pretexted, sins with another.

If you weigh these things, you will admit with Ballerini, V, 719-720, that solicitation is made under pretext of confession: a) whenever, by that pretext, bystanders are removed and sin is committed, whether the priest or the accomplice alleged the pretext, provided the priest, conscious of the alleged pretext, tacitly admitted the pretext; b) whenever a confessor sins with someone whom he knows to have been sent or to have entered his room under pretext of making confession.

Nevertheless, on account of the authority of St. Alphonsus, l. 6, n. 679, there can be excluded the case of the penitent who himself pretexts confession in order to solicit the confessor and sins with the confessor, because the author of the pretext was the penitent; and the case of both who from a previous agreement pretext confession in order to deceive others, because not the solicitation itself but only the execution of the sin is made under pretext of confession.

Yet in the same place, St. Alphonsus says that the confessor is to be denounced by whose counsel a woman who, fearing defamation, was refusing to sin, pretends that she is sick in order to call the confessor with whom she may sin.

A confessor is said to solicit under pretext of confession who, of his own accord or when asked, goes to the house of a sick person, and there, alleging that confession is to be heard, removes bystanders in order to solicit; or if he arranges that a boy be sent into a room and solicits him after he has entered, even with the end of confession proposed; or if a priest, either fictitiously or truly, invites a penitent to confess in order to solicit him. I say, invites to confess. For if, under pretext of confession, he invites a person to go into a church and there solicits that person outside the confessional seat, and consequently now not pretexting confession, the case of solicitation to be denounced is not had, since the invitation alone, not the solicitation itself, was made under pretext of confession.

You ask how that case differs from the preceding case of a person sent into a room under pretext of confession? We respond that a room is a place much narrower and is not furnished with a confessional properly so called, which would constitute a special place, so that in the preceding case the invitation is judged to have been made immediately for confessing.

More manifestly immune from denounced solicitation is he who alleges confession in order to obtain license to go to another's house in which he is going to sin with an accomplice.

5. With simulation of hearing confession, solicitation made, even outside the occasion of confession and therefore even if both came there for a plainly different end, in a confessional, or in another place destined or chosen for hearing confessions.

A confessional is that little structure of peculiar form placed in a church for the use of the sacrament of Penance. A place destined for confessions is not the whole sacristy, but, for example, there or in a parlor a kneeler with a seat placed for hearing confessions. Such, from the response itself of the Holy Office in *Acta Sanctae Sedis*, t. 9, p. 530, is the place where the confessions of nuns are heard. A place chosen for confession is any other place, for example the room of a sick person, where at least one of the two sincerely wished either to confess or to hear confession. For if each merely pretended to choose the place for confessing, the place cannot be called chosen for making confession, nor is simulation of confession made in a place truly chosen.

But simulation in the two prior places is had already in reality if penitent and confessor place themselves there in the usual manner, unless from laughter it is perceived that another matter is being done; while in the third place, the external figure of confession must be studiously imitated for confession to be simulated. For simulation is said to be figure without the thing. Witnesses actually present are not necessary. It is enough that they could be present.

II. The Obligation of Denouncing

— 1. The obligation of denouncing holds: a) the solicited person himself; b) any other person, even an impubes, provided he was possessed of reason, who, either as an immediate witness or from trustworthy persons, has known that solicitation was made. Indeed the words of the Code, as Noldin, III, 377, observes, seem to oblige only the penitent, that is, the solicited person, to denounce; but the preceding interpretation of the law is indirectly confirmed by the very words, "According to the norm of the Constitution of Benedict XIV." Thus we say with most, against Cerato, *De delicto sollicitationis*, n. 89. Yet you should except him to whom the matter was manifested for asking counsel. And one who merely heard the matter is no longer obliged if the person narrating satisfied his own obligation. Thus Lehmk., II, 126, §5; and rightly indeed if, at the time when he narrated, he morally denounced

at the same time. For if he deferred denunciation, it will be useful that, with the denunciation made by the hearer, it be established that the crime had already been narrated at a time not suspect.

Neither a long interval of time, nor defect of proofs, nor denunciation already made of another case, nor the proper fault of the solicited person who consented to the sin, indeed who first solicited, excuses him from making denunciation. But he will not have to manifest his own consent; nor, if he reveals this, is it to be reported in the acts.

Yet excuse of grave damage to be feared in life, reputation, or temporal goods, as long as the danger lasts, excuses from this law as positive. For common damage can increase the obligation from natural law. The obligation is also suspended in regions where, without grave inconvenience, not even by letters, the Ordinary or the Nuncio or Apostolic Delegate or the Holy Office can be approached.

Likewise a person will be excused who can neither personally approach the Ordinary nor write to him, unless the confessor, which of itself is not to be advised, on account of danger of error and detraction, should wish to transact the matter for the person.

Probably a confessor who was led to shameful acts by grave fear alone is not to be denounced, since grave fear is accustomed to excuse guilty persons from ecclesiastical penalties (cf. St. Alph., VI, 687; D'Ann., III, 376 [8]); nor, as some think, a priest concerning whose amendment it is altogether established. But by the death of the guilty person the obligation ceases, since the end of the law has fully ceased.

2. The soliciting confessor himself does not have to denounce himself. But if nevertheless he has done so of his own accord, and has sincerely opened all things, he will be immune from vindicative penalty, though not always from medicinal penalty, even if he is afterward accused.
3. Denunciation must be made within a month from the obligation of denouncing having been known.
4. Denunciation is to be made either to the Holy Office, the Nuncio or Apostolic Delegate, or the Ordinary of the place in which the solicitation was made, even if the confessor was of another diocese or an exempt religious. But religious Superiors are strictly prohibited from involving themselves in this cause (c. 501).

— Denunciation is to be made judicial, and therefore before the Holy Office or the Nuncio or Apostolic Delegate or the local Ordinary or their delegate, with the intervention of an ecclesiastical man who acts as notary.

— The confessor must warn the penitent about his obligation of denouncing, with his conscience gravely burdened (c. 904).

Every confessor, yet not the solicitor himself, for this would be too hard, must give this warning. Yet when death is imminent, the penitent is not to be exposed by this warning to eternal ruin. - If from the warning made, public divulgation of the whole matter is to be feared, there seems to be place for epikeia. - And the warning can be deferred to a more opportune time, if it is foreseen to be useless now but efficacious afterward. But if the penitent is not going to return, let the confessor at least warn him about the obligation of speaking about that matter with another confessor, on account of the difficulty still to be untied, and of obeying the confessor. By the same reason he can conduct

himself who judges himself unequal to solving the case. Yet without a just cause it is not lawful for the confessor to transfer the burden to another. - Nor is a person to be warned who, on account of his simplicity, did not understand the solicitation: for his scandal is to be avoided.

— **Questions.** What if the confessor has already been convicted and punished because of solicitation?

If because of the same solicitation numerically, this also will hold here: not twice for the same thing. But if because of another delict numerically, without doubt he is again to be reported.

What if he appeared of his own accord? He is to be denounced, so that in the trial it may be established that all things were declared by him (Holy Office instruction, 1867).

What in doubt?

a) If the words signify solicitation, and there is doubt only about the intention of the confessor, the end consonant with the words is presumed to have been present.

b) If the delict itself is truly doubtful, the more benign parts can be preferred (St. Alph., VI, 702).

c) If there is doubt about the person who solicited, the matter is to be indicated if there is probable hope that the judge by his diligence will be able to detect the guilty person. But he who hesitates in doubt between two persons ought to indicate neither, lest he harm the reputation of an innocent person (D'Ann., III, 368 [19]).

— Persons who, conscious of this obligation, refuse to make that denunciation cannot be absolved, not even by the solicitor himself. And to urge execution, it will sometimes be better not to absolve them before they have fulfilled the obligation.

Yet one who is pressed by grave difficulty of appearing personally before the ordinary or delegated judge can send letters either to the Nuncio or Apostolic Delegate, or to the local Ordinary, or to the Holy Office, in which, the guilty person or species of the fact not yet being designated, he simply declares that he is held to making denunciation, and asks that he may be able to complete it before the confessor alone. But the letters must be signed: blind or anonymous letters are destitute of all value.

Then the confessor, unless he already has it, will obtain from the episcopal curia the formula of questions to be put. He will note the responses of the person, omitting those things which would manifest this person's complicity or fault. Finally, with his name signed, he will have to confirm that the relation is genuine or faithful.

Yet the confessor is not of himself obliged to receive the denunciation. But if he refuses to do this, the person who with difficulty approaches the Ordinary can wait for the occasion of a confessor who is willing to perform that ministry.

Finally, if he is delayed by excessive repugnance, and the utility of the denunciation does not seem so great, the confessor can, with the name kept silent, propose the difficulty to the Sacred Penitentiary and obtain from it for the penitent a dispensation from undergoing the too grave burden.

III. Penal Sanctions

— **Sanction of the obligation.** The solicited faithful person who within a month knowingly has not completed the denunciation prescribed by c. 904 contracts an excommunication *latae sententiae* reserved to no one, from which nevertheless he cannot be absolved unless after he has satisfied his obligation, or has seriously promised that he will satisfy it. He escapes this penalty who had to denounce but was not himself solicited.

But he who has written to the local Ordinary or to the Holy Office can wait for the response even longer; but if he has opened the difficulty of denunciation, silence seems able to be interpreted legitimately as a dispensation from the obligation (c. 2368, §2).

— Penalties against solicitors who have not betrayed themselves of their own accord or not in due time[1] are established as most grave by c. 2368, §1, but all are *ferendae sententiae*. Nor is the local Ordinary, where the custom is that he himself act, or the Holy Office accustomed, scarcely after the denunciation has been received, to proceed at once. A first or second denunciation is accustomed to be followed by a warning, whether paternal or judicial;[2] after the third, the cause is instructed.

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[1] Wherefore to a priest now well disposed to whom denunciation seems to be feared, prudent counsel can sometimes be given that he accuse himself of his own accord.

[2] Formerly, but no longer today, after a second denunciation the Holy Office used to command that the bishop observe the priest.

— Innocent confessors must be protected from false denunciations. Wherefore he who by himself or through others, as for instance through a confessor, falsely denounces to Superiors a confessor concerning the crime of solicitation, by the fact itself commits an excommunication reserved in a special manner to the Apostolic See, from which he cannot in any case be absolved unless he has formally retracted the false denunciation, and has repaired according to his powers the damages, if any followed therefrom, with a grave and long-lasting penance imposed besides.

Before the Code the crime of false denunciation was, without censure, reserved most specially to the Holy See. That reservation was judged penal, so that it was not incurred by one ignorant.

Today, of itself, there is contracted a censure reserved only specially to the Holy See. At the same time, however, conditions are imposed on absolution which only the Holy See in the particular case will be able to dispense: that is, formal retraction, namely in judicial form, or before a judge; reparation of damages, if any followed, and in this matter the law of nature is almost confirmed; and besides, a grave and long-lasting penance to be imposed. A grave penance is that which is given in the sacrament for grave fault; long-lasting, according to Cerato, *De censuris*, n. 61, whom Gen., II, 400, follows, is one which lasts for three years; according to Cappello, *De censuris*, n. 103, it is one which is to be observed for six months.

The reason of estimations of this kind escapes us. And we judge that this notion must be weighed relatively, with attention paid to the quality of the person, the gravity of the delict, and also the frequency of the imposed action. In a shorter interval an action becomes long-lasting if it must be done often. Thus the following seems to us to be a long-lasting penance: daily recitation of the Rosary for three months; weekly approach to the sacraments for six months; monthly approach for a year; approach four times in the year for three years; annual spiritual exercises for five or six years.

Ignorance, but not crass ignorance, excuses from that censure.

But if because of ignorance the censure was not contracted, the sin then by reason of itself will remain reserved, though not specially or most specially. Retraction at least according to the requisites of the natural law will have to be demanded.

But they judge that the delict is not committed except by a denunciation properly judicial, so that the excommunication does not affect a person who has sent a calumnious letter to the bishop or to the Holy Office.

From the common opinion of the Doctors, in this matter faith is not easily to be given to women, since not rarely they are deceived either by their own imagination, or from hatred, envy, jealousy, they calumniate innocent priests. Therefore, before it is prescribed that a denunciation be made, one must carefully consider whether perhaps the accusing person is unworthy of being believed, whether the malice of the priest is sufficiently established, especially of one who enjoys the best reputation. Yet it can happen that a wolf is disguised in sheep's clothing; nor does it pertain to the confessor to inquire into persons.

Summary

— I. **On Contrition.** 1. For the fruitful reception of the sacrament there suffices and is required at least attrition, which is formal, and is not contained only virtually in an act of charity, for it is the sacrament of Penance; supernatural, that is, one which, with the help of supernatural grace, has been conceived on account of a motive which is referred to God directly or indirectly, for the offense of God must be detested as such.

Motives return to fear of punishments and to the turpitude or deformity of sin, to which ingratitude toward God and contempt itself of divine goodness are reduced; appreciatively supreme, so that sin is estimated as a greater evil than every evil which must be undergone in order to avoid sin, and therefore, in every true or possible hypothesis, excludes the will of sinning. Although the offense of God is not to be preferred to the punishments of hell, that absurd comparison is in no way to be instituted; universal, as to all mortal sins.

2. Although several deny this, the sacrament of Penance seems able to be valid and unformed, not only if attrition is not universal, but also if, though true, it does not reach the supreme degree. Wherefore penitents who have confessed in good faith, provided they have conceived some true sorrow, ought not to be compelled to repeat confessions.
3. It is in no way required that attrition be conceived from intention of the sacrament; nor is it established that it must be directed to the sacrament by the will itself of the penitent; but it is enough that the minister of the sacrament find apt matter. Wherefore the conceived sorrow has persevered sufficiently in the habitual will and is sufficiently expressed in sincere accusation, so that one who has not renewed an act of contrition conceived several hours before and has approached the sacrament coldly ought not to be anxious about his contrition. Nor is a new formal act of contrition required from him who, after absolution has been received, immediately seeks to be absolved from an omitted sin.

4. Provided the disposition of the penitent has habitually persevered, absolution will be able to be distant even for a long time from the acts of the penitent, since the sacrament was instituted after the manner of a judgment.

5. Since sins are opposed unequally even to a universal motive, since a man is rarely moved by the full force of such a motive, and detests more what is more repugnant to that motive, and since our act, subjectively one, becomes virtually multiple on account of the several motives to which it is terminated, sufficient attrition is not retracted as to all sins by a new fault; but partial retraction is well understood. Yet by every new mortal sin attrition perishes, insofar as universality is required.

6. Sorrow which merely follows sacramental confession, provided it is rendered sensible, seems to suffice for fruitful absolution.

7. Sorrow concerning venial sins does not have to be universal even virtually; but he who consciously accuses only venial sins and is sufficiently sorry for no venial sin will be guilty of grave sacrilege. But he who is sorry for one will not sin gravely even if he is not sorry for all which he accused; indeed he will not sin at all who simply accuses all things and does not positively affirm universal sorrow.

8. Putative attrition does not suffice; putative contrition is not required.

9. The things which have been said for cutting off anxieties do not prohibit counsels of formal excitation to perfect contrition, joined with discussion of conscience and accusation, and renewed if a new absolution is sought.

II. Formal acts of faith and hope are not necessary, but those suffice which are necessarily contained in a pious approach to the sacrament. Nor is there lacking the beginning of love which, from the Tridentine Council, prepares the way for perfect justification.

III. **On Purpose.** 1. An absolute purpose of not sinning any more, or, from the present affection, of never sinning, is required for the remission of every sin, and therefore for fruitful use of the sacrament is necessary at least concerning one accused sin. And because no mortal sin is remitted without the others, the purpose must be universal about all committed mortal sins, indeed about others too, at least insofar as an explicit purpose concerning the committed sins confirms a good will concerning the rest.

2. Attrition above all things contains a virtual purpose; and indeed a universal one, if it was conceived from a universal motive. This virtual purpose suffices, although not a few require a formal one. Indeed several wish that to attrition conceived from a particular motive there be added a positively universal purpose concerning mortal sins.

3. Concerning venial sins a purpose concerning one of the accused suffices, or concerning deliberate ones, or concerning lessening indeliberate ones, or concerning avoiding them as far as there is power. For in these modes there is contained an absolute purpose concerning at least one venial sin.

4. The efficacy of purpose is distinguished as principiative, or immediate, which affects the will at the moment of conversion to God or of use of the sacrament, and connotes the sincerity of

purpose; and subsequent, effective, in constant execution, which connotes the virtue of the will.

An efficacious will embraces the means, both negative and positive, necessary for attaining the end. How far it must be extended to flight from occasion, we saw in Fundamental Theology, n. 452-456, where the notions concerning proximate occasion are also handed down.

Relapse into sins, even frequent relapse, demonstrates a changed will, but not necessarily a defect of the preceding will. Nor does founded fear, indeed certain foresight of relapse, argue a defect of present purpose. This defect can sometimes be demonstrated by uniform perseverance of sin in a certain occasion, since apt remedies are not lacking.

IV. **On Confession.** 1. Confession is required to be at least formally integral. Material integrity is furnished by him who confesses all mortal sins of which, after diligent examination, he has consciousness, with the circumstances which change the species. He satisfies the obligation of material integrity.

Material integrity, taken more strictly, supposes a truly complete accusation of all grave sins which, committed after Baptism, have not yet been remitted by force of the keys.

Formal integrity is furnished by him who makes the accusation by which he is here and now bound; and such an accusation especially is called formal which, on account of a just cause, is not made complete.

2. Material integrity is prescribed of itself. This: a) requires an examination made according to the capacity of the penitent, according to the distance from the last confession, and according to the other adjuncts, with the moderate care which a prudent man applies in serious affairs, or such as the learned and timorous are accustomed to have in this matter, even if someone knows that with greater diligence he would find more. Today we require from no one an examination through several days; but we judge that an examination made for an hour suffices for accusing sins even for those who have not confessed for many years; b) after the examination has been made, the lowest theological and moral species of grave sins must be declared spontaneously, so that the whole substance of the sin is accused. Unknown species are not contracted and therefore are not to be accused. When reasonably questioned by the judge, the penitent will also have to declare aggravating circumstances. Besides, the certain number, if possible, or the probable number, with "more" or "less" added, must be declared. Unless a notably greater number afterward becomes known, the certain number does not have to be supplied by him who indicated the probable one. The greater the difficulty, the less a definite indication is required. Sometimes it will be enough to indicate the time; c) one who has forgotten a grave sin has to accuse it in the next confession, but meanwhile he can communicate. Yet after diligent examination a new formal examination of the same period is not required, and because of the presumption of an integrally made confession, the penitent is dispensed from accusing a sin which merely seems to have been passed over. Nor is a confused confession incomplete. Wherefore, after a confused manifestation has been made which could be made, distinct memory afterward had does not oblige to a new distinct accusation, unless the sin is altogether alien to the things confusedly set forth; d) a confession which, because of mortally culpable negligence or ignorance, was not integral is sacrilegious. Negligence

subjectively not grave allows the confession to be valid, but does not dispense from a better examination; e) neither things doubtfully committed, nor doubtfully grave, nor certainly grave but probably accused, must certainly be accused. In practice the penitent will have to be directed from presumptions.

3. Since excessive difficulty excuses from the positive precept of material integrity, formal integrity suffices: for those who labor under physical impotence of confessing integrally, at least by ordinary means; for those who are impeded from material integrity by moral impotence, as when the destruction of many is imminent or also sometimes in a mission among unbelievers; for those who from integral confession have grave damage to be feared, either to themselves, or to the confessor, or to another, per accidens and not of itself joined with such confession. To moral impotence is referred the case of a scrupulous person concerning past life, of a penitent who before confession has been finished is absolved by an impatient confessor, of him who cannot be absolved directly from a certain sin, which today can happen only in absolving an accomplice. Yet that someone may confess incompletely, there is required some necessity or great utility of confession, and lack of a confessor to whom integral confession can be made. And when there is occasion, the confession will have to be completed. And in an incomplete confession, grave sins are to be accused before light ones.

Infamy, whether of an accomplice or of another person, before the confessor does not seem to permit incomplete confession, unless there is a special cause why the revelation of sin made to such a one is hateful. Yet there is a more benign opinion as well as a more severe one.

4. Free matter, such as sins already pardoned or venial sins, is usefully subjected to the keys, both on account of sacramental grace and on account of the remission of punishments.

5. Sufficient matter is to be subjected to the keys; such is not a doubtful sin or positive imperfection, if any exists; but a sin already directly remitted is such. The general formula "the sins of the whole life," added to the present accusation, indeed suffices; but so that attrition may be more certain, it is better that the penitent, especially an uneducated one, indicate some species. Outside necessity, a confession which is simply about the sins of the whole life, without any specification, is not to be admitted.

6. The obligation of vocal confession, which several inferred from the usage of the Church, is pressed in silence in the Code. And certainly it is enough that, after a written confession has been handed over, the penitent, if he can, say: "I accuse these things."

To make confession secret is the right of the penitent, not an obligation.

A true confession is demanded. Grave in confession would be not every lie, but a lie committed in necessary accusation or with deception of the confessor in a notable matter. He cannot be reprehended gravely who, in a general confession, deliberately mixes past and recent things. One who positively declares grave recent matter to pertain to past matter seems to us, as the author of a grave deception, guilty of sacrilege. Some respond more benignly when it does not matter for knowing custom or relapse.

7. A whole confession which was invalid is to be repeated, as one which is made in bad faith to a half-asleep or unaware priest. A confession which, without fault of the penitent, was not wholly heard must be repeated in part, as to mortal faults.

Yet if in a long confession the penitent does not know which things were not heard, it will be enough that he state a few species among which he hesitates in doubt, or if he cannot even do this, that he declare generically that certain things were not perceived. But he who spoke clearly should presume that all things were perceived.

Nothing therefore must be repeated because the confessor judged light what was grave.

8. At the moment of absolution, a confused memory of the accusation, whether preserved or then resumed, suffices for the confessor, so that it is plainly enough if he knows that absolution is to be given, that a connected obligation, if there is any, exists, and that this ought to be the mode of penance. Wherefore, if a confession wholly null or sacrilegious is repeated to the same confessor, it seems to suffice that the confessor ratify the preceding confession, if it was sacramental, after a generic repetition has been made by the penitent.

But confession is not to be repeated unless it is morally established that it was null. Nor for the most part are those to be disturbed who in good faith think that they have confessed rightly.

9. General confession is useful and to be commended: for removing a grave doubt about the value of past confessions; for the more perfect expiation of past faults; for better adapting oneself to grace to be received before acts of greater moment.

Wherefore, in the principal periods of life, confession of the whole life can prudently be advised; this counsel is confirmed by the Code for those entering religion. That greater fruit may be gathered, let it be made as if the last.

Yet confession of the whole life does not seem to have to be repeated more often, nor does approach to a new confessor furnish cause for repeating it. But it is better after stated intervals, for example after individual years, to make a general confession from the last general confession.

A general confession will be harmful if it would be for a penitent prone to anxiety a cause of disturbances or scruples, or if it would nourish the passions of one tempted.

Asked for counsel, let the confessor ask why it is wished to be made, and inquire whether disturbance of soul is to be feared.

10. **Concerning the dying person.** If he is in possession of himself, let him be treated according to his disposition. A non-Catholic who cannot prudently be warned about the error of his sect should be stirred up to perfect contrition; then let him declare himself a sinner before God and the priest. If then he admits that the priest help him as far as he can, he will be able to be absolved conditionally.

One deprived of the senses, whose express will of absolution others can testify to, has confessed as it were through an interpreter, so that he can be absolved absolutely. From present usage all other

Catholics must be absolved conditionally. Even those who rejected the sacraments, or baptized non-Catholics, can be absolved conditionally. Yet non-Catholics will be helped more by Extreme Unction.

V. **On Satisfaction.** 1. One guilty of grave sin, in approaching the tribunal of Penance, must under mortal obligation be prepared to fulfill the fitting penance which is imposed on him, saving his right of asking commutation from the same or from a different confessor. One guilty of venial sin has the same obligation under light obligation. If two penances have been given by different confessors for the same accusation, it is enough that the penitent fulfill whichever one he has preferred.

2. A grave penance which has been imposed for grave sin must of itself be executed under grave obligation. Satisfaction can be made even in the state of sin; nor is a special intention of satisfying required. It suffices that the work be done in the mode by which it would have to be done if it were a common precept of the Church. Unless the confessor has permitted more, penance must be fulfilled by the penitent himself, within the time expressly or tacitly established by the confessor. If none has been established, then at least in such a way that danger of forgetfulness is met.

3. He who has perfectly forgotten the imposed penance is relieved of every obligation, unless the confessor, who prudently is thought to remember the penance imposed by him, can conveniently be approached again.

VI. **On the accidental obligation of denouncing.** Besides the obligation of natural law, from the Constitution of Benedict XIV, *Sacramentum Poenitentiae*, which later decrees have interpreted, a positive obligation of denouncing is imposed on the penitent and certain other persons. Therefore:

1. the confessor is to be denounced as such, not if a penitent has solicited another;

2. the guilty person of solicitation to shameful things, even mutual or mediate solicitation to sin with another. The modes of solicitation can be words, signs, nods, touch, writing to be read now or afterward. Solicitation, although it need not itself appear a grave sin, nevertheless must be directed to grave external sin against the sixth precept of the Decalogue, whether it is an action, or a dealing, namely deliberation or pact, or conversation;

3. solicitation is understood in confession, that is: in the act of sacramental confession, which has its beginning from the moment when the penitent has begun to declare his sins, indeed when in the manner of penitents he presents himself to the confessor; immediately before or immediately after confession which truly has taken place or at least has been begun in the way which we stated; on the occasion of confession, or when the confession itself, not knowledge of it, is per accidens the cause of soliciting the penitent. He solicits on the occasion of confession who hands to the penitent a little note to be read afterward by which he himself is solicited. If the note is to be carried to another, the case will be had if the penitent was conscious, but not if he was ignorant of the things contained; under pretext of confession, even when confession has not followed, as if he solicits one whom he invited to confess or, after confession has been alleged, removes bystanders in order to solicit; with simulation of confession, in a confessional or in another place destined or chosen for hearing confessions. A destined place is not the whole room or sacristy, but, for example, a kneeler placed there with a seat for hearing confessions. Simulation there, as also in a confessional, will be had of itself

from the fact that both present themselves there in the customary way; in a chosen place, the external manner of confession must be imitated for simulation to be had;

4. the obligation holds the solicited person and anyone possessed of reason who, either as an immediate witness or from trustworthy persons, has known that solicitation was made. Yet one who merely heard the matter is not held if the one narrating morally satisfied his obligation immediately, or if he knew the matter as one consulted.

The obligation is not removed by interval of time, defect of proof, another denunciation already made, consent into sin; but it is excused by danger of grave damage, in life, reputation, or goods;

5. denunciation is to be made within a month from the known obligation, and indeed judicially, either to the Holy Office, or the Nuncio or Apostolic Delegate, or the Ordinary of the place in which the solicitation was made, every mingling-in of a religious Superior being excluded;
6. the confessor must warn the penitent about his obligation. In certain cases, as of a dying person, from epikeia the warning will be able to be omitted or deferred;
7. those who do not wish to denounce cannot be absolved and, if they themselves were solicited, they are struck by excommunication *latae sententiae* reserved to no one. But it can be asked that, because of grave difficulty, denunciation be made before the confessor alone;
8. he who has made a false judicial denunciation is struck by excommunication specially reserved to the Holy See, and from which he will not be able to be absolved unless formal judicial retraction has been made, damage repaired, and a grave and long-lasting penance accepted which must be imposed on him. If the excommunication was not contracted, the sin remains reserved to the Holy See by reason of itself.

Title IV: On Indulgences

(cc. 911-936)

Utility. - By accurate knowledge of indulgences, the confessor will not only distribute more fully and securely to the faithful the spiritual riches of the Church, but also, every appearance of superstition excluded, will inculcate right and solid devotion, and will prepare weapons for himself to refute the enemies and calumniators of the Church.

— *Appendix XIII belongs to this section.* **Historical.** Cf. Appendix XIII.

Chapter I: On the Granting of Indulgences

— C. 911 defines an indulgence: "the remission before God of the temporal punishment due for sins already deleted as to guilt, which ecclesiastical authority from the treasury of the Church grants for the living by way of absolution, for the dead by way of suffrage."

Therefore an indulgence says remission before God, and not before the Church, for example of punishment due from a judicial sentence; remission of punishment, not of guilt itself. If sometimes, in the more ancient monuments, speech is made about pardoning sins, this has a suitable explanation, insofar as by the name of sin there is designated not only the guilt of fault but also the guilt of punishment; remission of temporal punishment, because eternal punishment is freely pardoned with grave guilt; due for sins already deleted as to guilt, for no punishment is remitted in the forum of God while guilt remains; which ecclesiastical authority, by force of the mission entrusted by Christ, "whose sins you shall forgive, they are forgiven them"; from the treasury of the Church, that is, from the satisfactions chiefly of Christ, secondarily of the saints, entrusted to the Church; for the living, by way of absolution, or of true jurisdiction, which therefore confers an inviolate title of obtaining the indulgence; for the dead, by way of suffrage, that is, by praying, indeed with most efficacious prayer, yet subject to the laws of prayer.

Insofar as it is given by absolving the living, and is directed to the full extinguishing of sin, it is closely connected with the sacrament of Penance. How this bond is also historically confirmed we saw in n. 545, on sacramental Penance, and cf. the Appendix. Therefore the chapter on indulgences is aptly placed here. Moreover the same canon decrees that all the faithful should esteem indulgences highly.

Namely, the power of the keys handed over to the Church also has force for remitting the punishments of sins. But its dispensation must be reasonable. Now absolution from punishments becomes reasonable from the fact that at the same time payment is offered from the treasuries of the Church, and the good work, namely devotion, etc., which seems to ecclesiastical Superiors to be promoted for the end of the Church, is given or promoted by its own quasi-reward. Therefore, in present discipline, an indulgence granted to the living grows together, as it were, from three elements: absolution, full or partial, from punishments; payment of the debt, from the treasuries of the Church; and performance of a good work as a condition, which together with payment makes the absolution reasonable.

When application is made for the dead, the Church, after the prescribed work has been fulfilled by the faithful person, offers to God her intercession together with payment of the debt, that souls may be freed wholly or partly from purgatorial fire. For the most part she permits the option to the living person either of gaining the indulgence or of applying it to the dead. Sometimes, however, the indulgence is granted either for the living person alone or for the dead alone. The Church could permit application to another living person, but hitherto has not permitted it. That these things may be better understood, cf. the historical Appendix and also above, n. 545.

— **Conditions of a valid concession.** The power of the Church is demonstrated in the dogmatic school. But neither licitly nor validly is an indulgence granted without cause, since power has been

given for dispensing, not for dissipating or squandering; but "whatever cause is present which tends to the utility of the Church and the honor of God, is a sufficient reason for granting indulgences" (St. Thomas, 4 Sent., d. 20, q. 1, art. 3, q. 2). Nor is strict proportion required between the work and the indulgence, since the work is the condition and not the cause of the remission. Yet some fittingness between the indulgence and its conditions is necessary, that is, the fittingness which makes the concession reasonable. This is to be measured not only from the difficulty of the work, but also from the intended end and the relation of the work to that end. Thus public protestations of faith in the primacy of the Roman Pontiff yield not a little to the glory of God, so that a very great indulgence can be offered to those voluntarily present.

— I. **Variety of indulgences.** 1. A plenary or total indulgence is distinguished from a partial indulgence. A plenary indulgence, obtained completely, takes away every temporal punishment due for sins. Such also is the indulgence of jubilee, which nevertheless differs accidentally from another plenary indulgence on account of the annexed privileges of dispensing in certain vows, absolving from censures and from reserved things, and the greater hope of truly obtaining the whole indulgence, on account of the greater works required as conditions, and on account of the common effort of Christian society (cf. Beringer-Steinen, *Die Ablasse*, I, 26 and II, 1008).

A partial indulgence is one of one or several years, or days, or quarantines. Here, however, there are not understood years, etc., which someone would have to remain in purgatorial fire, but years of canonical penance, with the efficacy of expiation of those years nevertheless preserved. That is, he who gains an indulgence of 100 days obtains the same remission of punishments to be paid to God which he would have obtained through one hundred days of canonical penance. But through certain Lenten times penitential discipline was more severe and more expiatory. Wherefore an indulgence of seven quarantines merits express mention.

Yet since the canonical discipline of penances was of various severity according to the variety of places and times, and no one has hitherto defined the times and places to which the concession refers, one must confess that partial indulgence labors under a certain uncertainty which could happily be removed.

Therefore it is clear that the estimation of a plenary indulgence formally differs from the estimation of a partial indulgence.

Yet a different signification is obtained by partial indulgence in c. 926, by which we are warned, according to the opinion already previously received, that a plenary indulgence has force as partial if the whole cannot be obtained.

For if, because of imperfect disposition of the subject, the fruit could not be anything except partial, we think that the punishments due for sins from which the penitent is alien in affection are entirely taken away, but that punishments remain for the sins, namely venial ones, toward which he has preserved an inordinate affection. Therefore partial indulgence signifies here complete expiation of certain sins, but not of all. How much is obtained when imperfect execution of the works has stood in the way of plenary fruit, we cannot define.

Formerly sometimes there was granted a plenary indulgence and so many years. Then, for him who did not gain the whole indulgence, there was available the partial indulgence of the customary form;

or the plenary indulgence was converted into a partial one of the customary reckoning. Yet this kind of formula is explained differently by different authors (cf. Bellarmine, *Controv.*, *De indulg.*, c. 9).

2. According to its duration, an indulgence is distinguished as perpetual or temporary.
3. According to the object to which it is attached, it is either personal, which can be acquired only by certain persons, either simply or by means of enrollment in a religion, confraternity, etc.; local, which is obtained by all but only in a certain place; real, which is attached to possession or use of some thing. And it can also be mixed, so that some quality of the person and some possession or use of the thing are necessary. Such, before the last declaration of Benedict XV, were the so-called apostolic indulgences. For, after the first use of a thing enriched with these indulgences, this thing could not thereafter, with the possessor changed, benefit the new possessor.
4. There is an indulgence of ordinary form and a jubilee, or one in the form of a jubilee, which in some way imitates a jubilee in conditions and privileges.

The jubilee itself is ordinary or greater, and extraordinary or lesser. The ordinary, announced by Boniface VIII for individual centuries, by Clement VI for individual fifty-year periods, by Urban VIII for individual thirty-three-year periods, from Paul II, in 1475, was accustomed to be celebrated every twenty-fifth year. In the beginnings the jubilee was offered to be gained in the City alone; from the year 1500, under Pope Alexander VI, everywhere now opportunity is given of enjoying it, yet after the "holy" year celebrated at Rome. Yet in the year 1875, it was granted simply *Urbi et Orbi*.

An extraordinary jubilee is granted outside that time for some grave cause. For the end of a jubilee is not the indulgence, but the common good of the Church to be promoted by this reason.

How it differs accidentally, as to force and efficacy, from a plenary indulgence, we said in n. 619. In a jubilee the norms given by Benedict XIV in various Constitutions are to be observed, especially in the Constitutions *Peregrinantes* and *Inter praeteritos*, insofar as there is no derogation from them by the Bull of the jubilee. Confession and Communion distinct from annual and Paschal confession and Communion, and visits of churches, are accustomed to be prescribed. In an extraordinary jubilee, fasting with abstinence and alms are added. In the holy year itself, other indulgences, at least for the living, and faculties of absolving from reserved things and of dispensing, were accustomed to be suspended; yet again broad ones are conceded for those who intend to gain the jubilee. But suspensions of this kind are tempered more and more by exceptions.

5. Some indulgences are applicable to the dead; others profit only the one gaining them. They can never be acquired for others living in this life. But all indulgences granted by the Roman Pontiff, unless something else is established, are applicable to the dead (c. 930).

We judge that this holds equally of future indulgences and of past ones. The indulgence which has its name from a good death is not applicable to the dead.

But all indulgences acquired by him who has made the heroic vow in favor of the souls in purgatory become applicable to the dead; and he himself enjoys the daily personal privilege of the altar.

By the name of vow is indicated here a purpose, indeed perpetual but revocable without sin, by which someone renounces every satisfactory fruit of his works and the suffrages which after death will be offered for him, in favor of the souls in purgatory, whether of the souls which he himself defines in some way once or successively, or of the souls to which the Blessed Virgin wishes them to be applied. For this handing over into the hands of the Blessed Virgin Mary is not essential; nor by his heroic act is someone prohibited from offering prescribed or otherwise due suffrages for definite dead persons.

The plenary indulgence which on the Commemoration of all the dead is available to be gained as often as the work is done cannot be acquired by the living except for the dead.

— In the Church, "the Pope principally, but others insofar as they receive power from him, either ordinary or delegated," can grant indulgences. Thus already St. Thomas, Quodlibet 2, art. 16, because the treasury of the Church "is in the dispensation of him who presides over the general Church"; and from c. 912, others besides the Roman Pontiff cannot bestow indulgences by ordinary power unless this has been expressly granted to them by law.

But those inferior to the Roman Pontiff cannot: 1. commit to others the faculty of granting indulgences, unless this has been expressly granted to them by the Holy See; 2. grant indulgences applicable to the dead; 3. add other indulgences to the same thing or act of piety or sodality to which indulgences have already been granted by the Apostolic See or by another, unless new conditions to be fulfilled are prescribed (c. 913).

Therefore there is here a certain right of prevention, by which the first one granting inhibits the power of another who is inferior to the Supreme Pontiff. But when a new condition is added, the indulgence is now not granted simply to the sodality or thing, so that the prohibited cumulation is avoided. The exclusion of indulgences applicable to the dead from the power of those inferior to the Supreme Pontiff was not so established before the Code (cf. for example Lehmk., II, 669). If any such indulgences applicable to the dead were then validly granted, we do not judge that they have perished.

— Cardinals can grant an indulgence of 200 days, even as often as the work is done, simply "in places or institutes and for persons of their jurisdiction or protection"; but in other places only to be gained by those present, on individual occasions (c. 239, §1, n. 24).

A Metropolitan can grant 100 days in the dioceses of suffragans as in his own diocese (c. 271, 2°).

A residential bishop from possession taken can grant 50 days in places of his jurisdiction (c. 349, §2, 2°). This can also be done by Vicars Apostolic and Prefects Apostolic, within the limits of their territory and while the office lasts, even if they lack episcopal character (c. 294, §2).

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 that day; but on the anniversary day, 50 days if he is a bishop; 100 if an archbishop; 200 if a Cardinal of the Holy Roman Church (c. 1166, §3).

Nuncios and Apostolic Delegates have obtained broad faculties for the places of their mission of granting indulgences, even applicable by way of suffrage to souls detained in Purgatory. For a catalogue of these, cf. *Epitome Iuris canonici*, I, n. 715, p. 362.

But in the article of death, the pastor or another priest who assists the sick person can grant him the Apostolic blessing with plenary indulgence according to the prescribed form (c. 468, §2).

Priests enrolled in the Eucharistic priestly league can communicate in the sacrament of Penance, to the faithful who are accustomed at least five times in the week to approach the sacred synaxis, a plenary indulgence to be gained once in the week, and which seems to demand no other condition besides use of quasi-daily Communion. A priest can grant this for several weeks, at least as long as they confess to him (cf. *Per.*, t. 2, p. 69; t. 3, p. 113 ff., or t. 2 and 3, p. 297-301).

— The Supreme Pontiff is accustomed to grant indulgences through the Sacred Penitentiary, to which a section concerning indulgences is annexed.[1] But a concession is either contained in a simple rescript, which then, if the concession is perpetual, has this clause: "These presents to be valid in perpetuity without any expedition of a Brief"; or it is expedited through the Secretariat of Briefs.

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[1] For a long time there existed the Sacred Congregation of Indulgences and Relics, established by Clement IX, Brief *In ipsis*, July 6, 1669. This was suppressed by Pius X, Constitution *Sapienti Consilio*, June 29, 1908; and administration of indulgences was committed to the special section of the Congregation of the Holy Office. Benedict XV transferred to the Sacred Penitentiary the things which regard the use and concession of indulgences, "saving the right of the Holy Office of seeing those things which regard dogmatic doctrine concerning the same indulgences or concerning new prayers and devotions" (c. 258, §2).

But those who have obtained concessions of indulgences from the Supreme Pontiff for all the faithful are held by obligation, under penalty of nullity of the grace obtained, to bring authentic exemplars of those concessions to the Sacred Penitentiary.

Authentic exemplars, that is, a written document either signed by the hand proper of the Supreme Pontiff, or subscribed by a Cardinal or by a competent Official who testifies to the oracle of the living voice.

The clause "for all the faithful" is understood strictly, so that it regards only those indulgences which all the faithful everywhere and at every time, without special use of a blessed thing, can gain, but not those which demand a visit to a definite church (cf. Beringer-Steinen, *Die Ablasse*, I, 199, 200).

— The interpretation of indulgences must be broad or wide, with the propriety of words nevertheless preserved, because they are graces. Wherefore those are judged perpetual which are granted without limitation of time; and as often as the work is repeated, when there is not added: once in the day. Yet a plenary indulgence cannot regularly be obtained several times in the day by repeating the work (c. 928, §2). Since they are graces made, indulgences do not cease by the death of the one granting.

— **Publication of indulgences.** "New indulgences granted to churches, even of regulars, which have not been promulgated at Rome, are not to be made public without consulting the Ordinary" (c. 919, §1).

Promulgation at Rome is made regularly by insertion in *Acta Apostolicae Sedis*. But contrary to what several, for example R. P. Fanfani, *De Indulgentiis*, p. 25, seem to think, that prescription does not affect all indulgences, but those which are not merely personal, but granted to some church, altar, or group (ex c. 712, §1); nor is it a condition of validity, unless perhaps it is a question of indulgences which are communicated to a sodality by an archsodality (cf. Beringer-Steinen, I, 195-197).

Summary

— I. An indulgence is defined: the remission before God of temporal punishment due for sins already deleted as to guilt, which ecclesiastical authority from the treasury of the Church grants for the living by way of absolution, for the dead by way of suffrage (c. 911).

The mode of absolution is the use of jurisdiction given for binding and loosing. The mode of suffrage is prayer.

II. Indulgences are granted by the Pope, principally; by others, insofar as they receive power from him, either ordinary or delegated.

Those inferior to the Pope cannot, without express indult, commit to others the faculty of granting indulgences, or grant indulgences applicable to the dead, or add indulgences to the same thing already enriched except by prescribing new conditions.

Cardinals can grant 200 days; a Metropolitan, also in the dioceses of suffragans, 100; a residential bishop, 50 days. In the article of death, a pastor or priest assisting the sick person can impart the Apostolic blessing with plenary indulgence.

The Supreme Pontiff is accustomed to grant indulgences through the Sacred Penitentiary, to which a special section is annexed. And those who have obtained indulgences from the Supreme Pontiff for all the faithful must, under penalty of nullity of the grace, bring an authentic exemplar of the concession to the Sacred Penitentiary.

III. The interpretation of indulgences is demanded as wide or broad. Yet a plenary indulgence cannot regularly be obtained several times in the day by repeating the work.

IV. A new indulgence granted to a church, altar, or group, unless it has been promulgated at Rome, cannot be made public without consulting the Ordinary.

V. An indulgence is distinguished as plenary, by which, from the intention of the Church, every temporal punishment is taken away; and partial, which, unless it is a plenary indulgence acquired incompletely, gives the same remission which canonical penance done for the same time would have given; perpetual or temporary according to its stability; personal, local, real; of ordinary form, and a jubilee, or a plenary indulgence with annexed privileges of dispensing, absolving, and special conditions which give greater hope of gaining the indulgence fully. An ordinary jubilee is now granted every twenty-fifth year; an extraordinary one, outside the time, for some grave cause. An indulgence in the form of a jubilee imitates a jubilee in some way in conditions and privileges; indulgences are applicable to the dead or only to the living who gain them. Now all indulgences granted by the Supreme Pontiff, except the indulgence in the article of death, are of themselves applicable, just as all indulgences are which are gained by one who by heroic vow has renounced all his satisfactions and suffrages after death in favor of the dead. The indulgence after the manner of the Portiuncula which is available on the commemoration of all the faithful departed cannot be obtained except for the dead.

Chapter II: On Acquiring Indulgences

— **Common conditions for gaining an indulgence.** 1. A capable subject is every baptized person, not excommunicated, in the state of grace at least at the end of the prescribed works, if several are prescribed, and a subject of the one granting (c. 925, §1).

Yet, unless something else appears from the concession, travelers, vagi, and all exempt persons dwelling in the territory can gain episcopal indulgences; but subjects can gain them also outside the territory (c. 927).

2. To gain indulgences there is required at least a general intention of acquiring them, besides due execution of the enjoined works (c. 925, §2).

Although the safer opinion, to which Cardinal de Lugo, d. 27, n. 85, adheres, requires the state of grace even when the indulgence is applied to the dead, nevertheless this is not established. Others hold that it suffices that the prescribed work be done; and this having been posited, the Pontiff himself applies the indulgence to the dead. This is more likely when the indulgence can be obtained for the dead alone, as the indulgence *totiens quotiens* on the Commemoration of All the Faithful Departed; but other indulgences, as is gathered from the words of c. 930, "No one acquiring indulgences can apply them to others living in this life," seem to be acquired before they are applied. But they cannot be acquired except in the state of grace. Again, however, c. 925, §1, expressly requires the state of grace only so that someone may gain indulgences for himself. Therefore the matter is not free from doubt.

It is controverted whether habitual intention, that is, intention once had and not retracted, but which now no longer moves to acts, suffices for gaining indulgence or not. Some deny that it suffices, since an indulgence is given so that we may be stirred up to the work; others affirm, since the Pontiff is not to be thought less liberal toward those who perform the work of their own accord than toward those who are moved by the stimulus of spiritual gain. And Lehmk., II, 675, thinks that an implicit habitual intention suffices (cf. Palm., t. V, n. 775-778; Beringer-Steinen, *Die Ablasse*, I, 80 ff.).

But they say that this is already had in the very profession of Christian life. And the general norm by which they think defects are supplied by the Church when it is a question of probable and practical opinions renders us practically more secure (cf. Palm., V, n. 778).

Yet the usage is to be commended of making in the morning the intention of gaining indulgences if any are annexed to works done; this entirely suffices. There is no reason why knowledge of the indulgence itself should be demanded.

But if the condition of the indulgence is a work furnished for a certain end, it is necessary that it truly be referred to that end.

There are some, for example Lehmk., II, 662, who judge that the value of a partial indulgence varies according to the disposition of him who fulfills the prescribed work, since the efficacy of the canonical penance, which the indulgence supplies, would also have been different according to the

different fervor of the penitent. Yet against this conclusion it can be objected that the work which is the condition of the indulgence is not truly substituted in place of canonical penance.

— The work satisfying the condition of an indulgence: 1. cannot be a work which by another title, from law or precept, and therefore under sin, is owed, unless something else is expressly said in the concession itself. Yet by the same work someone can both satisfy sacramental penance and gain indulgences (c. 932).

And it already appears alien from the very mind of the Legislator that a spontaneous obligation taken up by vow should remove indulgences from the promised works. What is prescribed by a rule not obliging under sin remains useful for gaining indulgences;

2. when it is done, it must be useful for the end intended by the one granting. Thus the defect of venial vainglory will not prevent the condition from being satisfied by alms prescribed for a military expedition or for the building of a church (cf. Lugo, d. 27, n. 85); but by him who, while fasting, at the same time makes himself drunk, the end of placating God intended by the fast is frustrated (Laymann, L. 5, tr. 6, n. 4);
3. the work must be furnished by the one gaining himself, at least as by the principal cause. For in giving alms someone can use another as an instrument, or even, when advised, consent that alms be given in his name. This consent seems to suffice even if the giving is taken from goods which do not belong to the one gaining the indulgences.
4. the work must be fulfilled morally whole. Therefore a notable omission, though not that of a very small part, for example two or three Hail Marys in the Rosary, will impede the indulgences.
5. by one and the same work several indulgences cannot be obtained at the same time, unless something else is expressly provided, as it has been granted that one recitation of the Rosary of the Blessed Virgin Mary have force for the apostolic indulgences and those of the Crucifers; for the indulgences of the Most Holy Rosary and of the Crucifers (Rescript, June 12, 1907). Yet confession and Communion which are required for obtaining several indulgences do not have to be repeated (c. 933).
6. When several things are prescribed, of itself it matters little in what order the works are performed.

— The prescribed confession is to be made even by him who does not have mortal sins; but absolution is not necessary (Sacred Congregation of Indulgences, May 19, 1759, Decr. n. 214; May 6, 1852, D. n. 259). It is always usefully performed within the eight days which immediately precede the day to which the indulgence is annexed, or within its octave. And the confession which is prescribed for gaining indulgences for pious exercises drawn out over a triduum or week is usefully made also within the octave which immediately follows the completed exercise. Nor is actual confession required from those who a) are accustomed to confess at least twice in the month; or b) nearly daily, that is, five times in the week, receive the Holy Eucharist in grace and with a pious mind. Except the confession required for indulgences of an ordinary and extraordinary jubilee, or after the manner of a jubilee (c. 931).

— The prescribed Communion is always, even for the first Friday of the month, usefully received on the vigil of the day to which the indulgence is annexed, or within its octave; as also within the octave which immediately follows completed triduan or septenary, or octavary, exercises to which indulgences have been granted (c. 931). Except for the indulgence of a jubilee, Paschal Communion has force for gaining indulgences which demand Holy Communion (Sacred Congregation of Indulgences, May 10, 1844).

— The required visit to a church can be made from noon of the preceding day up to the midnight which closes the day to which the indulgence is affixed (c. 923).

This was already granted from June 26, 1911 (cf. *Per.*, VI, p. 8).

Those faithful who, for the sake of striving for perfection, or because of instruction or education or even health, live a common life in houses established with the consent of the Ordinaries, lacking a church or public chapel, satisfy the condition of visiting a church or non-determined public oratory by visiting the chapel of the house in which they can satisfy by law the obligation of hearing Mass; and likewise all persons dwelling there for ministering to them (c. 929).

Therefore this privilege does not have force concerning the indulgence of the Portiuncula, August 2, since then a definite church must be visited; nor in hospital houses erected by lay authority without the intervention or consent of the Ordinary, although the chapel itself has been erected by the authority of the Ordinary; nor does it profit those detained in prison, since the cause of common life is different.

Cardinals, archbishops, bishops, even titular ones, and their households enjoy a similar privilege in the proper chapels of Cardinals, archbishops, or bishops.

But the notion of a public oratory is to be taken from the Code itself; and observe that the formal reason of the Code is no longer taken from access from a public way, but from the fact that all the faithful have, at least during divine offices, the legitimately approved right of approaching it (c. 1188).

Moreover, he visits a church who enters it piously, or with the intention of worshipping God. Formal prayers are not necessary for this. Thus he who goes into a church to confess, to decorate an altar, visits it. If entrance itself cannot be made, either because the door is closed or the crowd prevents it, most hold that it is enough that someone place himself piously at the doors (St. Alph., VI, 538, q. 10). This is more certain when someone joins himself to a crowd which as a whole is judged morally present in the church.

But visits are not multiplied except by going out or departing and by a new approach to the church.

The daily plenary indulgence which, either for a time or as perpetual, is available to those visiting some church or public oratory signifies an indulgence which individual faithful can acquire only once in the year, but on any day (c. 923, §1). It is called daily for the living and dead insofar as it is applicable to the dead. Yet the Basilica of St. Peter has been enriched with a perpetual indulgence after the manner of the Portiuncula.

— Prayers prescribed in general must be at least in part vocal; but any prayers can be chosen.

A definitely prescribed prayer can be recited in any language, "provided the fidelity of the version is established by the declaration either of the Penitentiary, or of one of the Ordinaries of the place where the language into which the prayer is translated is vernacular" (c. 934, §1).

Under the old law, only the condition of fidelity was demanded as essential (Sacred Congregation of Indulgences, *Decr. auth.*, n. 415). Now the printed version must bear the testimony of the Sacred Penitentiary or of the competent Ordinary concerning the fidelity of the version. Yet we judge it enough that a manuscript version be faithful; for testimonies of this kind are not usually sought for such a version.

It is also enough to recite the prescribed prayer with a companion in alternate parts, or to follow it mentally while it is recited by another, for example an act of consecration (c. 934, §3).

But the mute gain indulgences annexed to public prayers if, together with the other faithful praying in the same place, they lift their mind and pious affections to God; but for private prayers it is enough that they recollect them in mind, or pour them forth by signs, or run through them with the eyes (c. 936).

And provision has also been made for the maimed, who cannot perform a bodily act sometimes prescribed together with recitation: it is enough that they pour forth prayers (from audience of His Holiness, October 22, 1917).

But any addition, subtraction, or interpolation takes away the indulgence (c. 934, §6).

This is understood quite severely. Thus the sung Litanies of the Blessed Virgin Mary in which the *Kyrie eleison* is recited only once, or in which individual *Ora pro nobis* do not respond to the individual titles enumerated, do not suffice for gaining indulgences (Sacred Penitentiary, July 21, 1919; *A. A. S.*, XII [1920], p. 18).

But what about the custom of inserting, in the middle of the Hail Mary, a brief statement of the mystery to be meditated?

The Sacred Penitentiary, having been privately asked by an orator whether this custom could or could not be preserved and propagated, while the indulgences of the Most Holy Rosary remained intact, responded negatively on July 27, 1920. But then on January 22, 1921, it declared that the indult of 1859 had in no way been revoked, by which Pius IX, for places where the custom had already prevailed, had granted that the faithful reciting the Rosary in such a way could gain its indulgences. And besides, with the Penitentiary itself supplicating, Pope Benedict XV extended the indult in such a way that it profits all who, in any places whatsoever, have been accustomed to recite the Most Holy Rosary according to that custom (*A. A. S.*, XIII [1921], p. 163).

But what, with the indult excluded, seems to have to be answered?

I think the matter must be defined from the mind of the one praying. He who, and this intention is to be presumed, wishes the Angelic Salutation itself to be whole and intact, and merely, after the middle part of the Angelic Salutation, to insert as it were a certain pause through which he recalls the mystery or part of the mystery, seems by this usage to generate no danger to the indulgences. Do they not, in the graver matter of Baptism, admit that Baptism conferred with these words has force: "I baptize you in the name of the Father and of the Son and of the Holy Spirit and of the Blessed Virgin," provided the one baptizing does not wish to number the Blessed Virgin together with the

Most Holy Trinity, but merely, after the form of the sacrament, to implore her aid so that she may as it were ratify the Baptism already conferred?

Observe also that the usage of naming the mystery after the word Jesus is to be traced back to Dominic of Prussia, Carthusian, who, at the beginning of the fifteenth century, first joined the mysteries to be meditated with the recitation of the Angelic Salutation, which at that time ended at the word Jesus (cf. Beringer-Steinen, I, 897).

The prayers to be recited are said by those who are at least contrite in heart, that is, who are in the state of grace and can obtain remission of punishments, because sufficient contrition has deleted the fault. The word at least excludes the necessity of recourse to the sacrament of Penance.

— The intention or mind of the Pontiff is the exaltation of the Holy Church, the extirpation of heresies, the propagation of the faith, the conversion of sinners, peace and concord among Christian princes. But it is enough that the one praying wish to offer prayers for the intention of the Supreme Pontiff or for gaining indulgences (Sacred Congregation of Indulgences, July 12, 1817).

But how much must one pray? The matter is not defined. Since the law does not demand except prayer (c. 934, §1), not a few judge that one Our Father suffices. Others object, however, that by so scant a prayer a defect of devotion is demonstrated, by which at least a plenary indulgence is impeded. It is plainly established that five Our Fathers and Hail Marys, or a prayer equivalent to this, suffice. Nor does it seem less certain that fewer prayers suffice if they are recited slowly and with great care[1] (cf. Beringer-Steinen, I, 130 ff.). Moreover any vocal prayer can be chosen, but only mental prayer does not suffice (c. 934, §1).

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[1] Today the most common opinion is, and it is sufficiently gathered from the cited decrees, that recitation of five Our Fathers and Hail Marys, or an equivalent prayer, suffices for fulfilling the condition of praying for the intention of the Supreme Pontiff, and also that a shorter one can be enough if it is discharged more devoutly and fervently (cf. St. Alph., l. 6, n. 538; Mocchegiani, *Coll. Indulg.*, 1897, n. 187).

— The general faculty of commuting the works enjoined into others for those who are prohibited from furnishing them by legitimate impediment is granted to confessors by canon 935. This commutation can be made even outside the tribunal of Penance by a confessor, that is, by a priest approved for confessions.

The things said seem to have force also concerning the indulgences of the Portiuncula.

Yet it is necessary that the object or cause of the indulgence be substantially preserved, with only the conditions changed. Thus use of a crucifix blessed for this purpose is substantial so that the Way of the Cross can be supplied; an indulgence granted because of frequent Communion necessarily supposes this Communion. But that which is annexed to feasts supposes only the feast.

Summary

— I. **Common conditions.** There is required: 1. a capable subject: every baptized man, not excommunicated, in the state of grace, unless perhaps he applies the indulgence to the dead, at least at the end of the prescribed works; a subject of the one granting. Yet in the territory of a bishop, of themselves all, even non-subjects, can gain episcopal indulgences;

2. at least a general intention, which several think is already contained in the profession of Christian life;
3. due execution of the enjoined works. Although others judge only the safer parts to be secure, Ballerini-Palmieri judge probable fulfillment of the conditions to suffice, since from the general canon the Church supplies defects.

II. **On prescribed works.** The work of itself cannot be one already owed from law or precept, except sacramental penance; it must be useful for the end intended by the one granting; it is to be furnished by the one gaining himself, as by at least the principal cause; and it must be fulfilled morally whole. By one and the same work, which can and is accustomed to be repeated, several indulgences cannot be acquired, unless something else is expressly provided. It does not matter in what order the works are done.

The prescribed confession is always usefully performed within the eight days which immediately precede the day to which the indulgence is annexed, or within its octave, as within the octave which immediately follows the completed triduan or septenary exercises. Nor, excepting an indulgence of jubilee or after the manner of a jubilee, is special confession demanded from those who are accustomed to confess at least twice in the month, or nearly daily to receive the Holy Eucharist with pious mind.

The prescribed Communion is always usefully made on the vigil of the day to which the indulgence is annexed or within its octave, as also within the octave which follows completed triduan or septenary or octavary exercises.

A visit to a church can be made from noon of the preceding day up to the midnight which closes the day to which the indulgence is affixed. Of itself the visit is to be made in a public oratory, but privileges and exceptions are had.

Prayers enjoined in general must in part be vocal. For the mute and the maimed special provision is made. If definite prayers are prescribed, any addition, subtraction, or interpolation takes away the indulgence.

The general faculty of commuting for the legitimately impeded the conditions of indulgences is granted to confessors.

III. **Cessation of indulgences.** A local indulgence ceases when the place has been destroyed. Yet it revives if the church within 50 years is built again in the same or almost the same place and under the same title. One granted to a group is extinguished with the group; but a moral person, after the members have died out, survives for one hundred years, and is judged to remain in one surviving member. Indulgences annexed to Rosaries or things cease if they altogether cease to be, or are sold, but not if they have passed to another gratuitously.

Chapter III: On Certain Indulgences in Particular

— **The papal blessing**, or the blessing which the Supreme Pontiff himself gives by himself or others give in his name, is according to itself a sacramental, to which often, yet not always, a plenary indulgence is connected.

> Therefore one who asks the faculty of conferring this blessing will opportunely add express mention of the indulgence. Yet whenever the blessing of the Pontiff is not merely sent, but is to be conferred according to the rite prescribed in the Ritual, the plenary indulgence is judged to be annexed.

The Code now in c. 914 grants that bishops, each in his own diocese, can impart the papal blessing with a plenary indulgence, according to the prescribed form of the Ritual, twice in the year: on the solemn day of Easter, and on another solemn feast-day, to be designated by themselves, even if they have not celebrated solemn Mass, but have only assisted at it; but Abbots or Prelates Nullius, Vicars and Apostolic Prefects, even if they lack episcopal dignity, can do this in their territories on only one of the more solemn days in the year (c. 914).

Those Regulars who enjoy a similar privilege, that is, of imparting this blessing outside missions or adjuncts of this kind, cannot use it except in their own churches and in churches of nuns or tertiaries legitimately aggregated to their Order, nor on the same day and place on which the bishop confers it (c. 915). By place understand city, town (cf. brief of Leo XIII, July 2, 1882). The formula for Regulars is found in the Ritual, tit. VIII, c. 32, and there the blessing is said to be given with the words: "May Almighty God bless you," etc.

> By this canon papal blessings are not touched which, for example, at the end of a mission are permitted to religious missionaries.
>
> Concerning these, the Sacred Congregation of Rites, May 11, 1911, gave this rite and formula: one sign of the cross with a crucifix, using the formula: "The blessing of Almighty God," etc. Yet it is also lawful to use the formula of the Ritual (Beringer-Steinen, I, 799; II, 506, 507).

— **Apostolic or Papal indulgences** are those which, according to the list customarily promulgated at the beginning of each Pontificate, are annexed to things blessed for that end by the Supreme Pontiff or by him who has received power. Among these is found the plenary indulgence at the article of death, on account of which those things are said to be blessed with the indulgence of "a good death." To gain the indulgences it suffices to possess those things either on one's own person or in one's own house, and before them to recite the prescribed prayers, even if it is a question of a rosary.

— **On the privileged altar.** This privilege, conjoined with an altar, is a plenary indulgence of more certain efficacy, inasmuch as, on the part of the celebrant, only the application of the Mass is required.

> With the exception of the Gregorian altar, other privileged altars seem to be traced back from the twelfth century. They seem first to have been granted by Paul III; but the greatest grantor was Gregory XIII (cf. Beringer-Steinen, *Die Ablasse*, I, n. 981).

> Most altars are privileged for the dead alone. Yet there are some which have expressly been declared privileged for the living and for the dead. Then also the disposed living person for whom you celebrate directly obtains the plenary indulgence.

The application cannot be made except to him for whom the Mass is celebrated. If it is celebrated for several, the indulgence is not divided among several, but profits one only.

> This last response concerns a privileged altar for the dead. And when asked whether or not the same would hold concerning the living, the Sacred Penitentiary judged that the solution of this question was to be awaited from the Holy Office. Yet we judge that the same must be said, because the nature of a plenary indulgence seems to be repugnant to division among several; one indulgence cannot profit several as plenary, nor can it of itself be divided into partial indulgences, since the reason of a partial indulgence is diverse (so also Beringer-Steinen, op. cit., I, 979). Moreover the indulgence of a privileged altar for the dead no longer demands that, on days on which it is lawful, you celebrate Mass with black appointments.

A local privilege is distinguished, which adheres to the altar: this must be fixed at least in the broad sense (cf. n. 344); and a personal privilege, which adheres to the person wherever he celebrates; or which also is granted for certain deceased persons: for example, of a Congregation.

On the day of the Commemoration of all the faithful departed, all Masses are privileged.

— The **Gregorian altar** is the privileged altar of St. Gregory which exists in the church on the Caelian Hill, and because of the liberation of the monk Justus it is judged to have been endowed by a peculiar title for divine acceptance. By this special efficacy, not by the value of many Masses, the Gregorian altar is equivalent to the Gregorian thirty, of which above, n. 304. That peculiar efficacy is to be attributed to the estimation made by the Church and to the intercession of St. Gregory (Sacred Congregation of Indulgences, March 15, 1884; cf. Beringer-Steinen, I, 675 ff.). There have also been granted privileged altars after the manner of the Gregorian; this is no longer granted after the response of the Holy Office, December 11-12, 1912, to VII (*A. A. S.*, V [1913], p. 33; Beringer-Steinen, I, 975 ff.).

To avoid imprudent inscriptions, c. 918 commands that nothing be inscribed on the designated altar except: "A privileged altar, perpetual or for a time, daily or not." Nor, under pretext of the privilege, can a greater alms be demanded for a Mass to be said there.

> Local Ordinaries and Major Superiors of exempt clerical religion can designate and declare one daily perpetual privileged altar, provided another is not had, in their cathedral, abbatial, collegiate, conventual, parochial, quasi-parochial churches, but not in public or semi-public oratories, unless they are united to a parochial church or subsidiary to it (c. 916).

— A plenary indulgence granted for feasts of the Lord or of the Blessed Virgin Mary is understood as granted for only the feasts of the universal calendar (c. 921, §1), while previously it was reserved for the principal feasts, and only partial indulgences were obtained on all feasts of the universal calendar; a plenary or partial indulgence assigned to feasts of the apostles is understood as granted for their natal feast (c. 928, §2).

When a feast has legitimately been transferred, the connected indulgences are transferred, if a perpetual transfer of the Office with the Mass is made; or if the solemnity and external celebration

are transferred, even for a time only. If these later conditions are lacking, the indulgence remains affixed to the day, even if it is Friday in Parasceve (Sacred Penitentiary, February 18, 1921; *A. A. S.*, XIII [1921], p. 165).

> This external celebration demands no indult, unless a Mass is desired with rites or according to a calendar not permitted. Connected indulgences are those which are joined either to feasts or to supplications which are performed before the feast, after the feast, and during its octave (c. 922).

— 1. Indulgences annexed to rosaries or things are no longer lost because, after the first possessor using them, another employs them to gain indulgences; but then only do they cease if the rosaries or things altogether cease to be or are sold (c. 926, §1).

> From a recent declaration, February 18, 1921, apostolic indulgences are now to be considered as merely real indulgences (*A. A. S.*, XIII [1921], p. 164). Therefore, contrary to what R. P. Fanfani wrote, *De indulgentiis*, pp. 55, 71, 96, one who has already used a blessed rosary to gain indulgences can efficaciously and licitly hand the same over to another, who himself will gain the indulgences annexed to the recitation. But to avert every appearance of simony, it had already often been declared that indulgences perish by a sale which is subsequent to the blessing (cf. resp. July 16, 1887). But nothing prevents the merchant himself from seeing to it that rosaries already sold be blessed; nor does the price not yet paid prevent it.
>
> The beads are blessed, but not the chain; therefore this can be changed while the indulgences remain intact; nor does it matter in what order the beads are replaced. Fanfani, pp. 75 and 95, seems to deny this[(1)].
>
> To gain the indulgences of the Most Holy Rosary of the Friars Preachers, it is not enough for someone to hold it in the hand, unless he also turns the rosary. Yet in common recitation, it suffices that one turn the rosary. But there are also indulgences connected with possession or carrying of rosaries[(2)]. Once possession has been transferred, however, only those indulgences pass which are annexed to possession or use of the things, not those which require inscription in a confraternity, if the new possessor is not enrolled.

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(1) "If the thread by which the grains are bound is broken and the grains are gathered together into a heap, the indulgences cease." So he himself, *De indulgentiis*, p. 95. Certainly, as long as the form of the rosary has been destroyed, the indulgences are suspended. But, when the rosary has been restored from the blessed beads, the indulgences are restored, just as when an altar or church has been repaired, the indulgences revive. R. P. Fanfani indeed alleges the *Acta S. S.* for the Society of the Most Holy Rosary, I, c. 5, n. 108, where these words are read: "If the thread is changed, the beads being confused without a thread, some hold that the blessing with the indulgences is lost. Nevertheless, according to the more common opinion, in this case the blessing with the indulgences is preserved, provided that from the same beads a rosary is made with a new thread."

(2) When it is a question of apostolic indulgences, it is all the same whether you have a rosary or a small statue or a medal, provided you carry with you the thing thus blessed, or before it say the prescribed prayers, for example, recite the rosary. Beringer-Steinen, op. cit., I, 849.

2. The matter from which things to be enriched with indulgences are made must be solid, which will not be broken by falling. Therefore the matter of compact glass is admitted, but not of blown glass. That a few non-blessed beads be substituted for others does not remove the indulgences; indeed they are judged by that accession to be blessed, so that without detriment to the indulgences all can be changed successively in this way.

— Indulgences indeed cease when the place or group to which they were annexed has been destroyed. Yet:

1. a moral person is not extinguished when its members have been extinguished, unless it has ceased for one hundred years; and it is judged to remain in one surviving member (c. 102);
2. nor do indulgences cease which have been granted to a church which, having been utterly overturned, is built again within fifty years in the same or almost the same place and under the same title (c. 924, §1).

Because the cause is favorable, we judge it enough that within fifty years the building has begun to be made.

This revival, before the Code, was admitted without limitation, and can still be admitted for an altar if, after destruction, a new one is built in the same place and under the same title.

— A **plenary indulgence at the article of death** is obtained under various titles: a) from the apostolic blessing, which now any priest assisting the sick can confer (c. 468, §2), to be given, under penalty of nullity, according to the formula of Benedict XIV (*Pia Mater*, April 4, 1747), inserted in the Ritual, to the sick who ask for it, or who likely would have asked for it, or who have at least given signs of contrition, but not to the excommunicated and impenitent; and it is to be given only once in the same illness, even if a right to it is had under several titles, or it has been received in the state of sin; b) on account of frequent invocation of the name of Jesus, frequent recitation of acts of faith, hope, charity; or of the prayer "Angel of God"; c) on account of acceptance of death according to the formula of Pius X[1]; d) on account of enrollment in many confraternities; e) on account of possession of a thing to which apostolic indulgences are annexed; f) on account of a personal concession from the Supreme Pontiff. He then desires the use of the Benedictine formula by the priest whom the sick man has asked for. Yet of itself in all cases b), c), d), e), f), no ministry or application is essential.

The conditions generally are that the sick person receive the sacraments, or if this cannot be done, be perfectly contrite, and especially that with a resigned mind he accept death from the hand of God, and with the mouth, if he can, otherwise with the heart, invoke the name of Jesus. Moreover the sick person must have with him the thing fortified with an apostolic indulgence, that is, not necessarily hanging from the neck, wrapped around the arm, or in the hand, but either in the bed or beside him, even if he does not remember that the thing is there[2].

This indulgence obtains its effect in the last instant of life. If the sick man recovers, it is deferred to the true article of death. But several titles of this indulgence effect this: that the sick man, more stirred up to the best acts, may be better disposed for gaining this indulgence once.

(1) This formula is: "O Lord my God, even now whatever kind of death it may be, as it shall have pleased You, with all its anxieties, punishments, and sorrows, I receive from Your hand with an equal and willing mind" (*A. S. S.*, XXXVI, 637).

(2) Even a healthy man gains apostolic indulgences if he keeps the thing with him or in his own room and fulfills the prescribed conditions.

— The indulgence called *totiens quotiens*, with which images of Christ crucified are furnished, signifies this: not only the possessor of the image, but any of the faithful whatsoever can gain the plenary indulgence who at the article of death have kissed it or touched it in any way, provided that, having confessed and been refreshed by Holy Communion, or, if they could not do this, being at least contrite, they have devoutly invoked the most holy name of Jesus with the mouth, if they could, otherwise with the heart, and have patiently received death from the hand of God as the wage of sin (cf. declaration of the Holy Office, June 11, 1904; *Periodica*, VIII, 204).

> They report, however, that a broader concession was sometimes made by Pius X, so that as many times as a kiss was fixed or the act was renewed, so many times a title of plenary indulgence was placed. It is clear that the later declaration did not derogate from the express signification of the Supreme Pontiff.

— To the exercise of the Way of the Cross are annexed all indulgences granted to those visiting the stations of Jerusalem. But how many and what they are is not known. Plenary indulgences, if there are any, can be acquired only once in the day; the others, when the exercise has been repeated, can of themselves be acquired even several times.

The indulgences adhere to the crosses, which must be wooden; with the indulgences preserved, they are transferred from one place to another of the same church. Nor does temporary removal harm; or the fact that a few crosses are substituted for blessed ones, as was said concerning the beads of a rosary (Sacred Congregation of Indulgences, August 22, 1842).

> For those performing the Way of the Cross privately or in common, there is required for the indulgences: a) local movement from one station to another. Yet in a public exercise, to avoid disturbance or because of excessive difficulty, it is enough that the priest alone with two clerics or singers go around the stations, and either he himself or another priest recite the prayers from an elevated place. And this method can be observed in chapels of lay Congregations in such a way that one of the Brothers or one of the Sisters goes around (Anal. Eccl., 1902, p. 250); b) some mental consideration of the Lord's Passion in general. Yet in a public exercise it is recommended that the customary prayers not be omitted; c) visitation of the stations made morally in one continuous course. Yet a brief interruption, for example of ten minutes, will not harm. Indeed neither will a greater one, if it was for performing another work of piety: confession, Communion, Mass.

— Prominent images of the divine Savior affixed to the cross are sometimes furnished by a competent priest with the indulgences of the Way of the Cross. They are blessed with the sign of the cross alone. Yet they do not supply for the Way of the Cross except for those impeded by illness, or by difficulty of going to a place where there are stations. And besides at least some remembrance of the Lord's Passion, it is required that in morally one continuous course twenty Our Fathers, Hail Marys, and

Glory Bes be recited: fourteen for the stations; five for the five wounds of Christ; one for the intention of the Supreme Pontiff (cf. *A. A. S.*, X [1918], p. 31).

— 1. **Scapulars**, omitting also the scapular of Tertiaries, which is a diminished religious garment of the Order, are of two kinds; some, the older ones, are a vestige of religious dress and a sign of some aggregation to a religious institute and enrollment in its confraternity; others are merely emblems of devotion toward the Sacred Heart, the Immaculate Virgin, St. Joseph.

Scapulars must be of woven wool; the ribbons or cords can be of any matter, except for the necessity of red wool for the scapular of the Passion. For this alone an image is required. The scapular of the Most Holy Trinity must bear a cross not sewn with a needle. One who wears several must wear them sufficiently distinct. It is preferable that the scapular of the Most Holy Trinity be put in the first place; last, the scapular of the Lord's Passion; that they not be sewn together except at the upper part, and that each immediately adhere to the cords. Only the first time they are used do they need blessing.

2. The imposition of the scapular of the Blessed Virgin Mary of Mount Carmel, of the Seven Sorrows, and of the Most Holy Trinity is necessarily joined with enrollment in the confraternity.

Not rarely there is granted the use of a formula for the simultaneous blessing and imposition of various scapulars, nor is the scapular of the Blessed Virgin Mary of Mount Carmel now excepted from that privilege.

3. After true scapulars have been imposed, not before, unless there is a special indult, in place of scapulars which are not of Tertiaries, with exception of dispensation (*Periodica*, XI, 81-83), metallic medals can be substituted, which on one side, the front, bear the image of our Most Holy Lord Jesus Christ showing His Most Sacred Heart; but on the reverse side, some likeness of the Blessed Virgin Mary. Moreover the medal must be carried decently on one's own person, not necessarily hanging from the neck. The medal must be furnished with as many distinct blessings, or signs of the cross, as there are scapulars it is destined to supply. One who can impose scapulars can bless medals to substitute for the same scapulars for which he is competent.

Yet, because in the decree *Cum sacri* of the Holy Office, December 16, 1910, he can do this only "with the limits, clauses, and conditions of the primitive faculty otherwise remaining firm," one who, as often happens, cannot impose a certain scapular in a place where there are religious to whom the imposition belongs of itself, will not be able in the same place to bless a medal for that scapular. But one who has obtained the blessing of medals by direct concession will have to attend to the clauses of the rescript (cf. *A. A. S.*, 1911, III, p. 22; Beringer-Steinen, *Die Ablasse*, I, 938). Direct concessions, however, are no longer made.

It has been granted to soldiers that privately, with invocation of the Blessed Virgin, they impose on themselves the duly blessed scapular of the Blessed Virgin Mary of Mount Carmel; indeed, that they directly assume a duly blessed medal, even if they have not yet been enrolled in the confraternity. By the very fact they have all the privileges and graces of those who have been duly enrolled in

confraternities of scapulars, or who have received the scapular in the customary form, provided that the medal has been blessed for that scapular. Cf. the indults, Pius X, January 4 and March 30, 1908; March 22, 1916; and Beringer-Steinen, loc. cit.

N. B. But a distinct faculty is required for commuting the works prescribed for the Sabbatine privilege, of prompt liberation from purgatory, of the scapular of Mount Carmel. Simple wearing of the scapular suffices for the other utilities of that scapular.

One who has not thrown aside scapulars formally out of contempt, but has merely neglected even for a long time to put them on, recovers the privileges by resuming the scapular or medal.

— The indulgence called **of the Portiuncula** is a plenary indulgence *totiens quotiens* for those visiting definite churches. The properly so called and older one is Franciscan, August 2. The Holy Office, by decree of May 26, 1911 (*Periodica*, VI, 57), gave us hope of a new ordering. Meanwhile the faculty given on June 9, 1911 to local Ordinaries of designating churches and at least semi-public oratories in which the indulgence might be available is extended to all respective Ordinaries. Yet communities which have a church joined to their buildings must visit this, not the domestic chapel (cf. *Periodica*, V, 159; VI, 56 f.).

> Several similar concessions afterward came, especially under the Pontiffs Leo XIII and Pius X, so that a plenary indulgence to be gained *totiens quotiens* is offered: for the feast of St. Francis of Paola, April 2, in churches of the Minims; for the feast of the Most Holy Trinity, in churches of the Order of the Most Holy Trinity, also of the Third Order and Confraternities; for the feast of the Most Holy Body of Christ, in churches of the Priests of the Most Holy Sacrament; for celebration of the month of the Most Sacred Heart, on the last Sunday of the month of June, in all churches, indeed in semi-public oratories of seminaries and of pious communities; for the solemn commemoration of the Blessed Virgin Mary of Mount Carmel, July 16, in churches of the Order of Carmelites and of Congregations of Tertiaries who join common life with simple vows; for the Dedication of the Basilica of the Portiuncula, August 2, in the places said above; for the feast of the Seven Sorrows of the Blessed Virgin Mary in the month of September, in churches of the Order of Servants of the Blessed Virgin Mary, also of the Third Order, or where the Confraternity of the Seven Sorrows has been canonically erected; for the solemnity of the Most Holy Rosary, in all churches where the confraternity of the Most Holy Rosary has been canonically erected; for which is required visitation of the altar itself or at least of the statue of the Blessed Virgin Mary, Queen of the Most Holy Rosary; for the Commemoration of All the Faithful Departed, by extension of the Benedictine Portiuncula, in all churches and oratories, even semi-public. Yet the Benedictine Portiuncula gives opportunity for gaining a personal indulgence, while the extended indulgence can profit the dead alone (cf. *Periodica*, III, p. 150 [or II and III, p. 334], V, p. [16], and VIII, p. 205).
>
> The Vatican Basilica enjoys the outstanding privilege of a daily indulgence after the manner of the Portiuncula.

— Probable fulfillment of the required condition, according to Suarez, Sanchez, and others, leaves the attainment of the indulgence uncertain; Ballerini-Palmieri, however, think that there is a general norm by which the Church, in practical matters, supplies defects which she can, if any have been committed from the use of a probable opinion (cf. *Opus theol.*, V, p. 778).

Treatise VI: On Extreme Unction

(cc. 937-947)

Utility. A priest, devoted to sacred ministries, must know well the rite, especially the essential rite. It is necessary that he be so instructed and persuaded concerning the utility and sweetness of this sacrament that, according to the repeated admonitions of the Supreme Pontiff, he procure and obtain the timely administration of the sacrament, far from being an accomplice of those who tolerate only too late that the sick be strengthened by this sacrament.

— *Appendix XIV belongs to this section.* **Historical.** Cf. Appendix XIV.

Chapter I: The Notion, Essence, and Ceremonies of Extreme Unction

— Extreme Unction is a sacrament instituted by Christ, "the consummative sacrament of the whole Christian life"[1], in which through sacred anointings under the prescribed words there is conferred on the sick perfect health of soul and also restoration of bodily health if this is more expedient (cf. St. Th., in 4 Sent., d. 23, q. 1, a. 2).

The proper grace of this sacrament is not usually proposed very distinctly. But if attention is given to the words of St. James, Catholic Epistle 5:15, where this sacrament is promulgated and commended[2]: "And the prayer of faith shall save the sick man, and the Lord shall raise him up[3], and if he be in sins, they shall be forgiven him"; to the doctrine of the Council of Trent, sess. XIV; to the form of the sacrament: "May the Lord forgive you whatever you have sinned"; it is sufficiently established that the special virtue of this sacrament looks chiefly to this: that, wiping away the remains of sin, it may relieve and strengthen the mind of the sick man; perfect the expiation of sins, insofar as is required; and thus dispose the Christian proximately for obtaining the blessed life of heaven, unless bodily health is more expedient for him. For the words "and if he be in sins, they shall be forgiven him" are to be understood primarily of the healing of wounds and the remission of debts which have been left after sin, since the other sacraments, Baptism and Penance, have been instituted directly unto the remission of faults; secondarily, however, they are to be received as concerning the removing of the faults themselves, both mortal and venial, in a disposed subject.

It can also be said that by the sacramental sign of oil, by which under the words "May He forgive whatever you have sinned" the sick person is anointed, this is signified: what soothing, healing, nourishing or strengthening oil is for bodily wounds, the same the oil of the sick works concerning the wounds of sin. It restores the sick person by the full extinction of sins (cf., besides Kern, *De Extrema Unctione*, C. Ruch, in Vacant, *Dictionnaire de theologie catholique*, article "Extreme Onction dans l'Ecriture sainte").

Distinctly, therefore, as effects of this sacrament we can number: 1. as the primary or principal effect, restoration of spiritual integrity, which brings with it confirmation of the weakened mind and extinction of punishments due for sins[4]; 2. as a secondary effect, not however merely accidental as in the sacraments of the living properly so called, remission of faults, both venial and mortal: of mortal faults indeed if a man can neither confess nor be contrite and is at least attrite; 3. as a conditional effect, health of the body "where it shall be expedient for the salvation of the soul"[5]. For illness itself is a consequence of sin. This effect, according to Trent, loc. cit., Extreme Unction sometimes works; and writers admonish that for this effect it is required that the matter not yet be naturally desperate (cf. Kern, S.J., *De Sacramento Extremae Unctionis*).

In Extreme Unction, the *res et sacramentum* is, according to C. Billot (*De sacramentis*, thesis VI), a certain consigning of the sick man into the hands of the merciful God, while R. P. de la Taille places it in the alleviation of bodily illness, "which, just as among the sacramental effects it is numbered in the first place by St. James, so also first of all it is designated by the rite of medicinal anointing, and this again is the demonstrative and efficacious symbol of the spiritual

healing by which there are destroyed in the soul the remains of sin, or of the illness of the soul contracted from sin and remaining even after sin has been forgiven."

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(1) Trent, sess. XIV, at the beginning, relates that it was so judged by the Fathers.

(2) Trent, sess. XIV, c. 1.

(3) The Greek *egerei* properly signifies "will raise up, will lift up."

(4) "That Extreme Unction has the virtue of wiping away every debt of temporal punishment has been proved through the whole of c. I of book II." So Kern, p. 189, in his excellent dogmatic treatise on Extreme Unction (cf. also p. 104, where he also alleges Suarez, in 3 p., d. 41, s. 1, n. 17).

(5) Trent, sess. XIV, c. 2.

— The remote matter of this sacrament is oil of olives blessed by a bishop or by a priest from a faculty of the Holy See (c. 949). And so that the validity may be certain, the oil must be blessed for Extreme Unction(1), although the oil of catechumens, or even chrism, can be used with probable validity. That oil is to be renewed yearly on the Lord's Supper, the old oil having been burned; yet it will be lawful to use the old until the new is obtained. But to neglect the renewal of the oil is held as grave fault (St. Alph., VI, 208). It will be lawful here also, when matter is lacking, to add a smaller quantity of non-blessed oil, which, by accession, is itself judged blessed.

The proximate matter is the anointing of certain parts of the body, that is, at least by necessity of precept, of the five senses, or, if they are mutilated, of neighboring parts. From the Code, c. 947, the anointing of the reins is now always to be omitted; but the anointing of the feet can be omitted for any reasonable cause. Even those blind from birth are to be anointed on the eyes or in a nearer place.

I say, at least by necessity of precept. For since neither the epistle of St. James nor the Council of Trent, sess. XIV, expressly mentions plurality of anointings, one single anointing which is done on one sense or on a principal part of the body seems essential to the sacrament. And now it is entirely established that in a case of necessity one anointing suffices "on one sense, or more correctly on the forehead, with the prescribed shorter form" (c. 947). Necessity can arise either from the imminent death of the sick person himself, or from danger of contagion, or from a physical obstacle to touching the accustomed places to be anointed. When there is opportunity, the anointing must then be made on the forehead itself. If, however, something prevents this, an anointing on one sense is also safely performed. Therefore the Code merely declares that the anointing is more correctly made on the forehead.

But it expressly commands in the same c. 947, §1, that the anointings "be accurately performed in the order and manner prescribed in the ritual books." Indeed, even in a case of necessity, there remains the obligation "of supplying the individual anointings, when the danger has ceased."

> This obligation is posited as absolute. It can reasonably be understood of a supplying which is morally united with the prior administration, and therefore is not too much separated from it. Taking an example from the received opinions concerning supplying one or the other consecration which has been invalid, Genicot-Salsmans (II, 417) think the obligation of supplying ceases after an hour. Yet a different opinion, adhering to the words of the Code, holds that the anointings are to be supplied as long as the same dangerous illness lasts, and is

defended by this further reason. Why are the omitted anointings to be supplied? So that a fuller effect may be obtained from the integral reception of the sacrament. This fuller effect does not seem, contrary to what Lehmkuhl, II, 718, 3, asserts, to be attributed to a better disposition of the subject stimulated by the repeated ceremony of anointings; for once the sacrament has been received, its operation ceases. Nor is one stimulated who is destitute of the senses. But, as Noldin, III, 431, explains, the sacrament itself is received more fully, that is, Extreme Unction, under this respect, is to be compared with the Eucharist, which indeed is received fully under one species, but more integrally under both, so that reception of the other species increases grace if it finds the subject better disposed. Thus "any anointing with its form completely and perfectly signifies the effect of the sacrament, and consequently also produces it" (Noldin, loc. cit.). Yet by new anointings the signification is repeated, and a new title of grace is placed, whether of the same grace, if the disposition has remained the same, or of a greater grace, if the subject is more perfectly disposed. But if things stand so, during the same illness the supplying of an omitted anointing can always be useful, and therefore seems to have to be done. A special efficacy for healing the sins which have been committed by individual senses named can also be admitted.

The words of the Code "when the danger has ceased" seem to be understood thus: when the imminent danger has ceased, by which regular administration was strictly or morally impeded. They cannot be understood of the danger of death being removed, since then Extreme Unction can no longer be administered. Therefore, if it were said "yet while the danger has not ceased," that would be understood equally well, indeed more easily.

The Sacred Congregation of the Holy Office wisely responded, March 9, 1917 (*Periodica*, VIII, p. 192), that those anointings are to be supplied absolutely, not conditionally. For conditional administration would suppose that the prior one had been doubtful, which cannot be admitted. Nor is Extreme Unction repeated, but it is perfected.

The anointing of a sense which previously had been impeded, or omitted through forgetfulness, or not well performed, is also to be supplied.

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(1) On the pyx the letter I is marked. In the Latin Church, the faculty is not granted to a priest.

— The manner of making the anointings is this. 1. Although the use of an instrument does not impede the validity of the sacrament, nevertheless, "outside the case of grave necessity, the anointings are to be made by the very hand of the minister and with no instrument used" (c. 943, §4). 2. It is not required that the oil flow, and it certainly suffices if you dip the tip of the finger in oil and anoint; indeed several think one drop suffices for anointing. So Palm., V, 851. 3. The parts to be anointed are the eyelids, the eyes being closed; the extremities of the ears; the extreme summit of the nose or both lateral wings of the nostrils; the mouth, the lips being compressed, or, if the mouth cannot be compressed, the lower or upper lip; the palms or hollow parts of the hands, yet in priests, in whom these have already been anointed elsewhere, the backs of the hands; the soles of the feet, or, according to the received custom, the tops of the feet. When a member is lacking, let the anointing be done on a neighboring part of the body (Roman Ritual); when one or the other of paired senses or organs is altogether lacking, let that one which is had be anointed. 4. "The minister, that is, the server, if he is in sacred orders, or the priest himself, after each anointing, is to wipe the anointed

places with a new ball of cotton or of a similar thing, and place it in a clean vessel, and afterward take it to the church, burn it, and throw the ashes into the sacrarium" (Roman Ritual, c. 2, n. 9).

— The voluntary omission of one anointing is judged grave; indeed, unless the paired parts can be touched only with greater difficulty, it now seems grave not to anoint one or the other of the paired parts. But inversion of the order must be called light, although several contend, but without argument, that it is grave (cf. Lehmk., II, 720; Noldin, III, 435).

— The ordinary form is this: "Through this holy anointing and His most loving mercy, may the Lord forgive you whatever through (sight, hearing, smell, taste and speech, touch, walking) you have sinned. Amen." The individual parts indicated within the parentheses are named, and at each one the words placed outside the parentheses are repeated.

The words "through this anointing," by which the sacramental action is indicated; "may the Lord forgive you," by which the effect of the sacrament is indicated in a general way, are essential.

The words *holy*, and *His most loving mercy*, are not essential, for these are sufficiently contained in the word *forgive*, nor is the word *Amen* essential.

> One who has not designated the special sense indeed omits nothing which is essential to the sacrament, but he seems to administer the sacrament as it were all at once. Therefore one who has anointed several senses, naming none, but repeating the form, seems as it were several times to repeat the sacrament. And if there is a special efficacy for extinguishing sins which have been committed through the individual senses, he deprives the sick person of that particular utility. Yet observe that the effect extends beyond the province of the individual senses, since not all instruments of sin are named, and the Church itself has now suppressed the designation of the reins.

The words *whatever you have sinned* must be called essential, so that they may complete the signification begun by the word *may He forgive*.

In a case of necessity, this shorter formula, indicated by the Holy Office, April 25, 1906, is sufficient: "Through this holy anointing may the Lord forgive you whatever you have sinned. Amen."

It would be grave outside necessity to omit the designation of the senses, or the words themselves: "and His most loving mercy," since these notably adulterate the prescribed form. The deprecative formula must also be used under grave obligation, which plainly corresponds to the place of St. James: "and the prayer of the Church shall raise up the sick man."

Yet they deny that this is essential from the institution of Christ, since formerly in the Latin Church an indicative formula was used, *He forgives*, and this does not prevent the intention of praying.

The voluntary distraction of the minister, although blameworthy, since it does not remove the prayer, does not take away the validity of the sacrament.

— 1. **Observation of ceremonies.** He sins gravely who, outside necessity, administers this sacrament without any sacred vestment, or who omits the prayers to be recited by the priest himself before and after Extreme Unction.

It would be venial to anoint otherwise than in the form of a cross; to anoint with a finger other than the thumb, without just cause; to omit the stole or surplice; to administer the sacrament without any

light, or alone, without a server.

Only by counsel are the penitential psalms, litanies, and other prayers to be recited by those standing by.

2. **Custody.** - "The parish priest shall diligently keep the oil of the sick in a clean and decently adorned place, in a silver or tin vessel" (c. 946).

It is forbidden to keep it at home "unless because of necessity or another reasonable cause, with the license of the Ordinary acceding" (c. 735).

A reasonable cause can be the distance by which the parish house is distant from the church. But custody in the tabernacle where the Most Holy Eucharist is kept is forbidden.

Summary

— I. Extreme Unction is a sacrament in which, through sacred anointings under the prescribed words, there is conferred on the sick perfect health of soul and also restoration of bodily health, if this is more expedient.

It operates directly toward removing the remains of sin. Therefore the primary effect is restoration of spiritual integrity; the secondary effect, remission of faults both venial and mortal: of mortal faults, if a man can neither confess nor be contrite; the conditional effect, health of the body, which is expedient. For illness itself is a consequence of sin.

II. The remote matter is oil of olives blessed by a bishop or, by faculty of the Holy See, by a priest, and, so that the validity may be certain, blessed for Extreme Unction. The annual renewal of the oil on the Lord's Supper cannot be neglected without grave fault.

The proximate matter is the anointing of certain parts of the body, that is, at least by precept, of the five senses. The anointing of the reins is now always omitted; the anointing of the feet can be omitted for any reasonable cause.

In a case of necessity, one anointing suffices, on one sense, or more correctly on the forehead, with the shorter formula. There then remains the obligation of supplying absolutely the individual anointings, when the urgent danger has ceased.

Manner. Outside grave necessity, the anointings must be made by hand. The eyelids are anointed; the extremities of the ears; the extreme summit of the nose or both lateral wings; the mouth, with the lips compressed, or if the mouth cannot be compressed, the lower or upper lip; the palms of the hands, or for priests the backs of the hands; the soles of the feet, or, as usage has it, the tops of the feet. It is not required that the oil flow. The assisting minister, if he is in sacred orders, otherwise the priest, wipes each of the anointed places with a new ball of cotton or similar thing.

The voluntary omission of one sense, indeed of one from paired senses if both can be touched without difficulty, but not inversion of order, is judged grave.

III. The form is: "Through this holy anointing and His most loving mercy may the Lord forgive you whatever through (sight, hearing, smell, taste and speech, touch, walking) you have sinned. Amen." The essential words are those under which a little line is drawn. In a case of necessity, from the decree of the Holy Office, April 25, 1906, it suffices to say the essential words, with Amen added.

The designation of the senses, the words "and His most loving mercy," and the deprecative formula are to be used under grave obligation.

IV. Ceremonies. 1. He would sin gravely who, without necessity, administers the sacrament without any sacred vestment; or who omits the prayers to be recited by the priest himself before and after Extreme Unction.

2. Without a reasonable cause approved by the Ordinary, the oil cannot be kept at home. Its custody in the tabernacle of the Most Holy Sacrament is forbidden.

Chapter II: On the Minister of Extreme Unction

— The minister of valid administration is every and only a priest (c. 938, §1).

The ordinary minister is the pastor of the place in which the sick person dwells. Yet a bishop is anointed by the dignity or canon of the cathedral chapter to whom it belongs (c. 397, 3). In every clerical religion, however, it is the right and office of the Superiors that by themselves or through another they administer Extreme Unction to the professed, novices, and others dwelling in the religious house day and night by reason of service, or education, or infirm health (c. 514, §1).

In a case of necessity, or by reasonably presumed license of the same pastor or local Ordinary, any other priest can administer this sacrament (c. 938, §2).

These words prove that the local Ordinary also has the right of administering Extreme Unction to those who lie sick in his territory.

— The ordinary minister must administer this sacrament by himself or through another from justice; and indeed under mortal obligation to those who ask for it, unless a just cause excuses. For with danger to life he is not bound to administer it to those for whom provision is made through the sacrament of Penance.

And the uncertain interior disposition of him who is destitute of the senses also effects this: that not even then is the obligation of conferring the sacrament with danger to life strictly demonstrated. But the ordinary minister sins gravely who delays administration with probable danger that the sick person may die without anointing, unless a just cause excuses.

In a case of necessity, any priest must administer this sacrament from charity (c. 939), and therefore according to the laws of charity. The obligation is not thought mortal unless the sick person is in very great need, because he can receive no other sacrament. A proportionate inconvenience will excuse from the obligation. Nor in extreme necessity does there seem to be an obligation of incurring danger to life, for the reason given; but zeal will counsel more.

Summary

— I. The minister of valid administration, and also of licit administration in necessity or from the reasonably presumed license of the ordinary minister, is every and only a priest. The ordinary minister is the pastor, and, in every clerical religion, the Superior for religious, novices, and servants, pupils, guests, and the sick dwelling day and night in the house. A bishop is anointed by a canon of the cathedral church.

II. The ordinary minister is bound from justice; others, according to the laws of charity, to administer the sacrament. It is not strictly to be administered with danger of death.

Chapter III: On the Subject of Extreme Unction

— "Extreme Unction cannot be given except to a faithful person who, after having obtained the use of reason, by reason of infirmity or old age is in danger of death" (c. 940, §1).

> Therefore there is required a baptized subject, possessed of the use of reason, in danger of death not because of an extrinsic cause of battle or capital sentence, but because of a cause intrinsic to the body from illness or old age. Moreover a wound and childbirth are assimilated to illness.
>
> The Greek word of the epistle of St. James, *asthenei*, designates a serious illness, by which someone is broken in strength. From the decree of Eugene IV for the Armenians, it can be given "to him concerning whose death there is fear." The Council of Trent, sess. XIV, c. 3, says only that it is especially to be conferred on those who are placed at the end of life. From the Ritual, it is to be given to those who "labor so gravely that danger of death seems imminent, and to those who fail by reason of old age and seem about to die day by day." Therefore they admit that a probable indication, or positive doubt concerning death to follow from this infirmity, suffices. And nothing compels us, as it were, to obtain the license of a physician.

If the danger itself is doubtful, as if it is doubted whether the sick person has attained the use of reason or whether he is dead, this sacrament is to be administered under condition.

— **Corollaries.** Therefore, from Fr. Kern, a) it is not even validly conferred in an illness which neither greatly afflicts a man nor is actually dangerous;

b) it is validly and licitly conferred in an illness which, although it lightly afflicts the sick person, is nevertheless joined with danger of imminent death; in a grave illness and one dangerous by its nature, although objectively there is no risk of life; in an illness which by its nature is dangerous and which at the same time gravely afflicts the sick person, although subjectively it does not yet seem to bring with it risk of life.

If the sick person is gravely afflicted by an illness whose nature is not yet established, he will be able to be anointed at least conditionally.

In an illness which brings a certain danger of death, but only remote danger, so that death is not indicated as to follow before several months, Extreme Unction is validly conferred. Liceity will depend on the adjuncts: on the opportunity which the sick person will have, or will not have, of receiving the sacrament, on the state of the illness, hope of fruit, etc.

On account of opinions not so long ago put forth concerning apparent death, the sacrament can be conferred conditionally, at least when an expert man is absent who can render us more certain concerning perfect death, within a half-hour from the moment at which, according to common judgment, death has followed; indeed within an hour, if someone has been affected by sudden death. Indeed R. P. Ferreres thinks that absolution and Extreme Unction can be conferred at least for a half-hour after an expert physician, after every inspection has been made, has declared the person dead.

At least illicit would be an administration made to a sick person consenting to a safe use of the knife, or operation, by which every danger from the illness which he now has will be removed.

> Those who are about to suffer the hands of a surgeon generally are already actually subject to an internal danger of death, so that even before the use of the knife they can be anointed. Yet if someone bodily healthy is about to undergo a dangerous use of the knife, for example for correcting a deformity, he cannot be anointed before the very use of the knife has induced a danger from an internal reason.

— To those who, impenitent in manifest mortal sin, contumaciously persevere, Extreme Unction is not to be conferred; but if this is doubtful, let it be conferred under condition (c. 942).

> Observe that the contumacy of one who is destitute of the senses is no longer established. In what way there is introduced here a condition which is not necessary for validity was explained above, n. 184. What if he who with doubtful disposition was anointed under condition afterward arrives at a better disposition? Let the sacrament be given again under the condition "if you have not yet been anointed," rather than under the condition "if you are capable." For, as will be said immediately, repeated administration is rather to be judged valid; and since repeated administration is forbidden, the condition "if you are capable," which does not exclude repetition, would not impede illicit administration.

— The sacrament is to be conferred absolutely on sick persons who, when they were in possession of their mind, asked for it at least implicitly, or likely would have asked for it, even if afterward they have lost sense or the use of reason (c. 943).

— "It is lawful for no one to neglect this sacrament; and with every care and diligence it must be seen to that the sick receive it while they are fully in possession of themselves" (c. 944).

> Yet a grave obligation of receiving this sacrament is not judged to be present of itself. Thus the probable opinion. Yet it would be grave to contemn this sacrament, or to neglect it with scandal of contempt of this kind.
>
> Moreover the abuse of delaying the sacrament until instant death, or until health is certainly despaired of, meanwhile deprives the sick person a) of the spiritual helps of this sacrament; b) of the effect of recovering health.
>
> Counsel. - One who has weighed the marvelous effects of this sacrament, how would he not desire for himself, even several times in life, that spiritual renewal which the holy oil works? Therefore we judge it most to be commended that it not be reserved for desperate sick persons alone, nor be for many a dreaded omen of certain death, but that it become the common sacrament of all who are afflicted by an illness dangerous by its nature. Our Most Holy Lord Pius XI calls it "a deadly error," by which it happens that, with detriment to the soul, the sick are not anointed with holy oil before, death being imminent, they have almost or altogether lost the senses. One who, when a probable indication of danger is present, "takes care that it be administered, not only follows the doctrine of Mother Church, but piously and salutarily fulfills her desires." Brief *Explorata res*, February 2, 1923, concerning the sodality of Our Lady of a good death (Tinchebray).

— So that he may receive this sacrament with fruit, the sick person who is conscious of mortal sin must either confess before he is anointed, or be contrite if he can. Therefore judged contrition suffices; indeed a later attempt of contrition suffices, if opportunity for confession is not had, provided attrition is had.

— "In the same infirmity this sacrament cannot be repeated, unless the sick person, after receiving the anointing, has recovered, and has fallen into another risk of life" (c. 940).

Therefore the sacrament is licitly repeated in a twofold case: a) in a different illness; b) in the same illness but in a new danger of death, as if the sick person has imperfectly recovered and then again is brought into risk.

> Formerly it was conferred on several successive days, so that the forbidden repetition is to be referred to more recent discipline, unless nevertheless those successive anointings can be held as one integral administration. Therefore repetition of this sacrament in the same danger, although gravely prohibited, nevertheless does not seem invalid.

Summary

— I. The subject of Extreme Unction is a baptized man, possessed of the use of reason, who, because of a cause intrinsic to the body, from illness, to which a wound or childbirth is assimilated, or from old age, is in danger of death.

In doubt concerning the danger, concerning life, concerning the use of reason, let it be administered conditionally. To him who perseveres in manifest impenitence, which a man destitute of the senses is not, Extreme Unction is not to be conferred. If this is doubtful, let it be conferred under condition. The sacrament is conferred absolutely on sick persons who, while possessed of sense, would have asked for it.

It must be seen to that the sick receive it while they are fully in possession of themselves.

A grave obligation of receiving it is not proved.

It cannot be repeated in the same infirmity. Yet if the sick person has sufficiently recovered and has fallen into a new risk of life, it can be administered anew.

Treatise VII: On Order

(cc. 948-1011)

Utility. - These things commonly come into use chiefly for priests: that they may possess a right account of priestly vocation; that they may know accurately with what documents and letters those to be ordained must be furnished; that they may not be ignorant of the things which impede the exercise of order; and, by the help of certain rules, that they may forestall and calm scruples concerning valid ordination.

Chapter I: General Notions

— *Appendix XV belongs to this section.* **Historical.** Cf. Appendix XV.

— **Ordination**, which was taken for the creation of magistrates, in the Church designates the creation of sacred ministers. Hence c. 948, which deliberately abstains from the word *sacrament of order*, has: "Order, from the institution of Christ, distinguishes clerics from laics in the Church for the rule of the faithful and the ministry of divine worship." This canon is to be compared with c. 107 concerning the divine origin of the distinction of clerics from laics.

But the sacrament of Order is the sacrament by which, through a sacred rite used by a competent minister, spiritual power is conferred together with grace for worthily undertaking the sacred offices. The power chiefly regards the sacraments, or those things which are referred to the sacraments, as chrism, oil of the sick, etc. With this power is connected the power, at least radical, of preaching the word of God, of ruling the people of God, of blessing.

Order taken actively is the same as ordination, and designates the action by which that spiritual power is conferred; but passively, it designates the effect of that action, or the aptitude conferred. It can also signify the collection of persons who have been endowed with sacred power, or the ecclesiastical hierarchy.

This sacrament is a certain potential whole, so that several parts can exist separately and be conferred separately, which are had together by him who possesses the fullness of order.

— In the Latin Church there are now distinguished three major or sacred orders: subdiaconate, diaconate, presbyterate or priesthood, which is twofold: lesser or incomplete, and greater, which is the episcopate; and four minor orders: porter, lector, exorcist, acolyte.

> Are the minor Orders a sacrament? Most today deny this, relying chiefly on historical reasons, by which they show that these orders did not exist before the third century, have varied in number, and are not now the same in the Latin and Greek Church. Yet those grave arguments are not strictly apodictic, if you consider that the sacrament of order was instituted by Christ as a potential whole, and that it is not repugnant to that institution that the Church could have distinguished new grades to which a partial power contained in a greater grade would be committed. Therefore the opinion of St. Th., in 4 Sent., d. 24, q. 1, art. 2, q. 2, or Suppl., q. 35, a. 2, and of most scholastics, who admitted the nature of a sacrament to be present in all orders, can be defended (cf. Ballerini-Palmieri, V, n. 886; Noldin, III, 452; Bucceroni, III, 880).

It is established, however, that the diaconate, presbyterate, and episcopate are sacraments, from Trent itself, sess. XXIII, cap. 3 and can. 6: "If anyone shall say that in the Catholic Church there is not a hierarchy instituted by divine ordination, which consists of bishops, presbyters, and ministers, let him be anathema." These ministers at least are deacons.

Moreover the episcopate is a sacrament so distinct from the simple presbyterate that not only do inferior priests lack the power conferred through episcopal consecration, but also, at least according to several, the episcopate does not contain the simple presbyterate, and, if priestly ordination has been passed over, it would be conferred invalidly; while, on the contrary, the ordination is valid of a

deacon who has received no inferior order, and the ordination is valid of a priest who has not previously been ordained deacon. Although the Church most gravely prohibits ordinations "by leap" and commands that omitted formal ordinations be supplied.

— But first tonsure, since it confers no power, is not a sacrament, but an initiation into the clerical state, by which clerics are distinguished from laics. Yet the Church, in its conferral, wills that the norms concerning conferring sacraments be observed; and therefore the words "to ordain, order, ordination" include, besides episcopal consecration, all orders and first tonsure itself, "unless something else is drawn from the nature of the matter or the context of the words" (c. 950).

— Certain orders are called sacred, either because of the annexed vow of chastity, or because of the power given over consecrated things. The same are called major, because they approach more closely to the sacrifice itself, or rendered men fit for undertaking the greater offices. I say rendered, because no longer, after the Code, can a subdeacon or deacon be co-opted among bishops.

— But the sacrament of order imprints a character. Therefore it can neither be lost nor repeated. This, at least from ecclesiastical institution, also holds concerning minor orders and first tonsure.

— First tonsure is conferred by this essential rite: that the bishop or competent prelate cuts the extremities of the hairs, and he who is tonsured says: "The Lord is the portion of my inheritance and of my chalice; You are He who will restore my inheritance to me." The omitted handing over of the surplice is neither essential nor seems to have to be supplied. Nor for validity is it required that the one conferring tonsure himself pronounce the words before him who is tonsured, although the custom of pronouncing them thus is said to be observed. Is tonsure validly conferred if the bishop, in place of true hairs, cuts the hairs or locks of a false wig? The matter is not established. Therefore, if one's own hairs are altogether lacking, it will be safer to have recourse to the Holy See (cf. Gasparri, n. 1011).

Minor ordinations and the subdiaconate consist essentially in a certain handing over, as proximate matter, and in the words of the bishop or ordaining minister then pronounced, as form.

To the porter are handed the keys of the church. It is not essential that the porter close and open the door, or strike the bell. For validity it is enough that one key be handed over, although the rubric commanding that keys be handed over is to be observed; and they can be silver, iron, or wooden, provided they are apt for opening (Sacred Congregation de Propaganda Fide, March 11, 1810, *Collectanea P. F.*, ed. 1, n. 1189); and any keys suffice (Sacred Congregation of Propaganda Fide, March 13, 1844).

To the lector is handed the book of readings, or the codex from which they are to read, that is, either a Missal, or Breviary, or volume of Sacred Scripture.

To the exorcist is handed the book in which the exorcisms are written, but in its place the Pontifical or Missal can be handed over.

To the acolyte are handed a) the candlestick, for which there cannot be taken the instrument with candle which the bishop is accustomed to use at the book; b) the cruets or empty ampullae, or at least one. And they commonly hold that the handing over of each instrument is essential. One or the other which has been omitted or doubtfully placed will have to be supplied absolutely or under condition, with nothing else repeated.

— To the subdeacon: a) there is handed an empty chalice with an empty paten placed over it. Neither the handing over of cruets nor the imposition of vestments is essential; indeed these rites do not seem necessarily to have to be supplied if they have been passed over. That the chalice and paten are handed over empty or with wine and host, this matters nothing for validity; but that they are handed over unconsecrated gives place to a certain controversy. Some object that by the handing over of a non-sacred thing sacred power is not signified (so St. Alph., VI, 747); others answer that the signification is already had from the material form itself. And this seems more probable to us. Nor is that consecration, concerning which the Pontifical is silent, more necessary for the symbolic rite than it is necessary that the keys of the church itself be handed to the porter; b) the book of Epistles or Missal is also handed over. Several think that this also is now essential.

Therefore if one or the other handing over has been omitted, let it be supplied absolutely or under condition, according as the omission was certain or only doubtful. If neither was done, the ordination itself will have to be repeated absolutely or conditionally.

But all these handings over are received by those to be ordained by touch of the right hand, which they will to be physical, so that if physical contact has been lacking, the handing over is to be supplied at least conditionally.

The step which, although not necessary, expresses the solemn vow of chastity can usefully be made by all who are not bound by such a vow. Yet by those who are held by a perpetual vow, even a simple one, it is customarily omitted.

— A deacon, according to the more probable opinion, is ordained by imposition of the hand with the eucharistic prayer or Preface, into which, not from the beginning, these words are inserted: "Receive the Holy Spirit for strength and for resisting the devil and his temptations: in the name of the Lord."

Yet for the sake of security there cannot be omitted the physical handing over of the book of Gospels or Missal, with the formula: "Receive the power of reading the Gospel in the Church of God, both for the living and for the dead, in the name of the Lord. Amen."

> Unless there were that power of the Church of more defining the matter and form of sacraments instituted by Christ, it would have to be held as established that by this hand-imposition alone with the joined Preface the essential ordination is completed. And the same would have to be said concerning the presbyterate. For it is established, and recently His Eminence Cardinal Van Rossum has luminously demonstrated by his learned work, that through many centuries there was no handing over of instruments in the Latin Church, just as neither is any had now in the Greek Church. Yet the Church seems able to determine the essential rite. Now the opinion of St. Thomas and of the scholastics, Eugene IV in the decree for the Armenians, and the Roman Pontifical itself, in which, even after the Preface has been recited, those to whom the vestments are to be imposed and the book of the Gospel handed over are called those to be ordained, not yet ordained, prove that in the Latin Church a common persuasion concerning the necessity of that handing over prevailed. This common persuasion at least probably demonstrates, from custom itself, the will of the Church of having that handing over as essential. Therefore we do not doubt concerning the power of the Supreme Pontiff to suppress that necessity; but until he has done this, the handing over of instruments in the ordination of deacon and priest cannot safely be omitted.

Therefore practically: 1. if the imposition of the hand has been passed over, it alone is to be supplied with its words (c. 3, *De Sacramentis non iterandis*, I, 16). These words seem to be the whole Preface, rather than the brief formula: "Receive the Holy Spirit" (cf. Gasparri, *De sacra ordinatione*, II, 1050); 2. if the handing over of the book of Gospels with the relevant form has been omitted, this also will have to be supplied; 3. if both have been omitted, the whole ordination will have to be restored. Yet observe that the words "Receive the Holy Spirit" seem less essential than the rest of the Preface. Yet if they have been passed over, the matter cannot be neglected without authority of the Holy See.

The other prayers and the imposition of vestments are not at all essential; indeed, if perhaps passed over, they do not even seem to have to be supplied.

— In the ordination of a priest[(1)], we observe a threefold imposition of hands and the handing over of instruments. First, the bishop in silence imposes both hands upon the head of the one to be ordained, which, after him, other priests perform, if any are present; for this is not essential. This having been done, another succeeds, unless you prefer to say that the first is continued in another way. That is, the bishop and the priests present extend their right hands over those to be ordained, while the bishop says: "Let us pray," etc. This prayer, which is rather an invitation to praying, is followed both by a true prayer directed to God, "Hear us," and by the Preface or eucharistic prayer. In this, besides other things, these words are said: "Grant, we beseech You, almighty Father, to these Your servants the dignity of the presbyterate; renew in their inward parts the spirit of holiness, that they may obtain from You, O God, the office of second merit." The third imposition of hands is made at the end of Mass, before the Postcommunion, by which the bishop imposes both hands upon the head of each, saying: "Receive the Holy Spirit; whose sins you shall forgive, they are forgiven them, and whose sins you shall retain, they are retained."

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(1) Cf. ancient documents, for example in Appendix V, at the end of the work *De sacra ordinatione*, C. Gasparri.

In the Greek Church, ordination consists in the imposition of hands alone under the due form. But in the Latin Church, somewhat after the second imposition of hands, the vestments are put on, the hands are anointed; and there is handed to each one the chalice with wine, over which is placed the paten with a host, and the bishop says: "Receive the power of offering sacrifice to God, and of celebrating Masses both for the living and for the dead, in the name of the Lord." And in the Pontifical, not before, but already then they are called ordained.

Concerning the essential matter and form of this ordination, it seems that it must be said thus. Theoretically, that rite is to be held as essential by which the bishop, in the manner which the Church has determined, clearly signifies the communication of priestly power.

> For a long time, this rite was, after the exhortation to pray, the extension of the hand over the head of the one to be ordained with a prayer in which grace was implored over him whom the Church was dedicating with the honor of the presbyterate (cf. Duchesne, *Origines*, 5, pp. 390, 391). Through the first nine centuries, the imposition of hands alone was used. Then the scholastics, with St. Thomas, considered the blessing, the imposition of hands, through which they recognized that the fullness of grace was given, and the anointing of hands, as a preparation for the formal conferral of power, which they thought was made through the handing over of the chalice with the words: "Receive the power of offering sacrifice to God,"

etc., in which giving of the chalice the character would be imprinted (cf. St. Th., in IV Sent., d. 24, q. 2, art. 3, c.). To this doctrine the Pontifical seems to have been accommodated. Hence in the decree for the Armenians, which decree is a practical instruction, yet of greatest authority, it is said: "the presbyterate is handed down through the presentation of the chalice with wine and the paten with bread... The form of the priesthood is such: Receive the power of offering sacrifice in the Church for the living and the dead in the name of the Father and of the Son and of the Holy Spirit." Benedict XIV, *De syn.*, l. 8, c. 10, n. 8, judged that this must be interpreted concerning an integrating and accessory form. Today authors incline more and more toward these parts, so that theoretically they hold the imposition of hands alone with the prayer *Exaudi nos quaesumus* and the following Preface as essential. Yet in the Preface itself there are several things which cannot be held as essential, since several are related historically. But the last part of the Preface, from the words "Grant, we beseech You, almighty Father," is clearly principal. The Holy See has abstained from a doctrinal definition. Practically, however, it responds as if both the imposition of hands and the extension of the hand with the following prayer, and also the handing over of the chalice with its form, were essential, and the power of absolving were given through the last imposition of hands with the words *Receive the Holy Spirit*, etc. Hence there are especially two opposed opinions. The first holds that every priestly power is communicated together from the beginning, and that afterward it is more clearly explained what has been conferred; the other, on the contrary, holds that from the beginning the conferral of power is prepared, which is made formally either together, in the handing over of the chalice with the words joined to it, or through two successive parts, in the handing over of the chalice, and in the last imposition of hands under the words then to be pronounced.

Theologians agree, however, that the safer parts must be followed, and that nothing is safe except what the Holy See has declared to be such.

— What things in the imposition of hands itself and in the handing over of the chalice must practically be held as essential is to be defined more precisely.

1. **Concerning the imposition of hands:**

a) it is established that priests have been made before the third imposition of hands, for they concelebrate with the bishop. Some doubt only is had concerning the necessity of the third imposition for giving the power of absolving. Therefore the ordained man who has not received this will be able safely to celebrate Masses, but not sacramentally to absolve, before this ceremony has been supplied by a bishop in another sacrifice; and indeed absolutely, if it certainly was omitted, but conditionally, if it probably, even with slight probability, was neglected or badly performed;

b) by extending the hand, the Ordaining minister continues the imposition of hands previously made in silence. So Benedict XIV, *De syn.*, l. 8, c. 10, n. 4, and after him authors. Therefore for a long time the first imposition of hands was considered as an integrating but non-essential part, which it was enough to supply afterward.

This, by the obvious sense of the words, Gregory IX also teaches, in c. 3, *De sacramentis non iterandis* (I, 16). Yet there are those who remain in doubt whether there is question there of the first or of the third imposition of hands. Yet departing from that usage of merely supplying the

first imposition of hands, which Gasparri, *De ord.*, II, 1080, and Palm., V, n. 910, for example, attest, on July 4, 1900, the Holy Office judged that the whole ordination must be repeated under condition, because the first imposition of hands had been made without physical contact.

It was also said that either imposition of hands suffices for validity. And Gasparri, II, 1081, reports a response of the Holy Office, September 16, 1877, by which it had declared that acquiescence should be made, that is, nothing should be supplied, after an ordination in which only the second imposition had been passed over. But more recently, July 19, 1899, the Holy Office ordered that the ordination be repeated entirely under condition, in which the first imposition of hands had been made, because it was not established "at least for a moment, concerning the extension of hands over those to be ordained" (*Anal. eccl.*, VII, 340).

Physical contact, however, is necessary in the first and third imposition. Yet mediate contact suffices. Thus, January 22, 1890, the Holy Office responded that physical contact had not been lacking in an ordination in which the bishop, in the first imposition, had physically touched the skullcap of the one to be ordained and not the head (*An. eccl.*, V, 144).

But what if the first imposition of hands is supplied not after the ceremonies of ordination have been completed, but in the ordination itself, even after the Preface or handing over of instruments but before the Canon of the Mass, without any repetition of words? We think this suffices for validity. For this imposition is to be made without a form of words; but the words pronounced before are joined with the extension of the hand, and, being made during the ordination, it is morally united with the whole rite. So also Palmieri, V, 892, would say. Yet an authentic declaration is desired.

C. Gasparri, II, 1982, thinks that it is enough that, if it has been omitted, the first imposition of hands be repeated with the subsequent extension of hands and with the words passed over, if the invitation *Oremus* or the prayer *Exaudi nos* had been omitted. We think that the whole ordination must be repeated under condition, unless the error is corrected before the Canon.

There seems to be no reason why we should call the exhortation to pray, "Let us pray, dearest brethren," by which the right hands are extended over those to be ordained, essential. But the form consists in the following prayer and Preface. Nevertheless, if the words "Let us pray," etc., have been omitted, the Holy See will have to be approached. The form of the third imposition is certainly contained in the words: "Receive the Holy Spirit; whose sins you shall forgive," etc.

But whether the words have been omitted, or have been substantially corrupted, the Sacred Congregation of the Holy Office, May 27, 1840, prescribed only the conditional supplying of the third imposition and form, because the bishop had said: "Whose sins you shall forgive are retained" (Gasparri, II, 1085).

2. **Concerning the handing over of instruments:**

a) if the chalice is handed over empty of wine, or the paten without a host, the whole ordination must be repeated under condition (cf. Holy Office, July 6, 1898; January 11, 1899, *An. eccl.*, VI, 338; VII, 145). But that the mixture of water has been omitted does not affect the essence, since that mixture is not necessary for the consecration of the wine itself. Indeed Lehmk., II, 742, reports that it

was answered that one could safely acquiesce, when certainly a greater quantity of water had been poured into the wine. But because the chalice with wine and the paten with host constitute one certain thing, for validity it suffices that the candidate has touched either. Thus the Sacred Congregation of Rites, December 3, 1661, pacified a priest who had not touched the chalice (*Decr. auth.*, n. 1921); thus the Holy Office, June 22, 1892, ordered that an ordinand acquiesce who certainly had touched the host, but positively doubted about the touch of the paten (*An. eccl.*, V, 144); and on March 17, 1897 another who had touched the paten and host but not the chalice (*An. eccl.*, V, 203). But if he has touched only the paten and not the host and chalice with wine, or only the host but not the paten and chalice with wine, it will be safer to ask the Sacred Congregation of the Sacraments or the Holy Office, or to repeat the entire ordination under condition (Gasparri, II, 1085).

It is also established that it is enough that the contact be morally joined with the form.

Therefore the Holy Office, March 17, 1897, willed that a priest be secure who had touched the instruments before the bishop pronounced the words, but not during those words (*An. eccl.*, V, 144).

— Neither the anointing of the hands nor the handing over of vestments is essential. Yet the anointing will have to be supplied afterward, with the other ceremonies omitted. Cf. c. un., *De Sacra unctione* (I, 15).

It is not established that the imposition of vestments must be supplied.

Much less is it established that concelebration must be supplied, although some hold this. But it is established that other things are not to be supplied (cf. Gasparri, II, n. 1086; Lehmk., II, 743; Palm., V, 910). Gasparri, loc. cit., would rather wish that the promise of obedience be supplied.

Of all religious who are not exempt, the bishop truly is the High Priest. Nor do they have a prelate properly so called except exempt clerical religious. Therefore the promise of obedience at the end of ordination seems to have to be made by all others to the Ordinary Bishop.

Concerning concelebration, it was treated above, nn. 287 and 318 (cf. also Benedict XIV, *De sacrificio missae*, III, 16, n. 7).

— Episcopal consecration is essentially contained in the imposition of hands with the Preface or eucharistic prayer, or with the relative words: "Receive the Holy Spirit." The imposition of the open book of the Gospels over the neck and shoulders of the one to be consecrated, which is done in silence from the beginning of the sacred rite, is certainly not of divine institution, and seems to be merely a sacramental. Yet we do not yet have an authentic response, so that safely we could have this as accidental (cf. Gasparri, II, 1115). The other things are not essential. But from c. un., *De sacra unctione* (I, 15), Innocent III defined that an omitted anointing, whether of the head or of the hands, is to be supplied by a bishop, with two bishops assisting, without any other repetition of the consecration.

— **General norms concerning correcting or supplying defects.**

1. In ordinations whose special rite is certainly of ecclesiastical institution, or, as others say, which certainly are not sacraments, a rite probably valid becomes certainly valid, since the Church can and is accustomed to supply defects of this kind, or at least practically to permit that, with the inferior grade omitted, one ascend to a higher one. Yet authors circumscribe this

rule to the four minor orders, since some, who nevertheless remove the reason of sacrament from minor orders, have wished to place the subdiaconate among the sacraments. Nor is this rule to be followed practically when a truly grave reason suggests nullity.

2. It is also established, in every ordination, that a rite which is certainly of ecclesiastical institution does not pertain to the essence beyond the will of the Church or of the supreme Pastor (Lehmk., II, 743). Therefore the Church could be content with probable observation of that rite. Yet hitherto it has by no means done this. Therefore it has not rarely commanded conditional repetition of ordination on account of a probable defect of such a rite. Thus, with this distinction omitted, it must be said as follows:

3. a) a defect which certainly has been committed in a rite certainly essential obliges to the whole ordination being repeated absolutely;

b) but an ordination which probably, by probability of fact or of law, is affected by a substantial defect is to be repeated under condition.

If, however, the omitted rite already supposes certain power conferred through another rite, as is the handing over of the book of Gospels in the ordination of a deacon, or the third imposition of hands in the ordination of a priest, then it is enough to supply what was omitted.

The same suffices if the omitted rite can be judged to be merely an integrating part of the rite which was used. And they were bringing forward as an example the first imposition of hands in the ordination of a priest (cf. Palm., V, 910). But this has now come into controversy, as we have seen.

And when it is a question of the power of an inferior grade which is certainly contained in the superior, the obligation of receiving the order again conditionally will not be present without a truly grave reason, at least in him who has received the superior order;

c) the rite itself certainly accidental, if it has been passed over in a grave matter, as is the anointing of the hands of a priest, is to be supplied, but without the ordination being repeated. If in a light matter, nothing is to be done.

It is also clear that he sins gravely who knowingly neglects a notable ceremony.

4. It is not required that the same bishop supply who committed the defect, since, as is clear in Extreme Unction, partial matters and forms of one sacrament can of themselves be administered by several.

5. When an essential rite is to be supplied absolutely, the time of ordination is of itself to be awaited. But the Sacred Congregation will dispense so that the ordination be repeated secretly and at another time.

But if, on account of doubt, an Order is repeated under condition, probably it can be repeated on any day and by any bishop; and on the same day both major and minor orders can be conferred together, with only those solemnities used which are certainly or probably necessary for validity (St. Alph., VI, 759).

Summary

— I. Ordination designates the creation of sacred ministers.

Order, actively, is the same as ordination; passively, it designates the conferred power; collectively, the ecclesiastical hierarchy itself.

The sacrament of Order is the sacrament by which, through a sacred rite used by a competent minister, spiritual power is conferred together with grace for worthily undertaking sacred ministries.

This sacrament is a potential whole: the parts which are had together by him who possesses the fullness of order can be conferred separately. Yet it is doubted whether the episcopate can be validly conferred without formal presbyterate. And ordination by leap is so prohibited that the omitted formal orders must always be supplied.

The three major and sacred orders: episcopate, presbyterate, and diaconate are sacraments. Are the minor orders and subdiaconate sacraments? The matter is controverted and rather denied.

First tonsure is mere initiation into the clerical state, in the conferral of which, however, the norms concerning conferring sacraments are to be observed.

II. **Essential rites.** A. **Generalities.** This can be said theoretically concerning all orders: that rite is to be held as essential by which the competent minister, in the manner which the Church has determined, clearly communicates spiritual power. Practically, no imposition of vestments pertains to the essential rite. Concerning the four minor orders at least they admit that a probably valid rite becomes certainly valid, because the Church can and is accustomed to supply defects of this kind, or practically permits that, with the inferior grade omitted, one ascend to the superior, if the ordination objectively was null.

B. **Concerning individual orders.** 1. **First tonsure.** The competent prelate cuts the extremity of the hairs, and he who is tonsured says: "The Lord is the portion of my inheritance and of my chalice; You are He who will restore my inheritance to me." If hairs are altogether lacking, recourse will have to be made to the Holy See.

2. **Minor ordinations and the subdiaconate.** A certain handing over is had as proximate matter and the pronouncement of words as form. Note that the handing over of an empty cruet is essential to the acolythate, but the handing over of full cruets is not essential to the subdiaconate. Physical touch is always required for security.

3. The deacon is more probably ordained by the imposition of the right hand with the eucharistic prayer or Preface, into which the formula taken more broadly is inserted: "Receive the Holy Spirit for strength," etc. For the sake of security, the handing over of the book of Gospels or Missal, with the formula "Receive," etc., cannot be omitted and is to be supplied.

4. In the presbyterate the essential rite is more probably contained in the second imposition or extension of the hand, which continues the first imposition of hands, made in silence, with the eucharistic prayer. The third imposition of the hand with its form, "Receive the Holy Spirit," etc., is certainly not essential. Practically, however, neither the first nor the second can be omitted. If the third has been lacking, it must be supplied before the priest hears confessions.

Besides this, the handing over of the full chalice with host, and with the formula, cannot be omitted in the Latin Church without necessity of repeating the ordination under condition.

III. **Rules for supplying defects.** 1. A defect certainly committed in an essential rite obliges to the whole ordination being repeated.

2. On account of a probably substantial defect, the whole order is repeated under condition.
3. Yet if the omitted rite already supposes certain power conferred through another rite, as the handing over of the book of Gospels to the deacon or the third imposition of hands in priestly ordination, it is enough to supply what was omitted.
4. The rite itself certainly accidental in a grave matter, as the anointing of the hands of a priest, is supplied without the ordination being repeated.
5. It is not required that the same one supply who committed the defect. Conditional repetition can probably be made on any day and by any bishop; this the Sacred Congregation easily permits also where the essential rite is to be supplied absolutely.

Chapter II: On the Minister of Sacred Ordination

— The minister of valid ordination is of itself a consecrated bishop. Yet common law, or by a peculiar indult the Apostolic See, can grant to one who is not a bishop the conferral of minor orders and of the subdiaconate. Whether a priest can be rendered capable of conferring the diaconate is disputed. In the Latin Church, the faculty is granted only to priests and as regards minor orders alone, for example, to blessed Abbots, Vicars and Apostolic Prefects.

Nor in the consecration of a bishop are three bishops required for validity, at least when the Apostolic good pleasure accedes.

— **The licit use of power.** 1. To no one, without faculty of the Apostolic See, is it lawful to promote one ordained by the Supreme Pontiff to a higher order; 2. no one can consecrate a bishop unless it is first established concerning the mandate of the Roman Pontiff, to whom this consecration is reserved (cc. 952; 953). And without apostolic dispensation, the consecrator must use two other bishops. In foreign missions, it is not rarely granted that the consecrator use two priests; 4. everyone is to be ordained by his proper bishop, or with his legitimate dimissorial letters. Yet the proper bishop, if Latin, cannot licitly ordain a subject of an oriental rite without apostolic indult. But, excluding a just cause, the proper bishop is himself to ordain his own subjects by himself (c. 955).

— **On the proper bishop.** 1. The proper bishop, as regards seculars, by today's law is only the bishop of the diocese, or the prelate of a quasi-diocese equivalent to him, in which the one to be promoted has domicile together with origin, or simple domicile with a sworn intention of remaining perpetually in the diocese.

Yet simple domicile suffices for a cleric who by first tonsure has already been incardinated into the diocese, or for a student to be promoted who is ordained for the service of another diocese, into which he is incardinated by the ordination itself, or who is destined for the service of another diocese in the future, with prior legitimate excardination and incardination; or for a professed religious to be promoted.

> The place of origin of a son is defined by the domicile, or, if this is lacking, by the quasi-domicile which the father, or if the son is illegitimate or posthumous, the mother, had when he was born. The place of origin for a son of vagi is the place of birth, and for an exposed child, the place of finding (c. 90. Cf. our *Epitome iuris canonici*, I, n. 164).
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> Domicile suffices for him who by first tonsure has already been incardinated into the diocese. But so that he may be legitimately incardinated in this way, or legitimately receive first tonsure, it is necessary that he have origin with domicile, or add an oath to domicile, or obtain tonsure for the service of another diocese from the bishop to whom he is subject at least by reason of domicile (cf. *Epitome iuris*, I, n. 187, and Ferreres II, n. 869, note 1, and resp. of the Pontifical Commission to the Cardinal Archbishop of Armagh, August 17, 1919, in *Irish Theol. Quarterly*, 1919, p. 391).
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> A bishop will also be able to ordain someone for the service of an alien diocese, and indeed without oath, whom he has as a subject only by reason of domicile, without origin; or a

professed religious who is legitimately dismissed to him, or who, if he is to be ordained after the manner of seculars, is judged to have domicile in that diocese by reason of the convent to which he is ascribed.

Therefore in seminaries for foreign missions it happens that a young man who, having perpetually abandoned the diocese of origin, has been able to acquire only quasi-domicile in the place of studies, has no proper bishop. For this difficulty, which was proposed to the Pontifical Commission for interpreting the Code, up to now no provision has been made except by dispensation of the Holy See.

2. He who can give dimissorial letters for receiving orders can also ordain the same orders by himself, if he has the necessary power of order.

Therefore not only a regular Abbot in office, if he is a priest and blessed, can from c. 964, 1, adorn with first tonsure and advance with minor orders candidates who, by force of profession at least simple, are subject to him; but any Superior who is a bishop, by right of c. 959, is permitted to ordain, not only with major orders, those religious to whom he can give dimissorial letters.

— 1. **Dimissorial letters** are letters by which a Bishop or competent Superior sends his subjects to an alien Bishop so that they may be ordained by him. These letters at the same time contain testimony concerning the qualities of those to be promoted, nor can they be given before the testimonies required by law have been had.

2. These letters for seculars, while jurisdiction lasts, are given, from c. 958: a) by the proper Bishop and quasi-diocesan Prelate, after possession has been obtained, but already before consecration; b) by the vicar general, yet from the special mandate of the bishop; c) by the capitular vicar, with the consent of the chapter, after a year from the vacant see; but within the year "to only those constrained by reason of a benefice received or to be received, or by reason of some certain office, for which, because of the necessity of the diocese, provision must be made without delay." Yet let the capitular vicar not give letters to those who had been rejected by the bishop.
3. But for exempt religious these same letters are given by the abbot of a monastery sui iuris and by the major Superior of an exempt religion.

But to professed members from temporary vows they can grant these letters only for first tonsure and minor orders (c. 964, 3).

4. For non-exempt religious, Superiors will not be able to give dimissorial letters without a peculiar indult or privilege, which is often granted, but which they can no longer use toward professed members of temporary vows except for tonsure and minor orders.

Yet those religious of themselves do not need these letters. For since they are not exempt, they have a proper bishop of domicile, by whom they will be able to be ordained without these letters. Their ordination, says c. 964, 4, is governed by the law of seculars, except for the necessity of the oath concerning which in c. 956.

And by a similar reason the bishop of domicile himself can advance professed Regulars from temporary vows to major orders by the law of seculars, if they have a title, for example of patrimony, and he himself is prepared to recognize them as of his clergy if they leave religion. Thus we know that in the year 1922 a Premonstratensian religious was ordained.

5. Dimissorial letters can be given by the proper bishop, even by a suburbicarian Cardinal, to any bishop having communion with the Apostolic See, except only, short of apostolic indult, to a bishop of a rite diverse from the rite of the one to be promoted; but by a religious Superior, unless there is a privilege, they cannot be sent except to the bishop, or quasi-bishop, of the diocese, or quasi-diocese, in which is situated the religious house to whose family the one to be ordained belongs (c. 965). And in c. 967 religious Superiors are warned not fraudulently against the diocesan bishop to send a subject to be ordained to another religious house, or deliberately to defer the concession of dimissorial letters to that time at which the bishop is going to be absent, or is going to have no ordinations at the next legitimate time. There it is a question of general ordinations to be had on the Saturdays indicated below, n. 730. For then, from c. 966, provided that this is established from an authentic testimony of the episcopal Curia, they are permitted to send letters to any other bishop of the rite of those to be promoted. This they can also do if the diocese is vacant and is not ruled by a man distinguished with episcopal character, or, unless we are mistaken, able to confer orders.

Summary

— I. The minister of valid ordination is of itself a bishop; from common law or indult, for minor orders, the subdiaconate, and perhaps for the diaconate, it is also a priest.

II. Apostolic faculty must be sought: for promoting one ordained by the Supreme Pontiff; for consecrating a bishop; for ordaining a subject of oriental rite, if the proper bishop is Latin.

III. Each person is to be ordained by his proper bishop or with his dimissorial letters.

The proper bishop of seculars today is only the bishop or quasi-bishop of the diocese or quasi-diocese in which the one to be promoted has domicile together with origin, or domicile with a sworn intention of remaining perpetually in the diocese. Yet for a cleric who by first tonsure has been legitimately incardinated in a diocese, or for a student to be promoted who is destined for the service of another diocese, or for a professed religious, domicile suffices. Finally, one who can give dimissorial letters can confer orders by himself, if he has power.

IV. Dimissorial letters are letters by which a bishop or competent Superior sends his subjects to an alien bishop so that they may be ordained by him. These letters are at the same time testimonial.

For seculars they are given by the proper Ordinary; by the vicar general from special mandate; by the capitular vicar, with the chapter consenting and after a year from the vacant see; within the year, to only those constrained or by reason of an office for which provision must immediately be made. For exempt religious they are given by the abbot of a monastery sui iuris and by the major Superior, but to professed members from temporary vows they can be given only for first tonsure and minor orders. The ordination of non-exempt religious is governed by the law of seculars. Superiors of non-exempt religion do not grant dimissorial letters except from indult or privilege, which is frequent.

The proper bishop can give letters to any bishop of the same rite. But a religious Superior, unless there is a privilege, cannot send these letters except to the Ordinary of the territory in which is the religious house to which the one to be ordained belongs, unless the bishop is going to have no general ordinations at the next legitimate time.

Chapter III: On the Subject of Sacred Ordination

§ 1. On the Required Vocation

— Since, especially today, orders are not received without some intention and hope of priesthood, we must be solicitous about vocation to the sacerdotal state alone. Concerning this, these few things are noted.

1. By the will by which Christ instituted in His Church the perpetual Sacrifice and the perpetual dispensation of the sacraments, several of which can be conferred only by sacred ministers, by the same will He also willed to adorn the Church with an abundance of priests who would offer that Sacrifice and dispense these sacraments. And it pertains to divine Providence efficaciously to provide that the Church not lack necessary ministers.

Therefore it cannot be doubted that many are called to the priesthood, insofar as they receive efficacious graces for embracing and exercising that state holily.

But while the evangelical counsels of themselves are proposed to all, on the contrary it is certain that the sacerdotal state is not proposed to all, since priests pertain to the hierarchy which God Himself willed to be distinct from the people. Besides this, while a religious, as such, pursues his own proper sanctity, the sacerdotal state is referred not so much to the private good of someone as to the common good of the Christian republic. No one becomes a priest for himself.

2. Nor does someone become a priest by his own will alone.

On the contrary, in Sacred Scripture and in the Council of Trent the action of God calling and of the ecclesiastical Superior is placed directly. "Nor does anyone take honor to himself, but he who is called by God, as Aaron was" (Epistle to the Hebrews 5:4). "Impose hands hastily on no one." Thus the Apostle admonishes his disciple in 1 Timothy 5:22. And the Council of Trent, after in sess. 23, cap. 4, it had recalled that not all can aspire to the hierarchy, in can. 7 strikes with anathema him who says that "those who are neither duly ordained nor sent by ecclesiastical and canonical power, but come from elsewhere, are legitimate ministers of the word and of the sacraments." Again, however, it is within the power, at least of the Supreme Pontiff[(1)], that because of the necessity of the Church he can command a faithful man to ascend to the sacerdotal state. Therefore:

3. To the question, who are called to the sacerdotal state, we judge that this must briefly be answered thus:

a) by the will of God consequent upon the external assumption itself, all those who have been duly assumed by the Church, to whom the selection of priests has been committed, are called. Therefore the Catechism of the Council of Trent, on the cited place of the Epistle to the Hebrews, says: "They are said to be called by God who are called by the legitimate ministers of the Church." And in the letter of July 2, 1912, the Cardinal Secretary of State reported that the judgment of the Commission of Cardinals had been approved by the Supreme Pontiff, by which the work of Canon Lahitton, *La*

vocation sacerdotale, is said to be worthy of distinguished praise in that part in which it establishes "1. That no one ever has any right to ordination antecedently to the free election of the bishop."

b) But if you ask who are called by the antecedent will of divine good pleasure, that is, who please God when they aspire to that state, in vain and without valid argument will you demand some special instinct or quasi-internal speech of God calling; but it is lawful for any suitable person to seek this state with a sincere intention of executing the obligations of the same state. Nor in this matter is it lawful or expedient for the confessor himself to assume other parts than those of a prudent counselor, lest the one ordained, with danger of unhappy and sometimes scandalous inconstancy, seem to himself to have undertaken grave obligations by another's command. But with St. Th., 2, 2, q. 189, art. 1, ad 3, and St. Alph., l. 6, n. 802, in order that someone be suitable, besides gifts of talent and suitable knowledge, we require the present sanctity of life itself. For sacred orders are received by those who do not have well-chastened morals with too much detriment to themselves and danger to the Church, and too much against its mind, for these men to be able of themselves to ascend to the priesthood without grave guilt (cf. what was written above, n. 34). But we understand sincere intention as conceived by spontaneous will. For those who seek spiritual offices from a human intention, and those who receive the same unwillingly, moved by necessity or by the authority or consideration of parents, can be judged equally fragile and dangerous to the Church. But by these notes of suitability and right intention true vocation is composed.

To the point, the work of Lahitton mentioned above was also praised by the Commission, with the Pontiff approving, insofar as it establishes: "2. That the condition which must be attended to on the part of the one to be ordained, which is called sacerdotal vocation, consists by no means, at least necessarily and by ordinary law, in some internal aspiration of the subject or invitation of the Holy Spirit for entering the priesthood; 3. but, on the contrary, nothing more is required in the one to be ordained, so that he may be duly called by the bishop, than a 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 make a founded hope that he will rightly be able to undertake the duties of the priesthood and holily to observe its obligations." Cf. *Periodica*, VI, 262, and our little work: *De vocatione religiosa et sacerdotali*.

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(1) The Code, c. 973, §2, denies that a cleric of inferior grade can be compelled by the bishop to receive superior orders. Concerning the prior law, cf. Gasparri, *De sacra ordinatione*, I, 638, 639.

§ 2. Who Are Validly Ordained

— Incapable of orders, by divine law, is a man not baptized or of the feminine sex. And he who doubtfully is male cannot licitly aspire to orders, since he exposes all actions which demand sacred character to perpetual danger of nullity. The constant tradition and practice of the Church demonstrate that the masculine sex is required.

In an adult there is also required intention, or the will, at least habitual, that is, which was actual and has not been revoked, of receiving orders.

But what will? Since the sacrament works *ex opere operato*, consent to the application of the sacred rite seems to suffice. But he necessarily furnishes this who voluntarily permits the ordaining minister to exercise the sacred rite upon him, although internally he dissents. For

this will is elicited by the prevailing will which moves the candidate to approach. So C. Gasparri, I, 644, appealing, n. 643, to Innocent III, in c. 3, § *Item, De baptismo eiusque effectus* (III, 42), which place others must interpret violently. Nevertheless the common opinion thinks that the ordination of him who approaches fictitiously is null. And according to this opinion the Holy Office responded on March 2, 1842 (*Collectanea P. F.*, I, 946), and the response of the Holy Office, November 28, 1900 (*Collectanea P. F.*, II, n. 2069), also favors it, although there it merely commands conditional repetition (cf. Wernz, II, 82, who has the nullity as indubitable).

— **Corollaries.** 1. Therefore the perpetually insane, infants in cradles, and those who consent coerced by grave fear are validly ordained. But a coerced cleric, unless, after the fear has been removed, he has ratified the ordination at least tacitly through the exercise of the order, willing nevertheless by such an act to subject himself to clerical obligations, after the coercion and defect of ratification have been legitimately proved, will be reduced to the lay state by sentence of a judge, without any obligations of celibacy or of canonical hours (c. 214).

But he is not coerced who by no external force, by no threats or terror induced, has been led to ordination, but persuaded by his own want of things or fear of a humble and laborious condition, or even of divine chastisement, has chosen the sacerdotal state.

But an ordained infant is bound by no obligation, unless he has ratified his ordination, fully possessed of himself and pubescent, indeed of full age.

For, resolving the case concerning Copts, who were accustomed to confer the diaconate even on infants, Benedict XIV, Instruction *Eo quamvis*, May 4, 1745, §28, ordered that those ordained thus, after completing sixteen years, be asked by the local Ordinary concerning their intention. He declares that this age was defined by him because at that age irrevocable religious Profession could be made. But since today the Code has assigned the age of completed twenty-one years to perpetual profession, consequently it seems that the option concerning the clerical state must be deferred to that age.

2. Invalidly ordained is one sleeping; a drunken adult who before had not had the intention of receiving the order; one who by external force is dragged to ordination; one who jokingly or by reciting a play presents himself to the one ordaining.

§ 3. Who Are Licitly Ordained

— For orders to be received licitly the subject must:

1. be in the state of grace. Yet the obligation is not grave for orders which, according to the more common opinion, are not sacraments;
2. be immune from censure or another canonical impediment, concerning which immediately below;
3. have the mind of clericating, or of serving God through the proper ministries of the order received; indeed the purpose of ascending to the presbyterate (c. 973, §1). Yet the fraud is not grave. Therefore he would sin lightly who received a minor order with the intention of conjugal life. Nor does a positive will of exercising the inferior orders seem today to be prescribed;

4. be confirmed. It is not established that the obligation is grave;

5. have canonical age, due knowledge, and morals congruent with the order to be received (c. 974).

— The canonical age is twenty-one completed years for the subdiaconate, twenty-two completed years for the diaconate, twenty-four completed years for the presbyterate. Certain dispensations from the age required for priesthood, of one year, of one year and a half, are granted for a just cause, especially because of the necessity of the Church. No canonical age is prefixed for tonsure and minor orders. Before the Code, writers judged a suitable age to be between the completed seventh and fourteenth year. Now indirectly a greater age is required, since tonsure is forbidden to be conferred on those who have not yet begun the theological course (c. 976). A certain power of dispensing is conferred by the faculties of Nuncios or Apostolic Delegates and by the quinquennial faculties of Ordinaries.

— Due knowledge is established, both for religious and for seculars, to be acquired, when it is a question of theology, in schools instituted for this purpose, according to this plan of studies: that, after a biennium of philosophy, for a full four years they follow a course of theology which, besides dogmatic and moral theology, includes the study of Sacred Scripture, ecclesiastical history, canon law, liturgy, sacred eloquence, and ecclesiastical chant. So c. 1365, which wills that "there be also lectures on pastoral theology, with practical exercises added, especially concerning the manner of handing on the catechism to children or others, of hearing confessions, of visiting the sick, of assisting the dying."

Now, first tonsure demands that the theological course has begun; the subdiaconate is not to be conferred except when the third year of the theological course is ending; the diaconate, except when the fourth year has begun; the presbyterate, except after the middle of that same fourth year.

The course and year, scholastic year, are said to have begun when lectures have been begun; it is judged to be ending when it inclines toward the end, or when two-thirds have passed; but it finishes when the examinations have been completed, or at least when the lectures have been completed. The middle of the year is judged to be had also when one passes to the other semester, as they say.

Besides this, concerning the very order to be received, every one to be promoted, whether secular or religious, must undergo a previous and diligent examination; but one to be promoted to sacred orders must make trial also in other treatises of sacred theology. The bishop of the place who ordains by his own right or gives dimissorial letters determines the method, matter, and examiners. He also receives the examination, unless he prefers to commit this to the bishop about to ordain, accepting this burden (cc. 996-997).

He can also, although he is not bound to, acquiesce in a bishop or Superior who in dimissorial letters asserts that the candidate was found suitable in a duly made examination. "But if according to his conscience he judges that the candidate is not suitable, let him not promote him" (c. 997, §2). By this canon no privileges are removed by which some religious are exempt from episcopal examination.

— What morals are required was already explained above. But so that they may more easily put on congruent morals, c. 972 says that care must be taken that those aspiring to sacred orders be received into the seminary from tender years; and it commands that all remain there at least through the

whole curriculum of sacred theology, "unless the Ordinary in particular cases, for grave cause, with his conscience burdened, has dispensed" (c. 972, §1). But those who legitimately remain outside the seminary are to be commended to a pious and suitable priest who may watch over them and form them to piety (c. 972, §2). Although this is to be desired, it is not however prescribed that they be received under the same roof of the priest himself.

— Ordinations by leap are altogether prohibited, but orders are to be conferred by degrees, with no grade omitted (c. 977). This is so urged that the Holy See commands that omitted ordinations be supplied even in him who already in the higher order received possesses the minor orders virtually.

— The intervals of time are also to be observed "by which those promoted are to exercise themselves in the orders received, according to the prescription of the bishop" (c. 978, §1). Moreover the interstices between tonsure and porter or between individual minor orders are committed 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 been engaged in his order for at least one year, and the subdeacon and deacon for at least three months each in his own order, unless the necessity or utility of the Church, in the judgment of the bishop, demands otherwise." Therefore the bishop can, even with religious, dispense for a just cause of public reason.

Yet it is not lawful for him to confer first tonsure with some one of the minor orders, or all minor orders at once. And the peculiar license of the Roman Pontiff is required that minor orders with the subdiaconate, or two sacred orders on one and the same day, with any contrary custom reprobated, be conferred (c. 978, §3). Therefore the conjunction of minor orders with the subdiaconate, or of two major orders, is prohibited more severely than the conjunction of tonsure with a minor order or the conferral in the same ordination of all minor orders. Here a contrary custom is not reprobated, and the place of epikeia is not excluded.

— Those to be advanced to major orders are to be provided with a canonical title. A canonical title is, in this place, a title of support, canonically admitted, that is, a caution concerning suitable and of itself perpetual support.

For secular clerics, the canonical title is that of benefice, and, this lacking, of patrimony, whose quantity and manner is defined by the statutes or norms of Ordinaries, or of ecclesiastical pension. One who, ordained in sacred orders, has lost the title does not therefore become suspended, but must provide another for himself unless, in the judgment of the bishop, provision has otherwise been made for his suitable support (c. 980, §1).

> But the bishop who, short of apostolic indult, has ordained or permitted to be ordained his subject in sacred orders without canonical title must himself, and his successor, furnish the same needy man with necessary food, until provision has otherwise been made for his suitable support; and a contrary pact is deprived of all force (c. 980, §§2, 3).

Yet when the customary titles are lacking, they can be supplied by title of service of the diocese, and in places subject to the Sacred Congregation of Propaganda Fide, by title of mission, yet with this law, that the one to be ordained, with an oath interposed, devote himself perpetually to the service of the diocese or mission under the authority of the local Ordinary for the time. But for a presbyter thus promoted, the Ordinary must procure suitable support. Observe that by the oath of service of the

diocese entrance into religion is not excluded; as, without license of the Holy See, it is excluded by the oath of mission.

To Regulars strictly so called the title of poverty is assigned; to religious of perpetual simple vows the title of common table, of the Congregation, or another similar title, according to the norm of the constitutions, is assigned (c. 982, §§1, 2). But for professed members of temporary vows there is lacking the title of common table, since they can leave religion, and be rather easily dismissed by it, at least when the span of the vows has elapsed. Therefore these, also as regards the title of ordination, are ruled by the law of seculars (c. 982, §3).

§ 4. On Irregularities and Other Impediments

— **Irregularity** is a canonical impediment, of itself perpetual, which of itself primarily prohibits the reception of orders, and secondarily the exercise of the same (cc. 968, 983).

> It is not therefore a penalty, but is directly established because of the reason of the common good, that is, the decorum or respectability of the clerical state. And from the new law, the traditional definition becomes strict and certain. For from irregularity there are properly distinguished defects of condition or quality commonly required in those to be ordained, for example, of age (c. 974), and impediments which, when adjuncts have changed, can cease without dispensation, for example, the conjugal state, infamy of fact.

But only those irregularities are in force which are contained in written law, all those which are not contained in the Code having been suppressed (c. 983).

In the present law there are distinguished only irregularities from defect and irregularities from delict. The latter, although they can be held after the manner of a grave penalty, are nevertheless primarily impediments, and, contrary to the opinion hitherto common, just as other irregularities and simple impediments, they are incurred even by those ignorant of them (c. 988). But without delict, and therefore without mortal fault, there will not be an irregularity from delict.

— Those irregular from defect are numbered in c. 984.

1. From defect of birth: "Illegitimate persons, whether the illegitimacy is public or occult, unless they have been legitimated, or have professed solemn vows."

   Concerning legitimacy, the book of baptisms makes full faith, which only manifest proof to the contrary can destroy.

2. From defect of body: "Those defective in body who cannot safely, because of weakness, or decently, because of deformity, discharge the ministry of the altar. Yet to impede the exercise of an order legitimately received, a graver defect is required, nor because of this defect are acts prohibited which can be duly placed."

Observe that by this irregularity the reception of any order and of first tonsure itself is prohibited, although the defect would impede only the exercise of a major order, for example the presbyterate. In estimating deformity, account must also be had of its cause, which, if it is noble and most honorable, such as war or hostile persecution, will effect this: that the use of the order by those mutilated in this

way may rather conciliate greater reverence and consideration for the Church and the altar. Therefore the Holy See has granted ordination and celebration with liberal hand to several who in the recent war had to be called not lightly defective in body.

> From the present head, irregular because of impotence are: those cut off in thumb or index finger, so that they cannot break the host with the customary fingers; much more the blind, the mute, those so deaf that they cannot hear the server responding, and those who tremble so much in the hands that they cannot celebrate without danger of spilling the Blood. Because of the decorum and dignity of the sacred function, those who, by a deficient or stained body, would generate horror or ridicule in spectators are irregular: those enormously hunchbacked, notably limping, stammering so much that they move laughter, indeed a man from whom the three posterior fingers have been taken away. Yet he, already a priest, is not bound to abstain from the sacred rite.
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> Certain men judged him irregular who lacked visual power of the left eye, the canonical eye, for reading the Missal through the Canon. But that opinion, destitute of foundation, can safely be abandoned. And since today a glass eye well fitted removes external deformity, not even from this head is a scruple to be introduced (cf. Noldin, IV, 665). He adds that judgment belongs to the Ordinary, either of the place or proper to an exempt religious, by which judgment, however, the ordaining bishop is not bound to stand. In doubt, the Ordinary can dispense.
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> A priest with failing sight, that is, one who cannot read except very large type, can obtain a dispensation for celebrating the votive Mass of the Blessed Virgin Mary or the daily Mass of the dead, according to the norms recently promulgated by the Sacred Congregation of Rites, January 13, 1921 (*A. A. S.*, XIII [1921], p. 154 ff.). Concerning these, note that the Mass of the Blessed Virgin must be read on all days on which Masses of the dead are not permitted; in that Mass the *Gloria* and *Credo* are to be said whenever they are to be said in the Mass of the occurring day; the Gospel at the end is always that of St. John. In the same instruction the Sacred Congregation of Rites admonishes that the conditions placed in the document of privilege oblige conscience. If in the privilege the clause is placed, "provided that the petitioner is not altogether blind," the man with failing sight who becomes blind must abstain from celebration until he has obtained a new indult; and when this has been obtained, "under grave obligation he is bound to use the assistance of another priest, although perhaps this obligation was not expressly placed in the indult" (cf. *Epitome*, II, n. 256).

— 3. From defect of mind: "Those who are or have been epileptic, 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 again permit his subjects the exercise of the orders received."

> Each part of the canon has been made more severe, insofar as it takes no account of healing before orders received; after orders received, it does not simply permit to those healed the exercise of orders, but establishes that the matter must be defined by the proper Ordinary, whether religious or local. Therefore whether perfect healing occurred before ordination, or, later than ordination, there was only imperfect healing, yet sufficient so that for fifteen days or a month or more it gives complete security, recourse will have to be made to the Holy See,

whether for ordination or for use of the order. Remedies are also available today which remove all dangerous crises even from those not perfectly healed. Yet Noldin, III, 666, thinks that he is not judged irregular who before puberty has perfectly recovered from epilepsy, which, as he says, frequently happens. This irregularity is said to arise from defect of mind. Rightly indeed when it is a question of insanity; but why the epileptic are called deficient not in body but in mind seems to be attributed to the opinion once common which held epileptics as possessed, or demoniacs. The insane are irregular, even if they have lucid intervals. And those perfectly healed are forbidden to ascend to superior orders without faculty of the Holy See.

— 4. From defect of sacrament: "A bigamist, namely one who has contracted two or more valid marriages successively." The irregularity is of apostolic origin, at least as regards bishops, "let him be the husband of one wife" (1 Tim. 3:2 and 12), and is founded in this: that a bigamist, who has divided his flesh among several wives, can no longer perfectly represent the union of Christ with the Church.

Before the Code, a presumed marriage was said to suffice for this irregularity; and besides true bigamy, interpretative bigamy was recognized, which he contracted who had consummated a second marriage even invalid, or had led and known a widow not a virgin, or his own wife previously corrupted by another; and similitudinary bigamy, of him who, after a solemn vow of chastity, contracted and consummated a marriage, even invalid. These have happily been suppressed. Noldin, III, 667, with most, thinks that he is affected by irregularity who before baptism had led two wives, or one or the other: the reason of irregularity because of division of the flesh is had even then. The ancient interpretation also favors this opinion.

— 5. From defect of fame: "Those who are marked by infamy of law." Infamy of law, or legal infamy, is incurred by authority of law because of a delict, and is distinguished from infamy of fact, which supposes divulgation of a shameful crime. The canons themselves define the delicts which carry infamy of law with them. Infamy of law arises either from the fact itself, or from a sentence of law decreeing infamy. Infamy of fact does not effect irregularity but an impediment (cf. below, n. 719).

The following are marked with infamy of law by the fact itself: a) one who has given his name to a non-Catholic sect or has publicly adhered to it (c. 2314, §1, 3), which now according to the norm of the declaration of October 16, 1919, concerning candidates of religions (cf. *Epitome iuris canonici*, I, n. 527), can be restricted to those who have defected from the Catholic faith; b) one who has thrown away the consecrated species or taken them away or retained them for an evil end (c. 2320); c) one who has violated the corpses or sepulchers of the dead for theft or another evil end (c. 2328); d) one who has laid violent hands on the person of the Roman Pontiff, or of a Cardinal or Legate of the Supreme Pontiff (cc. 267 and 2343); e) duelists and their seconds (c. 2351); f) simultaneous bigamists, who, despite the conjugal bond, have attempted another marriage, even merely civil (c. 2356); g) laics legitimately condemned for delicts against the sixth commandment committed with minors under the age of sixteen years, or for rape, sodomy, incest, procuring (c. 2357, §1).

By sentence of a judge, clerics in sacred orders, whether secular or religious, who have admitted a delict against the sixth precept of the Decalogue with minors under the age of sixteen years, or are guilty of adultery, rape, bestiality, sodomy, procuring, incest with blood-relatives or affines in the first degree, are to be declared infamous (c. 2359, §2).

Today already, contrary to what was before, no one because of an alien delict, or the delict of one closely joined to him, becomes infamous (c. 2293, §4). Yet from the fact of family members or blood-relatives with whom he lives, a pastor can lose good estimation and for that reason be removed (c. 2147, §2, 3).

— 6. From defect of mildness: a) "the judge who has borne a sentence of death," if death has truly followed. Jurors, since they do not bear sentence, are immune from this irregularity. If the sentence was collegial, those judges alone are irregular who efficaciously induced it.

b) "those who have undertaken the office of executioner and their voluntary and immediate ministers in the execution of capital sentence." Such are not soldiers who, compelled, kill the guilty man: they have undertaken no office of executioner; nor their commander: he also, while he commands the killing, pronounces no sentence of death as judge; nor those who erect the scaffold: they are not immediate cooperators.

Therefore defect of mildness is restricted to few cases. Nor do soldiers who have fought in battle and killed enemies become irregular from this head.

> Observe, however, that Christian mildness is understood, so that one who bore a sentence of death before baptism, etc., does not thereby become irregular (cf. Noldin, III, 670).

— Those irregular from delict are numbered in c. 985. Irregularity supposes: a) that the delict committed be a grave and external sin, public or occult; b) and this after baptism, if you except the delict of baptism received from a non-Catholic outside necessity.

— 1. Apostates from the faith, heretics, schismatics.

An apostate is one who, after baptism, has totally withdrawn from the Catholic faith; a heretic, one who, preserving the name Christian, denies some one of the truths to be believed by divine and Catholic faith, or exteriorly affirms that it is doubtful, whether he has given his name to a sect or not; a schismatic, one who refuses to be subject to the Supreme Pontiff or to communicate with the members of the Church subject to him, and thus withdraws himself from Catholic communion.

> Those who in good faith have been ascribed to a heretical sect are not irregular, but because of the presumption of the external forum they will have to be dispensed at least for caution before ordination, unless after conversion they have been baptized.

— 2. "Those who, except in the case of extreme necessity, have permitted baptism to be conferred on themselves by non-Catholics, in whatever manner."

> By this new irregularity, the Code marks those who with grave sin of their own have asked or tolerated that non-Catholics, that is, heretics or schismatics, should minister baptism to them: in whatever manner baptism is ministered, that is, whether with the rites of the sect used, or without any special rite. Infidels do not strictly come under the name of non-Catholics; and when the Code uses the broader sense, it says "any non-Catholics whatsoever," for example in c. 1099, 2.

— 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 marriage."

Those attempt marriage who, dissimulating an impediment, present themselves to the minister of the Church; those place the civil act who contract what they call civil marriage.

> The words *have dared*, which excuse from penalty those laboring under non-affected ignorance (c. 2229, §§2, 3), here have no efficacy, since, from c. 988, ignorance does not excuse from irregularity. Yet not all delinquents of this kind become irregular, but only those who, bound by the bond of marriage or of some religious profession, even only temporary, or with a woman bound in either way, commit that delict. Therefore it can happen that the marriage by which irregularity is induced is validly celebrated. For temporary vows, and of themselves simple vows, do not dirim marriage. The excommunication laid down against a similar delict is less extensive than this irregularity, by which from that part the irregularity of similitudinary bigamy, now suppressed, is compensated. The irregularity is new insofar as it touches the attempt of marriage infected with adultery.

— 4. "Those who have perpetrated voluntary homicide or procured abortion of a human fetus, the effect having followed, and all cooperating."

Since we are engaged in a matter of restrictive interpretation, understand homicide as directly voluntary, and therefore with casual homicide excluded, and also homicide only indirectly voluntary, or badly permitted.

Soldiers who, in a probably just war, kill enemies become irregular neither from delict nor from defect of lenity. Wherefore clerics compelled to military service seem to contract no irregularity on account of legitimate acts of war. It must be said otherwise concerning those who voluntarily, and therefore illicitly, fought in the battle-line.

> Therefore from the root cease the anxieties of those clerics who, in caring for a sick person, from imprudent handling, feared irregularity for themselves.
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> Both from the place where they are placed and from the interpretation of the old law, which we are commanded to follow in doubt, the words "the effect having followed and all cooperators" are to be referred to each case, of homicide and of abortion.
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> Yet positive cooperators are included only: by mandate, efficacious counsel, consent; but not negative cooperators, who did not impede the delict, although perhaps from justice itself they ought to have impeded it. For negative cooperation is cooperation less strictly so called; and negative cooperators already before the Code were said to be immune from this irregularity.
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> While it speaks of a human fetus, the canon sends off to merely historical disputes the distinction between male and female which they formerly urged in texts of law in which there was question of an animated fetus: for once they judged that the male fetus after forty days, but the female after eighty, was endowed with a rational soul.

— 5. "Those who have mutilated themselves or others, or have attempted to take life from themselves." Mutilation means the cutting off of a member; but member is understood as a part of the body endowed with a proper function: hand, not fingers; foot, eyes, tongue, testicles. For voluntary castration is especially touched.

What of one who from paired senses removes one or the other? According as they are commonly apprehended separately or only conjointly, the individual parts will be a member or only part of a member. Thus both nostrils constitute one nose. One who has rendered an eye useless is not guilty of mutilation, unless he also tears it out.

Mutilation can also induce deformity, and thence irregularity from defect.

— 6. "Clerics exercising the medical or surgical art forbidden to them, if death follows from it."

Therefore there are three conditions of this irregularity: it is necessary that the agent be a cleric, that he exercise medical or surgical art gravely sinful for himself, and that from this as from a cause, and not by occasion alone, death follow.

— 7. "Those who place an act of order reserved to clerics constituted in sacred order, either lacking that order, or prohibited from its exercise by canonical penalty, whether personal, medicinal or vindicative, or local."

The cause of the irregularity is usurpation of sacred order or of its exercise, committed by him who does not have that order, whether he was a layman or cleric, or by him who indeed has the order but is prohibited from its exercise because of a penalty. This penalty can be local: interdict; or personal, which is divided into medicinal, this is censure, and vindicative, this is borne for a definite time or in perpetuity, nor is it removed when contumacy ceases. While, before the Code, not a few theologians, contrary to most canonists, thought that irregularity was incurred only by violation of censure, c. 985, 7, connects irregularity with the violation of any penalty.

Yet it is permitted, not indeed that the proper parts of subdeacons be fulfilled by an inferior cleric, but that an inferior cleric, therefore at least tonsured, be seen to supply for a lacking subdeacon in solemn Mass. But this cleric can neither put on the maniple, nor at the offertory himself mix water with wine, nor after the consecration uncover the chalice, nor after Communion wipe the interior of the chalice. Yet we judge that those alone are marked by irregularity who with grave fault "would discharge every office of the subdiaconate," as Cerato says (*Censurae*, n. 161), "in solemn Mass with the vestments of a subdeacon," so that we think equally immune from irregularity those who illicitly have taken the maniple but have abstained from mixing water, etc., and those who have indeed done these things but without the maniple. Nor is he judged irregular who, without a stole, merely sings the Gospel. In the chant of the Lord's Passion it is also tolerated that, when a deacon is lacking, the third singer, acting the parts of the synagogue, not be a deacon.

They seem to us to speak less coherently who therefore excuse the cleric who without a maniple fulfills the parts of a subdeacon, because, since it is not a question of acts which are done invalidly by inferiors, only solemn ministration induces irregularity; but solemn ministration is not had without the maniple. For the same men pronounce irregular the subdeacon himself who without a stole acted as deacon in Mass.

Therefore, so that we may speak more briefly and more coherently, neither the office of subdeacon nor the office of deacon can be exercised by those who lack the order. Yet because of necessity a certain partial ministration of a subdeacon in Mass is tolerated.

But not only he who is not in sacred orders becomes irregular, but also a minister in sacred orders who exercises an order not his own. Therefore a subdeacon would become irregular who solemnly baptizes, or solemnly sings the Gospel with a stole; a deacon, who attempts sacramentally to absolve, but not a deacon who without due commission solemnly baptizes or distributes Communion, because these things in some way pertain to his order; a priest who solemnly exercises a pontifical function, but not one who, not approved, hears confessions, since he usurps merely jurisdiction, not order.

Observe also that irregularity is incurred only by violation of a penal prohibition. Thus, as Fr. Ferreres excellently notes, II, 1301 and 1306, one who in good faith was ordained by one excommunicated, suspended, or interdicted after declaratory or condemnatory sentence, or by a notorious apostate or non-Catholic, lacks the exercise of order until he is dispensed; one who after perpetual vows, even legitimately, departs from religion, is prohibited from exercising sacred orders until he has found a receiving bishop: these prohibitions can be violated without irregularity, although not without sin.

— 8. After the Code had been promulgated, the Sacred Consistorial Congregation, by the decree *Redeuntibus*, October 25, 1918, gave Ordinaries the faculty of dispensing, at least for caution, from the irregularity which was called from defect of mildness, priests or clerics who, compelled by law, had performed military service; but it ordered those who of their own accord had offered themselves for taking up arms to have recourse to the Holy See for dispensation.

As we said in *Periodica*, IX, p. 129, since irregularity from defect of mildness has been removed by the Code, excepting the few cases recited above, the former do not strictly need dispensation; yet the faculty given will not be useless, if perhaps by some extensive interpretation that irregularity is restored. The latter violated a grave obligation of their state and are affected by certain or only probable irregularity from delict, according as they have certainly or only probably killed. Their irregularity is reserved to the Holy See.

The same Sacred Congregation, by the decree *Magni semper*, December 30, 1918, concerning clerics migrating into certain regions, suspended *ipso facto* from divine things priests who without due license and dismissorial letters migrated rashly and arrogantly. When this suspension is contemned, they become irregular. This suspension and irregularity are reserved simply to the Holy See by the same decree (cf. *Periodica*, X, p. 38).

— From irregularities are distinguished simple impediments, which have a cause temporary by its nature.

"C. 987. The following are simply impeded:

1. "Children of non-Catholics, as long as the parents remain in their error." From the declaration of October 16, 1919, he is impeded of whom even only one parent is a non-Catholic. Nor do we think the impediment ceases by death, since the interpretation of the old law answers so severely. Formerly, at least from the paternal line, even grandchildren were said to be irregular. But today it stops in the first degree, as the Commission for interpreting the Code itself answered on July 14, 1922, to IX (cf. *Periodica*, XI, 124).

Contrary, however, to what Noldin seems to hold, III, 679, here again we understand non-Catholics strictly as baptized heretics or schismatics ascribed to some sect, or, as it is said, to a separated church. Under the previous law itself, writers treated only of descendants of heretics and schismatics. And the opinion of St. Alphonsus, VI, 363, remains probable, who exempted children born before the apostasy of parents who defected from the Catholic faith so as to adhere to a sect.

— 2. "Men having a wife." When the marriage has been dissolved, the impediment ceases. Otherwise, even after perpetual separation, a dispensation of the Holy See is needed so that a man can legitimately be ordained, even now to a minor order, or receive first tonsure. (In the national Council of the Armenians, held at Rome in 1911, they abstained from a formal prohibition. Cf. art. 737 of the Council, and Appendix XIV, n. IX.)

— 3. "Those who hold an office or administration forbidden to clerics, of which they must render an account, until, having laid down the office and administration, and having rendered accounts, they have become free."

Therefore not every administration, but only that which is forbidden to clerics according to what was said in n. 19 (from c. 139), induces this impediment.

It remains, however, even after the office has been resigned, until accounts have been rendered.

— 4. "Slaves by slavery 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."

Ordinary military service, from the very description of the decree *Inter reliquas*, January 1, 1911 (*Periodica*, V, 280), is that service which those first called to military service must perform for one or several years. Therefore under this name are not included the annual exercises to which all are bound after the period of first service has been completed, or "after active service"; nor the extraordinary military services which they must perform in time of war. But, from the authentic declaration of June 2-3, 1918 (*Periodica*, IX, 149), those are impeded who perhaps will be called to perform military service but have not yet been called, whether because they are not of age, or because, after examination has been completed, they have been declared temporarily unfit.

Nor do they seem to us to undergo ordinary military service who, by the law itself, are compelled to undertake only the care of the sick (cf. *Epitome*, II, 259; Gen., II, 640).

— 6. "Neophytes until, in the judgment of the Ordinary, they have been sufficiently tested."

By neophytes are understood those who, converted to the faith in adult age, have recently been baptized; therefore not recently converted heretics whose baptism was probably valid. The impediment is founded in 1 Tim. 3:2-6: "It behooves therefore a bishop... to be... not a neophyte, lest, being lifted up with pride, he fall into the judgment of the devil."

— 7. "Those who labor under infamy of fact, as long as it endures, in the judgment of the Ordinary."

You should observe that it happens that even innocent persons are marked by infamy of fact. Therefore this infamy can be removed both by amendment of life and by demonstration of innocence. The proper Ordinary will be judge, yet in such a way that the ordaining bishop need not stand by that judgment.

— On multiple irregularity. "Irregularities and impediments are multiplied from their diverse causes, but not from the repetition of the same cause, unless it is a question of irregularity from voluntary homicide" (c. 989).

Therefore he is not affected by multiple irregularity who has usurped an order not his own a hundred times; but he must be dispensed from multiple irregularity who has killed several men.

It is likely that abortion of a human fetus must be reckoned as homicide, since abortion is not said except of a living fetus. Yet because in c. 985, 4, abortion and homicide are numbered distinctly, and since it is not so certain concerning the moment of the infusion of the rational soul, the matter can be disputed. But that direct feticide comes under the name of homicide is not doubtful.

— On the faculty of dispensing. 1. The fullest faculty of dispensing from irregularities and impediments is in the hands of the Holy See. In occult cases all can have recourse to the Sacred Penitentiary. In public cases, recourse is made by seculars to the Sacred Congregation of the Sacraments, by religious to the Sacred Congregation of Religious. The Congregations themselves, for graver cases, must approach the Supreme Pontiff. Very rarely is dispensation granted from irregularity from true bigamy; and (outside war) from irregularity from voluntary homicide which can be proved in court; and from irregularity from a very notable and apparent defect of body.

The petition must indicate the plurality of irregularities and impediments, if there were several; add the causes for dispensing; and bear the commendation of the proper Ordinary.

2. To no one is granted ordinary power of dispensing from certain irregularities from defect or from impediments. But in doubtful irregularities, when there is a doubt of fact, Ordinaries can dispense from c. 15, if it is a question of irregularities in which the Holy See is accustomed to dispense. And the same can provide for more urgent cases from c. 81.

3. Nuncios and Apostolic Delegates (Faculties n. 5) can dispense those already ordained from every irregularity arising both from delict and from defect, "provided that scandal does not arise therefrom nor an impediment be caused to divine things, with those always excepted of which in c. 985, n. 4 (voluntary homicide and abortion, with the effect having followed), and with previous abjuration in the hands of the absolver when it is a question of the crime of heresy or schism."

Ordinaries, by themselves or through another, can dispense their subjects from all irregularities arising from occult delict, except that which arises from voluntary homicide or abortion, or another brought to the judicial forum.

From the decree of the Sacred Consistorial Congregation, *Redeuntibus*, October 25, 1918 (*Periodica*, IX, p. 214), local Ordinaries and religious Ordinaries can dispense their priests returning from military service if, in the judgment of the Master of Rubrics, they can perform with decorum the rites necessary in the sacred rite. If, however, rites of some moment must be omitted, or if there is need of an assisting priest, the Holy See must be approached, as for those who are not priests.

4. Their privileges remain to regulars, even those acquired by communication.

5. To all confessors is confirmed the faculty of dispensing in all irregularities arising from delict "in more urgent occult cases, in which the Ordinary cannot be approached and danger of grave

harm or infamy is imminent, but only to this end, that the penitent may be able licitly to exercise orders already received" (c. 990. Cf. Decree of the Holy Office, September 6, 1909: *A. A. S.*, I, 677). Voluntary homicide or abortion is excepted.

A confessor is a priest approved for hearing confessions; he can exercise the faculty even outside the act of confession, but only by himself, as it seems, although the words "the same faculty" admit a broader interpretation. Finally, after a dispensation has been given for exercising orders, no recourse to the Holy See or to the Superior is imposed.

Danger of infamy will often excuse from observing an irregularity from occult homicide or abortion; yet recourse must be had as soon as possible to the competent Superior, since the faculty given either to Ordinaries or to confessors does not extend to that irregularity.

No special formula of dispensation is required, so that a clear manifestation of the will suffices.

6. A general dispensation is invalid:

a) for irregularities or impediments concealed in bad faith;

b) for an irregularity from voluntary homicide or abortion concealed even in good faith, or for the number of these delicts.

A general dispensation to orders is valid also for major orders, and for non-consistorial benefices; but one thus dispensed cannot be nominated a Cardinal of the Holy Roman Church, bishop, abbot or Prelate *nullius*, or major Superior in an exempt clerical religion (c. 991).

"A dispensation conceded in the internal non-sacramental forum is to be committed to writing; and it must be recorded in the secret book of the Curia" (c. 991, §4): understand the curia of the proper Ordinary.

Summary

— I. Vocation to the priesthood is not universal, but by divine Providence those are called in such number as may suffice for the necessities of the Church. No one becomes a priest by his own will alone.

By the will of God consequent upon the ordination itself, as many are called as have duly been assumed by the Church. But by the antecedent will of the divine good pleasure, as many are called as, being suitable, seek that state with a sincere intention. To suitability belongs holiness of life already present; to sincerity, a will sufficiently spontaneous, or voluntary.

II. Any baptized person of the masculine sex can be validly ordained who, if adult, at least habitually wills it. One compelled by grave fear, unless, when the fear has been removed, he has expressly or tacitly ratified the ordination, and one who has been ordained as an infant, do not contract the obligations of the state.

III. Licit ordination requires a subject: a) in the state of grace, under grave obligation for orders which are sacraments; - b) immune from censure or impediment; - c) confirmed, yet not under grave obligation; - d) who has the intention of serving God through the order received, indeed, though this

is not under grave obligation, through the priesthood; - e) who has the canonical age of 21 completed years for the subdiaconate, 22 completed years for the diaconate, 24 completed years for the presbyterate; - f) endowed with due knowledge. This is regularly to be acquired after two years given to philosophy, in schools instituted for that purpose; and four years are to be spent on theological studies.

First tonsure requires the theological course to have been begun; subdiaconate, the third year coming to an end; diaconate, the fourth year begun; presbyterate, the middle of the fourth year.

Concerning the very order to be received, all those to be ordained; those who are to be promoted to sacred orders must undergo an examination on the theological treatises themselves according to the judgment of the bishop to whom the ordination pertains.

The interstices also are to be observed; from these, however, for a just cause of public reason, the bishop can dispense even with religious. Yet unless centenary custom permits conjunction, first tonsure is to be given separately; nor can all minor orders be conferred together. But that minor orders be conferred with subdiaconate, or two sacred orders on one and the same day, an apostolic indult is required.

Those to be advanced to major orders must be provided with a canonical title, that is, a security, canonically admitted, concerning fitting and of itself perpetual support. The canonical title, for secular clerics, is a benefice, and, failing this, patrimony, or a pension. The title can be supplied by the title of service of the diocese, and, in places subject to the Sacred Congregation de Propaganda Fide, by the title of mission, provided that the one to be ordained, with an oath interposed, devotes himself perpetually to the service of the diocese or mission under the authority of the local Ordinary for the time being. For regulars there is the title of poverty; for religious of perpetual simple vows, the title of the common table, of the Congregation, or another similar title, according to the norm of the Constitutions.

IV. Irregularities. 1. Irregularity is a canonical impediment, of itself perpetual, which of itself primarily prohibits the reception of orders, and secondarily the exercise of the same (cc. 968, 983). Only those irregularities are in force which are expressed in the Code: some are from defect, others from delict; the latter affect even those ignorant of them, provided, however, that mortal delict has been committed.

2. Irregular from defect are: illegitimate persons, unless they have been legitimated or solemnly professed; those defective in body who cannot safely because of weakness, or decently because of deformity, discharge the ministry of the altar. (This irregularity is limited to acts upon which the reason falls, and a graver defect is required to impede exercise than to receive an order); those who are or have been epileptic or insane or possessed by a demon: if, however, after ordination they have become such and have certainly been freed, they can be admitted by the Ordinary to exercising orders; bigamists: those who have successively celebrated two or more valid marriages; those marked by infamy of law: the Code defines the delicts with which infamy of law is conjoined either by the fact itself or by sentence of a judge; a judge who has borne a sentence of death, if it has been completed by execution; those who have undertaken the office of executioner or have been his voluntary and immediate ministers in the execution of a capital sentence.

3. Irregular from delict are: apostates from the faith, heretics, schismatics, those who outside extreme necessity have permitted baptism to be conferred on themselves by non-Catholics; those married or bound by sacred order or religious vows, even temporary, who have dared to attempt marriage or place the civil act, or those who have contracted with such persons; those guilty of voluntary homicide or abortion, the effect having followed, and all positive cooperators; those who have mutilated themselves or others or have attempted to take life from themselves; clerics exercising the medical or surgical art forbidden to them, if death has followed from it; those who usurp sacred order or its exercise, whether they have not received that order, or are prohibited from its exercise because of a penalty. To a tonsured cleric, on account of necessity, a partial ministration of a subdeacon in Mass is permitted.

V. Impediments. These by their nature have a temporary cause; when this has been removed, they will cease without dispensation.

Impeded are: children of non-Catholic parents, as long as they remain in their error; married men, while the marriage endures; those holding an office or administration forbidden to clerics, until, after the office or administration has been resigned, accounts have been rendered; slaves, before liberty has been received; those bound by civil law to ordinary military service, before they have completed it; neophytes, until, in the judgment of the Ordinary, they have been sufficiently tested; those laboring under infamy of fact, as long as, with the Ordinary as judge, the infamy perseveres.

Irregularities and impediments are multiplied from their diverse causes, but not from repetition of the same cause, unless it is an irregularity from voluntary homicide.

VI. Dispensation. 1. Interpretation. A general dispensation is not valid for irregularities and impediments concealed in bad faith, nor for voluntary homicide or abortion concealed even in good faith, or for the number of homicides, or another delict brought to the judicial forum.

A general dispensation to orders is valid also for major orders and for non-consistorial benefices. Yet the one dispensed cannot become a major Superior in an exempt clerical religion.

Conceded in the internal non-sacramental forum, it is to be committed to writing, and it must be recorded in the secret book of the Curia.

2. Faculty of dispensing: a) the Supreme Pontiff uses his full faculty through the Sacred Congregation of the Sacraments, and, if it is a question of religious, through the Sacred Congregation of Religious. In occult cases all can have recourse to the Sacred Penitentiary; b) Ordinaries can dispense in doubtful irregularities, when there is doubt of fact, in which the Holy See is accustomed to dispense; they can also provide for more urgent cases; c) from every irregularity, except voluntary homicide and abortion, with the effect having followed, those already ordained can be dispensed by a Nuncio or Apostolic Delegate. Ordinaries can by themselves or through another dispense from irregularities arising from occult delict, except homicide, voluntary abortion with the effect having followed, and a case brought to the judicial forum; and they can dispense their priests returning from military service, even from irregularity from defect; d) excepting homicide and voluntary abortion, all confessors, where there is danger of grave harm or infamy, can, if the Ordinary cannot be approached, dispense in more urgent occult cases so that the penitent may licitly exercise orders already received.

Chapter V: The Preparation, Rite, Place, Time, and Notation of Ordinations

§ 1. The Preparation of Ordinations

— Order of speaking. Besides timely notice to be given to the bishop concerning one's purpose of receiving orders (c. 992), those to be promoted must bring testimonial letters; and the Code besides prescribes concerning them an examination, banns, investigation by the Ordinary, and spiritual exercises. A few things concerning each.

— I. Testimonial letters. 1. Seculars and religious who in ordination are governed by the law of the former, cc. 993, 994, are ordered to bring:

testimony of the last ordination, or, if it is a question of first tonsure, of baptism and confirmation received;

testimony concerning the studies completed which are required by canon 976 for the individual orders;

testimony of the rector of the seminary, or of the priest to whom the candidate outside the seminary had been commended, concerning his good morals;

testimonial letters of the Ordinary of the place in which, after puberty, the one to be promoted has stayed for a quarter as a soldier, or for a semester as a cleric or simple layman. And the ordaining bishop, according to his prudence, can require testimonial letters also on account of a briefer time of stay and on account of time which preceded puberty. Testimonial letters make faith that no canonical impediment has been contracted by the candidate. If the Ordinary of the place has known the candidate too little to be able to make this attestation, or if the one to be promoted himself has wandered through so many dioceses that it becomes impossible or too difficult to obtain all the dismissorial letters, let the Ordinary provide at least by a supplementary oath to be furnished by the one to be promoted. If after the letters have been obtained and before ordination the one to be promoted has again stayed in the same territory for three or six months (according to the case), new testimonial letters of the Ordinary of the place are necessary;

testimonials of the major religious Superior, if the one to be promoted is ascribed to some religion.

Testimonial letters are to be given for receiving orders (Noldin, III, 471).

> The time of stay is understood as morally continuous; for, as is made manifest from can. 994, §3, it is a question of someone who has remained in the same territory for that time; and the response of the Sacred Congregation of the Council, June 25, 1904 (*Periodica*, II, 118), agrees.
>
> The ordaining bishop who can require testimonial letters more severely is both he by whose authority the ordinations are done, that is, regularly the Ordinary of the place, and the ordaining bishop himself, who has the right and office of driving away suspicion from his ordinand; but when it is a question of the oath by which the letters are to be supplied, that is permitted to the prudence of the Ordinary of the place alone.

By these dispositions the former law is moderated somewhat, insofar as letters for the time before puberty are not regularly to be required; and the Ordinary of the place has a remedy for supplying the letters.

2. Religious who are not governed by the law of seculars must bring dismissorial letters of the religious Superior, by which he makes faith not only concerning the quality and domicile of the one to be ordained, but also concerning studies and other requisites.

After dismissorial letters have been received, the bishop does not need other testimonials (c. 995).

But before the novitiate, testimonial letters had to be obtained from the Ordinary of origin and of each place in which, after the fourteenth year of age had been completed, the aspirants had stayed beyond a morally continuous year, besides the sworn testimonial letters of the rector of the seminary or college, after hearing the Ordinary of the place, or of the major Superior of the religion in whose postulancy or novitiate they had been.

Therefore by this sign religious who are governed by proper law are distinguished from those who are subject to the law of seculars, because the former receive dismissorial letters from their own Superiors.

From the indult by which not a few other non-exempt religious Superiors are permitted to give dismissorial letters, they are tacitly relieved from the burden of bringing other testimonials.

— II. Concerning the examination, what was said above, n. 693. But it can be asked to whom it belongs to examine religious who have the privilege that they can be sent by their Superiors to any bishop whatever. And we think that the right of examination remains in the bishop who, unless there were a privilege, would ordain them by his own right. But the privilege of exemption from episcopal examination follows such a privilege rather consistently. Yet to the ordaining bishop there remains the faculty of requiring an examination, which c. 991 also attributes to him who ordains another's subject.

— III. On banns. The names of those to be promoted to the individual sacred orders, except religious of perpetual vows, are to be publicly announced in the parochial church of each candidate, on a feast day of precept, during the solemnities of Masses, or on another day and hour at which a greater attendance of the people is had in church (c. 998, §§1, 2).

It is permitted to the Ordinary, for a just cause, both to dispense from that publication, and to command that it be made also in other churches, or to substitute for it public affixing at the doors of the church for several days, in which at least one feast day is included (c. 998, §1).

After six months have elapsed without the ordination having been performed, the publication is to be repeated, unless it seems otherwise to the Ordinary (c. 998, §3).

Moreover "the faithful are held by the obligation of revealing to the Ordinary or pastor before sacred ordination impediments to sacred orders, if they know any" (c. 999).

Publications, therefore, are to be made before the individual sacred orders. A parish becomes one's own through domicile or quasi-domicile. From the analogy of banns of marriage we shall

say that the same must be made in several parishes for him who has several proper parishes. The proper parish of transients is the parish where they are staying.

The obligation of reporting impediments is of natural law, which is recalled and confirmed by the positive canon. General norms concerning prescribed denunciation are to be applied. Cf. t. II.

— IV. On the investigation of the Ordinary. The Ordinary must make useful inquiries; and especially must commit to the pastor who carries out the publications, or even to another, that he diligently inquire concerning the morals and life of those to be ordained, and transmit testimonial letters concerning the investigation and publication to the curia (c. 1000).

In the ordination itself, however, the archdeacon can answer that those are worthy whom he has not known to be unworthy (cf. c. un. *De scrutinio in ordine faciendo* [I, 12]).

— V. On spiritual exercises. On all, even religious, there are imposed by c. 1001, before first tonsure and minor orders, spiritual exercises for at least three full days; before sacred orders, for at least six full days. If some are to be promoted to several sacred orders within a semester, the Ordinary can reduce the time for ordination to the diaconate, but not below three days.

Longer exercises are urged more before subdiaconate and priesthood, because subdiaconate imposes on seculars the obligation of chaste celibacy, while priesthood imposes graver offices besides the practically indispensable obligation of perfect chastity. Yet the matter is to be taken reasonably. Therefore, if use is made of a privilege permitting three sacred orders to be received in one moral series, it will suffice to make the exercises once, especially if they are then prolonged to eight or ten days. But as often as a reasonable interval permits it, at least three days of exercises are to be placed before the individual sacred orders.

The exercises must be repeated if, after they have been completed, ordination has been delayed beyond six months; if the delay has been less, let the Ordinary judge concerning the opportuneness of repeating the exercises.

Religious are to make these exercises in their own house or in another prudently chosen by the Superior; seculars, however, in the seminary, or in another pious or religious house designated by the bishop.

The Ordinary to whom various things to be defined are committed in c. 1001 is the Ordinary of the place and, for exempt religious, the major Superior. The Superior will also have to attest in his letters that the religious has completed the exercises.

The preceding pontifical law imposed spiritual exercises (and indeed for ten days) before the individual major orders only on secular clerics who were ordained in the City.

§ 2. Rite, Time, Place, Notation

— I. On the rites to be observed. These few things in cc. 1002-1005 are to be attended to by us.

1. Accurate observance of the sacred rites is inculcated, with every omission or inversion avoided.

2. By the minister himself of ordination or episcopal consecration, the Mass of ordination or consecration is to be celebrated.

3. He who has received certain orders in an oriental rite and then has obtained an indult from the Apostolic See to receive major orders in the Latin rite, must first, in the Latin rite, receive the orders which he has not yet received in the oriental rite.

That is, since the Greek Church from the four minor orders of the Latin Church confers only the lectorate formally or distinctly, he who is to receive diaconate or presbyterate in the Latin rite will first have to receive the orders formally passed over, so that every appearance of leap may be avoided.

— II. At what time ordinations are to be done. 1. Episcopal consecration must be conferred during the solemnities of Masses, on Sunday, or on the birthday of the Apostles (c. 1006, §1). 2. Ordinations *in sacris* are to be celebrated during the solemnities of Masses on the Saturdays of the Four Times, the Saturday before Passion Sunday, and Holy Saturday. But for a grave cause the bishop can have them also on any Sunday or feast of precept.

And since it is not said "on a feast of precept, even suppressed," as in c. 399, §1, only feasts which are in force are to be understood of themselves. And according to that opinion both the Sacred Congregation of Rites and the Sacred Congregation of the Sacraments used to answer and act. Recently, however, the more benign opinion has become practically safe, even in the City, which, just as for Masses for the people, also for ordinations, counts feast days according to the catalogue of Urban VIII.

3. First tonsure can be conferred on any day and hour; minor orders, on individual Sundays and double feasts, but in the morning.

From the manner in which, in §§2 and 4, the Code distinguishes double feasts from feasts of precept, it is clear that here double feasts are understood as doubles in choir, although not of precept.

4. Custom contrary to the times of ordinations prescribed by the Code is reprobated.

Yet privileges are not revoked. But the Sacred Congregation of the Council constantly responded that the privilege of receiving or conferring orders outside the Times is to be understood of the privilege of receiving them on Sunday or a feast of precept; and Lugo already notes, *Resp. mor.*, l. 1, d. 34, that the more benign opinion had been rejected by the decree of Urban VIII (cf. Gasparri, *De Ord.*, I, 52). But use according to this opinion will no longer be able to be preserved, since by §5 such a custom is reprobated.

5. The repetition of ordination or a rite to be supplied, absolutely or conditionally, can always be performed outside the Times and secretly (c. 1007). But here outside the Times signifies on every day on which Mass can be celebrated.

— III. Place of ordinations. 1. Since only Cardinals can exercise pontificals everywhere (c. 239, §1, 15), bishops who are not Cardinals cannot, without license of the Ordinary of the place, confer

orders even on their own subjects in whose conferral pontificals are exercised (c. 1008).

2. "§1. General ordinations are to be celebrated publicly in the cathedral church, the canons of the church being called and present; but if in another place of the diocese, with the clergy of the place present, the more worthy church, so far as can be done, is to be approached" (c. 1009).

General ordinations are those which are held on the six Saturdays which from c. 1006, §2 are the proper time for ordinations *in sacris*. Thus the usage of the word has already long been received. Because of the faculty which §3 of the same canon attributes to the bishop of having those ordinations also on any Sunday or feast of precept, Augustine, on c. 1009, thinks that now too under this name come ordinations which ought to have been celebrated on one of the six Saturdays but have been delayed to a feast day. But those which are celebrated outside those Times are particular ordinations. Moreover at general ordinations in the cathedral the canons must assist, and they can be compelled to this by censures (S. C. C., June 19, 1778, to IX; Richter, *C. Trid.*, p. 194, n. 1). Whether the bishop can in the same way compel the local clergy, when general ordinations are done in another place of the diocese, is less certain.

Particular ordinations, however, the bishop can have, for a just cause, also in other churches and in the oratory of the episcopal house or seminary or religious house (c. 1009, §2).

First tonsure and minor orders can also be conferred in private oratories (c. 1009, §3).

— IV. Notation and testimony of ordination. 1. The Code prescribes an accurate description, with the ordaining minister and the individual ordained indicated, of all ordinations performed, to be kept in a special book in the archive of the curia of the place of ordination; in this book those are also to be noted who were ordained by an outside bishop with dismissorial letters (c. 1010).

2. Besides, the local Ordinary, if it is a question of seculars, and the major Superior, if of religious ordained with his dismissorial letters, must transmit notice of the celebrated ordination of each subdeacon to the baptismal pastor, to be entered in the book of those baptized (c. 1011).
3. To each ordained man an authentic testimony of the ordination received is to be given (c. 1010, §2).

— V. Obligations imposed by the ordaining minister on the ordained. 1. What are imposed. The Roman Pontifical at the end of the ordination of priests suggests to the ordaining minister the burdens which he is to impose in these words: "Each of you promoted to first tonsure or to the four minor orders, say once the seven penitential psalms with the Litanies, versicles, and prayers; those promoted to subdiaconate or diaconate, the nocturn of such a day. But those ordained to the Presbyterate, after your first Mass, say three others, namely, one of the Holy Spirit, another of Blessed Mary ever Virgin, and a third for the faithful departed, and pray to almighty God also for me."

The psalms with litanies, etc., are found in their proper place at the end of the breviary. - The nocturn of such a day is understood either as the nocturn of the feria, or the first Nocturn of Sunday or of a feast of nine lessons, according as the ordination was held on a feria, feast, or Sunday. Thus the Sacred Congregation of Rites, June 27, 1899 (4042). That response supposes that the nocturn of the very day of ordination had been indicated. But the bishop could designate the nocturn of another day, and then it will be the nocturn of the feria or the first of

a feast of nine lessons if on that day the office is of the feria or of a saint. And the bishop also has the right of expressly designating another nocturn than the first.

A nocturn, however, consists of psalms with antiphons, without lessons, invitatory, and hymn (S. R. C., July 19, 1903, n. 4177).

The three Masses are understood as votive, unless a feast of the Blessed Virgin Mary occurs, or a day on which the Mass of the Holy Spirit is to be said; by that celebration the burden is satisfied. For these Masses a stipend can be received.

Yet Noldin, III, 478, at the end, advises that they be applied for the Church and for the faithful departed. For the mind of the Church is "that the ordained, through them, honor the Holy Spirit and the Blessed Virgin; give thanks to them for benefits received; implore divine assistance both for the universal Church, and for the ordaining Pontiff, and for themselves; and finally that they show mercy to the suffering Church, that is, to the faithful departed."

2. Obligation. It is not established that there is any obligation under sin of fulfilling any of these burdens.

Summary

— I. Things to be furnished before sacred ordination. Besides notice to be given timely concerning one's purpose, seculars to be promoted and religious who use their law in ordination must bring various testimonials, while for other religious it is enough to bring the dismissorial letters of their proper Superior. Those things which have been stated must be examined in the stated manner. Excepting religious of perpetual vows, the others are to be announced publicly once in the church. The Ordinary can dispense those banns just as he can command others; and the faithful must reveal impediments to the Ordinary or pastor. The Ordinary himself, by himself or through others, especially through the pastor, must make useful inquiries; finally, spiritual exercises are to be undertaken by all, even religious, for the time defined by the Code.

II. Various remaining things. 1. The rites are to be observed accurately; and ordinations are to be done at the due time and place. The privilege of receiving orders outside the Times can be understood of the privilege of receiving them on Sunday or a feast of precept according to the catalogue of Urban VIII.

2. Ordinations are to be noted accurately and to each ordained man authentic testimony of the ordination received is to be handed over. Besides, the local Ordinary, when it is a question of seculars, and the major Superior, when it is a question of religious ordained with his dismissorial letters, must transmit notice of the celebrated ordination of any subdeacon to the baptismal pastor, so that it may be entered into the book of baptisms.

3. Obligations imposed by the ordaining minister on the ordained are not proved to have been commanded under sin.

Chapter VI: Doubtful, Impugned Ordination

Penal Sanctions for Ordination Badly Conferred or Received

N.B. On account of the indelible character of the sacrament of Order, which perhaps even the minor orders imprint, the Church does not think of taking away the order itself from anyone. Nor does she wish that tonsure itself be invalidated. But she declares doubts, reduces the ordained to the state of laymen, and dispenses from obligations. Thus a cleric, in minor orders, validly and licitly marries; but, in the Latin Church, now, by that very fact, he falls from the clerical state.

§ 1. On Doubtful Ordination

— Doubts concerning the value of ordination, even for religious, pertain of themselves to the Sacred Congregation of the Discipline of the Sacraments, which will transmit the question to the Holy Office, if a doctrinal point can be controverted on which the solution depends.

Yet the Sacred Penitentiary can be approached for advice by all concerning a doubt of conscience pertaining to this matter, or when without danger of infamy or scandal the matter cannot be divulged, and at the same time the remedy can consist in a secret repeated ordination without the necessity of repeating quite many ordinations or of taking a similar disposition public of itself. Then the name of him concerning whose ordination there is doubt is withheld.

§ 2. On Causes Against Sacred Ordination

— The very validity of ordination or its obligations can be impugned. The libellus is to be sent to the Sacred Congregation of the Discipline of the Sacraments. But if a substantial defect of the sacred rite is alleged, the libellus is to be sent to the Sacred Congregation of the Holy Office.

The Sacred Congregation defines whether the cause is to be treated by judicial order or by the path of discipline. In the former case, the cause is remitted to the diocesan tribunal; in the other, the Sacred Congregation itself settles the question (c. 1993. Cf. *Epitome*, III, 299 with appendix).

Validity can be impugned both by the ordained man and by the Ordinary to whom he is subject or in whose diocese he was ordained; obligations, however, by the cleric alone who contends that the obligations were not contracted by him (c. 1991).

The mode of procedure is similar to the process in matrimonial causes, with a defender of the bond of sacred ordination constituted (cc. 1995, 1996). Meanwhile the cleric is prohibited from the exercise of orders as a precaution (c. 1997).

Two conforming sentences are required for the cleric to be free from the obligations which flow from the bond of ordination (c. 1998).

§ 3. Penal Sanctions

— 1. Suspension *ipso iure* and indefinitely, reserved to the Holy See, punishes the consecrating bishop, the bishops or priests assisting (in place of bishops), and the one consecrated without apostolic

mandate (c. 2370); clerics who knowingly have been promoted to orders through simony (c. 2371); those who presume to receive orders from one excommunicated or suspended or interdicted, after a declaratory or condemnatory sentence, or from a notorious apostate, heretic, or schismatic (c. 2372). These are graver delicts.

2. For a year from the conferral of orders, by the fact itself, they are suspended, with the suspension reserved to the Holy See: a) those who have ordained another's subject without the dismissorial letters of the proper Ordinary; b) those who have ordained their own subject without the testimonial letters due from cc. 993, 3 and 994; c) those who have promoted someone to major orders without canonical title, against the prescription of c. 974, §1, n. 7; d) those who, saving legitimate privilege, have promoted a religious belonging to a family which is outside the territory of the ordaining minister, even with dismissorial letters of his proper Superior, unless it has been proved that the case occurs which is excepted by canon 966 (c. 2373). These are less grave delicts.
3. All are said to be suspect of heresy, even those increased by episcopal dignity, who knowingly have promoted to orders through simony or have been promoted (c. 2371).
4. He is suspended by the fact itself from the order received who has maliciously approached orders without letters or with false dismissorial letters, or before the canonical age, or by leap (c. 2374). These are graver delicts in the ordained man.
5. He is declared to be punished with grave penalties who has maliciously approached orders without testimonial letters or while held by some censure, irregularity, or other impediment (c. 2374).

N.B. 1. He who in good faith has received orders from one excommunicated or suspended or interdicted after a declaratory or condemnatory sentence, or from a notorious apostate, heretic, or schismatic, lacks the exercise of order until he is dispensed (c. 2372).

2. Concerning irregularity because of an order badly exercised, it was said above in n. 711.

Summary

— I. Doubts concerning the value of ordination, even for religious, pertain to the Sacred Congregation of the Sacraments. Matters which must remain occult can be referred to the Sacred Penitentiary, with the name withheld. Doctrinal points are defined by the Holy Office.

II. A libellus for impugning the value of ordination or its obligations is likewise sent to the Sacred Congregation of the Sacraments, or, if it is a question of a vitiated rite, to the Holy Office. The Sacred Congregation either remits the cause to the diocesan tribunal, or itself settles the question in the disciplinary line.

III. Various penal sanctions, chiefly of suspension, are borne against those badly ordaining or badly receiving orders. And until he is dispensed, he lacks the exercise of order who in good faith has received orders from one excommunicated, or suspended or interdicted after a declaratory or condemnatory sentence, or from a notorious apostate, heretic, or schismatic.

Treatise VIII: On Matrimony

Canonical Part — (cc. 1012-1143)

Utility. - From an accurate knowledge of this canonical part, the priest has these principal fruits to gather: that, with the impediments known, he may not lend his work except to valid marriages; that, with the prescriptions to be observed known, he may exercise his ministry according to the mind of the Church; that, with the faculties of dispensing or convalidating marriages known, he may cut away many scandals, and may rescue not a few men from the miserable state of sin.

— *Appendix XVI belongs to this section.* Historical. Cf. Appendix XVI.

Title I: On Sponsals and Matrimony Considered in Themselves

Article I: Notions, Divisions, Favor of Law

— 1. Sponsals for the future are a voluntary, deliberate, and mutual promise, expressed by a sensible sign, of future marriage, between persons able by law. Before the Code, the individual words of the definition had to be weighed accurately, because sponsals, but not a diverse promise of marriage, induced the ecclesiastical impediment of public honesty, prohibiting marriage with any other person whatever, and diriming marriage with blood-relatives in the first degree of the bridegroom or bride. Both canonical impediments have now been removed. Wherefore, for marriages celebrated after the Code in force, this is no longer to be attended to, so that sponsals themselves have been reduced to the common genus of promises obliging from fidelity or justice. Therefore the Code reserves no chapter for sponsals, but c. 1017 joins various forms of promise, subjecting them all to a common condition of validity and effect.

2. For the promise can be unilateral, or of one person without a counter-promise, or bilateral, or of both; and, especially when it is unilateral, it can oblige from mere fidelity, or confer a right on the other, so that its violation is strictly injurious.

But the common condition of validity, for each forum, is that it be made by writing signed by the parties, that is, by the one promising and the one accepting or counter-promising, and either by the pastor or local Ordinary, or by at least two witnesses. If either or both parties do not know how to write or physically cannot, this must be noted for validity in the writing itself, and another witness (one) is to be added, who with the above-mentioned witnesses signs the writing.

The canonical effect, however, even of a valid promise obliging from justice, is only this: that damages from the violated promise are to be repaired. For this an action is given, but no longer for seeking the celebration of marriage (c. 1017). Thus, having imitated civil Codes, the canonical Code consults more for the liberty of marriages.

An invalid promise will not even give an action for repairing damages, unless because of unjust means employed, such as force and fear, and deceit.

It is clear besides that the general conditions of validity and dissolution of every contract or promise are to be observed. For the rest, cf. T. IV, nn. 23-29, the moral part.

— Notion of matrimony. Matrimony can be considered either in becoming or in fact being.

1. In becoming, the efficacious cause of the union is taken: it is the matrimonial contract, which among the baptized itself has been raised to the dignity of a sacrament, so that among the baptized a valid contract cannot subsist without being by that very fact a sacrament (c. 1012). It can be described as: the contract, and among the baptized the sacrament, by which man and woman legitimately hand over to each other their bodies, primarily for the end of procreating and educating offspring, secondarily for mutual help and a remedy of concupiscence (c. 1013, §1). The remote matter of the sacrament is the bodies of the contracting parties to be mutually handed over, or the mutual right over the body of the other. The proximate matter, and that

from which, is the mutual handing over of bodies, which is contained in consent expressed by external signs.

The form is the same consent, insofar as it has the character of acceptance.

The minister is not the priest: it is the contracting parties themselves, because they posit the matter and form.

The competent priest is an "authorized" witness, or one endowed with authority, commanded by law.

Matrimony between a baptized party and a non-baptized party, although not a few still contend that it is a sacrament in the baptized party, should rather, with the more common opinion, be held as a mere contract, because that sacrament does not seem able to consist imperfectly in one; because the non-baptized party does not seem able to administer that sacrament to another; and because matrimony contracted in infidelity, even if it is consummated after the baptism of one party, allows place for the Pauline privilege. (Cf. these reasons in Wernz, *Ius Decr.*, IV, 11 and note 95.)

2. Matrimony in fact being designates formally the union itself, or the very bond induced by the contract. It is matrimony more properly so called, whose "properties are unity and indissolubility, which in Christian matrimony obtain peculiar firmness by reason of the sacrament" (c. 1013, §2).

The *res et sacramentum* is, according to Cardinal Billot (*De sacramentis*, th. VI), the sacred bond of the mutual obligation of man and woman; Fr. de la Taille also places it in the conjugal bond, which, as he adds, is the symbol of the conjunction between Christ and the Church, redeemed from the corruption of the flesh of sin through the death of Christ (*Mysterium Fidei*, p. 581, note).

— Division. 1. "A valid marriage of the baptized is called ratified, if it has not yet been completed by consummation; ratified and consummated, if between the spouses there has taken place the conjugal act, to which by its nature the matrimonial contract is ordered, and by which the spouses become one flesh. If the spouses have cohabited, consummation is presumed, until the contrary is proved" (c. 1015).

Sanchez thought that by every reception of the virile seed into the uterus of the wife matrimony was consummated; nor does Sanchez doubt concerning that conclusion; today they rather judge that insemination in perfect copula is required (or with penetration into the female vessel. Cf. De Smet, *De sponsalibus*, etc., n. 157 and our *De castitate*, nn. 77-87).

It is called ratified insofar as it is confirmed or ratified by the sacramental character. Yet there are those who call ratified the matrimony of a baptized person with a non-baptized party if the license of the Church has acceded (cf. De Smet, n. 157). These suppose that in one person there can be a sacrament. The Code, abstaining from the doctrinal question, deliberately uses a manner not very perspicuous in the aforesaid c. 1015.

2. "Matrimony validly celebrated between non-baptized persons is called legitimate" (c. 1015, §3), or legitimate only. Sometimes every valid matrimony is said to be legitimate (cf. v. g. c. 1075).
3. Matrimony can be either true or valid, or invalid. "An invalid marriage is called putative, if it has been celebrated in good faith by at least one party, until each party becomes certain of its

nullity" (c. 1015, §4).

Therefore a doubt which supervenes on good faith does not take away the character of putative matrimony.

4. Matrimony is called canonical and political or civil, according as it satisfies only the conditions required by canonical law, or also the conditions prescribed by civil law for obtaining civil effects. Of itself, civil law ought to join civil effects to canonical matrimony, although the civil power is competent concerning civil effects.

Sometimes civil, or merely civil, is called a matrimony which, although to the contracting Catholic party it is fictitious, satisfies only the conditions of civil law.

5. Matrimony is also distinguished as public, which is publicly celebrated in the face of the Church, and occult or of conscience, which, denunciations being omitted, is contracted secretly before only the pastor and two discreet witnesses (cf. c. 1104). From marriage of conscience differs morganatic marriage, which is made between persons of unequal condition with the agreement that the wife and children, content with a certain donation[(1)], remain without share in the dignity and patrimony of the man; and clandestine marriage, which, without a pastor as qualified witness, or without the other two witnesses besides the pastor canonically required, is celebrated even openly, for example before a civil magistrate.

When accidental solemnities are added, matrimony merits the special name of solemn nuptials.

[(1)] The name is taken from *Morgengabe*, a morning gift, because the effects in the family matter are reduced to a certain donation.

— "Matrimony enjoys the favor of law; wherefore, in doubt, one must stand for the value of matrimony, until the contrary is proved, saving the prescription of c. 1127" (c. 1014). That is, this presumption yields to the privilege of the faith, which from c. 1127, even in a doubtful matter, enjoys the favor of law, so that for the utility of the faith one can stand for the nullity of a doubtful matrimony.

Article II: Banns and Various Things Which Must Be Premised to Matrimony

— One must proceed from this principle: "Before matrimony is celebrated, it must be established that nothing stands in the way of its valid and licit celebration" (c. 1019, §1).

Exception. In danger of death, however, when other proofs are lacking, "unless contrary indications are present, the sworn affirmation of the contracting parties suffices, that they have been baptized and are detained by no impediment" (c. 1019, §2).

— Obligations of the pastor. The pastor, therefore, and not the betrothed, insofar as the obligation is merely canonical, since the betrothed in certain adjuncts can marry without the pastor; and indeed the pastor who has the right of assisting at the marriage, therefore, for the most part, the pastor of the bride, must, at an opportune time:

1. diligently, in a general manner, investigate whether anything stands in the way of the marriage to be contracted (c. 1020, §1).

The investigation concerning free status and concerning free consent is to be made even by a pastor to whom these things are morally established (Vlaming, *Pract. iur. matr.*, I, 139).

Relying, however, on c. 1020, §3, which declares that it pertains to the Ordinary to prescribe prudent norms for the investigation by pastors, the Ordinary seems able to recall that investigation to his Curia, at least if, because of the adjuncts, that seems prudently to be counseled. We are confirmed by the response of the Sacred Congregation of the Council, February 1, 1908, by which, after the decree *Ne temere*, the law or custom was declared to be preserved by which the acts by which the free status of the contracting parties is established had to be performed by the episcopal Curia, and then permission was given to pastors of assisting at marriages (cf. Ojetti, *In ius antepianum et pianum ex decr. Ne temere*, n. 93, or our *De forma Sponsalium et matrimonii*, ed. 5, n. 55). This is done with admirable order in the Neapolitan Curia.

2. to interrogate the betrothed, even separately and cautiously, concerning impediments, concerning free consent, especially of the woman, concerning instruction in Christian doctrine, "unless because of the quality of the persons, this last interrogation appears useless" (c. 1020, §2).

It can appear useless either from the manifest instruction of the betrothed, or even from a mind hostile to religion. Yet let this latter not easily be presumed where there is the custom of an examination in catechism. For those who admit religious nuptials are accustomed then also to assent to the customary conditions; and one must beware lest, by excessive timidity, usages perish which certainly are to be approved. "Let him carefully teach ignorant betrothed persons," answered the Commission of the Code, June 2-3, 1918, "at least the first elements of Christian doctrine: but if they refuse, there is no place for rejecting them from marriage, according to the norm of c. 1066" (*Periodica*, IX, 150). According to the norm of c. 1066, that is, after the Ordinary has been consulted, who will settle the matter;

3. to observe the prescriptions by the Ordinary. For he can command several things here (c. 1020, §3), even when the investigation remains committed to the pastor;
4. to request testimony of baptism, even from a Protestant (c. 1021, §1);
5. since c. 1021, §2 warns that Catholics not yet confirmed should receive the sacrament of Confirmation before they are admitted to matrimony, if they can do so without grave inconvenience, the pastor will care for this also according to his powers;
6. to teach the betrothed their duties (c. 1033). How much it will help that here he have prepared a little book of pleasing form and easy reading, where the things which are permitted and not permitted in matrimony are proposed distinctly and at the same time prudently, with the duties concerning the instruction of children and also hygienic counsels concerning contagions and children added!

7. to warn minors by birth, insofar as there is need, lest they enter nuptials without the knowledge or with the reasonable unwillingness of parents; "but if they refuse, let him not assist at their marriage, unless the local Ordinary has first been consulted" (c. 1034);

8. to exhort those about to marry vehemently "that before the celebration of matrimony they diligently confess their sins and piously receive the Most Holy Eucharist" (c. 1033).

From the common law itself, the pastor can deny his assistance to a spouse who has refused to confess, if he is a public sinner (for example because of notorious omission of the Easter precept), or if he refuses confession in contempt of the Church, or if the omission will have been scandalous (cf. S. C. C. in Moguntina, August 28, 1852).

Confession prescribed by particular law cannot be converted into an impediment. Wherefore occult sinners who have refused to confess their sins are not to be excluded from matrimony.

A difficulty foreseen in a particular case is to be exposed to the Ordinary in good time. When a difficulty urges, assistance at matrimony cannot be refused, if he has been an occult sinner. Vlaming, I, p. 182; Linneborn, p. 83;

9. to make proclamations of the banns.

— On banns. 1. Banns, from a word which in the Middle Ages designated both jurisdiction and the territory of jurisdiction, and an edict and its proclamation, are public denunciations of a future marriage between definite persons, made authoritatively, with a tacit command made to the faithful of revealing impediments if any seem to stand in the way of the marriage.

2. These publications are to be made by the pastor whom domicile or quasi-domicile, or, if it is a question of a transient or of someone who has only diocesan domicile or quasi-domicile, at least present stay has made proper (cc. 94 and 1023). If there are several proper pastors, they are to be made by all.

Besides, if, after puberty, a party has stayed in another place (it is not said in another parish) for six months, the matter is to be proposed to the Ordinary, who will see what it is expedient to do.

The words of canon 1023, §2, "in another place" are understood by Vlaming, op. cit. I, 171, note 2, as "in another parish," because in §1 the banns are said to be made by the proper pastor. But the very difficulty of executing this canon, on account of which many, and Vlaming himself, think that one can depart from literal observance and stand by particular law, persuades us of the broader sense of the word, which in other respects is its proper sense.

If a positive suspicion of an impediment has arisen, the Ordinary will have to be warned; he also, for a briefer time of stay, will command proclamations, or in another way will take care that the suspicion be removed: before the suspicion has been removed, the marriage is illicit.

If, because of the plurality of journeys and the distance of regions, it will have been too difficult to gather the customary proofs by proclamations, it will be permitted to the Ordinary to provide otherwise and to admit other proofs, not excluding a supplementary oath (Response, June 2-3, 1918, *Periodica*, IX, p. 150, 4).

3. A twofold mode of banns is admitted today. Either by oral publications, 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 frequently come (c. 1024); or, if the Ordinary has preferred it, by public affixing at the doors of the parochial church or another church, of the names of the contracting parties, for the space of at least eight days, so that in this space two feast days of precept are included (c. 1025).

With the permission of the Ordinary, feast days even abrogated can be understood.

4. Banns are to be made for marriages between Catholics alone. Yet the Ordinary can permit that future mixed marriages be proclaimed (between a non-Catholic or infidel party and a Catholic party), scandal having been removed, after ecclesiastical dispensations have been obtained, and with the religion of the non-Catholic party kept silent (c. 1026).
5. Banns produce the effect of positively obliging the faithful, not excluding the betrothed, of revealing or reporting impediments before marriage, either to the pastor or to the Ordinary. Impediments are to be denounced even if occult and unable to be proved. After the marriage has been celebrated, only the natural obligation remains. From making the denunciation there excuse: a) a secret entrusted by reason of office, for the sake of seeking counsel; b) harm proportioned to the very gravity of the impediment and to the consequences of silence.

It can happen that, in silence, marriage between natural brother and sister or between father and his own daughter can be permitted, if the woman, conscious of this matter, cannot reveal it without the greatest disgrace of her own (cf. De Smet, *De sponsalibus et matrimonio*, n. 69).

Other pastors must immediately make the pastor who must assist at the marriage more certain concerning the outcome of the investigations or proclamations (c. 1029).

6. Not the pastor indeed, but the proper Ordinary of those about to marry, can dispense from banns. And if there are several proper Ordinaries, dispensation pertains to that proper Ordinary in whose diocese the marriage will be celebrated; but if the marriage is going to be outside the proper dioceses, any proper Ordinary can dispense (c. 1028).

That dispensation must be given if it is necessary for avoiding grave harm, for example, malicious hindering of the marriage, a delay that is scandalous, defamatory, or dangerous to the constancy of the party (cf. Ferreres, II, 946); it can be given, if there is no suspicion of an impediment, or if it is removed in another way, and the celebration of the marriage is urgent. And it is clear that a lesser cause suffices for partial dispensation than for complete. Princes generally are held as dispensed; magnates can more easily be dispensed.

— After the investigation and banns have been completed: 1. the marriage is not to be celebrated immediately, but of itself, from the last proclamation, three days must run. Yet a reasonable cause, which excuses from that delay, is permitted to the prudent judgment of the pastor himself;

2. but before he has received all documents, the pastor cannot assist at the marriage;
3. after six months from the publications made, unless marriage has intervened, the banns are to be repeated, unless something else seems good to the local Ordinary;

4. if no impediment has been detected, neither doubtful nor certain, the pastor, after the publications have been completed, is to admit the parties to the celebration of marriage (c. 1031, §1);
5. when a certain impediment has been detected, if the impediment is occult, the pastor is to carry out or complete the publications, and, withholding names, refer the matter to the Ordinary or to the Sacred Penitentiary. If it is public and is detected before the proclamations have begun, the pastor will proceed no further until the impediment is removed, even if he knows that dispensation for the forum of conscience alone has been obtained; if it is detected after some publication has been made, the pastor is to complete the publications and refer the matter to the Ordinary (c. 1030, §2).

— In special cases provision is made in this way: that the pastor, after applying his own diligences, should approach the Ordinary for advice and obey his commands. Thus it is prescribed that he do this:

1. if, the matter having been accurately investigated, he has prudently judged that a doubt concerning the existence of an impediment survives (c. 1031, §1);
2. except in a case of necessity, if one of those about to marry is a transient, that is, has nowhere domicile or quasi-domicile (c. 1032). We think that this must be done even if the wholly transient person has a monthly stay in the parish;
3. if it is a question of mixed marriage, "where he certainly knows" that the spouses have approached or will approach, whether by themselves or through a proxy, a non-Catholic minister, as one devoted to sacred things, for furnishing or renewing matrimonial consent. For they are always prohibited under grave obligation from doing this. For the sake of civil effects, a non-Catholic minister who functions only in the office of a civil official is not forbidden to be approached (c. 1063);
4. if one of those about to marry has notoriously either cast off the Catholic faith... or is ascribed to societies condemned by the Church (c. 1065);
5. "if a public sinner or one notoriously bound by censure refuses before marriage to approach sacramental confession or to be reconciled with the Church" (c. 1066);
6. if the marriage is to be contracted by proxy and time is available (c. 1091).

Summary

— I. What sponsals are. A promise of marriage can be unilateral, obliging from fidelity or justice, and bilateral. Sponsals are a voluntary, deliberate, mutual promise of future marriage between persons able by law. For each forum the condition of validity is that it be made by writing signed by the parties and by the pastor or local Ordinary or by two witnesses. If either or both parties do not know how to write or cannot, this must be noted for validity; and another witness must sign the act. From sponsals there arises only an action concerning damages.

II. What matrimony is. 1. In becoming, it is the contract itself and, among the baptized, the sacrament by which man and woman legitimately hand over to each other their bodies, primarily for

the end of procreating and educating offspring, secondarily for mutual help and a remedy of concupiscence.

The remote matter of the sacrament is the bodies of the contracting parties, but the proximate matter is the handing over which is expressed by consent. This consent, insofar as it expresses acceptance, is at the same time the form. The ministers are the contracting parties themselves. The *res et sacramentum* is the sacred bond of mutual obligation.

In fact being, it is the very bond induced by the contract. The properties of matrimony, thus properly so called, are unity and indissolubility, which by reason of the sacrament have greater firmness.

2. Of how many kinds matrimony is. It is ratified when, confirmed by the sacramental character, it has not yet been completed by consummation; ratified and consummated if among Christians it has been perfected by the conjugal act. Legitimate, properly today, is a valid marriage of non-baptized persons; sometimes it is said of every valid marriage; civil, which, whether true or fictitious, satisfies the conditions of civil law. Public marriage is contracted openly in the face of the Church; occult or of conscience is celebrated secretly before the pastor and two secret witnesses; clandestine is contracted even openly without pastor and witnesses canonically required.

In doubt, matrimony is presumed valid; in favor of the faith, one can stand for the nullity of matrimony in doubt.

III. Things to be premised to matrimony. Excepting danger of death, in which, unless there are contrary indications, the sworn affirmation of the contracting parties concerning their baptism and free state suffices, before marriage it must be juridically established that nothing stands in the way of the celebration. Therefore the pastor to whom assistance belongs must diligently investigate whether something stands in the way, interrogate the spouses, and dispose them. Banns are to be proclaimed by every proper pastor on three continuous Sundays or feasts, if the marriage is made between two Catholics. In place of public denunciations, the Ordinary can permit public affixing at the doors of the church of the names of the contracting parties for at least eight days, so that two feast days of precept are included. The Ordinary can dispense from banns; and in every difficulty and doubt, the pastor must approach him for advice.

Title II: On the Impediments of Matrimony

Chapter I: General Matters on Impediments and Dispensations

— Notion of impediment. In the broadest sense, an impediment is whatever stands in the way of the validity or liceity of matrimony: even natural inability for any contract whatever, such as insanity gives, and the state of sin itself. - In a broad sense, it is whatever externally, by divine or human law, stands in the way of the validity or liceity of matrimony: then it is also a defect of substantial or accidental form, as if matrimony is made without the pastor, without banns. - In the proper sense, it is whatever externally, by divine or human law, makes a person unable, not for any contract whatever, but for matrimony, or forbids him to contract marriage. Then a defect of form is not an impediment. And thus it is understood in the Code. Wherefore defect of solemnities is not numbered among impediments (cf. d'Annibale, III, 429; Gasparri, I, 265-266).

— Division of impediments. 1. An impedient impediment "contains a grave prohibition of contracting marriage": yet this does not render it invalid (c. 1036, §1). A diriment impediment, on the contrary, stands in the way of the very validity of marriage, which at the same time it gravely prohibits (c. 1036, §2).

2. An impediment is judged public which can be proved in the external forum; otherwise it is occult (c. 1037).

You should observe that in the Code itself, marriage and delict are said to be occult and public in a diverse manner, so that the notion handed down here is by no means general. Therefore a case occult or public is one thing; an impediment public or occult is another. It can well happen that an impediment can be proved in the external forum, which nevertheless is so commonly unknown that its case can and must be said to be occult.

Public and occult impediments can be such either by their nature (c. 1971, §2), or by fact. By their nature public are said those to which origin was given by a fact which must occur before the forum of the Church or in an assembly of the faithful, such as the impediment of order; or which must be entered in public registers: age, legitimate consanguinity, and mixed religion itself; or which can be proved by the testimony of a qualified witness testifying from his office or of two immediate witnesses: ligamen.

By fact, an impediment will be public whose proofs of the external forum are truly at hand, even if it is widely unknown. But the question controverted before the Code, whether an impediment should be called occult or rather public which is known materially in its elements but not formally in its juridical force, or whose cause indeed is known but not the effect of producing an impediment, can today be passed over. For the fact which is known can be proved in judgment, where the law is not unknown (cf. Cappello, III, 200, 3).

3. According to their origin, impediments of divine law are distinguished, which the Church authentically declares, and those of positive human law, which the Church establishes, or, for the non-baptized, the competent power establishes.

4. According to the discipline of dispensation, impediments are of lesser grade and of greater grade. Dispensation from the former is not invalidated because of the vice of obreption or subreption. They are: consanguinity in the third degree of the collateral line, affinity in the second degree of the collateral line, public honesty in the second degree, spiritual kinship, crime from adultery or from attempted marriage, even by a civil act only (c. 1042).

— Author of impediments. 1. Impediments of divine law are at the same time of natural law.

2. Impediments of human law for the baptized are established by ecclesiastical law alone. Their constitution is now reserved to the Holy See, with custom also excluded, insofar as a custom inducing an impediment is reprobated (c. 1041). For non-baptized persons, the power of inducing even diriment impediments does not seem to be removed from civil authority.
3. A bishop or local Ordinary can forbid some particular marriage in his territory, but only for a time and while a just cause endures.

The pontifical authority alone also, with even a custom contrary to impediments by abrogation or derogation reprobated (c. 1041), can suppress or relax impediments of ecclesiastical law.

— Subject of impediments. Only the baptized are directly bound by canonical impediments; only infidels by the impediments of civil law. But an impediment in only one or the other party renders the marriage illicit or invalid for both parties (c. 1036, §3).

As regards the form of celebration, the exempt party would of itself communicate its exemption with the other party, unless now it had been established otherwise by positive law (cf. Gasparri, I, n. 297).

After conversion and baptism, a fact before baptism brings forth an impediment if it subsists or perseveres in a natural bond, but not in a bond in the canonical manner.

— Dispensation or relaxation of impediments.

1. The Supreme Pontiff possesses the fullest faculty of dispensing in all impediments of ecclesiastical law, and of declaring divine law concerning the same matter. The civil power can relax its impediments for the non-baptized. Dispensation from occult impediments is sought from the Sacred Penitentiary; for public impediments the Sacred Congregation of the Sacraments is to be approached, excepting the impediments of disparity of cult and mixed religion, for which the Holy Office is to be approached.
2. Those inferior to the Supreme Pontiff cannot dispense in impediments, unless Ordinaries, when the fact is doubtful and it is a question of laws in which the Roman Pontiff is accustomed to dispense (c. 15); or when recourse to the Holy See is difficult and at the same time there is in delay danger of grave harm, and it is a question of a dispensation which is customarily conceded by the Apostolic See (c. 81); - or unless by indult or by the common law itself this faculty has been given.

— Faculties granted to Ordinaries. 1. General faculties have customarily been granted to Nuncios or Apostolic Delegates; to bishops, Vicars Apostolic, and Prefects Apostolic.

1. By force of c. III of their faculties, Nuncios or Apostolic Delegates can dispense from impedient impediments; for a certain number of cases, from diriment impediments of ecclesiastical law, whether public or occult, excepting those which arise from affinity in the direct line, after consummated marriage, from sacred order, and from solemn religious profession; they can sanate in the root, for a certain number of cases, marriages null because of a diriment impediment, when renewal of consent is morally impossible, yet the party conscious of the impediment having been warned concerning the effect of the sanation. The clauses to be observed, and the communication with an auditor or secretary acting in the place of the Nuncio, are indicated in the formula (cf. *Epitome Iuris*, I, p. 363 s.).
2. As regards local Ordinaries, by decree indeed of the S. C. Consistorial, April 25, 1918 (*Per.*, IX, 116), the faculties of the external forum which before had customarily been granted were first abrogated; but since the necessity of arming Ordinaries with habitual faculties was soon demonstrated, the same Sacred Congregation, by letters of March 17, 1922, sent various lists to the bishops, of quinquennial faculties which local Ordinaries not subject to the S. C. de P. F., in the year in which they must report to the Holy See, can obtain from the respective Congregations or from the Sacred Penitentiary. After the Motu proprio of April 20, 1923, all these faculties are bestowed by the S. C. Consistorial itself, the right of the individual Offices to draw up and change formulae remaining intact.

To Ordinaries outside Europe, and also to many Ordinaries of Europe, the S. C. of the Sacraments grants the faculty of dispensing in diriment impediments of lesser grade and in impedient impediments arising from a vow; besides this, in more urgent cases, of dispensing from impediments: a) of consanguinity in the second degree or in the third mixed with the first, provided no scandal or wonder arises from it; in the second degree of the collateral line; b) of affinity in the first degree of the collateral line equal or mixed with the second; c) of public honesty in the first degree, provided it is certainly established that the spouse cannot be offspring generated by the other of the contracting parties.

Besides this, at the time and in the act of sacramental visitation or of sacred missions and no further, they can dispense from all matrimonial impediments mentioned above with those who are found to be living in concubinage; they can sanate in the root marriages contracted invalidly because of impediments of lesser grade, if there would be great inconvenience in requiring from the party ignorant of the impediment a renewal of consent, provided the former consent perseveres and the danger of divorce is absent.

> By that distinction between consanguinity in the third degree and that which is in the third mixed with the first, the Sacred Congregation in no way thinks to convert consanguinity of a mixed degree into an impediment of greater grade, or to change the computation of the Code; it restricts only the delegated faculty.

From the Holy Office, the same Ordinaries can obtain the faculty of dispensing over the impediment of mixed religion and, if the case calls for it, also over disparity of cult as a precaution, the due cautions having been furnished; of sanating in the root marriages attempted before a civil official or a non-Catholic minister with the impediment of mixed religion or disparity of cult.

The faculties of both Congregations can be exercised everywhere toward subjects, with non-subjects, within the limits of the territory; they are delegable; yet in such wise that the faculty of sanating in the root proceeding from the Holy Office can be subdelegated only to pastors, in individual instances.

The Sacred Penitentiary, in the internal forum, even extrasacramental and outside the diocese, for the flock committed to him [faculty!], also for five years, gives the faculty of dispensing for seeking the debt with a transgressor of a private vow of perfect and perpetual chastity emitted after completing the eighteenth year of age, who has contracted marriage with such a vow; of dispensing over the occult impediment of crime, yet without machination (of death), whether marriage has been contracted or is to be contracted, a grave and lasting salutary penance having been enjoined. The faculty can be subdelegated, within the boundaries only of the diocese, to the Canon Penitentiary and to vicars forane for the forum of conscience and in the act of sacramental confession, even habitually; likewise also to some confessors for special causes; to others it cannot be subdelegated except in individual cases where they have recourse.

3. To bishops, Vicars Apostolic, and Prefects Apostolic of its jurisdiction, the S. C. of Propaganda Fide also grants matrimonial faculties through formulae which after the Code have been newly drawn up; and there are three in kind, yet in such a way that Formulae II and III are distinguished as greater (for Prelates increased by episcopal character) and lesser (cf. our *Commentarium* on these formulae).

Excepting the first formula, which is restricted to impediments of lesser grade, the others delegate a communicable faculty of dispensing "over matrimonial impediments, whether of lesser or of greater grade, as much public as occult, even multiple, yet of ecclesiastical law; excepting impediments arising from the sacred order of Presbyterate, from defect of the prescribed age, and from affinity in the direct line after consummated marriage"; and of sanating in the root marriages invalidly contracted because of some one of the impediments in which they can dispense.

But when a petition has been sent to the Holy See, Ordinaries are not to use their faculties unless from a grave and urgent cause, and they are at once to warn the Holy See concerning the matter (cc. 1048; 204, §2).

2. From the common law itself, cc. 1043 and 1045:

a) when danger of death is urgent, for consulting conscience and, if the case calls for it, for the legitimation of offspring;

b) whenever an impediment is detected when all things have already been prepared for the nuptials, and marriage cannot be deferred, without probable danger of grave evil, until a dispensation is obtained from the Holy See (the case which was called perplexed);

c) for the convalidation of a marriage already contracted, if the same danger is in delay and there is not time to have recourse to the Holy See; provided scandal is removed, and, if dispensation is granted over disparity of cult or mixed religion, the customary cautions are furnished (which latter condition is required for validity);

d) in these circumstances, I say, local Ordinaries can dispense both over the form to be observed in the celebration of marriage, and over all and individual impediments of ecclesiastical law, whether

public or occult, even multiple, excepting the impediments of presbyterate and affinity in the direct line after consummated marriage.

Moreover, they can dispense their own subjects wherever dwelling, and all those actually staying in their own territory. They must see to it that scandal is removed, and, if it is a question of disparity of cult or mixed religion, that the customary cautions are furnished.

That faculty, annexed by the common law to their office, according to the definition of c. 197, can be considered as ordinary and therefore delegable.

— Faculties of pastors. In urgent danger of death, if not even the local Ordinary can be approached, the pastor assisting at the marriage possesses the same faculty, ordinary and therefore delegable.

But in a perplexed case, or for convalidating a marriage (in a quasi-perplexed case), if the local Ordinary cannot be approached, at least without danger of violating secrecy, the pastor can do the same as the Ordinary, but for occult cases only (cc. 1044, 1045).

But the pastor must at once inform the local Ordinary concerning a dispensation granted for the external forum, and note it in the book of marriages (c. 1046).

— Faculties of the priest who assists at a marriage which is validly contracted before only two witnesses, according to the norm of c. 1098. This priest is furnished with the same power as the pastor by cc. 1044 and 1045; and he is held by the same obligation of notifying the Ordinary.

Faculties of the confessor. He can do the same as the pastor and the priest just mentioned, but for the internal forum, in the act of sacramental confession.

— Things to be observed concerning these faculties. a) Concerning the faculty in danger of death. - The danger of death can be either of the person who is bound by the impediment or of the other party. In that danger no difficulty of approaching the Holy See is required. A twofold just cause of dispensing is indicated: the necessity of conscience, if by marriage an occasion of sin is suppressed, or scandal is removed, or material damage is repaired, or hatred is extinguished, etc.; the legitimation of offspring born or to be born, provided it is not adulterine or sacrilegious, because this is not legitimated by marriage.

Provision will chiefly have to be made for removing scandal if a deacon or a professed religious afterward recovers. If there is hope of recovery, a promise of departing into a distant region is to be required, or at least of correcting by fervor of life the bad edification of the contracted marriage. When it is a question of the impediment of disparity of cult or of mixed religion, the customary cautions or promises (cf. n. 767) must be required. If they do not seem able to be fully obtained or prudently demanded, the Ordinary more probably acts validly who, in these extreme matters, is content with the conditions required by divine law (cf. Pigui, n. 90, 6; Cerato, *Matrimonium*, p. 47; Cappello, III, n. 232). Yet we gather this less from the present faculty than from c. 81, by which, where there is in delay a danger of grave harm, the Ordinary is permitted to dispense according to the mind of the Holy See. Wherefore, contrary to what Cerato thinks, p. 50, outside danger of death, even in a perplexed case, we judge with Cappello, n. 233, that the cautions are to be required for the validity of the dispensation.

b) Concerning the faculty in a perplexed case. Here it is required that the Holy See cannot be approached in time. And by the response of the Pontifical Commission, March 1, 1921, both the

Ordinary and the pastor can use their power in a perplexed case when the impediment, even if known before, is nevertheless detected by them only then, when all things are prepared for the nuptials.

c) Concerning the faculty of the pastor and assisting priest. This supposes that the Ordinary cannot be approached at least by letters. For the Pontifical Commission itself, November 12, 1922, to V, judged that the Ordinary cannot be approached if he cannot be approached except by telephone or telegraph (*Per.*, XI, 193). And by analogy from c. 1045, §3, if the matter must be covered with secrecy with respect to the Ordinary, then also he seems unable to be approached (Gen., II, 523 bis). Outside danger of death the faculty is restricted to occult cases. But whether the case is occult by its nature or only in fact, it seems comprehended by the faculty of the pastor and assisting priest. The secrecy whose danger excuses from approaching the Ordinary is not only sacramental secrecy, but also committed or natural secrecy: when grave damage or inconvenience stands in the way of revelation. Because the office of pastor comprises no jurisdiction of the external forum, the faculty given here does not seem annexed to the office. Wherefore it is not ordinary nor can it be subdelegated (Vlaming, op. c., n. 415). Yet this is probably disputed. But the faculty extends to all impediments from which he can dispense in danger of death, so that even (if the case occurs, for example where a marriage is to be convalidated) he seems able to dispense in the form of marriage.

What if, for example, a vicar forane can be approached to whom the Ordinary has delegated his power? Vlaming judges (op. c., n. 312) that recourse must then be had to that delegate, so that otherwise the pastor would dispense invalidly. That severity does not seem to us able to be drawn from the Code. Yet the Ordinary could prescribe recourse to the delegate for liceity.

d) Concerning the faculty of the confessor. Several, for example P. Cappello, III, 258, deny that this faculty extends to impediments public by their nature, even if the case is occult. And indeed, in urgent danger of death, there will scarcely occur a case where the Confessor cannot either obtain that the penitent seek a dispensation in the external forum from the pastor or assisting priest then intervening according to c. 1044, §2, or himself grant it as assisting priest. But if a case of necessity has intervened (as if an occult subdeacon does not wish to be known to the pastor as a violator of his vow), it does not seem to be ours to circumscribe the force of the general canon. But if danger of divulgation, or of conflict between the internal and external forum, is to be feared, the confessor will require from the penitent promises which remove the danger: of seeking a dispensation in the external forum, of permitting entry in the secret archive, or recourse to the Sacred Penitentiary, which perhaps may consent that the marriage be noted in one secret archive, or otherwise provide (cf. concerning this matter the full discussion in *Monitor*, 1920, p. 59 ss., which P. Arendt called back to examination: *Du cas perplexe et des pouvoirs du confesseur d'après le Code*, *Nouv. Rev. Théol.*, 1920, p. 261 ss.; Cappello, III, 238).

What if a marriage is celebrated before a delegated priest, and at that moment an impediment is detected in circumstances in which neither pastor nor Ordinary can be approached nor the marriage deferred?

Then either you will say with some, for example Cappello, III, 236, that the delegated priest has the power of dispensing which belongs to the pastor, so that, according to the norm of c. 200, §1, he has all those things without which he could not exercise the power. And indeed it would seem wonderful that a duly delegated priest could do less than any priest assisting when marriage is permitted to be

contracted before witnesses alone. Or at least you will permit him to handle the perplexed case as before the Code, that is, to declare that the impediment has ceased, with the obligation added of recurring to the Ordinary.

— The notation of dispensations in the internal forum. "Unless the rescript of the Sacred Penitentiary carries something else, a dispensation granted in the non-sacramental internal forum over 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 afterward the occult impediment has become public; but it is necessary if the dispensation had been granted only in the sacramental internal forum" (c. 1047).

— Things to be noted concerning the faculty of dispensing and its use.

1. Concerning a multiple impediment. A general principle is now established, according to which those who enjoy a general indult of dispensing can use it whether the same impediment is multiple or several impediments occur at the same time, even public impediments, and this both in marriages to be contracted and in marriages already contracted (c. 1049).

Yet where, for one out of several public impediments, the faculty is lacking, recourse must be had to the Holy See for all. But if, after a dispensation over others has been granted by the Holy See, an impediment or impediments are detected over which the faculty of dispensing was had, use of this faculty is to be made, with a new recourse omitted (c. 1050).

2. Concerning the legitimation of offspring. Whenever a dispensation over a diriment impediment is granted, by ordinary power or by power which has been bestowed through a general indult, by that very fact there is also granted the legitimation of offspring which has already been born or conceived from those who are dispensed, excepting, however, adulterine and sacrilegious offspring (c. 1051).

Therefore every dispensation, when the Holy See itself has granted it, whether in gracious form or by committing the execution to the local Ordinary, since it remains from ordinary power, brings this legitimation. It must be said otherwise concerning a dispensation which, in a particular case, is permitted to be made by the Ordinary[1]. For then the faculty does not extend to legitimation, unless it is expressly said. But if the Ordinary dispenses by force of a general indult, the legitimation is contained in the dispensation itself. Hence it also follows that offspring are legitimated by the dispensations granted by force of cc. 1043-1045, unless dispensation is made from a vow or the offspring has been adulterine.

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3. Concerning error in the supplicatory petition or incomplete exposition. a) "A dispensation from a lesser impediment once granted is invalidated by no vice either of obreption or subreption, even if the only final cause set forth in the prayers had been false" (c. 1054).

But obreption is had in suggesting a false cause; subreption in concealing a matter which would stand in the way of the dispensation and therefore, from the style of the curia, ought to have been stated.

Therefore the petition itself suffices, so that a sufficient cause for the dispensation is considered to be present. Wherefore even if the one dispensing, for example the Ordinary, had been conscious of the error or fraud of the parties, he will have the right of dispensing.

Nevertheless other causes of nullity subsist, for example if the dispensation had been extorted by force and fear.

b) "A dispensation from the impediment of consanguinity or affinity 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 inferior, or although another impediment of the same species in an equal or inferior degree had been kept silent" (c. 1052).

Therefore a twofold case is considered: a) they were affines in the second degree or consanguineous in the third, for whom a dispensation in the first degree of affinity or in the second of consanguinity was obtained: the dispensation is valid; nothing must be corrected; b) they were impeded by multiple consanguinity or affinity. One has been declared. Provided the omitted degree is not superior, the dispensation is valid; nor does the Code require the condition of good faith in the one keeping silent. Therefore for validity it is enough to have indicated a simple impediment in the nearer degree (De Smet, *De Spons.*, n. 47). But if affinity concurring with alleged consanguinity was kept silent, the dispensation is not valid, for the impediments are disparate or of diverse species.

This rule again is general: it is to be applied whoever the author of the dispensation is. But the Code deliberately speaks of an error which has crept into the petition or concession. For it can happen that the supplicatory petition itself was incomplete; and it also occurs that an imperfect response is given to a well-drafted petition, even from an error of the copyist. Yet each error of itself vitiates the rescript (cf. De Smet, *De Spons.*, 920, 3 and note 1).

4. Virtual dispensation from an impediment. A dispensation given by the Holy See over a ratified and non-consummated marriage, or a permission made for passage to other nuptials because of the presumed death of a spouse, always carries with it a dispensation from the first form of the impediment of crime, that is, adultery with promise or attempted marriage, but not from the other forms, where killing of the spouse has intervened.

Here you should observe that it is necessary that the dispensation be given by the Holy See, whether in gracious form or in imperative commissory form (*mandamus, committimus*). Other virtual dispensations, since none are mentioned, no longer seem to exist, even if they existed before the Code. Thus a dispensation in the impediment of disparity of cult used to carry with it a dispensation of the Catholic party from impediments to which the other party was immune.

[1] We deliberately abstain from the words, *in forma commissoria*, which are not always used with the same meaning. De Smet, *De Spons.*, n. 740, p. 204, note 2. This must be attended to, whether the Holy See dispenses by itself or by a mandatary, or whether the bishop dispenses through granted faculties.

— Execution of a dispensation. Dispensations over public impediments granted to the Ordinary of the petitioners are always to be executed by the Ordinary who gave the testimonial letters or transmitted the prayers, yet the Ordinary of another place in which perhaps the marriage is contracted having been warned (c. 1055).

Mention of the faculty delegated by the Holy See is always to be made in the dispensation to be granted (c. 1057).

You should observe that this mention is commanded, yet not for validity. A dispensation for the extrasacramental internal forum is also committed to other persons, for example to the pastor; for the sacramental forum, to the confessor.

— The gratuitousness of dispensation in the diocesan Curia. Saving an express concession of the Holy See, for dispensations which the Ordinary himself grants, every emolument is forbidden to be received, under penalty of restitution, "excepting some modest prestation by title of expenses of the Chancery," and this only from those who are not poor.

For dispensations which the Ordinary executes, the rescript itself often indicates what can be sought for the execution. And also, from c. 1507, §1, after the approval of the Holy See has been obtained, in a provincial council or convention, the tax of execution for the whole province can be predefined.

For dispensations which Nuncios and Apostolic Delegates grant by force of their faculties, it is said: "The persons about to marry should pay some offering, if it can be done, according to their means," to be transmitted to the S. C. of the Holy Office, if it is a question of disparity of cult, to the S. C. of the Sacraments, if there were other impediments.

In conceding dispensations from the faculties of the S. C. of the Sacraments, Ordinaries must see to it that those who are found able to pay should pay an equitable offering according to their means, in service of the Holy See. By the indult of the Holy Office we are taught that the tax customarily sought for any dispensation "which the Right Reverend Lord Ordinary will exact, unless because of the diversity of cases it must be moderated or remitted because of the poverty of the petitioners or other just causes" is 15 francs. The Ordinary is permitted by the Holy Office to retain the fifth part of the taxes which they exact for his own necessities and those of his diocese.

— Principle concerning capacity and liceity of marriage. "All can contract marriage who are not prohibited by law" (c. 1035).

Therefore, 1. when it is a question of marriage in general, the impediment must be proved, and in a doubtful impediment one must respond in favor of liberty. This rule is universal when it is a question of impedient impediments; when it is a question of diriment impediments, the right acquired by a third party must remain safe; wherefore it is not lawful to contract a new marriage if the invalidity of the prior marriage, or its dissolution, for example by death, is only probable. But an application of the rule is had in c. 1068, §2: "If the impediment of impotence is doubtful, whether by doubt of law or by doubt of fact, marriage is not to be impeded." De Smet (*De Spons.*, 472) not undeservedly restricts this application to absolute impotence; for when it is a question of relative impotence, we fall under n. 2. (Yet we do not wish to deny the probability, at least extrinsic, of the more benign opinion.)

2. The rule is less universal when it is a question of the faculty of nuptials between definite persons. Even then it holds concerning impedient impediments, and concerning impediments of ecclesiastical law which are doubtful by law. In impediments of ecclesiastical law which are doubtful by fact, the Ordinary can dispense in those impediments in which the Holy See is

> accustomed to dispense. But neither before this kind of dispensation, nor when it is a question of a doubtful impediment of natural or divine law, is marriage licit between persons thus doubtfully impeded. Wherefore c. 1076, §3: "Marriage is never to be permitted if there is any doubt whether the parties are consanguineous in any degree of the direct line or in the first degree of the collateral line."

The reason for the distinction between each kind of doubt is manifest. In the former, you would oblige an unwilling person to continence: the common good itself requires that this not be done without manifest reason; in the latter, the faculty of marriage with all persons not prohibited by a similar impediment is permitted to remain.

What must be said after the fact, we shall see below. Now the individual impediments must be proposed, yet the rule of communication of impediments having been recalled.

— Communication of impediments. "Although an impediment has itself on the part of only one party, nevertheless it renders the marriage either illicit or invalid" (c. 1036).

Therefore if an infidel contracts with a faithful person, or a non-Catholic with a Catholic, the impediments by which the Catholic is affected impede the marriage even with the free party: the immunity of the free party is not communicated.

Summary

— I. What. Of how many kinds. An impediment properly, and in the Code, is not whatever, even internally or externally, stands in the way of marriage, but is whatever external, by divine or human law, renders a person unable, not for every contract, but for matrimony, or forbids him to contract marriage. For there is an impedient impediment, which contains a grave prohibition, and a diriment impediment, which at the same time prohibits and invalidates.

It is public which can be proved in the external forum; otherwise it is occult, and that either by its nature or by fact.

According to origin, it is of divine law, which the Church merely declares authentically, and of positive human law: that is, for the baptized, of ecclesiastical law alone; for the non-baptized, of civil law alone.

According to the discipline of dispensation, an impediment is of lesser grade, whose dispensation is not weakened because of the vice of obreption or subreption, and an impediment of greater grade.

The Holy See alone establishes or removes impediments. The Ordinary can forbid a marriage for a time, while a just cause endures.

II. Subject. Only the baptized are directly bound by canonical impediments, only the non-baptized by civil impediments. But an impediment existing in either party makes the marriage illicit or invalid for both. For whom the form must be observed will be said later.

After conversion and baptism, a fact before baptism creates an impediment if it subsists or perseveres in a natural bond, but not in a merely canonical one. When it is a question of marriage in general, those doubtfully impeded preserve the right of contracting marriage; but if it is a question of

marriage between definite persons, this rule does not hold except concerning impedient impediments or concerning impediments of ecclesiastical law which are doubtful by law.

III. Dispensation. 1. Those dispensing. The power belongs to the Supreme Pontiff for all canonical impediments; to the civil power for impediments of civil law. For occult impediments the Penitentiary is approached; for public impediments, the S. C. of the Sacraments, excepting the impediments of disparity of cult and mixed religion, for which the Holy Office must be approached.

Local Ordinaries, when the fact is doubtful, or when recourse to the Holy See is difficult and, in delay, there is danger of grave harm, dispense in impediments which the Holy See is accustomed to relax.

They also dispense by force of a general indult granted by the S. C. of Propaganda Fide or by a competent Congregation.

From the common law, they can dispense their own subjects wherever dwelling, and all others in their own territory, by a faculty granted as ordinary, both over the form of celebration and over all impediments of ecclesiastical law, excepting presbyterate and affinity in the direct line after consummated marriage: when danger of death is urgent, for consulting conscience and, if the case calls for it, for the legitimation of offspring; besides this, if the Holy See cannot be approached in time, in the case which is called perplexed, that is, whenever an impediment is detected when all things are prepared for the nuptials and the marriage cannot be deferred without probable danger of grave evil until dispensation has been sought from the Holy See; similarly, when the convalidation of a marriage already contracted is urgent. Scandal must be removed, and, if dispensation is made over disparity of cult or mixed religion, the customary cautions must be required.

The pastor assisting at marriage in urgent danger of death can do the same if not even the Ordinary can be approached, at least by letters. In a perplexed case or for convalidating a marriage, he can do the same for occult cases only.

The priest who, when a marriage is validly contracted before two witnesses, assists at the marriage, enjoys the same power as the pastor.

The confessor can do the same, but only for the internal forum and in the act of sacramental confession.

N. B. Of itself, after a dispensation has been granted in the non-sacramental internal forum, a dispensation in the external forum, which is only a mode of recognizing what had already been validly done, is no longer necessary.

2. Concerning the use of the faculty. a) By a general indult, dispensation of a multiple impediment, or of several impediments concurring at the same time, is permitted. Yet if the faculty is lacking for one public impediment, the Holy See must be approached for all. But if, after dispensation over others has been granted by the Holy See, impediments are detected over which the faculty is had, its use is permitted without new recourse; b) a dispensation bestowed from ordinary power or through a general indult, by that very fact legitimates offspring born or conceived, excepting adulterine or sacrilegious offspring; c) a dispensation granted in some degree of consanguinity or affinity is valid, although in the petition or concession an error concerning the degree has crept in, provided the degree really existing is inferior, or an impediment of the same species in an equal or inferior degree had been kept

silent; d) a dispensation over public impediments is always to be executed by the Ordinary who gave the testimonial letters or transmitted the prayers; e) saving an express concession of the Holy See, the Ordinary can receive no emolument for dispensations which he grants, excepting, from non-poor persons, a modest prestation by title of expenses of the Chancery.

Chapter II

Article I: On Impedient Impediments

— I. A simple vow. The Code numbers five vows: of virginity, of perfect chastity, of not marrying, of receiving sacred orders, of embracing the religious state.

The first three, strictly accepted, differ formally, in such a way that a vow of virginity, after the first completed use of the venereal faculty, and a vow of not marrying, after marriage has been celebrated, have become impossible of execution; but often those making vows use one name to designate a vow of perfect chastity: their intention is to be explored. Nor do vows of virginity or of perfect chastity of themselves, or with the positive disposition of c. 1058 omitted, exclude a marriage to which, by mutual consent, there is added a purpose of continence. The two latter vows are not opposed to marriage except mediately, insofar as the Church requires celibacy from the ordained and from religious (cf. Wernz, IV, 564).

At the same time by the Code we are warned that by no simple vow, without a special prescription of the Holy See, is marriage invalidated.

— Adoption,* according to the provisions of civil law prohibiting nuptials, because of legal kinship arising from adoption (c. 1059).

And for the very extension of the impediment the Church here has accommodated her law to civil law.

Since civil law cannot establish impediments for the marriages of the baptized, the faculty given to the civil power of erecting adoption into a prohibiting or even diriment impediment (c. 1080) seems to have to be explained by the tacit concession of the Church. That is, the impediment indeed formally has force only by force of canon law. But the Church seems tacitly to permit the civil power to keep citizens from nuptials because of this cause. However, she does not formally look to civil marriage as such. The matter could nevertheless be explained in this other way. Civil law can establish even diriment impediments for its non-baptized subjects. Therefore what civil law efficaciously defines concerning adoption for the non-baptized, ecclesiastical law transfers to the baptized.

Before the Code, the matter was directly decided by ecclesiastical law: where full adoption was admitted, it created a diriment impediment; where only imperfect adoption existed, it was not an impediment.

Moreover, by Italian law (art. 60), Spanish law, and Brazilian law, adoption is constituted a diriment impediment. By the Code of France and Belgium (art. 348), according to the more common opinion, it is established only as prohibiting. In the German Code, art. 1311, it is a prohibiting impediment. But by Lusitanian law and that of many States of Latin America it does not even seem to be an impedient impediment (thus Ferreres, II, 1048). The same must be said of the law of Holland, England, and the United States of America (excepting Puerto Rico and the Philippine Islands).

Moreover Italian law has it thus: "Marriage is prohibited: between the adopter, the adopted, and his descendants; between the adoptive children of the same person; between the adopted person and children later born to the adopter; between the adopted person and the spouse of the adopter, and between the adopter and the spouse of the adopted." The Code of France and Belgium has the same.

Concerning this impediment Cappello, S.J., discusses broadly and learnedly in the journal *Ius Pontificium*, II, 93 ss., where on p. 95 ss. he more fully sets forth the varying civil law. Yet we warn that not all things are equally established.

— III. Mixed nuptials, that is, between a Catholic party and a party ascribed to a heretical or schismatic sect. The prohibition is urged most severely by ecclesiastical law, and, "if there is danger of perversion of the Catholic spouse and of the offspring, the marriage is forbidden even by divine law itself" (c. 1060). Wherefore:

1. these conditions of dispensation are set down: just and grave causes; a caution, that is, a formal promise, regularly written, of the non-Catholic spouse concerning the removal of the danger of perversion from the Catholic spouse, and of both spouses concerning all offspring to be baptized and educated only in a Catholic manner; moral certitude concerning the fulfillment of the cautions (c. 1061);
2. the obligation of the Catholic spouse of prudently caring for the conversion of the other party is recalled (c. 1062). The obligation is from charity. Before the Code this care had to be formally promised;
3. it is wholly prohibited that before or after the marriage a non-Catholic minister, as one devoted to sacred things (he is permitted to be approached, if civil law commands this, as a civil official for completing the civil act), be approached for furnishing or renewing consent. If the pastor knows certainly that the spouses will violate this law, or have already violated it, he is not to assist at their marriage, unless from most grave causes, scandal having been removed, and the Ordinary having first been consulted (c. 1063);
4. it is enjoined upon Ordinaries and other pastors of souls a) that they deter the faithful from mixed nuptials as much as they can; b) that with all zeal they take care that they are not contracted against the laws of God and of the Church; c) after the nuptials have been celebrated, whether in their own or in another territory, that they diligently watch that the spouses stand by their promises; d) that, when assisting at the marriage, they indeed make the interrogations by which they require and receive the consent of the contracting parties, but abstain from every sacred rite, unless the Ordinary has permitted one for avoiding graver evils, with the celebration of Mass always excluded (cc. 1064; 1095, §1, 3; 1102).

For the most part these marriages are so harmful that dispensation and assistance can simply be denied, if in this way several other mixed nuptials are impeded. Yet per accidens it can happen that in certain regions, through these nuptials cautiously made, conversions are prepared and the Gospel is propagated. Then there will be place for epikeia.

By decree of May 21-23, 1912, given on June 21 of the same year, the Holy Office had commanded that, if at any time a pastor had to assist at the mixed nuptials of those who obstinately refuse the cautions, he should abstain from interrogations and furnish merely

passive assistance (*Per.*, VI, p. 260). But on March 13, 1921, IV, to 13, it was responded that the assistance of the pastor cannot even be permitted "if in this way celebration before a non-Catholic minister or civil magistrate can be impeded." But wherever, because of peculiar circumstances and graver reasons, his presence is tolerated, it will now be safer, after the Code, that he make the interrogations which of themselves are required for validity.

— The Code, c. 1065, indeed does not extend the impediment of mixed nuptials to nuptials with notorious apostates who have given their name to no non-Catholic sect, nor with members of a condemned society. Yet it wills that the faithful be kept away from nuptials of this kind, nor does it permit assistance by the pastor except after the Ordinary has been consulted, who can grant this, provided a grave cause is urgent and he prudently judges that provision has been made for the Catholic education of all the offspring and for the removal of the danger of perversion of the faithful spouse.

— The matter is handled somewhat more mildly with a public sinner or a man who is bound by censure. If he first approaches sacramental confession, he is no longer a public sinner, and he is admitted to nuptials as the rest of the faithful. You may say the same of one censured who is reconciled with the Church. But if they have refused this, the pastor is not to assist at their marriage, "unless a grave cause urges, concerning which, if it can be done, he should consult the Ordinary" (c. 1066).

Therefore the obligation of consulting the Ordinary is urged less absolutely.

— The impediment of closed time today has been removed by c. 1108, §1; nor does a more severe custom seem to be among those which cannot prudently be removed.

But the prohibition of the Church, that is, of the Holy See or of the local Ordinary, concerning which c. 1039 speaks, is not an impediment properly such, because it is not stably constituted, nor does it demand dispensation, but, when the cause ceases, it ceases of itself. Therefore, for all actually staying in their own territory and for their own subjects even outside the boundaries of their territory, local Ordinaries can forbid marriages in a particular case, but only for a time, for a just cause and while that cause endures.

The cause usually will be a suspicion about an impediment which has arisen. Yet it could also be manifest damage, especially of public reason, arising from the marriage, as if the bishop adds his prohibition to the most just opposition of the parents; or if, because of the neglected civil form, damages to the Church herself are to be feared.

But only the Holy See can add an invalidating clause to the prohibition.

Article II: On Diriment Impediments

— Summary enumeration. A diriment impediment can arise either from the natural or legal inability of the parties, or from a vice of consent, or from defect of solemn form. Although an intrinsic vice of consent, such as error concerning the person, or defect of solemnity, is not strictly to be called an impediment, and they are treated in separate chapters in the Code. In Chapter IV of the Code it is a question only of those impediments which arise from the inability of persons.

With some changes of great moment having been made concerning certain others, the impediments of affinity from illicit intercourse, of public honesty from sponsals, and of spiritual kinship from confirmation have been suppressed.

But there remain defect of age (c. 1067); antecedent and perpetual impotence (c. 1068); ligamen (c. 1069); disparity of cult (c. 1070); sacred order (c. 1072); solemn vow or privileged simple vow (c. 1073); abduction (c. 1074); crime (c. 1075); consanguinity (c. 1076); affinity (c. 1077); public honesty (c. 1078); spiritual kinship (c. 1079) and legal kinship (c. 1080).

— I. Whereas by the old law the age of fourteen years in the man and twelve years in the woman, as in Roman law, was only required, now a man before the completed sixteenth year and a woman before the fourteenth are unable to contract marriage (c. 1067).

Before the Code, malice itself was said to supply age: that is, those were permitted to be joined in marriage before the canonical age who were capable in body, at the same time were sufficiently conscious of sexual matters, and sufficiently developed in mind that they could prudently be joined in marriage. Today this exception has been removed. And since in foreign missions age is frequently unknown, and the necessity of hastening marriage occurs, provision is made for the Ordinaries of those places through indults of the S. C. P. F. Yet the permission is not contained in the general formulae.

This impediment is of ecclesiastical law insofar as it requires more than ability to consent (in sane persons). As ecclesiastical, it does not affect infidels who contract among themselves, nor an infidel contracting with a baptized party who has completed the legitimate age. But an infidel can be touched by his own civil law, often more severe.

The Code c. 1067, §2, opportunely added this warning: "Although a marriage contracted after the aforesaid age is valid, nevertheless pastors of souls should take care to turn young persons away from it before the age at which, according to the received customs of the region, marriage is usually entered."

According to physicians themselves, a young man who has not passed the twenty-third year of age, and a girl who has not passed the twentieth year of age, in our European regions, is not fully mature of himself for marriage. Nor is an end always happily imposed on concubinage itself by marriage, as if inconstancy and hence civil divorces are too greatly to be feared.

— II. Antecedent and perpetual impotence. The Code adds that the impediment is diriment by the law of nature, both in the woman and in the man, whether the impotence is known to the other party or not, so that it can be removed by no consent of the parties, whether it is absolute or relative. Absolute impotence is said to be that which renders one impotent with respect to all persons of the other sex; relative, that which renders one impotent with respect to one or a few persons. At the same time it declares that the marriage of one who is doubtfully impotent is not to be impeded, whether the doubt is of law, that is, doctrinal concerning the very ratio or essence of impotence, or of fact, that is, of application. Yet we require a serious doubt by which moral certitude is excluded (Wernz, IV, 2, note 35), and we have narrowed the exception to absolute impotence. He who probably doubts concerning his relative potency with other persons, if he desires to be joined in marriage, can and must contract a certain marriage[1]. Finally, as c. 1068, §3 warns, sterility neither invalidates nor impedes marriage.

What impotence excludes marriage, cf. T. IV, n. 40-42.

Since marriage is indissoluble, it is clear that an impediment can be constituted by antecedent impotence alone. But temporary impotence stands in the way neither of any end of marriage nor of its validity. Does it prohibit the use of marriage? (cf. t. IV, n. 54).

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[1] Yet authors, except De Smet, n. 471, are not accustomed to limit the exception thus. But the reason which they propose falls only upon absolute impotence. Cf., for example, Wernz, IV, 2, p. 148, note 35, who admits that very grave authors such as Sanchez and Schmalzgrueber required that a positive doubt concerning potency be set aside before marriage.

— III. Ligamen, or the bond of a prior valid marriage, even non-consummated. As long as the preceding marriage subsists, another is attempted in vain. But as long as it is not established certainly, by moral certitude, and legitimately, that is, in that way which the law wills, concerning the dissolution or nullity of the prior marriage, another is illicitly attempted or contracted. The dissolution of the prior marriage, especially the death of the spouse, must be proved by the best means which are at hand. Yet no means of proof is excluded, so that recourse can be had even to various indications and presumptions.

Where an authentic document of death is had, nothing of itself compels the pastor to consult the Ordinary (Gasp., I, 723). In more difficult cases of less perfect proof, the Ordinary must recur to the Holy See. The mode of proof is governed chiefly by the Instruction of the Holy Office, 1868. If, after another marriage has been celebrated, even legitimately, the prior spouse appears, conjugal life must be restored with this one.

Concerning the privilege of faith, which is excepted here because it permits other nuptials while the former ones have not been dissolved, discussion will be made below.

That a long absence of the spouse for several years, and a fruitless, although most diligent, inquiry do not suffice for other nuptials to be permitted, but that it is necessary that positive judgments bring moral certitude, had already been defined by Clement III in c. 19, *De sponsalibus et matr.* (IV, 1). But the praised Instruction of the Holy Office wills that first an authentic document of death be diligently sought; this failing, that at least two approved and immediate witnesses be interrogated; nevertheless the testimony of one witness is not absolutely rejected, provided at least this is established concerning him, that nothing is found in his testimony which is not congruent and probable; even things said from the mouth of another can be admitted; finally, when other means are lacking, proof of death from conjectures, presumptions, indications, and any circumstances whatever will have to be pursued. And suitable investigations then to be made, and questions to be asked, are added.

Even an extrajudicial inquiry can suffice, if it brings certitude to the Ordinary; nor is the sworn testimony of the surviving spouse altogether excluded.

Sometimes after general calamities the Holy See itself declares what presumption of death can suffice (cf. examples in Gasp., I, 724).

It can also be asked whether a marriage contracted by him who was persuaded that his spouse was surviving, while nevertheless in reality the spouse was dead, could have been valid objectively. The difficulty is drawn from the part of consent, whether it could be seriously given. Yet the Sacred Congregations admit that this is not repugnant. And it suffices that, as much as depends on his will,

he wills to hand over and accept the conjugal right. Moreover he can conceive this will either by prescinding from the invalidating law, or by a certain simplicity of an erring mind, or even by a certain obstinacy. Cf. Gasparri, n. 906, 907 with several, for example De Smet, 470, against several. Besides, the Code itself, c. 1085, pronounces this: "Knowledge or opinion of the nullity of marriage does not necessarily exclude matrimonial consent."

— IV. Disparity of cult. 1. "A marriage contracted by a non-baptized person with a person baptized in the Catholic Church or converted to the same from heresy or schism is null" (c. 1070, §1).

Of itself no baptism makes one a heretic or schismatic; but every baptism destines the baptized person for the true Church. Yet by a broader usage, to which the Code accommodates itself, he is baptized in heresy or schism who, attention being paid to the intention of the one baptizing and of the one seeking baptism, is directed toward a non-Catholic community.

Because one must respond according to those things which are of themselves, baptism must be presumed to have been done in the Catholic Church, unless something else is established. Here there prevails the intention of the adult to be baptized, or, for an infant, the intention of the parents who order baptism and in whose power the child remains for education. A Catholic person baptizing in necessity confers baptism in the Catholic Church. Outside necessity, he would baptize illicitly without hope of Catholic education.

Vlaming, I, 284 bis, warns that today baptism is rejected by many sects; and he indicates Methodists, the Free Church, the Salvation Army; and that it is little cared for by Protestants who are called Moderns, especially by the "Remonstrants."

By this canon we have the first written law concerning an impediment which before rested upon universal custom, obliging everywhere. Insofar as it is diriment, the impediment is of ecclesiastical law, but by divine law itself the faithful person is prohibited from rashly exposing himself to the danger of perversion and the offspring to the danger of non-Catholic education.

General faculties of dispensing are conceded by the Holy See if in the place there are more infidels than Catholics.

But before, the impediment had force for those baptized in whatever way. Today it is restricted to those who have been baptized in the Catholic Church or converted to it from schism or heresy.

Now immune from the impediment are all those who never, either by baptism received in the Catholic Church or by profession of the Catholic faith, belonged to it.

By this wise provision the Church permits very many marriages to be valid which, without her dispensation, heretics contract with non-baptized persons.

But those seem to be affected by the impediment who, born from non-Catholics, were indeed baptized in the Church, but by the fault of parents or tutors, from infancy grew up in heresy or schism or infidelity or without any religion. For the Church dispenses these from the solemn form of marriage, but not from this impediment.

2. Whenever the baptism of either party is doubtful, or the party, at the time of the contracted marriage, was commonly considered as baptized, baptism will be judged valid or conferred, or

invalid, according as it matters for the validity of the marriage, which presumption favors. Thus c. 1070, §2.

In this paragraph it can be asked why it is not simply said "if the baptism of either party had been doubtful," but there is added: "if the party at the time of the contracted marriage was commonly considered as baptized." The reason can be this: in doubt concerning conferred baptism, it is required, for the presumption itself, that the party was commonly considered as baptized, so that the words "or his baptism was doubtful" merely look to the case in which baptism certainly conferred was of doubtful validity. Yet there are some who take the words "doubtful baptism" in a more universal signification, and at the same time think that the rule of c. 1070, §2 pertains only to marriages already made.

You should observe that the presumption thus yields to the truth, so that if afterward it is discovered that the person had been baptized who was thought not to have been, or in the contrary hypothesis, a pronouncement concerning the validity of the marriage must be made according to the facts now explored. Before the Code this was controverted. Thus C. Gasparri, I, 687, 688, judged that in these cases a virtual dispensation from the impediment of disparity of cult was had.

3. But in granting the dispensation, the same cautions are to be required for the validity of the dispensation which are demanded in mixed nuptials (c. 1071).
4. Corollaries: a) before the marriage itself, the doubt must be seriously explored, if perhaps certitude may be reached;

b) if one party is Catholic, lest the contract or sacrament be exposed to nullity, the doubt must be removed either by baptism certainly conferred or by a dispensation as a precaution from the impediment of disparity of cult. De Smet, n. 588, p. 102, note 3, recalls such a dispensation granted in the diocese of Bruges on February 19, 1920. Only if excessive difficulty stands in the way can it be permitted, for a proportionate cause, that the contracting parties be content with the presumption. Therefore practically it is to be advised that to a dispensation from the prohibiting impediment of mixed religion there be joined, as a precaution, a dispensation from disparity of cult.

Yet for a heretic, unless he wishes to be converted, it is not licit to repeat baptism conditionally (cf. Wernz, IV, 507, note 29). For he is not worthy of baptism.

Before the Code, when dispensation was made in the impediment of disparity of cult, the Catholic party was considered at the same time dispensed from impediments from which the infidel party was exempt, unless it was an impediment of divine law, or of clandestinity, or an impediment from which the Church is not accustomed to dispense. Contrary to what Cappello, III, n. 422, thinks, since that virtual dispensation is not confirmed, it seems tacitly abrogated, especially since the Code c. 1036, §3 does not of itself admit communication of exemption from an impediment; and expressly, in c. 1053, it states the virtual dispensation which it grants.

Who can dispense has been said above. A dispensation from the impediment of mixed religion, unless the clause "and from disparity of cult as a precaution" has been added, today

contains no tacit dispensation from disparity of cult, if the non-Catholic party is not baptized (cf. Cappello, III, 423).

c) If neither party has ever belonged to the Catholic Church, no invalidity of marriage from disparity of cult is now to be feared.

— V. Sacred order (c. 1072). From the disposition of the Church, "clerics constituted in sacred orders invalidly attempt marriage." They are affected by this impediment even if they neglected or refused to emit the vow of chastity. Therefore the law of the Church immediately invalidates marriage, and at the same time imposes the vow of perfect chastity, without which they could not, through internal sins of lust, become guilty of sacrilege (cf. what was said in n. 30).

The impediment of contracting marriage after sacred order also exists in the Greek Church, except that the subdiaconate is not there a sacred order; but those who, before ordination in sacred orders, were married, are not prohibited from using marriage.

How the law is tempered in favor of those who were ordained in boyhood or through force and fear, we saw in n. 31 and 699.

— VI. Profession of solemn vows, or also of those simple vows to which the Holy See has specially joined this invalidating force. Concerning this matter cf. n. 136, 137.

By him who has made profession fictitiously, the impediment is not contracted (against Cerato, n. 68, who thinks that the impediment exists in each forum until a sentence of the judge has declared the profession invalid); but in the external forum the fiction will have to be proved so that he can be considered free from the impediment.

— VII. Abduction (c. 1074). This impediment, introduced by the Council of Trent, was defined: the violent abduction of a woman from a safe place into another, for the sake of entering marriage. But by the present law the violent detention of a woman in the place where she is staying or to which she has freely approached is equated with abduction.

But violent abduction or detention supposes the woman unwilling. And although even a youth can be abducted, the impediment is constituted only for the abduction of a woman. Moreover, the abduction of any woman whatever, even of a betrothed woman, as is now certain, gives rise to the impediment. For she who assents to a future marriage does not on that account admit abduction, nor does she will to contract marriage at every time. And if a girl minor in age is abducted, the abduction is presumed violent and clear proofs concerning her consent are required so that marriage can be celebrated.

But the impediment does not cease unless after the woman has recovered her liberty, even if meanwhile she herself, by free persuasion, has consented to marriage; and it affects the marriage of a faithful person with an infidel. For if the woman is faithful, she must be protected from violence by canonical law through an impediment; if the man is Catholic, his guilt is touched by a canonical sanction (cf. *Epitome*, II, 326).

By abduction of seduction (or to which the woman consents), the impediment is not contracted (*Epitome*, l. c.; Cappello, III, 462).

— VIII. Crime (c. 1075). A. By a threefold ratio of crime a diriment impediment is constituted.

1. The first ratio is called that of adultery alone. It supposes that, while the same legitimate marriage endures, both parties of whom it is a question have consummated adultery between themselves, and have mutually given each other faith concerning entering marriage, or have attempted marriage itself, even by a civil act only (c. 1075, 1).

Therefore the impediment is not contracted: a) if mutual faith was given before the legitimate marriage of one or both parties with another person, or after its dissolution; or if, after it had been given, it was sincerely and externally retracted before adultery (Creusen, *Epitome*, II, 327); c) if adultery was committed with another person and not that one with whom mutual faith was given or marriage attempted; d) if faith was not mutually given; e) if adultery was not consummated by true conjugal intercourse: therefore onanistic or sodomitic intercourse does not suffice; f) if adultery was not formal on the part of both, but one or the other was ignorant of the other's marriage: yet affected ignorance is equated with knowledge. But knowledge of the bond suffices, even if the impediment is formally unknown. And since the impediment of bond remains until the death or dissolution of the prior marriage is morally established, some think that the impediment of crime is contracted also by him who attempts marriage with doubt concerning the dissolution of the prior bond; but this seems to have to be denied.

Nor does he have knowledge of the bond who merely doubts whether or not a prior bond had been contracted, unless he affects ignorance.

He who fictitiously gave faith is presumed in the external forum to have given true faith. The promise seems to be required as injurious to marriage, whose other spouse is unwilling.

But for the impediment there suffices the violation of a marriage even merely legitimate, and mutual faith given concerning contracting marriage after the prior marriage has been dissolved. But what if the promise had been otherwise conditioned: for example, if such a fat inheritance should come to you? The matter seems to be estimated from the day on which the condition arrives. For once the condition has been fulfilled, the promise then passes into an absolute one. If the condition has become impossible, the promise is considered never to have been made. And if it was fulfilled only after the marriage had been dissolved, the mutual faith was not, during the bond, perfectly given.

Moreover marriage can be attempted either in ecclesiastical form (with the prior marriage kept silent) or even in merely civil form. Nor does it matter in what order the mutual faith or attempted marriage preceded or followed the adultery. Wherefore a frequent case will be of those who, after obtaining a civil divorce, consummate nuptials celebrated afterward merely civilly.

2. The other ratio of crime is adultery with killing of the spouse. With the various doubts of the prior law removed, it suffices that adultery, consummated and formal on the part of both, concur, during the same legitimate marriage, with spouse-killing which one has perpetrated, even while the other is unaware (cf. c. 1075, 2).

Adultery must be formal in such a way that each knew the marriage which the other dissolved by spouse-killing (Vlaming, *Praelectiones iuris matr.*, I, 320). Whether the efficacious will of spouse-killing preceded or followed adultery, once the effect has followed, it will bring forth the impediment. Approved authors add that it is required that the spouse-killing be perpetrated from the intention of marriage. But that intention is presumed in the external forum.

3. The third ratio of crime is spouse-killing committed by mutual physical or moral cooperation. In order that the impediment be contracted, it is required that both were authors by formal conspiracy, for mutual cooperation is understood as principal, therefore of one commanding, ordering, executing. Mere counsel separated from conspiracy does not suffice. It is also necessary that death from the common deed or conspiracy of each accomplice truly followed, and not from the inexperience of a physician badly treating the inflicted wound.

Before the Code, several required spouse-killing perpetrated with a view to marriage. The Code is silent about that intention. Yet the interpretation of the superior law remains probable. Wherefore spouse-killing from the intention, at least of one or the other and manifested to the other, of entering marriage with the accomplice can also be added to the conditions.

B. This impediment can exist as multiple: a) if the conditions of two or three cases are fulfilled at the same time, as if adultery and attempted marriage concur with spouse-killing: the impediment will be twofold; but threefold if the legitimate spouse was killed while each machinated. Yet we do not think, contrary to what De Smet, n. 666, thinks, that the impediment is duplicated because there is had at the same time (with adultery) a promise of marriage and its attempted celebration. For promise or attempted celebration are conditions of one ratio by which the impediment of the crime of adultery is contracted; b) if injury has been inflicted upon several marriages, as if the adulterers were both married, if both killed the spouse; if Titius successively in two marriages was guilty of crime with the same person. But because not all things are equally certain, it will be safer in seeking dispensation to indicate the multiplicity, with the case described.

C. Since baptism washes all crimes, if the crime was committed by two infidels, it does not affect them after baptism; nor if one party was faithful, provided it is a question of spouse-killing which was committed by the infidel party alone, without the conspiracy of the other.

D. Before the Code, several thought that the impediment was not contracted by those ignorant of it. But now, from c. 16, those ignorant are not immune from this impediment.

We warned above, at the end of n. 760, that virtual dispensation from crime (without spouse-killing) is contained in a dispensation over a ratified and non-consummated marriage, and in the faculty of passing to other nuptials because of the presumed death of a spouse.

— Consanguinity, or the kinship of carnal consanguinity.

1. It is a bond of propinquity induced by generation between persons who descend from the same proximate stock, whether one has been generated from another, or whether they merely come together in one common author. For persons who have been generated one from another, the direct line is constituted, which is called ascending or descending, according as the computation is made from the offspring or descendants to the authors, or from the authors or generators to those generated; or according as the relation of filiation or paternity is formally considered. The oblique, transverse, or collateral line comprises persons who, without a mutual relation of paternity and filiation, have a proximate common stock. A proximate stock, I say, because all of us, at some time finally, have common first parents and pertain to one human family.

2. The distance by which persons are separated makes them less or more proximate. But it is computed by degrees. In the direct line, there are as many degrees as generations, or as persons, the stock (common author) being removed (c. 96, §2).

Thus in every law, both canonical and civil.

In the oblique line, if the persons between whom comparison is made are separated by equal distance from the common stock, that is, "if each tract is equal, there are as many degrees as generations in one tract of the line; if the two tracts are unequal, as many degrees as generations in the longer tract" (c. 96, §3). That is, in canon law, the degree of proximity, even in the collateral line, is estimated by distance from the common author; but by the longer if both persons are unequally distant from the common stock. Why proximity is defined by the greater distance, Ballerini, VI, 661, after Schmalzgrueber, gives this reason: that, since the ratio of propinquity is taken from the stock, one collateral cannot be nearer to another than he is joined to the common stock. Yet sometimes mention of the lesser distance is useful or even necessary. Then persons are said to be consanguineous, for example, in the third degree, touching either the first or the second. Modern civil laws, on the contrary, imitating Roman law, compute the whole distance by which two persons are separated from each other, so that the sum is made of the degrees by which each is distant from the common stock, and there are as many degrees as persons are numbered, one being removed. That is, after the ascent to the common author, descent is made to the other kinsman. In this way it happens that, if the tracts are equal, the civil distance is double the canonical. Thus two brothers are canonically in the first degree, civilly in the second degree; two sons of brothers (first cousins) are canonically in the second degree, civilly consanguineous in the fourth degree. Nor, civilly, is there speech of unequal degrees.

Titius's consanguines in the first three degrees.

In the direct line:

Ascending: father and mother (1 degree); grandfathers and grandmothers (2 deg.); great-grandfathers and great-grandmothers (3 deg.).

Descending: sons and daughters (1 deg.); grandsons and granddaughters (2 deg.); great-grandsons and great-granddaughters (3 deg.).

In the oblique or collateral line:

In the first degree: brothers and sisters (stock: father and mother).

In the second degree: the sons and daughters of brothers and sisters (or his nephews and nieces of the collateral line); his paternal uncles and paternal aunts (brothers and sisters of the father); his maternal uncles and maternal aunts (brothers and sisters of the mother); his paternal cousins (*patrueles* and *amitini* or *amitinae*, that is, sons and daughters of paternal uncles and paternal aunts); his maternal cousins (*consobrini* and *consobrinae amitinae*), or the sons and daughters of maternal uncles and maternal aunts (stocks: father, mother, grandfathers, grandmothers).

In the third degree: the grandsons and granddaughters of his brothers and sisters; his greater paternal uncles and paternal aunts; his greater maternal uncles and maternal aunts (that is, brothers and sisters of grandfathers and grandmothers); their sons and daughters, grandsons and

granddaughters; finally his *sobrini* and *sobrinae*, or great-grandsons and great-granddaughters of his grandfathers and grandmothers (stocks: father, mother, grandfathers, grandmothers, great-grandfathers, great-grandmothers).

Since a paternal uncle, paternal aunt, maternal uncle, and maternal aunt are distant by only one degree from the grandfather or grandmother, from whom Titius is separated by two degrees, Titius is their consanguine in the second degree touching the first; while with the sons of a paternal uncle or maternal uncle his consanguinity is in the second equal degree.

3. Consanguinity can exist as multiple. But after the Code, only that plurality is attended to which is had from a multiplied common stock (c. 1076, §2). Therefore it is multiple when, besides the singular or paired stock and its ascendants, whom all consanguines have, they come together also in another stock within the degrees which exclude marriage.

This happens: a) when persons, consanguineous between themselves, have arisen from two persons consanguineous between themselves who have been joined with two persons consanguineous between themselves. Then each parent communicates his own consanguinity to his descendants. Suppose, which is a frequent case, that two sisters are taken as wives by two brothers. The children of each marriage come together both in the parents of the father and in the parents of the mother; that is, in each line they have a common author or stock; b) when the same person begets offspring from several persons consanguineous among themselves. Suppose someone successively married two or three sisters. The children of the individual marriages come together both in the common father and in the common grandfather who was the father of the three sisters; and therefore their children are consanguineous between themselves in the second equal degree on the part of the grandfather, in the third on the part of the great-grandfather (their children, I say, because brothers and sisters cannot be joined in marriage); c) when a common ascendant has begotten children from a person consanguineous to himself. The descendants will have a common author, besides the ascendant, the common stock of the ascendant and of the person from whom he begot.

But it is no longer multiplied by the fact that one can ascend by diverse ways to the same common author.

This is had when, for example, the daughter of parents consanguineous between themselves wishes to marry a consanguine. For then this daughter, both through her father and through her mother, comes together in one common stock with her spouse. Therefore, if both spouses descend from parents consanguineous between themselves, they will necessarily have a double common stock: to one they will reach by one way, to the other by a double way; if only one or the other of the spouses descends from parents consanguineous between themselves, he ascends only by a double way to one common stock with the spouse.

4. Consanguinity is distinguished as legitimate and illegitimate. Which children are canonically legitimate will be said later.

Besides this, it can be bilateral or full, and unilateral or half. Full consanguinity joins those who communicate both from the father and from the mother. Brothers, sons of the same father and mother, are called full brothers (*germani*); sons of the same father but not of the same mother are

called consanguine brothers; but uterine brothers are those who have only the mother in common. Formerly relatives through the paternal line were called agnates; through the maternal line, however, cognates.

> You should observe that a double common author is had by all who are joined by full consanguinity; but, since this is the normal and more frequent condition, father and mother are taken after the manner of one stock, so that the consanguinity is called simple. Therefore do not confuse full consanguinity with multiple.

Multiple consanguinity can be set forth graphically thus.

Iacob Ioseph

Ioannes betrothed to Maria

The betrothed parties come together in Iacob and Ioseph in the 3rd degree.

Laban

Iacob marries Rachel and then Leah, sisters.

Iuda betrothed to Athalia

The betrothed parties have the common stock Iacob in the 2nd degree,
and Laban in the 3rd.

Franciscus
├─ Antonius
│ └─ Gallus
│ └─ Alexander
└─ Petrus
└─ Catharina

Antonius also, by spouse Catharina, has Lucia.

Alexander betrothed to Lucia

In this example, it is supposed that Antonius, son of Francis, generated Gallus, the father of Alexander, from another woman; but from his spouse Catharina (granddaughter of Francis) he generated Lucia. Alexander is consanguineous with Lucia in the second degree touching the first, by reason of Antonius; and in the third equal degree, by reason of Francis.

The more apt and safer mode of detecting impediments, especially to be used by those to whom these matters are not familiar, is this: that the bridegroom and bride indicate the names to be written down of their parents, grandfather and grandmother, great-grandfather and great-grandmother. If no common one is found, they will not be consanguineous even in the collateral line. For collateral consanguines in the third degree are only those who have as common author at least a great-grandfather or great-grandmother.

5. By today's law, consanguinity invalidates marriage infinitely in the direct line, or between all ascendants and descendants, whether they are legitimate or not. In the collateral line marriage is not invalid except within the first three degrees of consanguinity, legitimate or not.

This impediment in the first degree of the direct line is certainly of natural law, because the relation of equality between spouses cannot be composed with the reverence which a son and daughter owe to their parents. This opposition between conjugal equality and the reverence which is owed to ascendants perseveres in the other degrees. But whether it is so great that by the law of nature itself it invalidates marriage, this seems doubtful to many. Wherefore the impediment, as prohibiting, is of the law of nature; but it is less established that it is of the same law as diriment.

But in the collateral line, natural reason itself dictates that familiarity between brother and sister must be protected from impurity through the prohibition of marriage. Yet this reason could yield to the greater necessity of the general order at the beginning of the human race. Now, therefore, marriage in the first degree is certainly prohibited from natural law. It is less established that it is invalid. In other degrees, the impediment is of merely ecclesiastical law, yet well founded upon reasons of preserving reverence and the custody of purity.

Before the Code, consanguinity invalidated marriage in the collateral line up to the fourth degree inclusive; but it was multiplied also when one arrived at the same common author by several ways, or when there were several titles of the same consanguinity.

6. Since the bond is especially natural, converted and baptized infidels are held by this impediment no less than Catholics with all relatives, baptized or not.

For marriages contracted in infidelity, attention must be paid to divine law, and also to the civil law, written or customary, of the places. Civil law omitted, concerning only marriage in the first degree of the direct line is it established that it is and was perfectly null, and that the pseudo-spouses are to be separated. But those who are found joined in the first degree of the collateral line will be able after conversion, before the marriage is consummated after baptism, to be separated by pontifical authority and rendered capable of another marriage (cf. De Smet, 608).

— X. Affinity, with attention to c. 97, is defined as the bond of propinquity which a valid marriage, whether ratified only or ratified and consummated, induces between either spouse and the consanguines of the other spouse.

And it is computed thus, that in whatever line and degree the consanguines of one spouse are, they become affines of the other spouse (c. 97, §3).

You should observe that the spouses who by their marriage found affinity are not affines between themselves; but their peculiar proximity is designated by the proper name of marriage; nor does one spouse become an affine of the affines of the other spouse: affinity does not generate affinity; nor are the consanguines of one affines of the consanguines of the other spouse: affinity does not go beyond those joined, that is, affinity is terminated at the spouse who is affine. Wherefore the brother of one spouse is not an affine of the sister of the other spouse, so that two brothers can marry two sisters, and similarly a father and son can marry a mother and daughter. Nor is marriage prohibited between

the son already born of a widower marrying a widow, and her daughter already conceived before those new nuptials. Nor are the husbands of two sisters affines between themselves.

Before the Code, affinity was founded in carnal commingling, and there was distinguished affinity from licit intercourse, that is, conjugal, which invalidated marriage up to the fourth degree, and affinity from illicit intercourse, whose diriment force was circumscribed by the second degree. Besides this, a spouse, through incestuous intercourse with a consanguineous man or woman of his spouse, contracted supervening affinity, by which he was prohibited from the petition of intercourse. No illicit affinity is now had.

Marriage is not ratified except of the baptized. Therefore canonical affinity does not arise from the marriage of infidels. Thus Cerato, De Smet, n. 613, Aertnijs, n. 764; Cappello, III, 538, although Noldin, 576 extends the impediment to every legitimate marriage. This pleases Vlaming, I, 353, if the impediment proceeds from a marriage consummated in infidelity.

But thus one recedes from the propriety of the words of the canon. But with the baptism of both infidel spouses, their legitimate marriage becomes ratified, and from this moment will found the impediment.

But since a marriage between a baptized and non-baptized party is far more probably not ratified (or a sacrament), it gives rise only to a very uncertain impediment of affinity.

2. Affinity can be simple and multiple. It will be multiple: a) with consanguines who are united with the other spouse by a multiple bond of consanguinity; b) with a spouse who is a consanguine of the prior spouse: as if someone successively married two sisters. For then the cause of affinity is multiplied: affinity is contracted because of two marriages with the same persons.
3. Affinity invalidates marriage infinitely in the direct line; in the oblique line up to the second degree inclusive (c. 1077, §1).
4. Rather than natural, the bond of affinity seems to us to be connatural, insofar as its fittingness, once marriage has been made and especially consummated, is seen so clearly that it is confirmed by that law of nations which occupies a middle place between natural law and positive law. Wherefore in no degree or line is the impediment of natural or divine law. An argument is lacking. The best reasons for the law, which partly are duties of piety, partly the excessive danger of sin to be forestalled from familiar association, do not have that force so as of themselves to exclude a valid marriage.

Yet in the first degree of the direct line the Church does not dispense. Once, on December 2, 1911, it permitted a widower to marry the daughter whom the deceased spouse had begotten before the marriage from fornication.

5. Civil laws conceive affinity in the same way as the Code. But there are laws, for example the present French and the very recent Belgian law of February 11, 1920, which remove the impediment from the point at which, by the death of the spouse (but not by divorce), the marriage from which it arose has been dissolved.

— XI. Public honesty, 1. designates that ratio of public decency which counsels a certain extension of the impediment of affinity. By the present law, c. 1078, the diriment impediment of public honesty arises a) from an invalid marriage, whether consummated or not, and b) from public or notorious concubinage; but it invalidates nuptials in the first and second degree of the direct line between the man and the consanguineous women of the woman, between the woman and the consanguineous men of the man.

a) It arises from every invalid marriage, whatever the cause of nullity may be, even if it is defect of consent.

b) With attention to c. 2197, public is what has already been divulged or, with attention to the circumstances, can and must prudently be judged as easily going to be divulged; notorious adds openly divulged knowledge, so that it can no longer be concealed by any tergiversation (notoriety of fact), or a sentence which has passed into a judged matter, or a confession made in judgment according to the norm of c. 1750 (notoriety of law). Concubinage means the habitual commerce of one with another, with a certain imitation or external appearance of conjugal life.

A frequent case will be of those who, subject to ecclesiastical form, after contracting a civil marriage, live as husband and wife. If that marriage were valid and they were baptized, it would found affinity.

You should observe that the diriment impediment is circumscribed by the direct line alone.

2. Before the Code, the impediment of public honesty arose from every ratified marriage, both valid and invalid, unless defect of consent stood in the way of validity, and from validly contracted sponsals. Arising from sponsals, it invalidated in the first degree of the direct and collateral line; arising from ratified marriage, in the first four degrees of each line. And it remained after sponsals and marriage had been dissolved.

3. This obstacle is neither generated by the law of nature nor founded upon a natural relation. Wherefore it does not affect infidels, not even after baptism, if the marriage or concubinage preceded baptism.

— XII. Spiritual kinship is the bond which arises from baptism and confirmation between certain persons. Today the impediment of marriage arises from baptism alone and invalidates marriage a) between the baptized man or woman and the one baptizing; b) between the baptized man or woman and the godfather or godmother.

It requires valid administration of baptism; and if it has been conditionally repeated, it is not contracted by the godparent unless the same godparent was used in each. Is it then contracted by the one baptizing? We judge that one must respond in the same way.

Then only can it be multiplied, if the same one is baptizing and, through a procurator, is at the same time godparent.

Cf. what was said concerning baptism, where we explained the antecedent law.

— XIII. Legal kinship from adoption, where civil law has established that impediment as diriment (cf. what was said in n. 766).

Summary

— I. Impedient impediments. 1. There are five simple vows: of virginity, of perfect chastity, of not marrying, of receiving sacred orders, of embracing the religious state.

2. Adoption, prohibiting nuptials according to the provision of civil law.

3. Mixed nuptials, which are most severely prohibited. Besides, if there is present danger of perversion of the Catholic spouse and of the offspring, the marriage is prohibited by divine law itself. In order that dispensation be made, besides just and grave causes, there is required a caution, that is, a formal promise of the non-Catholic spouse concerning the removal of the danger of perversion from the Catholic party, and of both spouses concerning all offspring to be baptized and educated only in a Catholic manner, and moral certitude concerning the fulfillment of the cautions. If the pastor knows certainly that the spouses have violated or will violate the prohibition of approaching a non-Catholic minister as such, he is not to assist at their marriage except for grave causes, scandal having been removed, and the Ordinary having first been consulted. One must abstain from sacred rite, unless the Ordinary has permitted one for avoiding graver evils, with the celebration of Mass always excluded.

The pastor cannot assist at nuptials with notorious apostates or with members of a condemned sect except after consulting the Ordinary.

If a public sinner or one bound by censure refuses confession, the pastor is not to assist at their marriage unless a grave cause urges, concerning which, if it can be done, he should consult the Ordinary.

II. Diriment impediments. 1. Defect of age: 16 completed years in men, 14 in women. Nor does malice now supply age.

2. Antecedent and perpetual impotence, whether absolute or relative. Impotence, according to the more common opinion, is said to be impotence for intercourse of itself apt for generation.

3. Ligamen, or the bond of a prior valid marriage. As long as, by moral certitude and legitimately, that is, in the manner which the law wills, it is not established concerning the dissolution or nullity of the prior marriage, another marriage is illicitly attempted.

The mode of proof is governed chiefly by the Instruction of the Holy Office, 1868. In the more difficult cases of less perfect proof, recourse must be had to the Holy See.

4. Disparity of cult, in the marriage of a non-baptized person with a person baptized in the Catholic Church or converted to it from heresy or schism. Therefore immune from the impediment are all those who have never belonged to the Church. According as it matters for the validity of marriage, which presumption favors, baptism certainly conferred is judged valid or not valid, and the party who is commonly considered as baptized is presumed baptized or not. Yet no virtual dispensation is contained in that presumption. Therefore practically, unless excessive difficulty stands in the way, provision must be made for the certitude of the contract or sacrament by baptism certainly conferred or by a dispensation as a precaution. In

dispensation from this impediment, the same cautions as in mixed religion must be prescribed for validity.

5. Sacred order, even if the ordained refused to emit the vow of chastity.
6. Profession of solemn vows, or also of simple vows to which the Holy See has specially joined this invalidating force.
7. Abduction, or, by today's law, violent abduction of a woman (not of a man) from a safe place into an unsafe place, or detention in the place where she is staying, for the sake of entering marriage. The abduction of a minor girl is presumed violent. The impediment does not cease except after liberty has been recovered.
8. Crime, whether: a) of adultery alone, when, during the same marriage, both parties adulterous between themselves have mutually given faith concerning entering marriage, or have attempted marriage even by a civil act only. In what order each occurred does not matter; b) of spouse-killing, of which both were authors by formal conspiracy. Probably the intention of marriage conceived by one or the other and manifested to the other can be required; indeed, according to some, the intention conceived by each and manifested to the accomplice; c) of adultery concurring with spouse-killing, during the same marriage. Mutual machination of death is not required; but, in the killer, several require the intention of marriage with the other party, and indeed manifested to this other.

This impediment is contracted even by one ignorant of it. It can be multiple. Crime before baptism is washed away by baptism; nor does spouse-killing committed by an infidel alone harm the faithful party, unless the civil law itself urges the impediment for the infidel party.

9. Consanguinity, or propinquity arisen from generation, between persons of whom one has been generated by another (direct line), or who come together in one sufficiently proximate common author (stock) (oblique or transverse line). It is computed by degrees, which, in the direct line, are as many as generations; in the oblique line, canonically, are as many as the generations in the longer tract of distance from the stock. Where the tracts are unequal, mention of the shorter tract is sometimes useful, indeed necessary. The nearer degree is then said to be touched. Civilly, the whole distance by which both are separated from each other is customarily computed, as in Roman law.

Multiple consanguinity is had because of a multiplied common stock, with attention paid to the fact that one stock is made from two spouses.

Consanguinity is distinguished as legitimate and illegitimate. It is bilateral or full, which joins those who communicate both from the father and from the mother; and unilateral or half, on the part of the father alone or of the mother. Full brothers are called *germani*; consanguine brothers, those who communicate through the father alone; uterine, those who communicate through the mother alone. Formerly relatives through the paternal line were called agnates; through the maternal line, cognates.

Moreover consanguinity invalidates marriage infinitely in the direct line; but in the oblique line, within the first three degrees of consanguinity, legitimate or not. In the first degree of the direct line it is of natural law; in the collateral line, marriage between brother and sister is now at least

prohibited by natural law. In other degrees it is of ecclesiastical law, well founded upon reasons of preserving reverence and purity of morals.

Converted and baptized infidels are held by these impediments with all relatives, baptized or non-baptized.

10. Affinity, which is now defined as the bond of propinquity induced through a valid marriage, whether ratified, or ratified and consummated, between either spouse and the consanguines of the other. But in whatever line and degree the consanguines of one spouse are, in the same they become affines of the other spouse. Since only the marriage of the baptized is ratified, affinity does not arise from the marriage of infidels. Multiple affinity will be with consanguines who are united with the other spouse by a multiple bond of consanguinity; or with a spouse who is a consanguine of the prior spouse.

Affinity is not proved in any degree to be an impediment of divine or natural law. Nor does it hold infidels after baptism, unless by the conversion and baptism of both their marriage has certainly been made ratified.

But by ecclesiastical law, affinity today invalidates marriage infinitely in the direct line; but in the oblique line, within the first two degrees.

11. Public honesty is a certain extension of the impediment of affinity, founded upon the ratio of public decency, which now, arising from every invalid marriage, whether consummated or not, and from public or notorious concubinage, invalidates nuptials in the first and second degree of the direct line, between the man and the consanguineous persons of the woman, between the woman and the consanguineous persons of the man.

Public here is what has been divulged or will easily be divulged; notorious adds openly divulged knowledge (notoriety of fact) or a sentence which has passed into a judged matter, or a judicial confession (notoriety of law).

Infidels, not even after baptism, because of prior facts, are in any way held by this impediment.

12. Spiritual kinship, from baptism, between the baptized person and the one baptizing; between the baptized person and godfather or godmother. And legal kinship from adoption, insofar as civil law establishes that impediment as diriment.

Title III: On Matrimonial Consent and Its Form

Chapter I: On Matrimonial Consent

Order of discussion. We must treat briefly, imitating the Code, of the notion and necessity of consent, of the conditions necessary for consent, of the mode in which it can be given, and of its perseverance.

— I. Notion and necessity of consent. 1. "Matrimonial consent is an act of the will by which each party gives and accepts the perpetual and exclusive right over the body, in order to acts of themselves apt for the generation of offspring" (c. 1081, §2).

2. But consent can be supplied by no human power, since the sole cause of matrimony is the consent of the parties (c. 1081, §1).

Consent, moreover, is required to be: a) true: feigned consent cannot suffice; that which is feigned to be present is not truly present; b) mutual: each party gives and accepts the body of the other; c) it must give and accept a right over the body, perpetual and exclusive: perpetual, because matrimony is indissoluble; exclusive, because matrimony is of one man with one woman; d) it gives and accepts in order to acts of themselves apt, etc., but not for having offspring expressly and immediately (cf. St. Thomas, *Suppl.*, q. 49, art. 3, c.). From this description are known the conditions contrary to the substance of matrimony: they are opposed to the perpetuity, to the unity of matrimony, to natural copula, and to offspring itself, not to be positively impeded in the use of marriage.

3. What knowledge is required that this consent can be given, we are taught by c. 1082, which nevertheless does not say that what it indicates to be necessary already always suffices. Therefore, at least it is required that matrimony be known to be a stable or permanent society between persons of diverse sex, and this for procreating children. Once the primary end of matrimony is known, the object of matrimony is already reached, which consists in acts of themselves apt for generation. Moreover, matrimony must be known to be a society for procreating children, not simply for obtaining them by some means: therefore it is necessary that the contracting parties know that this happens by some common work, perhaps not distinctly perceived. But one who is content with a confused notion virtually accepts the mode which must be used; let him impute it to himself if later it is discerned to be such as he would not have admitted. But this notion of matrimony would not suffice, by which it would be conceived as a mutual contract for educating together children bought in a market or fallen from heaven.

And since the proximate matter of the contract and sacrament is the handing over of the body for generative acts, with Vlaming, II, 523; Linneborn, §36, p. 269, we judge that, in some rare case, substantial consent can be lacking in a person who did not know that concession to the use of one's own body is contained in matrimony, and who abhorred a concession of this kind more than he admitted conjugal life. Gasparri himself requires that it be known that a man procreates children from a wife. But proof of that ignorance and of a prevailing will will be very laborious in the external forum.

But this ignorance of the nature or object of the contract is not presumed after puberty, but must be proved (c. 1082, §2).

By this canon it is also demonstrated that the reticence of parents is harmful, who deceive marriageable daughters by an artificial ignorance, and rashly hand them over to a bridegroom, often little pious, to be used or abused.

— II. Conditions of consent. Besides the truth of consent, there is also required its immunity from certain vices.

1. First, from error. Yet not every error renders matrimony invalid, but only that error which, with attention to the nature of the contract, is reputed substantial. But although it is to be desired above all that the contract, upon which the morally whole lot of several human persons depends, be infected by no error, nevertheless the necessary stability of a contract whose consequences are irreparable requires that very few causes of nullity have force to invalidate it. Wherefore, besides error, necessarily substantial, concerning the object of the contract, only a threefold error substantially vitiates consent:

a) error concerning the very person to whom one gives faith: concerning the person, that is, not concerning the name or riches, but concerning his or her individual identity, so that one thinks he is contracting with Peter while it is Paul, or with the elder child of such a family, while it is the younger child. This would no longer be that error if he intended to make a pact with the person present, whoever that person may be;

b) error concerning a quality which redounds into error of person. For of itself error concerning a physical, intellectual, or moral quality does not stand in the way of validity. But error concerning a quality which has been expressly required as a condition without which not, redounds into error of person. For if the condition is lacking, no consent of itself is had;

c) error of servile condition, or concerning the freedom of the person, if a free person (therefore not if a slave) contracts with a person whom he thinks free, whether freeborn or emancipated, while that person is held by servitude properly so called.

No other error essentially vitiates matrimonial consent.

Not simple error (if fear is added, or contrary will, see below) concerning the unity of matrimony, or indissolubility, or sacramental dignity (c. 1084); not error concerning virginity, virtue, disposition, riches, nobility of the person, or concerning the paternity of a conceived child, by reason of which matrimony is contracted. Nor does it matter that the error gave cause to the contract, or was mixed with deceit or fraud.

— 2. Consent is required immune from fiction. We have already warned above that feigned consent is altogether ineffective. But internal consent is always presumed to have been conformed to the words or signs.

But, besides the subjectively complete fiction of him who wills nothing, there is a partial fiction from the object, when consent is borne only to an object or contract substantially diverse. Wherefore, "if either or both parties by a positive act of the will exclude matrimony itself, or every right to the conjugal act, or some essential property of matrimony, he contracts invalidly" (c. 1086, §2). Every

right to the conjugal act is excluded if she who is named a wife, in the manner of a concubine, can complain of no injury if, even without cause, she is dismissed. Not every right is excluded if it is conceded limited in time or subordinated to the condition of fidelity, etc. But then an essential property of matrimony can easily be excluded. But the excluding will is supposed to be efficacious, which is not destroyed by a contrary prevailing will, as if one should will matrimony, and at the same time that it be dissoluble, while ignorant of the indissolubility of matrimony. Cf. what is to be said below, n. 791, concerning conditional will.

— 3. Consent is demanded immune from a certain force and fear. Not every fear, even one which gives cause to the contract, brings with it the nullity of matrimony, but only force or grave fear inflicted from without and unjustly, from which, that one may free himself, he is compelled to choose matrimony (c. 1087). Therefore invalidating fear must satisfy these conditions:

a) force, under which name comes not only violence strictly so called, but every free extrinsic cause which produces fear, must have effected grave fear, whether such absolutely, which falls upon a steadfast man, or at least such relatively. Grave is that which is overcome with difficulty. Such can be even reverential fear, or the fear of offending persons to whom reverence is owed, especially parents, if threats, importunate prayers, etc., are added;

b) fear must be unjustly inflicted. But it can be unjust from the object or cause, as if the one instilling fear can exact nothing, or at least can in no way exact matrimony; and unjust from the mode alone, as if he cannot legitimately command matrimony in that way. Suppose the father of a deflowered virgin threatens death unless the deflowerer takes her as wife. Indeed, since now no action is given for exacting matrimony itself, every fear inflicted for obtaining matrimony must be called unjust;

c) no other option besides matrimony must have been available to the one suffering fear. This can happen even if the fear was inflicted for another end. Suppose an angry man who wishes to avenge some injury by atrocious revenge; and no other escape appears to a rich young man except the promise of taking the aggressor's daughter.

> By what law force and grave fear invalidate matrimony is disputed. Many think this impediment is established by positive law alone, although it is altogether consonant with the wishes of nature. For he who consents from fear nevertheless truly furnishes internal consent; and he could have escaped the necessity itself by feigning consent. Yet others think it repugnant to natural law itself that consent unjustly coerced be sanctioned by the most grave obligation of perpetual matrimony. Grave reasons indeed are alleged for each side. Even one who in a general way admits that acts from grave and unjustly inflicted fear are valid, as c. 103, §1 itself declares, can without absurdity maintain an exception for this contract-sacrament, to which it is so necessary that it be done freely. Nevertheless we shall incline toward the former side. For if it were an impediment of natural law, human positive law seems not to have been going to define so rigorously the conditions of invalidating fear. For that these embrace the whole force of the natural impediment would be difficult to demonstrate.

— III. Presence of the contracting parties. By the positive law of the Code the celebration of matrimony between absent persons, or by letters, is excluded.

The contracting parties, however, can be present either personally or through a procurator (c. 1088). A special mandate is required, given in writing and subscribed as sponsals are, except that, in the

present case, the pastor or local Ordinary can delegate a priest to subscribe. The competent Ordinary is the Ordinary of the place in which the mandate is made. If the mandating person does not know how to write, those things are to be observed which are prescribed when the party who promises marriage is ignorant of letters. If the mandating person has revoked the mandate before the marriage, or has fallen into insanity, the procurator, even ignorant of the matter, can no longer contract a valid matrimony for the mandating person. And for validity it is necessary that the procurator execute the mandate personally (c. 1089).

> Besides, diocesan statutes concerning the procurator, if any exist, are to be observed. But, contrary to what Noldin, III, 611, thinks, this is not a condition of validity, since Ordinaries cannot fortify their prescriptions or prohibitions concerning matrimony with the sanction of nullity. Cerato, n. 85; Cappello, III, 619, agree.

Matrimony can also be contracted through an interpreter.

The pastor is not to assist at a marriage through a procurator or through an interpreter unless a just cause is present, there is no doubt concerning the authenticity of the mandate or concerning the trustworthiness of the interpreter, and, if time permits, the license of the Ordinary has been obtained.

Both the spouses themselves and the procurator are to express matrimonial consent by words; nor, if they can speak, can they licitly use equivalent signs.

> Signs, however, suffice for validity. And thus the whole ceremony sufficiently manifests the consent to the witnesses, even if, because of a certain timidity, the bride does not pronounce in an intelligible tone the single affirmative word which the Roman Ritual demands. For the rest, the Ritual, tit. VII, c. 2, n. 2, did not require anything except some sensible sign expressing consent.

— IV. Conditioned matrimony. Like every contract, matrimony can be made conditionally. Yet this is proper to matrimony, that conditioned consent can always validly be revoked, and that another matrimony contracted absolutely before the condition arrives is valid.

> Concerning the difficulty which arises from the efficacy of that illicit retraction before the condition has been purified, the *Epitome*, II, n. 381, III, can be consulted.

Concerning an appended condition the Code briefly proposes these things:

1. A future condition which is necessary, or impossible, or base, but not contrary to the substance of matrimony, is considered as not added.

> Yet the intention of the parties must be observed, who could, through a necessary future condition, defer the very celebration of matrimony to the day on which it has been fulfilled, or clothe a will of not contracting with an impossible condition.

2. A future condition contrary to the substance of matrimony renders it invalid.

> Here a condition deduced into the pact must be carefully distinguished from a condition simply conceived. Because, when the condition enters the pact itself, the expressed consent

itself is not consent of a true matrimony; matrimony never has validity. For merely internal consent cannot be mutual. And therefore there was declared null the marriage of a non-Catholic, in whose celebration there was read the Gospel by which non-Catholics rely upon admitting perfect divorce in the case of adultery.

But where it has not been deduced into the pact, judgment must be made concerning the validity of matrimony according to the prevailing will.

Finally, a condition must be carefully distinguished from purposes, even mutual ones, of violating the laws of matrimony by adulterous or neo-Malthusian abuse. Indeed, most often those "conventions broadly so called" about avoiding offspring for the first year, etc., are not to be held as true conditions, nor do they impede the validity of matrimony, which was contracted absolutely.

Is a condition appended, indeed deduced into the pact, of preserving continence, repugnant to the substance of matrimony? Although several think that this is repugnant, nevertheless it seems it must be denied, because the right is one thing, the use of the right another. A pact of not using does not take away or impede the handing over of the right, which alone is essential (cf. Noldin, III, 613).

3. A licit future condition suspends the contract. When the condition arrives, matrimony is perfected, and is judged to have had its beginning from the day of the conditioned contract.
4. A condition concerning the past or the present makes matrimony valid or not, according as that which is subject to the condition exists or not (c. 1092, 4°).

— On the perseverance of consent. "Even if matrimony was invalidly entered by reason of an impediment, the consent furnished is presumed to persevere, until its revocation has been established" (c. 1093).

This must be carefully noted for the convalidation of matrimony invalidly celebrated.

Summary

— I. Consent is required to be true, mutual, which gives and accepts a perpetual and exclusive right over the body, in order to acts of themselves apt for the generation of offspring (c. 1081). It can be supplied by no human power. Therefore matrimony must be known at least as a stable society between persons of diverse sex, and this for procreating children, by some common work.

It must besides be immune from substantial error, i.e., here, from error concerning the individual identity of the person with whom one contracts; concerning a quality which has been expressly required as a condition *sine qua non;* concerning servile condition, if the other contracting party is a free person.

It must also be immune from grave fear unjustly inflicted, at least as regards the mode, and "from which, that one may free himself, he is compelled to choose matrimony."

II. It can be made under a licit future condition, and then it suspends the contract, which, once the condition is fulfilled, passes into the absolute. Meanwhile, however, the condition being disregarded, one validly marries another.

A future condition which is necessary or impossible or base but not contrary to the substance of matrimony is considered as not added. If it is future and contrary to the substance of matrimony (offspring, fidelity, or sacrament), it renders it invalid, when it has been deduced into the pact, or prevails over the will of matrimony.

Purposes, even mutual ones, of violating matrimonial duties must be carefully distinguished from a condition.

III. Consent is not necessarily impeded by knowledge of nullity; and once given it is presumed to persevere, until it has been revoked.

IV. Consent must be given between persons present, and therefore matrimony by letters is excluded, but not matrimony through a procurator or through an interpreter. But if time permits, the Ordinary must be consulted. And for liceity consent must be expressed by words.

Chapter II: On the Form of Celebration of Matrimony

— Law before the Code. Although, as the Tridentine synod warned, the Church always detested and prohibited clandestine marriages, nevertheless the same were contracted validly; and in the Council of Trent itself the clause introducing nullity was not admitted without difficulty and hesitation. The form of celebration thereafter was governed by c. *Tametsi*, Council of Trent, by which this form of celebration was prescribed, not for Catholics alone but for all the baptized, as substantial, namely that mutual consent be given before the Ordinary or pastor of the domicile or quasi-domicile of either spouse, or before one delegated by him or by the local Ordinary, and two witnesses. But only those places were subject to this decree in which, as a decree of the Holy See, it had been promulgated. Nevertheless little by little this interpretation of the decree prevailed, which recognized in it a force at once personal and local. Wherefore this form had to be observed under sanction of nullity: a) by spouses in whose domicile and quasi-domicile the decree had been promulgated, and this even in exempt places, unless in some excepted place either party had acquired quasi-domicile; b) by any spouses contracting in a subject place. But c) either excepted spouse communicated his exemption in an immune place with a subject spouse. Besides, there were certain regions, especially Holland, from the declaration of Benedict XIV, where marriages of non-Catholics between themselves or with a Catholic party were valid, although clandestine, or celebrated without a competent priest and witnesses.

The present discipline was introduced by the decree *Ne temere*, which Pius X promulgated through the Sacred Congregation of the Council on August 2, 1907: its prescriptions were reported almost entirely in the Code.

— I. Principle and general rule of valid celebration. For the very validity of matrimony, it is regularly required that it be contracted before the pastor or local Ordinary or a priest delegated by either, and at least two witnesses (c. 1091).

1. Under the name of pastor comes: a) the pastor strictly so called, to whom a canonically erected parish has been conferred as the title at least of office. He is commonly called pastor. To the territorial pastor is assimilated the personal pastor, constituted for persons of a certain rite, or of a certain class, indeed for a definite family; b) the quasi-pastor, or rector of a quasi-parish, i.e., of a determined territory, in places where parishes have not yet been canonically erected, e.g., in an apostolic vicariate or prefecture, which have distinct territorial parts with their own rector (cc. 216, §3, and 451, §2, 1°); c) the parochial vicar who with full power presides over a parish whose habitual care is in the hands of a college or chapter, or over a vacant parish, or who supplies for a pastor permanently unable. Such also is a substitute vicar who supplies for an absent pastor, provided he has been approved by the local Ordinary, or there is question of the vicar whom the pastor himself, suddenly and for a grave cause called away, is then permitted to substitute for himself without approval of the Ordinary, according to c. 465, §5 (cf. c. 474 and the response of the Commission of the Code, March 13, 1921, to II); d) a chaplain of soldiers, if the prescriptions of the Holy See so provide (c. 451).
2. Who the local Ordinary is has already been indicated in n. 455.

3. A priest delegated by either. This delegation, which is also called by the name license, because it does not communicate jurisdiction properly so called but the quality of an authorizable witness, must be expressly given; and, unless there is question of cooperating vicars for the parish to which they are assigned, it cannot validly be given except to a determined priest for a determined marriage. Any general delegations are excluded. Wherefore the one delegating cannot safely concede the faculty of subdelegating unless he himself indicates the priest whom the impeded delegate is permitted to substitute for himself; nor can he give it for marriages which will occur except to cooperating vicars, but the marriages themselves must already have been defined. And note that the competence of a particular delegate can give place to no common error.

Authors sufficiently agree that a determination left to the will of those about to marry, "I delegate whomever they shall choose," does not suffice. Whether a delegation given to a religious priest "whom the Superior is going to send tomorrow to act in my place on such a day" is valid, Linneborn, *Grundriss des Eherechts*, p. 321, admits, while Vlaming, op. cit., n. 572, excludes every choice left to some third person, although, n. 575, he seems to admit the validity of an expressly conceded faculty of subdelegating. Yet they are not accustomed distinctly to examine the case of a license which, for a determined marriage, the pastor has given to a definite priest, with the faculty added of subdelegating another priest whom only the delegate himself will indeed determine. And for the validity of that subdelegation it can be said that it seems consonant with the general principles of law (c. 199, §4), and that no determination is wanting. But if you compare c. 1095 with c. 1096, the determination of the assisting priest seems to have to be made by the delegator himself, and we have learned that this is the mind of the Sacred Congregation of the Sacraments.

Approved authors, moreover, admit that several can be delegated at once by the delegator in this manner, for example: for assistance at such a marriage I delegate all the priests of such a monastery (although, if they are several, this is less consonant with the mind of the Code). But it is clear that the delegate can be designated not less by name than by quality.

The marriage must be determined in the same way. To someone other than a cooperating vicar, the faculty cannot be given for all marriages which will occur on these days, or for the marriage which will occur first; although it can be given for the marriage which, at such an hour, I have learned is to be celebrated.

Finally, license can be expressed not only by words or writings but also by deed, so that only presumed license or mere tolerance is excluded. But that all ambiguity may be removed, it is better to express the license by words or writings.

4. The pastor and local Ordinary validly assist, or concede license to another, only from the day of acquired canonical possession of the benefice or of office begun (c. 1095, §1, 1°).

Residential bishops take canonical possession of the diocese as soon as personally or by procurator they have shown the apostolic letters to the chapter of the cathedral church (or, this lacking, to the council by which the chapter is supplied), in the presence of the secretary of the chapter or the chancellor of the curia; but pastors, when mission or "installation" has

been made "according to the manner prescribed by particular law or received by legitimate custom," or by dispensation from that manner expressly conceded in writing by the Ordinary (cc. 334, 1444).

5. The same persons can no longer validly assist at matrimony after they have been excommunicated, interdicted, or suspended from office by sentence, or declared such.

Yet this does not prevent the Church from supplying the defect, if common error concerning their ability has intervened. For what all say concerning a putative pastor must be said likewise concerning a true pastor but suspended by sentence: c. 209 falls upon each case.

But those who approach a non-Catholic minister as sacred commit forbidden communication in sacred things and are punished by an excommunication reserved to the Ordinary *ipso facto* (c. 1319).

6. They do not validly assist except within the limits of their territory; but there they assist validly at the marriage of all persons, although not always licitly.
7. The manner of assisting, necessary for validity, must be such that: a) constrained by no force or grave fear, b) they ask for and receive the consent of the contracting parties.

Therefore they must formally and freely ask for and receive the consent.

By this prescribed manner, marriages are effectively impeded which, beyond his expectation and will, would be celebrated before the pastor.

Passive assistance is insufficient for validity. Yet what if in some place assistance at a mixed marriage is tolerated, the cautions having been omitted? After the decree *Ne temere*, the Sacred Congregation of the Holy Office, on June 21, 1912, willed that in that case no interrogation be made and that the priest assist in a merely passive manner. Prummer, q. 334, scholion, judges that decree still to have force, while several others think the same has been suppressed (cf. De Smet, n. 111, note 3). Wherefore we judged above, n. 767, that it is safer that, until the Holy See, if it should seem necessary, declares the matter, the interrogations be made. I say "if it should seem necessary," for I do not know whether in no place now assistance itself at such nuptials is permitted.

8. Two witnesses are required besides. All who are actually possessed of reason are fit (Cappello, III, 652; Vlaming, II, 576; c. 1757, §1). But it is not required that they be formally called or assumed, but it suffices that, even by chance, they be present, provided those about to marry, conscious of their presence, at least tacitly employ them in this way, and they themselves have observed the words or signs of mutual consent; and this together with the pastor, not only before or afterward. For then in reality the marriage is made before two witnesses. The same presence in the pastor would not suffice, not only because now he must interrogate the parties and receive their consent, but also because matrimony must be celebrated before him as pastor or competent priest. Wherefore if a civil marriage is made before the syndic and two witnesses, of whom one is the pastor, the marriage is not judged to have been celebrated before the pastor (cf. De Smet, I, p. 96, note 1 from *Rev. du Clergé français*, t. 54, p. 209 ff.). Concerning the required presence of the witnesses, cf. Gasparri, II, 1163-1166.

Where Catholics can be had, non-Catholics are illicitly assumed. Yet, on August 19, 1891, the Holy Office declared that this can be tolerated by the Ordinary for a grave cause, provided scandal is not had.

— II. Concerning licit celebration. Licit celebration requires:

1. previous proof of free status, according to the norm of law. And those delegating are warned not to concede delegation except "after all things which the law establishes for proving freedom of status have been completed" (c. 1096, §2);
2. domicile, quasi-domicile, or at least a monthly stay of either contracting party in the place of celebration, or the license (not delegation) of the proper pastor by reason of domicile, quasi-domicile, or monthly stay. Vagi, however, have as proper pastor the pastor of the place where they are staying. But if they are actually itinerant, so that they have no seat of stay, any pastor is judged proper (c. 1097). You should observe that this license can be given by one who himself would not even validly assist at a marriage celebrated outside his territory. Besides, grave necessity excuses from seeking this license;
3. celebration in the place where the bride obtains a proper pastor. Yet any just cause excuses the choice of another place.

The marriages of Catholics of mixed rite, however, unless something else has been provided by particular law, must be celebrated in the rite of the man and before his pastor (c. 1097, §2);

The competent pastor who assists at a marriage without the license required by law does not make the stole fees his own, and must remit them to the proper pastor of the contracting parties (c. 1097, §3).

The decree *Ne temere* had substituted monthly stay in place of domicile or quasi-domicile, which c. 1097 joins to domicile or quasi-domicile for defining the ratio by which a pastor becomes proper and by which spouses are not judged vagi in relation to matrimony.

Monthly stay is a morally continuous stay of thirty days. You should observe that license can proceed from a pastor who is proper at least through monthly stay, but not from him where a vagus is merely actually staying. Wherefore an itinerant vagus is simply permitted to contract matrimony in the place where he is present, but the pastor ought not to assist at his marriage without license of the local Ordinary.(1) License is regularly to be sought from the pastor of the bride; but any just cause suffices that it be sought from the proper pastor of the bridegroom. A grave cause which excuses from seeking the license can be an urgent reason for celebrating the marriage or a grave reason for not revealing the matter to the proper pastor. Where there are several proper pastors, choice is allowed of the proper pastor from whom license is to be sought. Finally, the proper pastor of the man need not seek license from the pastor of the bride, since from c. 1097, §2, a just cause suffices. Wherefore, even if a just cause is lacking, he himself seems to escape the penalty of c. 1097, §3, since this is established only against non-proper pastors who assist at a marriage without the required license. But the fees are of themselves to be remitted to the pastor of the bride. If there are several proper pastors, they seem to be divided among them, or the one is to be preferred who would have celebrated

the marriage, or the pastor of domicile. An authentic declaration is desired (cf. our *De forma sponsalium*, etc., n. 86).

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(1) Indeed, license of the Ordinary is required even if the persons have a monthly stay, but lack a domicile or quasi-domicile, at least diocesan. Thus De Smet, I, n. 129, gathers well from c. 1032 referring to c. 91, against Wouters and [OCR appears to read: Schakman; possibly Standaert, since De Smet's older parallel discussion names Standaert with Wouters on this question].

Can the bishop or local Ordinary prescribe more strictly that marriages be made before the pastor of the bride, so that a just cause of acting otherwise does not suffice, but a grave cause is required, or formal license must be sought? De Smet, I, p. 105, note (1), relying upon the particular law of Bruges, thinks this can be done. But, unless a centenary custom is added, that derogation from common law does not seem to be within the power of the bishop. For a particular law derogates from the Code which by strict precept forbids what the Code permits for a just cause.

— Cases excepted by law. Whenever the pastor, or Ordinary, or delegated priest who would assist at marriage according to the form prescribed for validity, cannot be had or approached without grave inconvenience:

1. in danger of death, a marriage contracted before witnesses alone is valid and licit; and 2. even outside danger of death, provided it is prudently foreseen that this condition of things will last for a month (c. 1098, 1°).

"In either case, if another priest is at hand who can be present, he must be called and, together with the witnesses, assist at the marriage, saving the validity of the marriage before witnesses alone."

Therefore matrimony is validly celebrated before only two witnesses: a) in danger of death of either spouse, when a competent priest cannot be had or approached without grave inconvenience; b) even outside such danger, if the difficulty is prudently foreseen to be going to last for a month. If, however, a non-competent priest can be called, he must be called for liceity and must assist with the witnesses. Therefore an obligation is imposed upon the contracting parties of calling such a priest, and upon the priest of assisting.

In danger of death, the case can be had if from a delegation requested from the pastor or Ordinary, a suspicion of sin sacramentally accused could arise with the one delegating. Suppose a sick man who enjoys intact reputation although he exercises a secret concubinage with a maidservant. If, because of the permanent occasion of sin, it is expedient that they be legitimately joined, the penitent will not have to give permission for seeking delegation. It will then be sufficient that before the priest, as a simple witness, and another person, those about to marry express their consent (cf. Cappello, III, 691).

Outside danger of death, the case certainly occurs where the absence of every competent minister or other circumstances physically impede his assistance. But what where an impediment of another kind stands in the way, especially where it proceeds from a law which punishes with penalties the pastor or delegate who assists at marriage before the civil ceremony has been completed?

Some deny that then there is place for c. 1098. For in a region where priests are in great number, they cannot be said not to be able to be had or approached without inconvenience, although perhaps they themselves do not assist at marriages without inconvenience. And the same are confirmed in their opinion by the danger of abuses and inconveniences which can arise from many marriages deprived of civil protection.

Others, with attention to the general words of the canon, judge that one must respond more benignly.

And we are persuaded, both by the text itself and by the historical adjuncts, that the case of moral difficulty is included, even that which is created by civil law.

By the text itself. The canon has been written in such a way that it seems to have foreseen the obstacle of civil law and to have included it in its disposition. It uses general words. Nor does it demand that the pastor cannot be at hand absolutely or simply, but without grave inconvenience. The pastor or the spouses can be impeded by grave inconvenience. The pastor is impeded when he cannot be had, but the spouses, when he cannot be approached. But by what law do you understand inconvenience restrictively of physical inconvenience? Is not a civil penalty to be feared a grave inconvenience? But why mention another priest who himself can be at hand, unless because laws are accustomed to punish the competent minister, but not the priest who is neither proper nor delegated? Does it not seem that, on account of this difficulty of civil law, provision was made that another priest should assist?

We are confirmed by the historical adjuncts themselves. For, expressly asked concerning the case, the Holy See did not wish in express words to admit it in a general way; which, as is easily seen, it could not prudently do; but it did not openly exclude the case, which it could have done without inconvenience. But in responses of March 12-13, 1910 (*Periodica*, V, p. 115 ff.), with mention of the region omitted,[(1)] the Sacred Congregation of the Sacraments declared that marriage is validly and licitly contracted before witnesses alone "whenever ... a competent priest cannot be had or approached without grave inconvenience." Finally, in the year 1916 the same Sacred Congregation ordered that in particular cases recourse be had to it.

But now, after these responses, the Code restored the more general form proposed in the response of 1910, and adds the caution in n. 2°, by which provision is made for a more prudent and more religious celebration of matrimony. Wherefore, not only theoretically but also practically, the opinion is at least more probable which says that the celebration of matrimony before two witnesses and a priest is valid and licit when, on account of civil prohibition, the pastor or delegated priest cannot be at hand without grave inconvenience. This is not to be doubted if the case cannot be proposed to the Holy See in due time.

But here one must act prudently. Nor are nuptials to be contracted rashly without the solemnity of the present pastor and civil ceremonies when their happy outcome is not morally certain. For nuptials which are contracted without the protection of civil law, at least outside danger of death, are dangerous. Wherefore the Ordinary also can by general law forbid (not, however, under sanction of nullity) that, without recourse to himself or to the Holy See, marriages prohibited by civil law be celebrated before two witnesses and a non-delegated priest (cf. De Smet, I, 135-138).

Nor can the case where civil law forbids a marriage permitted by the Church be confused with the case where legitimate celebration merely removes certain undue profits. Thus it happens that "annual pensions" are conceded to widows who remain unmarried. This is a most just condition. That they may elude it, the spouses cannot appeal to the present canon so that they contract before witnesses alone, because the pastor is unwilling to assist at a religious marriage, the civil solemnities having been omitted.

The witnesses or the non-delegated priest himself before whom the marriage is made have no interrogation to make, but it is enough that they can testify to the consent mutually given.

But when the civil solemnities are omitted for a grave cause, R. D. De Smet, n. 138, prudently warns that these things are to be procured: 1. that they be supplied as soon as possible, and that the spouses promise that they will do this; 2. that the fact of marriage be accurately inscribed; 3. that the scandal of supposed concubinage be avoided.

Under the decree *Ne temere* a similar exception was admitted, but regard was had to the past, while it was required that the state of things impeding celebration before the pastor or delegate had lasted for a month.

The Sacred Congregation of the Sacraments, practically, follows the opinion which requires common difficulty, and therefore, in particular cases, it responded: "In individual cases let recourse be had" (this before the Code); or it even sanated marriages celebrated without a competent priest. Yet no authentic interpretation has been given, nor is there any general order urging the stricter opinion, which very many authors oppose. Wherefore, with Cappello (III, 694), we shall say: "While the controversy stands, a doubt of law is had, and therefore the prescription of c. 15 is to be applied (which in a doubt of law does not urge nullities or inabilities). Practically, unless grave necessity urges, for liceity it is to be urged that 'recourse be had in individual cases' to the Holy See; but, once marriage has been celebrated, 'one must stand altogether for its validity.'"

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(1) In c. 8 of the decree *Ne temere* it had been said: "If it happens that in some region the pastor ... cannot be had."

— Those bound to the solemn form. The form explained just now must be observed by:

1. "all those baptized in the Catholic Church and those converted to it from heresy or schism, even if either the former or the latter afterward defected from the same, whenever they enter marriage between themselves";
2. the same persons contracting with baptized or non-baptized non-Catholics, even with a dispensation obtained;
3. Orientals contracting with Latins bound to this form.

Therefore, contrary to the situation under Tridentine law, not the immunity but the obligation of one party is shared by the other party.

The decree *Ne temere* tempered this rule thus (art. XI, 2): "unless for some particular place or region it has been otherwise established by the Holy See." By these words was indicated the

exception made by the Constitution *Provida*, January 18, 1896, for Germans born in Germany and contracting there between themselves; which was extended by the Sacred Congregation of the Sacraments, February 27, 1909, to Hungarians born in Hungary and contracting there between themselves. The exception was understood so strictly that it was not permitted to be applied even to a Hungarian contracting with a German, or conversely. Now every exception has been removed, and the Holy See has declared that the Constitution *Provida* has been revoked.

— Immune from this form to be observed are: 1. non-Catholics, whether baptized (and never converted to the Catholic Church) or non-baptized, contracting between themselves;

2. "those born of non-Catholics, even if baptized in the Catholic Church, who from infancy grew up in heresy, or schism, or infidelity, or without any religion, whenever they contract with a non-Catholic party" (c. 1099, §2). Before, recourse had to be made to Rome for the marriages of these persons each time (response of the Holy Office, March 31, 1911).

— Concerning accidental forms or rites to be observed. - 1. "Outside a case of necessity, in the celebration of matrimony, the rites prescribed in ritual books approved by the Church, or received by laudable customs, are to be observed" (c. 1100). The Council of Trent itself, sess. XXIV, c. 1, *De ref. matr.*, had permitted diocesan rituals to be observed. This rite is performed before Mass and is accustomed to comprise: a) the interrogation concerning mutual consent, and the response of mutual consent, sometimes according to a definite formula; b) a certain formula of joining, e.g., "I join you in matrimony"; c) the blessing of the bride's ring. Today both are accustomed to present a ring to be blessed, but there is no formula except for the bride. But nothing stands in the way of the bridegroom's ring being endowed with priestly blessing and sprinkled with blessed water; d) prayers over those joined.

2. The solemn blessing is given in the Mass itself, according to the Missal itself, nor can it be separated from it. To be given, it is reserved to the priest who can validly and licitly assist at matrimony. Not rarely one is delegated to the marriage, another to celebrate the Mass with the blessing. In ferial time, i.e., from the first Sunday of Advent up to and including the day of the Nativity of the Lord, and from Ash Wednesday up to and including Easter, the solemn blessing is forbidden to be given. But afterward, even long afterward, it can be supplied. For a just cause Ordinaries of places can concede that, even in ferial time, it be joined with matrimony; but they cannot permit it separated from matrimony in ferial time. It is never given to a widow who has already received the blessing (c. 1113), nor can it be given in mixed nuptials.

The pastor must take care that the spouses receive the solemn blessing; but it is not established concerning a precept made to spouses of receiving the same.

The blessing coheres with the Mass in such a way that the votive Mass for spouses cannot be said when the blessing must be omitted.

Now, however, to several bishops, e.g., of America, a quinquennial faculty is conceded of giving the nuptial blessing outside Mass according to a formula recently approved by the Sacred Congregation of Rites.

3. Mixed marriages are of themselves to be celebrated outside the church, in a decent place, such as the sacristy, the pastor's house, and without sacred rites, but with the usual interrogations concerning consent. But, for avoiding graver evils, the Ordinary can permit some sacred ceremony, but not the celebration of Mass (c. 1102).

Understand the Mass for spouses, which would be part of the sacred ceremony. For since today Mass can be said for all, nothing stands in the way of the priest, after the completed ceremony, privately applying the Mass to the intention of the spouses, and the spouses themselves assisting at the sacred rite, as generally it is tolerated that non-Catholics be present during Mass. But care must be taken lest that Mass appear joined with the marriage. Much more is it licit for the spouses, after the marriage has been celebrated, to be present at some Mass.

— Inscription of marriage. 1. The pastor himself or the one who takes his place, although another delegated person assisted at the marriage, must record the celebrated marriage in prescribed and accustomed form in the book of marriages.

Yet it happens not rarely that the delegate writes and signs everything by his own hand, and then the pastor, with his name appended, virtually testifies to the same.

The marriage must also be recorded in the book of the baptized. Wherefore, if a spouse was baptized elsewhere, the pastor of the marriage, either personally or through the diocesan curia, must transmit notice of the marriage to the pastor of baptism.

But whenever a marriage has been celebrated before witnesses alone, the priest (not delegated), if he assisted, otherwise the witnesses are held *in solidum* with the contracting parties by the obligation of taking care that the marriage be noted as soon as possible in the prescribed books (c. 1103).

Summary

— I. Form required of itself for validity. Matrimony, for validity, must be contracted: 1. before the pastor or local Ordinary. Pastor is understood as strictly such, or the rector of a quasi-parish, a parochial vicar who with full power presides over the parish, as also the substitute vicar himself and, if the prescriptions of the Holy See so provide, a chaplain of soldiers;

2. or before a priest delegated by either. Express delegation is required, and, unless there is question of a cooperating vicar for the parish to which he is assigned, it cannot be given except to a determined priest for a determined marriage. The pastor and local Ordinary validly assist or delegate from the moment of office canonically begun, and as long as they have not been condemned by sentence or declared excommunicated, interdicted, or suspended.

They are competent for all within the limits of their territory.

3. It is necessary for validity that, constrained by no force or grave fear, they ask for and receive the consent of the contracting parties.

4. Besides, two witnesses are required: any persons possessed of themselves, who have observed the signs of mutual consent and have at least tacitly been admitted by those about to marry.

II. Liceity demands: 1. previous proof of free status;

2. domicile, quasi-domicile, or monthly stay in the place of celebration, or the license of the pastor or Ordinary thus proper;
3. unless a just cause stands in the way, celebration before the pastor of the bride. The pastor who, without license of the proper pastor, has unduly intervened, must remit the fees to the proper pastor.

III. Excepted cases. Provided a competent priest cannot be had or approached without grave inconvenience: in danger of death, or if the difficulty is foreseen as going to last for a month, two witnesses suffice. If, however, another priest can assist, he must be called for liceity.

Is there place for this exception when the penalties of civil law impede the presence of the competent minister? This is disputed.

IV. Immune from the solemn form are: non-baptized non-Catholics, or also baptized persons who never belonged to the Church, if they contract between themselves; those born of non-Catholics, even if baptized in the Catholic Church, who from infancy grew up in heresy, schism, infidelity, or without any religion, whenever they contract with a non-Catholic party.

V. The rite is to be observed; it can be diocesan. In Mass the solemn blessing is given, which, unless the local Ordinary dispenses, is forbidden to be given in ferial time, i.e., from the first Sunday of Advent to the Nativity of the Lord inclusive, and from Ash Wednesday up to Easter inclusive. It is not established concerning a precept of receiving the solemn blessing.

Mixed marriages are of themselves to be celebrated outside the Church with only the interrogations concerning consent. Some sacred ceremony, but not the celebration of Mass, can be permitted by the local Ordinary for avoiding greater evils.

VI. Notation. By the pastor himself or the one taking his place the marriage must be recorded in the book of marriages and of baptisms. Whenever it was contracted before witnesses alone (and perhaps a non-competent priest), the priest, or the witnesses and contracting parties *in solidum*, are obliged to take care of the inscription.

Title IV: On Marriage of Conscience

— 1. Besides the Holy See, only the local Ordinary himself, the vicar general being excluded without a special mandate, can permit a marriage of conscience for a most grave and most urgent cause (c. 1104).

2. This permission carries with it the promise and grave obligation of preserving secrecy "on the part of the assisting priest, the witnesses, the Ordinary and his successors, and also of one spouse, if the other does not consent to disclosure" (c. 1105).

3. The Ordinary is released from this secrecy: a) if some scandal or grave injury toward the sanctity of marriage threatens from observance of secrecy (e.g., if the man wishes to contract other nuptials); b) if the parents do not take care of the baptism of the offspring, or offer the offspring to be baptized under false names, unless within thirty days they provide to the Ordinary notice of the offspring born and baptized with sincere indication, or if they neglect the Christian education of the children (c. 1106).

4. A marriage of conscience must be noted neither in the customary book of marriages nor in the book of the baptized, but in a special book to be kept in the secret archive of the Curia (c. 1107).

Summary

— This marriage, only for a most grave and most urgent cause, can be permitted by the Holy See alone or by the local prelate. This permission includes the promise and obligation of secrecy to be preserved of itself. This marriage is inscribed only in the special book.

Title V: The Time and Place of Marriage

— I. Time. "Marriage can be contracted at any time of the year" (c. 1108, §1).

Before the Code, the laudable customs of provinces which prohibited marriages themselves during closed time seemed to Trent to have to be preserved. Now they will not be able to be preserved unless the Ordinaries of places judge that the same cannot prudently be removed.

Today, as was said above, n. 800, only the solemn blessing is prohibited of itself, and the time which before ran from Advent to Epiphany inclusive, and from Ash Wednesday to the octave of Easter, now has its end with the Nativity of the Lord and Easter (c. 1108).

— II. "The place is the parochial church; in another church or public or semi-public oratory it cannot be celebrated except by license of the local Ordinary or pastor; for it to be celebrated in private buildings there is required an extraordinary case, a just and reasonable cause, and the license of the local Ordinary. In churches or oratories, whether of seminaries or of religious women, Ordinaries are not to permit this except with urgent necessity and with opportune cautions applied" (c. 1109, §§1 and 2).

Mixed marriages are to be celebrated outside the church unless the Ordinary prudently judges that this cannot be observed without graver evils arising (c. 1109, §3).

Summary

— I. By force of common law, marriage can be celebrated at any time of the year.

II. The place is the parochial church. Elsewhere license of the local Ordinary or pastor is needed.

Title VI: On the Effects of Marriage

— I. General matters. 1. Besides the effect of inducing a bond by its nature perpetual and exclusive; of conferring grace on Christian spouses who place no obstacle; of giving to each spouse, and this from the beginning of the marriage, an equal right and office toward the acts proper to conjugal life, marriage, unless something else has been provided by special law, makes the wife, concerning canonical effects, a participant in the status of the husband (cc. 1110-1112).

Before the Code, a spouse was granted a two-month time, during which he or she could refuse the conjugal act, for deliberating about entrance into religion. - A wife does not fully participate in the status of the husband in morganatic marriages. But this is demonstrated more by civil than by canonical effects. A canonical effect could be had if in a certain monastery none are received except daughters of noble condition.

2. Then the Code, c. 1113, inculcates upon parents the most grave obligation of taking care according to their powers for the education of offspring, "both religious and moral, and physical and civil; and also of providing for their temporal good." Finally it treats of the effect of legitimacy and legitimation.

— II. Concerning the effect of legitimacy. 1. Canonically legitimate, and not only legitimated, are held to be children either conceived or born from a valid or putative marriage. Those who are merely born from marriage but conceived before the marriage would not be legitimate of themselves; but by benefit of the law they are held as such.

One exception is made. He who, after a marriage has been validly contracted, receives sacred order in the Latin Church or has made solemn religious profession, is prohibited from every use of marriage: a son who has been conceived in this time, although conceived from marriage, will not have been canonically legitimate (c. 1114).

2. Paternity, which is usually without direct demonstration, is proved by presumption. Hence the prior, "more burdensome presumption": "The father is he whom just nuptials demonstrate" (c. 1116, §1); i.e., a son who is conceived during marriage is imputed to the husband. The Code, however, admits evident contrary arguments. This presumption is completed by this other one: children who have been born at least after six months from the day of the celebrated marriage, or within ten months from the day of dissolved conjugal life, are presumed legitimate (c. 1116, §2). They are presumed legitimate, i.e., they are presumed conceived during marriage.

The explanation is confirmed by agreement with articles 159 and 160 of the Italian Code. But no presumption of law favors him who was born from marriage before six months, so that he be judged the son of the husband. But if, in the very joining of marriage, the father acknowledged the son, he, from c. 1114, will be numbered among the legitimate. - Exposed children are to be held as legitimate, since "the judge in doubt ought to be inclined toward the goods and advantages of the offspring" (Benedict XIV, *Redditae*, December 19, 1741, §4).

— III. Concerning legitimation. 1. From c. 1116 offspring is made legitimate through the subsequent marriage of the parents, whether true or putative, whether newly contracted or convalidated, even not consummated, provided that at the time either of conception, or of pregnancy, or of birth, the parents were able (and did not merely think themselves such) to contract marriage between themselves. Therefore it is enough that at one of these moments they were able. Therefore legitimate will become: the son of consanguines who were dispensed during the time of pregnancy; the son conceived from adultery, if, before birth, the marriage which had been injuriously violated had been dissolved, and the parents then celebrated just nuptials.

2. This legitimation perfectly equates sons to legitimate ones, unless something else has expressly been provided (c. 1117). Something else is expressly provided in cc. 232, §2, n. 1; 331, §1, n. 1; 320, §2: they cannot be chosen as Cardinal, bishop, abbot, or prelate nullius.

3. Another mode of legitimating, i.e., rescript of the prince, or disposition of law, must here merely be recalled. This rescript is conceded through the Sacred Congregation of the Sacraments.

Summary

— I. Besides grace, marriage gives to each spouse, from the beginning of marriage, an equal right and office toward the proper acts of conjugal life, and makes the wife of herself a participant in the status of the husband.

But it obliges parents to fulfill the offices of piety toward the offspring.

II. Legitimate are children conceived or born from a valid or putative marriage. Except if, after the marriage has been contracted, they were conceived at a time when, in the Latin Church, the parent was prohibited from the conjugal act by sacred order or solemn religious profession. By presumption, a son conceived during marriage is imputed to the husband. But he is presumed conceived during marriage who was born at least six months after the marriage was contracted, or within ten months from dissolved conjugal life.

III. Through subsequent marriage of the parents, a son is legitimated, provided that at the time either of conception, or of pregnancy, or of birth, the parties were able to contract nuptials between themselves. Those thus legitimated are perfectly equated to legitimate ones. Yet they cannot be chosen as Cardinal, Bishop, Abbot, or Prelate Nullius.

Another legitimation is made by rescript of the Holy See.

Title VII: On the Separation of Spouses

Article I: On the Dissolution of the Bond

— What marriages can be dissolved. 1. By no human power, and by no cause, can a valid marriage which at the same time has existed ratified and consummated be dissolved (c. 1118).

2. But a non-consummated marriage between baptized persons themselves, or between a baptized and a non-baptized party, is dissolved: a) by the law itself, through solemn religious profession; b) by dispensation conceded by the Apostolic See for a just cause to at least one party requesting, even if the other is unwilling.

It is controversial whether the dissolution of marriage through solemn religious profession should be attributed to a dispensation of the Holy See or to divine-natural law, on account of a perfect change of state. Wherefore the Code abstains from the word dispensation or concession, since the law of the Code could be a mere declaration of divine law.

But a dispensation of the Apostolic See, since it is made in a matter of itself withdrawn from human power, and therefore requires a power divinely conceded, cannot be validly conceded without a just cause. But a just cause is morally present if common life has become morally impossible. The Code, however, expressly recalls that a dispensation can be conceded even if the other party is unwilling, in order to demonstrate that the dissolution is founded in no consent of the parties. For it must firmly be held that a validly contracted marriage is intrinsically indissoluble.

3. "A legitimate marriage between non-baptized persons, although consummated, is dissolved in favor of the faith by the Pauline privilege."

"This privilege does not obtain in a marriage entered between a baptized party and a non-baptized party with dispensation from the impediment of disparity of cult" (c. 1120).

We shall speak at once of the Pauline privilege. Therefore use of the privilege is denied, indeed it is declared not to be had, when with dispensation from the impediment of disparity of cult a baptized party entered marriage with a non-baptized party.

But what if the marriage was contracted without dispensation? The solution is easy if the baptized party was in the Catholic Church: for then the marriage is attempted in vain without dispensation. But the party who has been neither baptized nor converted Catholic is not held by the diriment impediment of disparity of cult. Therefore the solution seems theoretically to have to be sought from the nature of the contract itself: is there or is there not a sacrament in the baptized party? This question lacks a certain solution. Practically, the Holy See positively permits nothing in this case. But if a baptized non-Catholic party has repudiated a non-baptized party in adjuncts which would give place to the Pauline privilege, the new marriage will be of doubtful validity, concerning which one must pronounce according to those things which will be proposed in the moral section.

— Concerning the Pauline privilege according to itself. Scholion. The Pauline privilege, or Case of the Apostle, is a privilege, promulgated by the Apostle Paul from a divinely conceded power, by force of which the spouse who in infidelity contracted nuptials with another infidel party, indeed consummated them, can, after receiving baptism, if the party who remains infidel departs, validly and licitly join new nuptials. When these new nuptials have been made, the prior marriage is dissolved.

The place of the Apostle is found in 1 Cor. 7:12 ff.: "For to the rest I say, not the Lord. If any brother has an unbelieving wife, and she consents to dwell with him, let him not put her away. And if any faithful woman has an unbelieving husband, and he consents to dwell with her, let her not put away the husband: for the unbelieving husband is sanctified through the faithful woman, and the woman is sanctified through the faithful husband; otherwise your children would be unclean, but now they are holy. But if the unbeliever departs, let him depart: for a brother or sister is not subject to servitude in matters of this kind; but God has called us in peace."

But the infidel is judged to depart not only if he refuses cohabitation, but also if he does not wish to cohabit peacefully and without contumely of the Creator, or wishes only that cohabitation which is intolerable for the faithful party, whether on account of annoyances to be borne by him or her, or on account of snares of sin which are cast for him or her, or on account of offensive things which he or she would have to behold, e.g., polygamy, idolatry.

> Whether the privilege is immediately divine, of which St. Paul was only the herald, or, on the contrary, St. Paul himself, using a divinely conceded power which now the Supreme Pontiff preserves, defined that the departure of the infidel furnishes sufficient cause for neglecting the marriage which was contracted with an infidel: the matter is disputed. Up to this point the style of the Curia, e.g., of the Holy Office, has been accommodated to an immediately divine origin: the privilege is described as "conceded by Christ the Lord, and promulgated by the Apostle Paul." And although the Church is not accustomed to concede anything to heretics before conversion, nevertheless it does not deny the use of the privilege to them.
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> Thus most writers. Yet those seem to speak better who refer this privilege to that general ministerial power conceded to the apostles and now to the Supreme Pontiff, by force of which, for a just cause, a marriage which is not both ratified and consummated can be dissolved by Apostolic authority. To this explanation the words of the Apostle are better fitted: "to the rest I say, not the Lord." Nor do the various dispensations which have been conceded seem capable of explanation unless over marriages consummated in infidelity the Supreme Pontiff can do the same things as over ratified non-consummated marriages. But once this faculty of the Supreme Pontiff has been admitted, why would we gratuitously affirm a divine intervention, not necessary, and which fits little with the general economy of the New Testament, which is this, that besides necessary precepts concerning faith and sacraments, God has established no other positive laws?

— Regular use of the privilege: 1. requires that the converted and baptized spouse interpellate the non-baptized party: a) whether he or she also wishes to be converted and receive baptism; b) whether at least he or she wishes to cohabit peacefully without contumely of the Creator;

2. the interpellations are regularly to be made by the authority of the Ordinary of the converted spouse, in a form at least summary and extrajudicial. This Ordinary must also grant delays for

deliberating to the infidel spouse requesting them, with that one nevertheless warned that, the delays having passed uselessly, the response will be presumed negative.

Private interpellations made by the converted party himself or herself are nevertheless also valid. Indeed they are licit, if the juridic form cannot be observed. In the external forum, however, it must be established by two witnesses or by another legitimate mode of proof concerning the interpellations made and concerning their outcome.

3. Interpellations must always be made, unless the Church has dispensed. Otherwise, a marriage made without interpellations is not valid, if the departure of the infidel after the baptism of the other is not plainly established.

But if the departure has been entirely established, interpellations do not seem to be necessary for validity, although some speak more strictly (cf. e.g., De Smet, n. 351, 352). The words of c. 1121, §1, favor the strict opinion: "Before a converted and baptized spouse validly contracts a new marriage, he must ... interpellate the non-baptized party"; and c. 1122, §2, where speech is made of valid interpellations and licit ones. Yet the texts are explained by the fact that interpellations are necessary for the very validity if the departure is not established. Therefore the legislator could say: in order that marriage be valid, certainly and in every hypothesis, interpellations must have preceded. He himself in c. 1121, §2, seems deliberately to have omitted the words "for validity," while he declares that interpellations must always be made.

You should observe that they must regularly be made after baptism, so that the departure after baptism can be established.

4. The use of marriage after baptism leaves intact the right of the faithful party of using the privilege: whether he or she did not interpellate the infidel, or whether that one later departs or does not stand by the promises (c. 1124). It is extinguished only by the baptism of the other party, since then there is no longer an infidel to be interpellated.

If before the faithful party has contracted new nuptials the infidel has sincerely and efficaciously repented of his or her departure, so that he or she is no longer departing, or if he or she has been baptized, use of the privilege without dispensation of the Holy See would be invalid.

Nor is there place for the privilege if after baptism (by which prior faults are blotted out) the faithful party himself or herself has given to the non-baptized party a just cause of departing, e.g., by adultery, by selling the wife, etc. (c. 1123).

5. From the moment at which the faithful party has legitimately celebrated new nuptials, the prior nuptials are perfectly dissolved, so that the infidel himself or herself recovers liberty (c. 1126).

— Force of dispensations by the Holy See. For just causes, especially of the common good, the Holy See can dispense so that an interpellation is made only concerning the will of conversion; or so that interpellations are entirely omitted. Once that dispensation is obtained, the faithful party has the same right of making new nuptials which negative responses of the interpellated party would give him or her (c. 1123).

Concerning particular dispensations these two general norms have force:

1. whenever interpellation is morally possible, and not plainly useless, the Supreme Pontiff does not concede a full dispensation, but merely indulges that it be enough to interpellate the infidel concerning conversion;
2. when dispensation has been made concerning interpellation, unless the marriage is celebrated within a year, either the interpellation must be made or a new dispensation must be obtained. That year runs from the moment at which the grace has come into the region, i.e., into the hands of the Ordinary, if it was conceded in gracious form, or from the moment at which the Ordinary conceded or executed it.

This last point is founded on c. 38. What we say concerning a grace simply conceded at Rome seems to be contrary to the same canon establishing this: "Rescripts by which a grace is conceded without an interposed executor have effect from the moment at which the letters are given"; but it has often been answered that faculties given to missionaries or Ordinaries of missions run not from the day on which they were given, but from the day on which they came into their hands. Therefore by employing the argument of analogy, so that the parties may in reality enjoy a whole year, we have judged that the beginning of the year can be established from the moment at which notice of the made dispensation can be had.

— Various ratios of dispensations. The Holy See can dispense immediately by general indult, or by particular rescript; or it can confer faculties of dispensing. Dispensations themselves of themselves are of strict interpretation, while faculties of dispensing admit a benign interpretation.

I. General dispositions. - Moreover, from the Constitutions of Paul III, *Altitudo*, June 1, 1537, and St. Pius V, *Romani Pontificis*, August 2, 1571, which c. 1125 extends to all regions in the same adjuncts, it is permitted: a) that converted polygamists who do not remember which wife they first received may accept any of their wives with whom they contract a true marriage. If they know which one they first received, the others having been dismissed, they are to retain her; nor does the third degree of consanguinity stand in the way of these marriages; b) that converted polygamists can remain with the wife who was baptized or is baptized with them.

You should observe that sometimes certain women are assumed without solemnity, and then another is more solemnly accepted, who will hold the first place among the wives. This one must then be judged the first wife, if it is sufficiently established that the prior women were not held as true spouses. The first wife is she who can be called first among equals (cf. response of the Holy Office, August 17, 1898, *Coll. P. F.*, n. 2017).

When it is not established which wife was first, it also seems intact to the man that (if the case should ever occur) he remain unmarried.

— II. Faculties of dispensing. - 1. From c. 1125, to Ordinaries of missions among gentiles, and to pastors and missionaries approved there for hearing confessions, there is given a general faculty of dispensing from every interpellation of the infidel spouse, "provided it is established, even summarily and extrajudicially, that the absent spouse cannot legitimately be warned, or that the one warned has not signified his or her will within the time fixed in that same warning," and consequently of permitting to the baptized faithful other nuptials, which can never be declared invalid on account of

omitted interpellations or of an excellent disposition of the infidel detected afterward (after the nuptials), indeed of his or her baptism.

This dispensation is called for ordinary cases.

2. In the third greater formula of the Sacred Congregation of Propaganda Fide, these faculties are conceded as delegable:

a) "of dispensing with gentiles and infidels having several wives, so that after conversion and baptism they can retain whichever of them they prefer, if she also becomes faithful, unless the first wishes to be converted" (n. 24);

b) of dispensing concerning interpellation, for all ordinary cases (n. 25; cf. here under n. 1);

c) "of dispensing concerning interpellation of the spouse left in infidelity, if indeed it has certainly been established, at least summarily and extrajudicially, that the interpellation cannot be made without evident danger of grave harm to be inflicted either upon the spouse already converted to the faith, or upon Christians" (n. 26);

d) "of permitting that, when a grave cause is present, the interpellation of the infidel spouse can be made before the baptism of the party who is converted to the faith"; or even of dispensing from that interpellation before that baptism, "provided that, in this case, from a process at least summary and extrajudicial it is established that the interpellation cannot be made or will be useless" (n. 27. Cf. our Commentary concerning these faculties).

— "In a doubtful matter the privilege of faith enjoys the favor of law" (c. 1127).

The same Holy Office, in the response of April 19, 1899 (*Ann. eccl.* 1899, p. 236), expressed this in these other words: "In doubts, let the judgment always be in favor of the faith." Wherefore: a) although of itself one must respond in favor of the validity of a doubtful marriage, nevertheless a doubtful marriage contracted in infidelity will be dissolved in favor of the liberty of the converted party (cf. De Smet, I, 343, p. 300, note 3). And an infidel who has no certain marriage with any of his wives can marry any Catholic woman (response of the Holy Office, August 17, 1898, *Coll. P. F.*, 2017); b) if it is doubtful whether or not the conditions of the Case of the Apostle are present, again one must respond in favor of the liberty of the faithful party (De Smet, I, 354).

Article II: On Separation of Bed, Table, and Habitation

— Principle. The obligation of preserving common life can be excused by a just cause. But here there must be distinguished causes which permit either party, while every kind of friendship remains between the spouses, to withdraw for a time, and juridic causes of separation or divorce as to bed, table, and habitation. The former will be treated in the moral section (cf. t. IV, n. 79). In this place the Code, after it has inculcated in c. 1128 the principle concerning the excusable obligation, indicates these causes and legitimate modes of imperfect divorce in the following canons.

— I. Adultery gives to the other spouse the right of dissolving, even perpetually, the communion of life. Except, however: a) unless he or she consented to the crime: no injury is done to one consenting; b) or gave cause for the same, e.g., through unjust denials of the debt, through illegitimate absence which was long-lasting; c) or expressly or tacitly condoned it: tacit condonation is had if the innocent

spouse, made more certain concerning the adultery, afterward freely conversed with the other spouse with marital affection. But condonation is presumed, unless the innocent party, within six months, expelled or deserted the adulterer or made a legitimate accusation (c. 1129, §2).

> Adultery, that it may give right to separation, must be formal and freely, not coercively, admitted. But if it was certain and notorious, it permits the innocent party to depart by his or her own authority, although recourse to the Ordinary is always to be advised. Moreover, it gives the right of perpetual separation, so that never, from justice, must the innocent party receive the adulterous spouse. Wherefore, not even if after separation the innocent party himself or herself has stained himself or herself with grave sins, even adulteries, does the other thereby recover any right. Yet it is open to the innocent party to be reconciled with the adulterer, unless he or the other, with his consent, has taken on a state contrary to marriage, suppose that he or she has made religious profession. Charity will be able to counsel that reconciliation, indeed sometimes to command it, according to the general rules.

This right of the innocent party was promulgated by Christ the Lord himself, in the places where Protestants have read the faculty of perfect divorce (dissolving the bond): "But I say to you: that everyone who shall put away his wife, except for the cause of fornication, makes her commit adultery: and he who shall marry her who has been put away commits adultery" (St. Matt. 5:32); "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" (ibid. 19:9).

— Other causes of divorce as to bed and habitation are various guilt imputable to the other spouse: 1. passage of the spouse to a non-Catholic sect, i.e., heretical or schismatic; 2. non-Catholic education of the offspring; 3. criminal and ignominious life; 4. grave danger created for soul or body; 5. cruelties which render common life excessively difficult.

And these are examples, so that other cases of the same kind can be admitted.

> Of itself the innocent spouse must use the authority of the Ordinary before separation. And the intervention of the Ordinary brings this advantage, that if the Ordinary has pronounced separation for a certain or uncertain time, the separated spouse is not held to restoring common life before the elapsed time or a new decree of the Ordinary. Generally it will be useful to send to the pastor those whom the confessor finds separated by private will.

For other causes, besides adultery, do not give a right of separation except as long as they themselves subsist (cf. c. 1131).

Once separation has been made, children are to be educated with the innocent or Catholic spouse, unless, with their Catholic education safe, the Ordinary judges that something else is more expedient (c. 1132).

But today the civil power itself is accustomed to pronounce concerning the lot of the children.

Summary

— Perfect divorce. I. Non-consummated marriage between baptized persons themselves or between a baptized and a non-baptized person is dissolved by the law itself, through solemn religious profession, and by dispensation of the Apostolic See from a just cause conceded to at least one party.

II. 1. A legitimate marriage which has been contracted between non-baptized persons is dissolved in favor of the faith, by the Pauline privilege: i.e., if the party who remains infidel departs, the other baptized party validly and licitly contracts new nuptials; when these have been contracted, the prior marriage is dissolved. But not only he who refuses to cohabit departs, but he also who refuses to cohabit peacefully and without contumely of the Creator, or proposes only cohabitation intolerable to the faithful party, whether on account of annoyances to be borne, or on account of an occasion of sin, or on account of offensive things which he would give to be looked upon: polygamy, idolatry.

2. Regular use of the privilege requires that, by the authority of the Ordinary of the converted spouse, and after this spouse's baptism, at least summarily and extrajudicially, the infidel be interpellated whether he or she wishes to be converted or at least to cohabit peacefully. Private interpellations, however, are valid.

A marriage contracted with another without prior interpellations is not valid, unless the Church dispenses or the departure of the infidel after the baptism of the other party is plainly established.

But the use of marriage after baptism does not harm the privilege.

There is not, however, place for the privilege if the faithful party after baptism gave to the non-baptized party a just cause of departing.

3. The Holy See can dispense so that interpellation is made concerning the will of conversion alone, or that the interpellations be omitted altogether. When dispensation has been made from interpellation, unless the marriage is celebrated within a year, either interpellations must be made, or a new dispensation must be sought.

4. By general disposition it is permitted that converted polygamists who do not remember which wife they first received contract true marriage with any; that they can remain with the wife who has been baptized or is baptized with them.

And from c. 1125, to Ordinaries of missions among gentiles and to pastors and confessors there a general faculty is given of dispensing from every interpellation "provided it is established extrajudicially that the absent spouse cannot legitimately be warned, or has not signified his or her will within the time fixed in the warning." Nuptials thus made can never be declared invalid on account of omitted interpellation or of the baptism, later (i.e., after the nuptials) detected, of the party who was thought infidel. From the third Formula of Propaganda Fide, a subdelegable faculty is given of dispensing concerning an interpellation which cannot be made without evident danger of grave harm to be inflicted either on the already converted spouse or on Christians.

But in doubts, let judgment always be in favor of the faith (Holy Office, April 19, 1899).

Imperfect divorce. - I. Adultery gives to the other spouse the right of dissolving, even by his or her own judgment, the communion of life perpetually. Except if the other spouse consented to the crime, or gave culpable cause for the same, or expressly or tacitly condoned it. Charity will be able to counsel reconciliation, indeed sometimes command it.

II. Because of other grave causes, such as cruelties, danger of soul or body, disgrace because of the ignominious life of the other, separation is permitted as long as the cause subsists, or the Ordinary,

whose authority must regularly be used, has decreed it.

Title VIII: The Convalidation of Matrimony

— A twofold mode of convalidation of matrimony is distinguished: one ordinary, simple, when, the impediment having been removed, of itself or by dispensation, or the defect having been supplied, the matrimony, the things to be observed having been observed, from that moment becomes and is considered valid; and sanation in the root, when, without new consent, from the former consent having been healed, the matrimony is convalidated. The peculiar juridic effects belong to this later mode. Hence the division of the chapter into two articles.

Article I: On Simple Convalidation

— Principle concerning the necessity of new consent. One must proceed from this principle. Although consent which would of itself suffice may have been given before, nevertheless by the removal alone of the cause of nullity (different from deficient consent) the matrimony is not convalidated, but new consent to matrimony is required, given by the person who is conscious of the nullity (cc. 1133, 1134).

And this is required for validity by ecclesiastical law (c. 1133, §2).

— Who must renew consent and in what manner. 1. If the impediment is public, the consent must be renewed in the form prescribed by law (c. 1135, §1) for the first celebration of matrimony.

What if the impediment is public by its nature, but occult in fact?

Since no exception of this kind can be gathered from the Code, even then the same form of renewal seems to have to be observed. But, with the permission of the Ordinary added, if the case requires it, the form of a marriage of conscience can be employed. If the matter must be hidden from the pastor, the confessor can be delegated by the Ordinary so that he himself, with two witnesses, may assist at the marriage. Of itself, however, the very reason of avoiding scandal demands that at least from publication the celebration become known. But per accidens it can happen that the publication itself becomes more scandalous (cf. De Smet, 729).

2. If the impediment is occult and known to both parties, it is enough that the consent be renewed privately and secretly by both parties (c. 1135, §2).

We understand occult both by its nature and in fact. Wherefore the marriage is supposed to have been celebrated in due form. But if otherwise, it must again be contracted in the legitimate form (c. 1137).

3. If the occult impediment is unknown to one party, it suffices that the party alone conscious of the impediment renew consent privately and secretly, which will be joined with the persevering consent of the other.

It is indeed necessary that the other party have persevered in consent. But, when contrary arguments are lacking, that perseverance is sufficiently demonstrated by the presumption itself from c. 1093. Therefore, if the other party had consented fictitiously, it is enough that he or she renew consent

internally, c. 1136, §2. If the defect of consent was also external, as for example if it was vitiated by fear, an external manifestation of consent will be necessary, whether occult or even public, according as the defect was occult or became public.

What if both parties are ignorant of the nullity? From c. 1133 we gather that it does not suffice that the impediment have ceased or have been removed by dispensation, but consent must be renewed at least by one party who is made more certain concerning the impediment, unless recourse is had to sanation in the root. This has been authentically declared concerning impediments removed by the Code (cf. declaration of June 2-3, 1918, IV, 7, *Periodica*, IX, 150).

N.B. Before matrimony is convalidated, the parties must be warned, if it can be done, that they procure for themselves or carefully preserve the state of grace, in order to receive the sacrament worthily and fruitfully.

Article II: On Sanation in the Root

— Notion. "Sanation in the root of a marriage is the convalidation of the same, carrying with it, besides dispensation from or cessation of the impediment, dispensation from the law concerning renewing consent, and retrotraction, by a fiction of law, concerning canonical effects, to the past" (c. 1138, §1). Therefore, sanation in the root:

1. is contained under the common genus of convalidation, which supposes either cessation of the impediment or its dispensation, under which name here also comes dispensation from observing the solemn form;
2. has as its proper or specific thing a twofold effect, one connatural: dispensation from the law of renewing consent; the other artificial (which is ascribed to a fiction of law), by which canonical effects are considered to have been produced before the moment at which the matrimony began to be valid.

The convalidation itself cannot be earlier than the concession. But from what moment are the canonical effects computed? From the beginning of the matrimony, unless something else is expressly provided (c. 1138, §2).

And because no consent is to be renewed, the dispensation itself from renewing consent and the sanation in the root can be conceded while one party, or even both, are unaware.

— Necessary condition. 1. Of itself it is altogether required that naturally valid consent have been given from some moment, not necessarily from the very beginning, and that it have not been revoked before the sanation.

2. From the will of the Church it is necessary that the matrimony not have been contracted with an impediment of natural or divine law (c. 1139).

Excluded, therefore, from this benefit is the fairly frequent case of a marriage civilly contracted after civil divorce. Before the Code, it happened that the Sacred Penitentiary (April 25, 1890) sanated a marriage of this kind from the moment at which the impediment of the bond had been removed. Today this is opposed to the law of the Code. But the power of the Supreme Pontiff remains intact.

And the same must be said if an impediment of natural or divine law supervened upon a marriage which before was null on account of an impediment of ecclesiastical law alone. Indeed, as long as that impediment perseveres, there is no place for sanation. De Smet, n. 736, p. 202, note, alleges a case where perpetual impotence supervened upon a clandestine marriage.

— Power of sanating. Sanation in the root is reserved to the Holy See (c. 1141), which nevertheless concedes delegated power, for example through faculties conceded to Nuncios or Apostolic Delegates and to Ordinaries of places, especially in missions.

Summary

— I. Simple convalidation, the impediment having been removed, demands new consent from the party who is conscious of the nullity; and this, by ecclesiastical law, for validity.

Is the impediment public, whether by its nature or in fact: the consent must of itself be renewed in the form prescribed by law. Is it occult and known to both parties: it is enough that consent be renewed privately and secretly by both parties. If it is known to one party only, it is enough that this party renew consent. If it is known to neither, one or the other party must be made more certain concerning the defect, that he or she may renew consent. Before convalidation, the parties are to be warned, if it can be done, concerning having the state of grace.

II. Sanation in the root is the convalidation of matrimony which, besides dispensation from or cessation of the impediment, carries with it dispensation from the law concerning renewing consent, and whose canonical effects are considered to have been produced from the beginning of the matrimony, unless something else is expressly provided (c. 1138).

The essential condition is naturally valid consent given from some moment and persevering at the moment of the sanation.

And, from the will of the Church, it is necessary that the matrimony not have been contracted with an impediment of natural and divine law.

Title IX: On Second Nuptials

— By the two canons of this chapter the Code recalls that chaste widowhood is indeed more honorable, but that second nuptials are valid and licit if the dissolution of the prior marriage is established; and that a woman to whom the solemn blessing has already once been imparted cannot be blessed again.

Supplementary Notes — Various Things to Be Observed Concerning the Use, Obtaining, and Execution of Dispensations

Above, already, nn. 754-762, we have treated of conceded faculties. A few things seem to have to be added here concerning their right use.

1. The executor of a rescript of the Holy See can now, from c. 57, substitute another for himself.
2. Which bishop is to be approached? If the spouses belong to diverse dioceses, they are not, however, bound, for the dispensation, to have recourse to both proper bishops, but it is enough that they approach either one endowed with the faculty (Ferreres, II, 956). The proper bishop of either is competent, although the bishop of the bride is to be preferred; the bishop of the diocese in which the marriage is celebrated is also competent.
3. A faculty given when all things are already prepared for the nuptials, from the very nature of the matter, excludes the case in which the spouses do not wish to celebrate matrimony in the legitimate form. Here, moreover, an impediment is not detected, but the law of the Church is violated.
4. The Ordinary is not considered able to be approached if only the telegraphic or telephonic way is open. Cf. n. 758.

P. Cappello, III, 236, also denies the necessity of using the railroad, "bicycle or motorcycle," which are considered extraordinary means.

5. When an occult impediment concurs with a public one, in order that all things may be proposed together, a twofold way can be entered upon: either, the names having been revealed, the occult impediment is made sufficiently public, so that both impediments can be referred to the Sacred Congregation of the Sacraments or the competent Congregation in the external forum; or, while recourse is had to the Sacred Penitentiary for the internal forum, it is manifested that there is besides a public impediment for which dispensation has at least been sought or perhaps already obtained.[1]
6. Impediments from which the local Ordinary can dispense, not by force of indult, but by force of ordinary power (a non-reserved vow, doubtful impediments), can be relaxed by him even if they concur with public impediments for which the Holy See must be approached. And it also seems that, in the same adjuncts, he can use a faculty which, even from an indult, he has had over occult impediments. This is borne out by a reasonable interpretation of c. 1050.

What if a new impediment is detected after the dispensation has been sought but not yet obtained? Cerato thinks that then also it is licit for the Ordinary to use his faculties. Since the words of the canon do not carry this, we think one must have recourse to the Holy See. But if, while the new petition is being sent, the grace previously sought is obtained, then, with a grave cause added, the Ordinary will be able to use his faculty.

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(1) And that this is necessary is written, for example, by De Smet, 847, 882; Genicot, II, 527. But they gather this from the Instruction of 1877. And since now, as De Smet himself contends, when an occult impediment in which the Ordinary can dispense concurs with a public impediment concerning which the Holy See must be approached, he is not prohibited from the use of his faculty, would it not be better said that only public impediments are to be proposed together, and that this is declared by c. 1050? Was not the rule which the letters of the Sacred Congregation of Propaganda Fide of May 10, 1837 (*Collectanea*, II, 1674), had before mentioned more universally concerning all impediments deliberately tempered by the addition, in c. 1050, of the word public? If matters stand thus, the rule here set down in n. 5 must no longer be observed. A reason of moderation is added. The obligation of manifesting a public impediment which concurs with an occult one, concerning which the names of the petitioners are kept silent, is not free from inconvenience, from danger of revealing the secret (cf. Cappello, III, 275, sqq.).

— Causes for dispensing. Since the Code is silent concerning causes, we are referred to the received style of the Curia.

Therefore there must be distinguished honorable causes and infamous causes, to which a delict or sin gives origin; canonical causes, or those customarily admitted, and non-canonical causes, or extraordinary but reasonable causes. The Ordinary cannot use a delegated faculty unless canonical causes are present.

It happens that a sufficient canonical cause is composed of various causes not sufficient of themselves, or that several impelling causes, which help, complete one final or motive cause.

Moreover, the graver the impediment is, the more numerous or graver are the causes necessary.

The chief canonical causes are indicated by the Instruction of Propaganda Fide, May 9, 1877. They are:

1. Honorable causes: a) narrowness of place, i.e., when the place of origin, or even of domicile, is so narrow, or the family so large, that an honorable woman, at least after having been established for some time in marriageable age, would not find there an equal marriage except with a consanguineous or affinal relative. She is considered not to find one if in reality no other offers himself here and now, even if she herself has sought no one, or has rejected several. But place is not the parish, but is made by grouped houses (*l'agglomeration*), and places which are separated by a mile or a third part of a league are regularly considered distinct. A place is considered narrow which numbers only 300 hearths or 1500 inhabitants, not counting, as is likely, non-Catholics, with whom nuptials are forbidden;

b) superadult age of a woman who is not a widow, i.e., if she has begun her twenty-fifth year of age. The more advanced she is in age, the more urgent the cause will be esteemed;

c) defect or insufficiency of dowry, i.e., of material goods by which the burdens of matrimony are to be borne;

d) lawsuits arisen over succession of goods, or grave and imminent danger of them, i.e., if the woman will find in the husband a suitable patron of her cause;

e) poverty of a widow burdened with offspring, whom the man is prepared to help;

f) the good of peace to be procured either between families or, much more, between republics;

g) convalidation of a marriage contracted in good faith by at least one party;

h) excellence of merits, whether of the petitioners or of the parents.

2. Dishonorable causes: of themselves they are graver than honorable causes, and therefore they more easily give access to matrimony: a) excessive, suspicious, dangerous familiarity: you should understand that familiarity which gives place to whisperings, so that scandal must be avoided;

b) infamy of the woman from copula had, and scandals to be avoided thence;

c) danger of celebrating a mixed marriage or one before a non-Catholic minister;

d) danger of civil marriage;

e) removal of grave scandals, for example from a merely civil marriage;

f) cessation of public concubinage.

By this enumeration other similar causes are not excluded, for example danger of incontinence for a young widow. And if, in a narrow place, one or another also offers himself, that slight option between two will not prohibit the Holy See from granting a dispensation.

The *componenda* is sometimes called a cause without cause, i.e., a fixed sum of money which the petitioners pay for a pious cause. This covers other reasonable causes or is itself the cause, and indeed a public one, since it promotes the good of the Church. This is not admitted except by a Sacred Congregation, in the external forum. For a similar reason the tax is increased if dispensation must be made from a graver impediment.

The causes alleged are, as it were, proper to the woman. But similar ones in the man will not be rejected and can be admitted.

Non-canonical causes strengthen canonical ones and will suffice in impediments of lesser degree.

These examples are adduced by Noldin, III, 593: "1. On the part of the female petitioner: a) if she is deprived of either or both parents; b) born from illegitimate birth; c) detained by infirmity, deformity, or some other defect; d) has already been deflowered by another. 2. On the part of the male petitioner: a) if he is detained by infirmity; b) if he is a widower burdened with offspring, for whom he seeks a good mother; c) if he is in need of the help of this woman, e.g., for managing domestic affairs. 3. On the part of the marriage: a) the published proposal of contracting; b) the convenience of the marriage; c) the good morals of the petitioners; d) the good of the parents, if the father or mother needs help."

— Things to be observed concerning seeking a dispensation. 1. A petition for the external forum is better composed by the pastor; another, for the internal forum, by the confessor. In the latter the names of those who wish to be dispensed are kept back.

2. Each, unless secrecy stands in the way, is better directed to the local Ordinary, who himself not rarely will be able to grant the dispensation.

3. Besides the designation of the petitioners and of the diocese to which they belong, these things must be indicated: a) all impediments, at least public ones, and those in which the Ordinary cannot dispense by ordinary power (if the petition is sent to the Holy See), i.e., how many they are in species, how many in number. In today's law, it is not established that, for validity, the mixed degree as such must be indicated, since, from the Code itself, in an unequal collateral line, the degree is defined by the greater distance (cf. Vlaming, II, 453, 4°); b) circumstances which make it easier or more difficult to dispense. This, however, does not affect the validity of the rescript, unless the Sacred Congregation has required the declaration as substantial. Cf. c. 42, §1; c) the causes for dispensing; d) the economic status of the petitioners, so that a suitable tax can be exacted.

Before the Code, those were called *miserabiles* who had to seek livelihood for themselves by manual labor; truly poor, those whose goods did not much exceed 3000 francs; almost poor, those whose goods did not greatly exceed 10,000 francs. The goods of both petitioners together must be computed, without neglecting the office which they exercise, a legitimately expected inheritance, unless the other party is non-Catholic. For the patrimony of this party is not attended to, since nothing is conceded to him or her.

Before the reform of the Curia this distinction was of much greater moment, because the Sacred Penitentiary granted dispensations, even in the external forum, to the poor, and, for some regions, also to the almost poor. Today, since the distinction is no longer of such great moment, authentic definitions of the poor have not been given. Moreover, with regions the manner of indicating goods varies. Sometimes it is said what the petitioners are prepared to pay; or the Holy See admits what the parties offer of their own accord. Nor is payment of the tax a condition of validity.

4. A dispensation can be sought while one or even both parties are unaware. But they are not compelled to use the dispensation. Yet if the impediment affects both parties at the same time, as consanguinity, affinity, the acceptance of either party removes the impediment for both.

— Things to be observed concerning execution of a dispensation. 1. Before the rescript has been received, the faculty which it grants cannot validly be exercised, unless the very authority conceding it has permitted that in its name an oral message be given, or a telegraphic message be transmitted.

2. Clauses are to be observed accurately: all are preceptive; some must be executed for validity.

3. In the external forum, the truth of the petitions must be investigated before execution: this is usually done through the pastor. This investigation, however, is no longer required for impediments of lesser degree. Scandal, if present, must be removed, either through some separation of the spouses who live together scandalously; or, if that cannot be obtained, at least through a declaration before the pastor and two witnesses that they grieve over and detest the

external fault, and are prepared to fulfill the penance. Then the delegate, by himself or by another, fulminates the dispensation, i.e., executes it. Execution is prescribed to be made in writing, with mention made of the faculty obtained and of the impediment from which dispensation is made. If the executor has erred in execution, he can better execute the dispensation again, without new recourse (c. 59).

4. In the internal forum, competent, from the very inscription of the letters, is any priest approved for confessions in the place where the dispensation is granted, and chosen by the petitioner. The clause: *If matters are thus*, obliges the confessor to ask from the penitent whether the things set forth are true. He can believe his or her affirmation, unless from extrasacramental knowledge he knows otherwise. The clause: *Sacramental confession having first been heard*, requires sacramental accusation, but not absolution or a confession worthily made. If this clause is absent, the dispensation can be granted outside confession. The clause: *A salutary penance having been enjoined*, demands a penance distinct from the sacramental penance.

Salutary is anything useful. Sometimes a grave and long penance (*gravis et diuturna*) is enjoined. These things are to be estimated relatively. What grave and long is, we said in n. 614.

The words grave and long sound less severe. Noldin, III, 602, has these things concerning it: "a work of penance which is imposed to be performed every week for a year or for a half-year, or even for a quarter-year, e.g., once or twice every week to recite the rosary, once every week to hear Mass, every Sunday to perform the way of the cross, at least once in the month to receive the Most Holy Sacraments." Most grave and perpetual would oblige to a similar work, or even to annual spiritual exercises, to be performed until death.

This penance must be imposed and accepted, but its omission or an intention of not fulfilling it does not stand in the way of validity.

The clause: *The present letters being immediately burned*, obliges to full destruction of the letters within three days from the moment indicated in the letters. But a transcript is not forbidden. One party alone is to be dispensed if the impediment is proper to that party, suppose a vow. If the impediment is common to both parties or induced by the fault of both, suppose crime, each party must be dispensed so that penance may be imposed on each. Therefore each must approach a confessor, not necessarily the same one. If two different confessors are chosen, the first confessor must return the rescript to the penitent, who is to hand it over to the other party so that this one also may be dispensed (so almost Noldin, III, 602). No special formula is required. It is granted orally. In confession it is to be given after the accusation, before or after absolution.

A well-conceded dispensation of itself remains efficacious, although before the marriage the cause has ceased: for example, the offspring has died (cf. t. I, 228).

Title X: On Matrimonial Causes

— General notions concerning competence. 1. "Matrimonial causes between baptized persons by proper right and exclusively pertain to the ecclesiastical judge" (c. 1960), who can also incidentally and accessorily, by his own authority, take cognizance of and define questions concerning the merely civil effects of marriage. These, however, in a principal action, belong to the civil magistrate (c. 1961).

2. Matrimonial causes are either of separation of spouses, or of dispensation over a ratified and non-consummated marriage, or of the use of the Pauline privilege, or of the faculty of passing to other nuptials on account of the presumed death of the spouse, or of a declaration of nullity on account of a defect of consent or an impediment.

3. But a) by reason of persons, the causes of supreme princes, of their sons and daughters, and of those to whom there belongs the next right of succeeding to the kingdom, are reserved to the Sacred Congregation, tribunal, or commission to which the Supreme Pontiff has committed them (cc. 1962 and 1557);

b) concerning causes of separation, nothing peculiar occurs that must be said. Competent is the Ordinary of the place in which the marriage was celebrated, or in which the respondent party (i.e., the one against whom the suit is brought), or the Catholic party, if the other is non-Catholic, has domicile or quasi-domicile (c. 1964);

c) causes of dispensation over a ratified and non-consummated marriage are reserved to the Sacred Congregation of the Sacraments; causes which refer to the Pauline privilege are reserved to the Sacred Congregation of the Holy Office, to which there also belong exclusively the impediments of disparity of cult and mixed religion;

d) causes of nullity of matrimony, unless it is requested that by Pontifical commission they be referred at once to the Sacred Roman Rota, belong in first instance to the tribunal of the Ordinary; in second instance to the tribunal of the Metropolitan; or if the Metropolitan, as Ordinary of the place, is the judge of first instance, to the tribunal of a suffragan once for all chosen for appeals from the tribunal of the Archbishop. But for validity itself there is required a collegiate tribunal of three judges. In the third instance the Sacred Roman Rota is competent.

— Concerning dispensation over a ratified and non-consummated marriage. In a twofold way one comes to the legitimate process.

1. When the spouse petitions, whose petition is accustomed to reach the Holy See through the Ordinary of the place, the Holy See gives the Ordinary the faculty of instructing the process. When this has been completed, the instructing judge transmits all the acts, together with the written vote of the bishop and of the defender of the bond, to the Sacred Congregation, which, after one consultor has been heard concerning the matter and another for defense of the bond, decrees whether there is or is not place for consulting the Most Holy Father concerning the dispensation.

2. In a cause of a marriage impugned under the head of impotence, the competent tribunal (e.g., that of the Ordinary) finds that there is proof not of the impotence of the spouse but of the non-consummation of the marriage. Thence it transmits the acts to the Sacred Congregation, which comes to a decision in the same way as above.

— Most causes concerning the Pauline privilege are doubts whether or not there is place for the privilege, or whether some dispensation, for example from interpellation, is to be granted. A strictly judicial cause could arise if a marriage is impugned on account of the illegitimate use of that privilege. The Holy Office will judge that cause according to its own method.

— Causes of nullity, or those which regard the bond, have these special things: a) that all things must be carried out with the defender of the bond intervening, who, insofar as is equitable, is to defend the reasons for the valid marriage; b) that after the first sentence which has declared the nullity of the marriage, the defender of the bond must appeal to the higher tribunal, nor is there a right for the parties to contract other nuptials unless two sentences have admitted the nullity. After the second sentence by which the prior one concerning nullity has been confirmed, it is indeed open to the defender of the bond, by a new appeal (to the tribunal of the Rota), to seek a third sentence. He can nevertheless abstain from this appeal; and then the spouses have the right, after ten days have elapsed from the notification of the sentence, to contract new nuptials.

— Exception from these solemnities. 1. "When from a certain and authentic document, which is liable to no contradiction or exception, there has been proof of the existence and of the non-dispensation of the impediment of disparity of cult, order, solemn vow of chastity, bond, consanguinity, affinity, or spiritual kinship, then, the other solemnities having been omitted, the Ordinary, the parties having been cited, can declare the nullity of the marriage, with the intervention nevertheless of the defender of the bond" (c. 1990). If he prudently doubts that the matter is certain, he must appeal to the judge of second instance, who, with the intervention of the defender of the bond alone, will decree whether the sentence is to be confirmed, or whether the cause is to be judged in the ordinary manner: he then remits the cause to the tribunal of first instance (cc. 1991-1992).

2. This simpler manner of proceeding in manifest causes was introduced by Leo XIII. It nevertheless supposes that some appearance of marriage is had. Wherefore, if the substantial form of matrimony was manifestly neglected, i.e., if parties certainly subject to the canonical form contracted merely civilly, no process is required, no intervention of the defender of the bond. These cases are to be solved by the Ordinary himself, or by the pastor after consulting the Ordinary, in the prior investigation for the celebration of marriage. Thus the Commission of the Code itself responded, October 16, 1919.

— Faculty of reopening the cause. As in all causes concerning the status of persons, sentences in matrimonial causes never pass into a thing judged, at least while both spouses are living. Wherefore, if nevertheless new and serious arguments are at hand, they will always be able to be reconsidered (cc. 1903, 1989). When one party has died, the Sacred Rota admitted, June 20, 1922, that a sentence concerning the nullity of marriage can pass into a thing judged (*A.A.S.*, XIV, 600, or *Periodica*, XI, 199).

N.B. The moral part of the treatise on marriage is contained in volume IV of our work, nn. 23-81.

Summary

— For more things concerning the obtaining, use, and execution of dispensations, cf. the treatise itself.

Concerning matrimonial causes it will be enough to have said these few things. Dispensation over a ratified and non-consummated marriage belongs to the Sacred Congregation of the Sacraments, which is accustomed to give the local Ordinary the faculty of instructing the process. A cause which regards the Pauline privilege is to be referred to the Holy Office. Causes of nullity of marriage must be carried out with the defender of the bond intervening; and two sentences for nullity are necessary, unless, however, there is question of certain impediments concerning which proof can be had from a certain and authentic document. And while both spouses whose marriage was in question are living, causes never pass into a thing judged.

N.B. The moral part of the treatise is contained in volume IV, *On Chastity and the Contrary Vices*.

Parergon: On the Unity of the Sacraments

— By polemical reasons which the war against the Church made necessary, theologians in more recent times have been led to defend more the external ramparts of the Church, and to explore less her interior riches, with which she has been enriched by her Spouse, much less to show and preach the same to the faithful. The analytic consideration of things also has had this inconvenience, that things were proposed and considered as too separate. Thus, too much in the understanding and practical judgments of the faithful, the sacraments have been separated from the Eucharist, the common priesthood of the baptized from the ministerial priesthood of those who are ordained for doing sacred things, actions called natural from supernatural ones, the life of Christians from the passion of Christ, man from his exemplar and new Father in whom he has been regenerated, Christ from the Church, which continues Christ.

But by a wonderful unity all the sacraments converge toward the Eucharist. For every man now exists for this purpose, that he may be converted into Christ. This is done formally through the Eucharist, which alone, according to itself, communicates the life of Christ. But the other sacraments either prepare the Eucharist: thus Baptism, Penance; or render it more certain, as Confirmation; or complete it, as Extreme Unction; or confect it, as Order; or beget for it other worshipers and participants, as Matrimony, which also "by its signification touches this sacrament, insofar as it signifies the union of Christ and the Church, whose unity is figured by the sacrament of the Eucharist" (cf. St. Thomas, III, q. 65, art. 3, *On the Excellence of the Most Holy Eucharist*).

Treatise IX: On Sacramentals

(cc. 1144-1153)

Utility. - By a distinct notion of sacramentals the priest will be helped so that he can spread a right estimation of them and a use alien from all superstition; for his own action it will help to know what blessings he can validly and licitly impart and what rites and rules are to be observed in the dispensation of sacramentals.

— Notion and definition. Already before the middle of the twelfth century they began, by the name sacramentals (substantively), to call certain things or actions which imitate the sacraments in some manner, yet deficiently. 1. Since sacraments are sacred things or observances and work the grace which they signify, already, on account of the former note, all observances of external worship, with only the sacraments and sacrifice excluded, and especially the ceremonies of the sacraments, were called sacramentals by theologians before Suarez and Bellarmine.

2. Afterward, however, it pleased them to attend more to an efficacy which is not merely connatural or from the one operating, i.e., to the other note of the sacraments; and then, with mere ceremonies also excluded, sacramentals could be said to be of six kinds, which are counted in the well-known verse:

Orans, tinctus, edens, confessus, dans, benedictus;

Orans designates the Lord's prayer and the prayers of the Church, especially public ones;

Tinctus alludes to blessed water and to the various blessed or consecrated oils.

Edens recalls blessed bread (*eulogiae*) and blessed foods;

Confessus refers to the recitation of the *Confiteor* and other acts of humiliation;

Dans denotes alms and works of mercy;

Benedictus is said of blessed things and of the blessing of persons.

You should observe that some blessings are constitutive, like all consecrations, while others are merely invocative. Thus a church, baptismal or lustral water, and chrism are adorned by a permanent constitutive blessing, so that they are now no longer profane; while a house, animals, and, for the most part, persons themselves are endowed with a merely invocative blessing. (The blessing of an abbot, however, must be called constitutive.) When the blessing is constitutive, the sacramental is the thing itself thus blessed; while, when it is invocative, the sacramental consists rather in the blessing itself.

3. If, moreover, you require the notion of sign, then almsgiving is not to be placed among sacramentals properly so called.

4. If you require the strictly such use of the Church, private actions, for example the sign of the cross, are no longer sacramentals properly so called.
5. The Code, in its description of sacramentals, besides things or observances, does not urge the notion of sign; but it requires the habitual use of the Church, spiritual effects hoped for from the impetration of the Church; and it defines sacramentals, c. 1144: "Sacramentals are things or actions which the Church is accustomed to use, in some imitation of the sacraments, to obtain from her impetration effects especially spiritual" (c. 1144).

Things are blessed water, the paschal candle, the *Agnus Dei*.

Actions are the blessing of persons or even of things, the sign of the cross, the recitation of the *Confiteor*, the invocation of the name of Jesus. An action can be joined with a thing, as in the sprinkling of lustral water, in an anointing made by a minister of the Church.

The use of the Church is understood properly as instrumental through her ministers, as in the sacraments.

But the effect is never immediately habitual grace itself, or formal remission of sin, even venial sin. Yet the effects are said to be especially spiritual, and they are the consecration or deputation of a person or thing to God and divine worship; a certain flight of the devil and liberation from his infestation; a certain excitation, through pious movements, of faith, hope, penitence, charity, whence also remission of punishments and of venial faults. By this reason, sacramentals either remove impediments or dispose toward sanctification.

But bodily or temporal benefits are to be referred to liberation from the devil, insofar as all temporal evils, in the present order, have a certain connection with sin.

Moreover, what the peculiar effects of individual sacramentals are must be gathered from the words or prayer of the Church when she confects sacramentals, or from the very nature of the action which is the sacramental.

The efficacy of sacramentals is attributed to the impetration of the Church. For the Church, when she blesses things or performs certain things for obtaining spiritual effects, or when she sanctions the use of sacramentals, formally or virtually asks from God that the indicated effects be granted by God and by Christ the Spouse.

But, while it expresses this efficacy, the Code does not deny another source of efficacy, if any is probably demonstrated. Now, whether from Sacred Scripture itself or from tradition, it is established that in the Church there is an imperative blessing and an imperative coercion of the devil. Wherefore the very positing of the sacred sign by the Church seems already to require certain effects, especially spiritual ones, instrumentally; to which efficacy, which is more strictly from the work worked, the efficacy of the prayer of the Church is then added. Thus it happens that consecrated and blessed things acquire spiritual power inchoatively; i.e., by force of the blessing, there is induced in the blessed thing a permanent real relation to God, the author of every help, by which the conferral of help by God is either required or commanded (cf. Arendt, *De sacramentalibus disquisitio scholastica-dogmatica*, p. 53 ff.).

— Infallibility of the effect. That the things or persons which the Church blesses or consecrates are consecrated and blessed is not doubted, so that things permanently blessed by a constitutive blessing truly possess that inchoative supernatural power of which above. It is also established that the Church, the beloved spouse of Christ, is always heard, so that no prayer of hers is fruitless. But when there is question of a definite and particular effect, which is not absolutely necessary for salvation, its obtaining is always subordinated to the order of divine Providence, which sometimes also hears us better when, in place of the good hoped for, it substitutes another more profitable to us. Moreover, in the very subject to whom application is to be made, disposition can be lacking.

— Constitution. 1. Sacramentals are not of merely ecclesiastical origin. For God alone can execute supernatural effects and connect them with a sensible sign. He alone also gave to the Church the power of blessing imperatively or of coercing demons.

2. Christ can more specifically be called the author of exorcism, since he willed that in his name demons be cast out; the adviser, by example and promissory commendation, of the washing of feet or exercise of humiliation; and the preceptor of the Lord's prayer, whose very formula, at least from the use of the Church, is employed as specially efficacious, just as a peculiar promise of reward is annexed to works of mercy, which is not common to all good works.
3. But while the Lord himself definitely established that there are and will be in the Church seven fountains of graces which are the sacraments, he provided for the constitution of sacramentals by a promise generally made or by a power conferred, so that there would be as many and such as the Church would make them. By canon 1145, however, the constitution, change, abrogation, and authentic interpretation of sacramentals is reserved to the Apostolic See.

Thence sacramentals can vary in number and be determined otherwise in their constitution, according to the will of the Apostolic See. Thus recently new blessings and forms of exorcism have been introduced, for example the exorcism of Leo XIII.

— Minister of sacramentals. 1. The legitimate minister is a cleric who has the power and is not prohibited from exercising it by competent authority.

2. No one validly consecrates unless he either has the episcopal character or it is permitted by law or apostolic indult (c. 1147, §1). Thus cardinal-priests, from c. 239, §1, 20°, can consecrate churches, altars, chalices.
3. A priest always validly effects blessings, unless the Apostolic See has expressed otherwise in the reservation; but he is prohibited from giving those reserved to the Supreme Pontiff or to bishops or to others. You should observe that indulgences can be attached to pious things only by those to whom the faculty has been given.

Clauses are to be diligently distinguished. The clause "with the consent of the local Ordinary" is not for validity, and the consent can even be presumed. Within domestic walls, for religious the consent of their Superior suffices (cf. S. C. Indulg., June 14, 1901; Beringer-Steinen, *Die Ablasse*, I, n. 835).

4. "Deacons and lectors can give validly and licitly only those blessings which are expressly permitted to them by law" (c. 1147, §4).

— Rites are to be accurately observed. The use of the formula prescribed by the Church is essential for validity, whether the blessings and consecrations were constitutive or invocative.

You ask what color can or must be employed in the use of the stole. Resp. 1. The color is not rarely indicated in the Ritual itself: then it is clear that this one must be assumed.

Thus, for making blessed water, the Ritual prescribes the use of a violet stole; but if it is blessed before Mass, according to the Missal, the priest assumes not a surplice but an alb, with the stole which agrees with the office of the day.

2. If no color is indicated in the Ritual, then: a) it is always licit to choose the color which the nature of the thing requires, i.e., the saint or mystery in whose honor the blessing is employed. But if absolution or exorcism constitutes a large part of the formula, the violet color is to be assumed; b) it is also always licit to employ the color of the day, except for absolutions or exorcisms, which require the violet color. The Ritual itself insinuates this rule when it says: "In every blessing outside Mass, the priest should use at least a surplice and stole according to the reason of the time, unless otherwise noted in the Missal" (*General Rules concerning Blessings*, n. 2, Title VIII, ch. 1); c) it is also licit to employ the white color when the nature of the matter requires no other definite color, in doubt concerning the required color; or outside the house, especially for the red color, since it is difficult to carry with oneself stoles of every color.

— Use of the blessed thing. Reverence is prescribed toward things consecrated or blessed by a constitutive blessing; nor can they be employed for profane or non-proper use, even if they are in the ownership of private persons (c. 1150).

Contrary, therefore, to what used to be said, it is not licit to use a blessed candle as an ordinary light, nor to drink blessed water for extinguishing thirst. But these things are neither mortal sins nor to be accused of sacrilege; and from a just cause they are easily excused.

But he who knowingly substitutes false matter for sacramentals would be guilty of grave sacrilege.

— Subject. Although blessings have been instituted for Catholics and are especially to be imparted to them, nevertheless they can also be given to catechumens, and, unless the prohibition of the Church stands in the way, "even to non-Catholics for obtaining the light of faith or, together with that, health of body" (c. 1149).

Therefore blessed candles, ashes, and palms can be received, provided every superstition is removed.

Yet excommunicated or interdicted persons after declaratory or condemnatory sentence are prohibited from the use of sacramentals (cc. 2260, 2275 ff.).

Exorcisms can be made, as we think, over non-Catholics or excommunicated persons, even vitandi (c. 1152).

— Concerning exorcisms. Excepting exorcisms which occur in baptism and in consecrations or blessings, and whose legitimate ministers are those who legitimately baptize solemnly, consecrate, or bless: a peculiar and express license of the Ordinary is required so that someone may legitimately use his power of exorcizing toward the possessed. That license is to be given only to the most approved priests, after a prudent investigation of the case (c. 1151).

The Ordinary will be able to be the major Superior of an exempt clerical religion, if the possessed person belongs to his family by some title indicated in c. 514.

Only exorcisms which are pronounced over the possessed are subject to that prohibition. Hence exorcisms of places and fields can be pronounced more easily. And the so-called exorcism of Leo XIII, which is found in the Ritual, although it is a reserved blessing, can be recited by the faithful as a formula of pious prayer.

You should observe that it is not the infallible effect of exorcism itself to expel the demon; he is infallibly urged by a ministerial precept "either to depart or at least to desist from attacking, only as much as shall have pleased God" (Arendt, op. cit., p. 343). Therefore the greater sanctity of the minister, the invocation of the Blessed Virgin Mary, the proximity of a miraculous image, is not useless; and it is understood that an extraordinary charism for expelling demons can even now fittingly be granted to certain persons.

The very invocation of the Most Holy Name of Jesus possesses a connatural efficacy for putting the devil to flight, to whom it represents his defeat.

Summary

— I. Notion. On account of their relation to the sacraments, ceremonies themselves, as such, can be called sacramentals and have been called such. But properly such are things and actions which, to connatural efficacy and efficacy from the work of the one operating, add some other efficacy, by which they imitate the sacraments in some manner. They have this efficacy proximately from the impetration of the Church, whether formal or virtual: when she sanctions certain uses of things, the Church virtually asks that the intended ends be obtained. Remotely, however, it is owed to Christ himself, who conferred upon the Church imperative power for blessing or consecrating persons or things, and for coercing the devil; and he is the first author of certain commendations, such as almsgiving and the Lord's prayer. Sacramentals more strictly are those which the Church herself employs through ministers; and thus they are understood in the Code. Sacramentals which have the notion of sign imitate the sacraments still more.

They differ from the sacraments both because they do not require institution by Christ, and because they never immediately confer grace. If you except constitutive blessings and consecrations, the other effects are not even strictly from the work worked. Nor are particular effects infallible.

They are things: blessed water, and in general those things which are endowed with a constitutive blessing; and actions: the sign of the cross, invocative blessings. An action can be mixed with a thing, as in the sprinkling of lustral water, in an anointing made by a minister.

II. Effects are: consecration or deputation of a person or thing to God and divine worship; a certain flight of the devil and liberation from his infestation; a certain excitation, through pious movements, of faith, hope, penitence, charity. Temporal benefits are to be referred to liberation from the devil, since all evils in the present order have a certain connection with sin.

III. The Holy See alone constitutes, changes, abrogates, and authentically interprets sacramentals.

IV. The legitimate minister is a cleric who has the power and is not prohibited. Every bishop validly consecrates; a priest only from concession of law or indult; a priest of himself validly blesses; a

deacon and lector only insofar as this is committed to them.

Today solemn exorcism over the possessed can be committed by the Ordinary only to approved priests. Nor is expulsion of the devil infallible.

V. Rites must be accurately observed. The prescribed formula must be employed for validity.

The color of the stole is indicated either by the Ritual, or by the nature of the matter, or by the time or day itself. In doubt, or outside the house, white can be assumed.

VI. Subject. Blessings can be given even to non-Catholics, a special prohibition being excluded. Yet excommunicated persons after sentence are excluded from the use of sacramentals. Nevertheless they seem to be able to be liberated directly from the devil through exorcism.

Book III: On the Precepts of the Church and Censures

Treatise I: On the Precepts of the Church

What precepts of the Church come to be considered. As many as have been prescribed by general laws of the Code or by particular laws, indeed or by use of jurisdiction, so many in truth are precepts of the Church. By this reason, in every part of moral theology there is speech about the precepts of the Church, and there are also many precepts which are necessarily passed over in moral books. Nevertheless, by a more restricted use of the word, by the name precepts of the Church there have customarily been called a few prescriptions, of very general use, which in catechism formulas are proposed to the faithful to be held by memory. These are now to be explained by us. To these, however, the laws concerning the censure and prohibition of books must be joined.

Moreover, these common precepts can conveniently be referred to the Christian virtues. For the precepts concerning annual confession and Paschal communion are connected with the general pursuit of justice and sanctity; the canons concerning the censure and prohibition of books are directed chiefly to protecting the virtue of faith; the obligation of sanctifying feasts coheres with the virtue of religion; but by the precept concerning fast and abstinence the virtue of temperance to be exercised is inculcated. The precepts concerning annual confession and communion, however, were proposed in the treatises on the Eucharist and Penance.

Title I: On the Precept of the Sanctification of Feasts

(cc. 1243-1249)

Utility. - I. Concerning positive sanctification. The apostolic man must first of all endeavor to persuade not a merely literal observation of the precept, but also the true religious intention of these prescriptions. For solving cases it will be especially useful to him to have distinct concepts concerning the necessity of assistance and of presence at Mass, and to discern well the causes of excuse. Yet he will admit these in such a way that at the same time he is solicitous for fostering religious learning and practice in those who are often compelled to be absent from sacred offices.

II. As to negative sanctification, an accurate, filial, non-Judaic manner of abstaining from servile works must be obtained from Christians. For himself the priest will have to form a criterion for estimating what things are certainly licit or not licit, and what are legitimate excuses.

Article I: General Things

— *Appendix XVII belongs to this section.* I. Historical. Cf. Appendix XVII.

II. Nature of the precept. The precept of sanctifying feasts is natural, insofar as it requires that some time be spent in worshiping God; insofar as it imposes some participation in the sacrifice of the New Law, it is of positive divine law; insofar as it prescribes Sunday and festive assistance at Mass and cessation from labor, it is of ecclesiastical law. For the divine law itself of the Old Testament concerning hebdomadal rest was abrogated by the promulgation of the New Law. And the positive part and negative part of the precept stand in an inverse manner in each Testament. In the Old Testament the principal obligation was of sabbatical cessation; in the New Testament the positive sanctification of feasts holds the first place with the Church and the faithful.

— By what power feasts are governed. Today, there is reserved to the supreme ecclesiastical authority not only the institution and abrogation, but also the translation of festive days, whether common to the universal Church or special; and it is conceded to local Ordinaries only that by way of an act they may command a feast day for their dioceses or places (c. 1244).

It is also sometimes indulged to them that they transfer the solemnities of certain feasts which are not of precept to the nearest following Sunday (except in a year when the feast falls on a Sunday), which is conceded by c. 1247, §2 itself concerning the feasts of patrons (of the kingdom and of the place).

— Feasts to be sanctified. "Feast days under precept in the universal Church are only: all and individual Sundays, the feasts of the Nativity, Circumcision, Epiphany, Ascension, and Most Holy Body of Christ, of the Immaculate Conception and Assumption of the kindly Mother of God Mary, of Saint Joseph her spouse, of the Blessed Apostles Peter and Paul, and finally of All Saints" (c. 1247, 1).

The legislator, however, did not will that, without the Holy See having been consulted, anything be innovated in places where some feast from those enumerated has been legitimately abolished or transferred. Meanwhile those regions will preserve their own particular discipline (c. 1247, §3).

With attention to the declarations of the Pontifical Commission, you would say that one must understand only particular discipline introduced by concordats, indults, or custom, but not that which resulted for the universal Church from the Motu Proprio *Supremi disciplinae* of Pius X, July 2, 1911. For by the said Motu Proprio, Pius X had abrogated the feasts of the Most Holy Body of Christ and of Saint Joseph, whose universal celebration nevertheless the Commission sufficiently urges by its responses.

The same Commission, by its various responses, regards as abrogated the proper feasts of regions not contained in the said catalogue, so that the words "in the universal Church" seem to be joined rather with the following word "are" than with the preceding words "under precept."

Therefore the signification is not: "With attention to the general law, only these must be observed," but rather this: "No others, in the universal Church, wherever you may be, are feast days under precept."

— Force of the precept. On feast days of precept, Mass must be heard, and besides, one must abstain from various works or acts. On the same days sacred ordinations can then be made for a grave cause (c. 1006); proclamations of banns also are made; and Mass must be celebrated by pastors for the people. By a response, however, of February 17, 1915, for Mass for the people, the catalogue of Urban VIII was restored, of which afterward a new quasi-promulgation was made by the Sacred Congregation of the Council, December 28, 1919 (*A.A.S.*, XII, p. 42).

Therefore for that obligation of pastors these feasts are to be added: Monday and Tuesday after the Sunday of Easter and Pentecost; Finding of the Holy Cross; Purification, Annunciation, Nativity of the Blessed Virgin Mary; Dedication of Saint Michael; Nativity of Saint John the Baptist; days of the Holy Apostles Andrew, James, John, Thomas, Philip and James, Bartholomew, Matthew, Simon and Jude, Matthias; day of Saint Stephen; day of the Holy Innocents; day of Saint Lawrence; day of Saint Sylvester; day of Saint Anne; day of the holy patron of the place.

— Computation of the feast day, excepting the acquisition of indulgences (c. 923), is made from midnight to midnight.

— Gravity of the precept. The obligation of observing feasts is grave, as is also established from proposition 52 condemned by Innocent XI, and it binds all and only the baptized who enjoy the use of reason and have completed seven years (c. 12).

Article II: The Positive Part of the Sanctification of Feasts

— Substance of the obligation. What it is to hear Mass. "On feast days of precept, Mass must be heard": i.e., human, bodily, and devout presence must be exhibited to it.

That it may be human, there is required the intention of furnishing this act of external worship, or of honoring the sacrifice by one's presence, but not the intention of satisfying the precept (cf. I, n. 198).

That it may be bodily, it is required that the faithful person externally be and appear present, whether from the place where he is: the church; or through conjunction with those who surround the altar, when the crowded multitude is not contained by the church, or hears Mass under the open sky; or through the external manner by which he manifests attention, when, for example, from a neighboring

house, behind a wall, in the sacristy, he intends to participate in the Mass. He is not considered present who by the aid of a telescope observes Mass in a distant place.

That it may be devout, at least the attention which is called external must be furnished, i.e., that the faithful person externally do nothing alien to divine worship, or by which he is prohibited from at least confusedly turning his mind to the fact that the sacrifice is being offered there. It does not stand in the way that he himself does not attend internally.

All attention of itself is internal. Yet they distinguish the just-named external attention, which rather negatively excludes external distractions, from the interior attention by which one positively wills to apply his mind to sacred things, whether by observing the sacred rites of the priest (superficial attention), or by considering their signification (literal attention), or by thinking again on God or divine things (spiritual attention) (cf. Lugo, d. 22, n. 25).

Wherefore it is not necessary that someone pray during Mass, or truly notice the various or principal actions of the priest, as if pious reading or contemplation has occupied the whole man. Therefore they satisfy the precept who play the organ: the playing refers to the Mass itself; who collect alms: that good work is a certain accession to the sacrifice and does not impede every attention; who serve at Mass, even while they withdraw for certain moments to seek wine, a host, incense, lights, or to ring the bell for the consecration: they are not considered absent; who pray at another altar, perform the way of the cross, make confession: those pious works do not impede confused attention, and the mind of the Church is not opposed to this benign interpretation; who now converse, now attend, if not too much time is spent in conversation. A priest who celebrates can hear another Mass at the same time.

They do not satisfy the precept who sleep for a notable time, although involuntarily, or trifle, play, laugh, fixedly look at other things, read profane things, even learn a sacred text by memory: for these things take away either bodily or devout assistance.

One who half-asleep preserves a certain confused consciousness of his presence at Mass is not compelled to hear another Mass (St. Alph., l. 3, n. 316); and by epikeia he is dispensed from another attempt who, from his physical state, is exposed to too great a danger of new sleep.

— Mass must be heard when celebrated in some Catholic rite, under the open sky or in a non-private oratory, excepting private cemetery chapels (c. 1249).

Therefore it is not established that he does not satisfy the precept who hears a Mass which a true priest of a schismatic or heretical sect has celebrated in a Catholic rite: although formal communication with a celebrant of this kind is prohibited, and therefore his Mass must not be heard.

Oratories of a religious or pious house are not considered private, unless there is question of a Mass which is said in the room of a private person, even a religious, for example because of infirmity. The oratory of a private house is recognized by this sign, that a pontifical indult is required so that Mass may habitually be celebrated there. In the indult are numbered the persons who can satisfy there the precept of hearing Mass. And the one serving the Mass, as also the celebrant himself, seems to satisfy the precept in such an oratory.

The precept is also satisfied by him who hears a Mass celebrated by a cardinal or bishop, or for the convenience of either. For concerning a bishop the Sacred Congregation of Rites responded this on

June 8, 1896.

— Mass must be heard whole, i.e., from the beginning up to the last Gospel exclusively. An omission is mortal which affects grave matter. Gravity depends both on quantity, if this reaches the third part of an ordinary Mass, and on the dignity of the part omitted, or proximity to the substance of the sacrifice. Wherefore a brief absence during the part which extends from the canon to communion more easily becomes grave. We add certain moral estimations:

It is not certainly grave: to omit the Mass of the catechumens, or all things up to the offertory exclusively (at least if then the last Gospel is heard); or all things after the reception of the Holy Blood; to omit all things up to the epistle exclusively and all things after the reception of the Blood.

It is not grave to omit only the first Gospel (even if it is the Passion of the Lord), or only the offertory, or only the preface.

It is reputed grave to omit all things from the canon to the consecration, or from the consecration to the *Pater noster*. It is grave to omit both the consecration and communion. The omission of communion alone, especially since it is sufficiently established that it is not essential to the sacrifice, can be held light. With greater reason several condemn as mortal the omission of the consecration, whether of either species or certainly of both. On account of extrinsic authority, however, the more benign opinion can be held, which rather, with Lehmkuhl, I, 718 note, we explain thus: when a momentary withdrawal has as its cause a very brief necessity, which is not considered to have interrupted moral conjunction with the others standing by (cf. Lugo, d. 22, n. 45).

He is excused from grave sin (from all sin, if the cause is reasonable) who hears successively two half Masses; provided that, as after St. Alphonsus, l. 3, n. 311, they commonly require, he is present at one whole sacrifice, and therefore the consecration and communion are of the same sacrifice: the law receives this benign interpretation.

To supply the light part which has been omitted is best; but concerning a strict obligation of such imperfect reparation it is not established. But he who has arrived only after the consecration does not now seem to be held to hearing the remaining part, since he cannot satisfy the substance of the precept.

— Excuse. From hearing Mass, besides the impossibility under which, for example, one labors who is at once blind and deaf, there excuses any notable or moderately grave inconvenience, whether in mind, or in body, or in goods of fortune, or in honor, reputation, shame, which is reasonably feared (Lehmk., I, 722). Yet habitual omission can be conceded with more difficulty, since from the divine precept itself Mass seems sometimes to have to be heard. Wherefore those who are regularly impeded on Sunday should be present at least at some Masses through the year, on another day. Therefore he is excused:

who by reason of health prudently omits visits to friends; or has to fear notable heaviness of the head, weariness of strength, or delay in convalescing. And in doubt that precept does not seem to have to be urged;

who must guard a city, flock, or infants; or must be a comfort to a sick person who would suffer at least grave disturbance or sadness. If from two spouses one is retained at home, there is at least great fittingness that they exchange turns;

who does not seem able to hear Mass without grave offense of husband, parents, masters. If, however, this happens rather often, inquiry must be made about another means, e.g., about changing service. It is licit for a father, for correction, to keep a son closed at home, even if thus he omits Mass; it is licit for a master to require service which is thought necessary from servants with the same foresight. The servants themselves must take care with moderate diligence that they be able to be present at Mass; nevertheless they are not bound to bear a notable diminution of sleep from this;

who otherwise would lose a convenient occasion of travel. Otherwise, he is forbidden to set out on Sunday unless before the journey or on the journey he hears Mass;

who would have too great a distance to overcome. By a pedestrian journey of one good hour or five quarters (understand this of the going alone), all seem absolutely to be excused, and a lesser distance excuses if from the condition of weather, road, or person, the trouble is increased. But for one to whom, without new expenses in some way serious, there is easily available a private or public carriage (*tramway*) or even a "bicycle," a greater distance is needed for him to be excused;

who, from the custom of the country, is not accustomed to go out, for example in time of mourning or after childbirth;

who would suffer notable embarrassment, whether because he lacks suitable clothes (unless in the first hours or in another church the cause ceases), or would have to hear the proclamation of his own marriage, etc.;

who wishes to avoid another's scandal, e.g., a young man by whom a girl is loved desperately;

who would lose extraordinary profit and profit notable to himself (e.g., double the profit of one day), or in exercising the office of driver, sailor, miller, would suffer notable loss;

who is dispensed for a just, although lesser, cause. In individual cases, local Ordinaries and pastors can, by force of c. 1245, dispense for a just cause individual faithful subject to themselves or individual families even outside the territory, and, in their own territory, even pilgrims.

The same power, after the manner of a pastor, is had by Superiors in an exempt clerical religion, as regards professed members, novices, or others dwelling in the religious house day and night by reason of service, or education, or hospitality, or infirm health (c. 1245, §3).

— Must someone use a privilege for hearing Mass? We think one must respond with this distinction. It need not be arranged that Mass be said from a privilege; but if it is said, one must assist at it, at least if it is said in that place where the precept can of itself be satisfied, for example in an open place on a ship.

— Things to be desired. Two things are chiefly to be striven for in this matter: 1. that the faithful formally and therefore also by other exercises strive to sanctify feasts, and chiefly use that occasion for learning religion better; 2. that the faithful, even the humbler, be taught a reasonable manner, at once pious and accessible, in which they may be present at Mass, so that, as befits man, they may be able to esteem the most august things by their own consciousness.

Article III: The Negative Part of the Sanctification of Feasts

— "On feast days of precept... one must abstain from servile works, forensic acts, and likewise, unless legitimate customs or particular indults carry otherwise, from public markets, fairs, and other public purchases and sales" (can. 1248).

After the old law has been abrogated, this obligation is wholly ecclesiastical (cf. St. Th., II-II, q. 122, art. 4 ad 4), as history itself demonstrates, since the first law concerning festive rest was passed by Constantine the Great. Cf. more things, *Questions concerning Religion*, at n. 109, Supplement, or Appendix XVII.

Concerning the individual prohibitions, these few things seem to have to be handed down.

I. - On Prohibited Works

— I. Servile works. 1. Under the New Law, at first thought seems to have been given to granting vacation to servants. Then, or almost at the same time, for a fuller sanctification of the Lord's day, profane works were excluded; finally a quasi-philosophical notion of servile work was investigated: by this, servile work is said to pertain to that servitude by which, after original sin, man is compelled to serve the earth that he may obtain its fruits, which otherwise he would have received as things offered freely to a king. Therefore they are labors by which neither a sufficiently proximate cultivation of the soul nor the immediate care of the body is intended, but work is spent in changing exterior matter (mechanical art). In these works the powers of the body hold the first parts, and the mind of itself is impeded from higher things and depressed to the lowest things. Wherefore those who are of a more honorable condition are accustomed to appoint servants, i.e., in a broader sense, domestics assigned to some ministry, to exercise them. Thence the reason for the name and another criterion.

In a matter, however, which has been introduced by custom, not only abstract reason but use must decide many things.

Liberal works are opposed to servile works. And there are certain middle or common works. When there is question of a work properly servile or properly liberal, questions concerning the intention of profit or recreation, of fatigue, or of time spent are irrelevant; not so, however, when there is question of common works.

2. It is servile to exercise agriculture or a trade; to place merchandise on beasts of burden, wagons, a ship, but not to drive them. Wherefore if a great time is not to be spent in loading a wagon, the whole seems licit: yet one must not depart from received usages, at least because of scandal.

It is also servile to spin, to make little nets or lattice-work.

3. It is not servile to care for one's own or another's body, to study, to write, to transcribe (by hand or machine), to draw an image, indeed to paint with colors (but it is servile to whitewash walls), to embroider with a needle. They speak more strictly concerning sculpture, unless there is question of finishing a statue. Yet Genicot-Salsmans, I, 334, assimilates the proper art of a sculptor to painting. To draw lines on paper on which you write is not permitted except as accessory to writing: therefore not of itself, or independently of writing. To take photographic images is not servile; but servile is the preparation "which is required beforehand and demands

much labor" (Noldin, *Praec.*, n. 270). The labors of typographers are reputed servile, if you except the arrangement itself of the letters.

4. Certain works are probably licit which are done principally by the aid of nature, beasts, machines, when the cooperation and application of man is moderate: for example in mills which are moved by water, wind, beasts, or even steam. But take care lest you understand this of large workshops, in which labor is done no less than elsewhere.

5. Fishing and hunting are of those works which are licit for the sake of recreation, but not if they are laborious and from office, as by fishermen on the sea.

Because it is licit to make a journey, those things which are consequently necessary can also be done: to join the wagon, to carry burdens for the use of the journey, etc.

— You ask concerning grave matter. Today they hold rather commonly that work through a space notably exceeding two hours, i.e., two and a half hours, is required. Considering the time which is customarily spent in laboring during the day, that part is shown to be truly notable. Yet in lighter labors, they require three hours; indeed certain rather light labors which neither greatly occupy the mind nor very much fatigue the body are permitted by many, provided they are not prolonged beyond two hours: to make rosaries, scapulars, wax images, artificial flowers. The intention of piety is easily added. And a motive remote from profit permits matter below three hours to be esteemed light. The works of various workers who are occupied individually for two hours by one master do not seem to coalesce.

— II. Forensic actions. 1. Lest sacred days be disturbed by disputes or dissensions, and lest the mind be drawn too much to diverse things, the sessions of tribunals and actions which regard decisions of causes, both civil and criminal, in either the civil or ecclesiastical forum, are prohibited. Hence to cite parties, to exact a judicial oath, to pronounce or execute a sentence is not licit. But it is lawful to excommunicate, to suspend from informed conscience, to confer benefices, to dispense, to inform a judge privately, to consult an advocate, etc., because these things do not require judicial noise. Nor are contracts written by notaries properly prohibited.

2. N.B. By earlier law there had also to be vacation from judgments at least through Holy Week and the octave of Easter: which time by the common norms of Pius X (c. 5) was reduced to four days before and two after Easter. But now, from c. 1639, only the last three days of Holy Week are held as ferial. One must strive that also in the civil forum the use of keeping holiday then be preserved.

3. Grave matter will be estimated here rather from the quality of the work. Thus a session of a tribunal will be thought grave, less grave the hearing of one or another witness by an instructing judge.

— III. 1. Public markets, fairs, and other public purchases and sales are prohibited of themselves (c. 1248).

Public markets by a kind of collective name designate those many purchases and sales which are made by merchants gathered by design. If they recur after fixed days, they are fairs. Other public purchases and sales are certainly auctions, sales by the spear. Purchases and sales in public shops also

seem to be such of themselves. Yet custom rather generally permits purchases of things which have a certain and definite price, in the sale of which, therefore, a very small labor is spent (cf. d'Annibale, I, 112 and 16). In not a few places it was required that, as a sign of reverence, shops remain half-closed: this pious usage is to be inculcated. But purchases and sales privately made are licit, as are rentals of a house, horse, etc. Even notaries are not strictly prohibited from drawing up instruments.

2. Grave matter would be, for example, every solemn sale or market. But cf. the excusing causes.

II. - On Excusing Causes

— Excusing causes. 1. Custom excuses many things, for example fairs which, when they fall on a feast day, are not customarily transferred; and in not a few places, markets for several hours, for the convenience of country people who are accustomed then to approach the city; purchases in public shops. C. 1248 itself admits these customs while it mentions them. According to several, custom is also the cause why barbers are permitted to exercise their art. (This, however, because it immediately affects care of the body, already draws from this fact a certain excuse.)

2. Piety toward God permits all things which are proximately referred to divine worship, such as to ring bells, to carry sacred images in procession; things which are only remotely referred, such as to sweep the church, are reputed only venial sins when, without reason, they are deferred to a feast day.

For a poor church it is lawful to arrange silk flowers, tapestries, linens, purificators, corporals, to sew sacred vestments. If the works put on the character of a public work, for example the building of a church, it at least befits one to seek a dispensation.

3. Charity toward neighbor permits judicial acts of the poor, and, in a certain measure, servile labors done for them. These are licit when done for the poor who are pressed by grave necessity. It seems that clothes of common kind can also be made for the poor. But it is not licit to sew clothes and pour back the price of the labor upon poor persons of this kind.

4. One's own or another's necessity, of body or soul, i.e., a proportionate loss, excuses from a precept of this kind. Thus judges in an urgent cause are excused; servants and maids compelled by a master (if, however, this happens frequently, they must seriously inquire into another service), or those who repair their own clothes, when they cannot do this on another day; the poor who cannot otherwise feed themselves and their own; a worker who, having been impeded through the whole week, completes something in his garden (but today daily labor is restricted in such a way that this excuse is scarcely had), especially if by using better clothes he testifies to the observance of the day; craftsmen who have an urgent work to execute, suppose the restoration of a public bridge, the repair of a plowshare or instrument of those who could not labor on the following day; tailors in necessary works. But here take care of the abuses of those who, by accepting too many things, cast themselves into a habitual necessity of laboring on a feast day. Because of danger lest fruits be spoiled or stolen, it is licit to gather them.

They are accustomed here also to allege cooks, culinary workers, bakers, who are permitted to prepare foods for the use of the day. But these are already licit from another source, because they have a personal destination. Yet custom permits that cooks prepare more delicate foods which could

have been cooked the day before, and perform certain accessory things. And if with venial sin they omitted what had to be done the day before, nevertheless on the feast day it will be supplied without sin (Lehmkuhl, I, 707). Bakers, however, cannot without cause reserve to feast days the preparation of foods for the week.

The necessity of avoiding idleness excuses, when idleness brings danger of sin which is scarcely overcome otherwise. Cases can occur in foreign missions. Wherefore, even in our regions, care must be taken that workers learn to use prudently the leisure obtained for themselves.

5. Common utility permits necessary works to be completed on the arrival of a prince, on the occasion of a great solemnity.

Indeed a special occasion of profit which, for the condition of the one acquiring, is esteemed great, also seems to excuse.

6. Dispensation for a reasonable cause can be imparted by the same persons who can dispense from the positive part of the precept. And in the cases just brought forward it is preferable, by a dispensation sought, to render the excuse more certain and to exercise Christian humility.

— Filial observation of the precept. The festive rest of Christians must not savor of Judaic rigor. Filial observation is to be commended most highly. For most grave reasons this frequent raising of the mind above earthly things is recommended. And what can be seen with the eyes is greatly to be grieved over: by threats and disturbances those interruptions of labor are now exacted which it was denied could be conceded to religion and piety. But this is chiefly to be procured for all: that they consult not only bodily or physical recreation, but reserve a sufficient part for spiritual offices and exercises. And that these may be obtained more easily, everywhere there should be at hand books at once of solid piety and of not unpleasant reading; everywhere with decorum, and, insofar as supply is given, with participation of the people, sacred functions should be celebrated.

Summary

— Concerning certain common precepts of the Church one must treat, which are connected with the virtues. But the precept of annual confession and communion, which coheres with the general pursuit of justice and sanctity, has been explained in the sacraments of the Most Holy Eucharist and Penance.

I. Origin of the precept of sanctifying feasts. Some time must be spent worshiping God by the law of nature. Participation in the sacrifice of the New Law is of positive divine law; but Sunday and festive assistance at Mass and cessation from labor today pertain to ecclesiastical law.

The supreme authority alone can stably institute, transfer, and abrogate feasts. And besides Sundays, in the universal Church only these are of precept: Nativity, Circumcision, Epiphany, Ascension, Most Holy Body of the Lord, Immaculate Conception, Assumption of the Blessed Virgin Mary, Saint Joseph (March 19), the Holy Apostles Peter and Paul, and All Saints. Where, from those enumerated, some feast has been legitimately abolished or transferred, nothing is to be innovated without consulting the Holy See.

Feast days are to be observed under grave obligation; they are computed from midnight to midnight, excepting the acquisition of indulgences.

II. Positive sanctification. 1. On feasts of precept, there must be exhibited to Mass presence of religious intention, bodily presence, so that, whether from the place where we are, or through conjunction with those who surround the altar, or through the external manner by which we attend, we externally are and appear present; devout presence, by which at least we externally do nothing alien to divine worship or by which we are prohibited from applying the mind to the sacrifice or to divine things. This attention is called external.

2. Mass must be heard in some Catholic rite, under the open sky or in a non-private oratory, excepting private cemetery chapels. In a private oratory only the persons numbered in the indult satisfy, besides the priest celebrating and the one serving him.

3. Mass must be heard whole. The gravity of omission depends on quantity: a third part of an ordinary Mass, or on the dignity of the part omitted: from the canon to communion a brief absence more easily becomes grave. He is immune from grave sin who successively hears two half Masses, at least if the consecration and communion pertain to the same sacrifice. Concerning a strict obligation of supplying a light omission it is not established.

4. Excusing causes are any notable or moderately grave inconvenience, whether in mind (from grave offense of husband, parents, masters), or in body (from health which probably impedes, or from a distance to be overcome of one hour and a quarter of pedestrian journey), or in goods of fortune (if extraordinary and relatively notable profit is to be lost or a notable loss is to be made in exercising the office of driver, etc.); or in honor, reputation, shame (e.g., if women, from the custom of the country, keep themselves at home in time of mourning or after childbirth). The reason of charity, for avoiding another's scandal; an occasion of a journey otherwise to be lost, can also excuse. In this matter, the frequency of omissions is to be observed. For a lesser cause, yet a just one, local Ordinaries and pastors dispense individual persons and families subject to themselves, even outside the territory; and in the territory even pilgrims and vagi.

It is to be desired that the faithful sanctify feasts also by other exercises, by acquiring for themselves a better knowledge of religion; and that even the humbler themselves be taught to participate in Mass formally.

III. Negative part. 1. On feast days one must abstain: a) from servile works, or works in which the powers of the body hold the first place and the mind of itself is impeded from higher things and depressed to the lowest things. Which these are, however, use also must teach. Besides servile works, to which liberal ones are opposed, there are certain middle or common works, in which the manner, for example pursuit of profit, must be attended to: fishing, hunting. Grave matter is considered labor prolonged notably beyond two hours; or for three hours in lighter works. Certain rather light labors are simply permitted for two hours; b) from actions of the judicial forum. But acts of non-contentious jurisdiction are licit, such as excommunication itself or suspension from informed conscience. From judgments also one must abstain through the last three days of greater week. Grave matter here depends more on the quality of the action; c) from public markets, fairs (or markets which recur on fixed days), public purchases and sales. Every solemn sale or market would be grave matter.

2. Excusing causes: a) custom, especially for fairs; b) the end of divine worship: this excuses works proximately connected, while remotely connected ones are only venial. And for a poor church it is lawful at least to labor privately; c) charity toward the poor, through works directly made for them (not indirectly from a price poured back); d) one's own or another's necessity of body or mind: or a proportionate inconvenience; e) danger of sin from idleness; f) special occasion of profit; g) dispensation for a reasonable cause by persons who can dispense from the positive part of the sanctification of feasts.

Filial, accurate observation is to be inculcated, but without Judaic rigor.

Title II: On Fasting and Abstinence

(cc. 1250-1254)

Usefulness. - The religious observance of this precept, with its spirit and evangelical foundation indicated, will have to be inculcated, especially as regards abstinence, by which many more persons are obliged. Fasting must be preached and explained in such a way that those who wish to fast may increase in number. But especially this must be urged: how much it is fitting that Christians renounce worldly feasts during the days which are destined for recalling the Passion of the Lord, for expiating sins, and for preparing paschal joy; at which time not only the memory of the Lord's Resurrection but also the spiritual resurrection of the faithful ought to excite and confirm holy joys.

Order. We shall follow this order: first to give a canonical exposition, then a moral exposition, of the ecclesiastical precept concerning temperance.

— *Appendix XVIII belongs to this section.* Historical. Cf. Appendix XVIII.

Article I: The Canonical Exposition of the Precept

— Object of the precept. 1. The ecclesiastical precept contains two parts, today distinct: abstinence and fasting.

2. "The law of abstinence forbids one to eat flesh and broth from flesh, but not eggs, milk-products, and any condiments whatsoever, even from the fat of animals" (c. 1250).

Therefore the universal exclusion of non-fasting foods, which for a long time and through the whole of Lent had been in force, so that fasting foods were called Lenten foods, has been entirely removed.

Whatever, whether liquid or even not liquid, is used in a moderate quantity so that the more principal food may be rendered savory, has the character of a condiment.

Since any condiments whatsoever are permitted, even from the fat of animals, the so-called "margarine" is admitted; nor is one to ask about the origin of the so-called "gelatin" used, which is drawn from fish or from the bones of a calf. Lard is not admitted of itself except by way of condiment. But substances, such as "peptone," which in common use do not come under the name of flesh and do not have the taste of flesh, do not seem to be comprehended by the ecclesiastical prohibition of flesh.

What has the character of flesh must be defined not scientifically but by common estimation and custom. If use is lacking, the rule of St. Th., II-II, q. 147, art. 8, can be admitted, by which those terrestrial animals are judged prohibited by the law of abstinence which are accustomed to live for a long time outside water or which are filled with warm blood. As regards amphibians, Benedict XIV advises that one consider with which animals their flesh bears the greater likeness. In a probable doubt, one can answer for liberty. Moreover, by common acceptation, not only oysters, mussels, and squid are equated with fish, but also snails, tortoises, frogs, and locusts. Where custom favors it, coots or swimming birds of this kind are also tolerated on days of abstinence. Some also permit otters and beavers.

3. "The law of fasting prescribes that only one meal be made in the day; but it does not forbid taking something of food in the morning and evening, provided, however, the approved custom of places concerning the quantity and quality of foods is observed" (c. 1251, §1).

"It is not forbidden to mix flesh and fish in the same refection, nor to exchange the evening refection with dinner" (c. 1251, §2). Therefore:

a) by today's law, drink, as such, does not break the fast.

b) one meal, or full refection during the day, is a substantial part of this law. This is not to be prolonged beyond about two hours, unless, as some permit from custom, after two hours only sweets or lighter foods are set out, and the small evening refection is then omitted. The same full refection cannot be morally interrupted, i.e., at least not notably beyond half an hour. Yet if someone, half-dined, has been compelled to depart because of business, he will return to table without penalty, even after several hours, from the benign sense of the Church, lest he pass the day without any full refection.

c) Now by formal law a morning morsel is permitted, besides the little evening supper.

Concerning the quantity and quality of foods, approved custom is said to be observed in the morsel and little supper.(1) As regards quantity, they agree sufficiently that in the morning two ounces can be taken, i.e., morally 60 grams (more accurately, 63). In this quantity one cup composed of coffee and rather thin "chocolate" does not seem to have to be computed.

In the evening, everywhere they permit 8 ounces, i.e., 250 grams; in certain regions of a colder climate and broader use (Belgium, Germany), two ounces, or 63 gr., seem able to be added. And each one can take as much as he needs in order to be able to observe the fast without notable inconvenience. Where a morsel of bread cooked with water is taken, several, with St. Alph., l. 3, n. 1029, deny that 250 grams of bread can be taken, as if some fermentation had occurred. But since there is no fermentation, nor are the quantity of foods increased by alteration in water, Genicot-Salsmans, I, 327, depart from this severity on account of a probable reason. Of itself one must look to usages.

On the day before the Nativity of the Lord, sweets or more delicate foods can be added to the evening collation, so that the quantity can be doubled.

Concerning quality a rather great variety of use is seen. In a few places eggs themselves are permitted; in more places at least milk-products are admitted; in others, for example in Italy, only fasting foods; in Spain, if you except one or another diocese of the northern part, fish themselves or little fish are prohibited. And because approved custom is confirmed, a stricter abstinence must therefore be observed in Italy and in many places by all in the morning and evening than in the principal refection, where eggs are always permitted. As is plain of itself, that quality must be attended to only by those who are bound by the law of fasting. Others, on days of fasting only, will be able even to take flesh in the evening.

d) The hour of the principal refection is understood to be around noon; but the exchange of the evening refection with dinner is expressly permitted by c. 1251, §2.

By the same paragraph the law by which Benedict XIV (Const. *In suprema*, 22 Aug. 1741) had prohibited the mixture of flesh with fish in the same meal is entirely abolished.

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(1) That custom in this place designates received usages by which, differently in different places, there has been a departure from the rigor of Lenten observance, which, excepting Sundays, permitted only one refection, and, not excepting Sundays, admitted only fasting foods. Therefore, where there has been no received use concerning the quality of food, only fasting foods would be licit in the morning and evening.

— Days under the precept. 1. The law of abstinence alone now obliges only on individual Fridays (c. 1252, §1).

2. "The law of abstinence and fasting is to be observed on Ash Wednesday, on Fridays and Saturdays of Lent, and on the Ember days, on the vigils of Pentecost, of the Mother of God assumed into heaven, of All Saints, and of the Nativity of the Lord" (c. 1252, §2).

It can be obtained rather easily that, in the time of Lent, Saturday abstinence can be transferred to Wednesday.

3. "The law of fasting alone is to be observed on all the remaining days of Lent" (c. 1252, §3). Yet Sundays are excepted. For:

4. "On Sundays or feasts of precept, the law of abstinence, or of abstinence and fasting, or of fasting only ceases, except a feast during the time of Lent; nor are vigils anticipated; likewise it ceases on Holy Saturday after noon" (c. 1252, §4).

Therefore, excepting the time of Lent, feasts of precept, whether from general law or from a particular statute, exclude the obligation both of abstinence and of fasting; but it is necessary that they actually be of precept, so that in regions where certain feasts have been suppressed, the law of abstinence or fasting is not touched by those feasts (cf. responses of the S. C. of the Council, 28 Aug. 1911 to the Archbishop of Mechlin, and 22 Nov. 1912 to Astorga).

By the new benefit of the Code, vigils, as regards fasting and abstinence, are no longer anticipated. Therefore the fast and abstinence of the vigil of the Nativity of the Lord and of the Assumption are suppressed in years in which those feasts occur on Monday.

The reasonable use of the third grace concerning Holy Saturday, entirely new, will be this: that on Holy Saturday, through the whole morning, you fast in the customary manner, so that you take only the morsel; but when noon has passed, i.e., after the twelfth hour has sounded, you can cease from the fast and abstinence begun. And if for some just cause you anticipate the refection, abstinence must be observed in it, which is prescribed on Saturdays of Lent.

— Subject of the law. "All who have completed the seventh year of age are bound by the law of abstinence; all from the completed twenty-first year of age to the beginning of the sixtieth are bound by the law of fasting" (c. 1254).

Therefore that strange privilege which some, without reason, wished to add for fifty-year-old women is rejected by the very silence of the Code.

— Dispensation from the law. Today, in the Code, under the common name of sacred times come both feast days and days of abstinence and fasting (c. 1243). But dispensation from them can be granted by the same persons whom we indicated where we treated of feasts to be observed (cc. 1245 and 514). Cf. n. 861.

Observe that the faculty is given of dispensing, but not of commuting. Therefore, for example, a pastor could not dispense from the quantity and at the same time enjoin that in the evening only those foods be used which are permitted to fasters, unless, as is said in n. 885, the very reason for the dispensation has to be completed. For the quality of foods to be observed in the evening and morning is part of the law of fasting; it is not a distinct law of abstinence from which he could dispense separately. From the law of abstinence Nuncios and Apostolic Delegates can also dispense by force of n. 10 of their faculties.

— Special rights. Contrary to what was said or insinuated concerning feasts, we are reminded by canon 1253 that by the canons concerning fasting and abstinence nothing is changed concerning indults, vows, constitutions, and rules of physical or moral persons.

This seems to us to be the sense of that canon: that all things which have been expressly sanctioned in these indults and vows remain intact as regards the substance of observance; but as regards the manner, unless something else is expressly defined, the present discipline is to be observed. For those who vowed fasting, if they wished to add nothing, referred themselves to present usages in such a way that they tacitly admitted variations of discipline. Wherefore the vow of fasting alone will no longer contain abstinence; nor will a vow of abstinence exclude eggs; nor will a vigil be anticipated. Wherefore rightly, in the year 1920, in Rome, the votive fast of the vigil of the Purification of the B. V. M. did not take place. Yet if the one vowing formally or virtually intended to vow fasting with abstinence, he will be held by both obligations. Ferreres also rightly says, *Theol. mor.*, I, 596 and II, 1370, that the fast which by the Bull of the Crusade is to be observed on the Saturday before the day of the Nativity of the Lord is suppressed in a year in which that day of the Nativity falls on Monday.

Article II: Moral Exposition of the Precept

— Abstinence can be violated and observed in several refections by distinct acts, while the observance of fasting is indivisible on individual days. Wherefore, he who has taken illicit foods at dinner will nevertheless be held in the evening by the law of abstinence, while he can dine a third time without penalty who, on a fast day, has twice been fully refreshed.

— Grave matter, in the law of abstinence, is placed below 15 grams of flesh by many, even by St. Alph., l. 3, n. 1029, with astonishing severity. Certainly better, with some, we shall require about 60 grams, especially in the principal meal, for grave matter. As regards eggs and milk-products, we seem able to extend grave matter to 130 grams (suppose two eggs), which will still have to be attended to by fasters in the evening collation. From Gousset, an ordinary portion of broth (*brodo*) is not grave matter.

— You ask what is to be said if dinner, in good faith, has been furnished with illicit foods. If in light matter, an excusing cause seems to be present. If the whole dinner has by error been composed of forbidden foods, the inconvenience which must be sustained to observe the law is to be weighed. The

error of a public host does not permit clients in a tavern to eat forbidden foods; but the difficulty of deferring the dinner of a numerous family, quarrels which are feared, etc., will rather often be able to furnish an excuse according to the mind of the Church, if there is no opportunity of seeking a dispensation.

— When the violation of fasting has been completed, one sin is committed on each day of the precept of fasting: such is the received opinion (cf. I, 137); and after a second full refection, fasting becomes impossible of observance on that day. But several partial injuries, light or grave, can be committed on the same day. For, account being taken of opinions, a grave injury of fasting seems able to be estimated at 130 grams. And although small refections coalesce (the contrary proposition 29 was proscribed by Alexander VII), nevertheless by the general rule, quantity is to be taken more strictly when the whole is taken at once than if it is taken divided into parts.

But the fast is not broken by the division of dinner on account of business arising, or by the use of a dish which, after you had risen from table, was set out beyond your expectation; or if something is taken because of weakness or another reasonable cause, as ministers and table readers among religious are accustomed to taste something beforehand (e.g., a morsel). For they intend one refection.

Nor is it broken by the taking of electuaries (i.e., pastilles, jujubes, candies), which are taken by way of medicine to aid the digestion of foods, or of a sweet with a draught "lest the drink harm," provided this is not done in fraud of the fast and therefore not frequently in the day.

Coffee, tea also mixed with a moderate amount of sugar, a drink made from water and the juices of oranges or lemons, even frozen, preserve the character of drink, provided they do not contain a great quantity of substance. But the drinking of milk, broth, and similar things is assimilated to food, from its ordinary destination.

The substance of the fast does not seem to be violated by exchanging the morsel with the evening collation. Hence for a just cause this will not even be venial. But one who could not fast except in the inverted order is not bound to use this means.

One who advertently or inadvertently has taken almost the little supper in the morning, of himself must either defer dinner or reduce the evening collation almost to the morsel. But he will be excused by grave inconvenience.

— Causes excusing from abstinence. Infirmity or weakness which demands flesh; to this can also be referred the vivid appetites of pregnant and nursing women, for whom, however, provision is better made by dispensation.

Poverty, lest the poor be deprived of a rare occasion of eating flesh.

The grave labors of certain workers. And with many one must sufficiently dissimulate. For they are accustomed to be more remiss in observing precepts, and, on account of the constant use of flesh, they experience a greater difficulty in abstinence.

Those making a journey, who cannot obtain licit foods for a suitable refection without great difficulty. Yet good will is more often lacking to these than convenience. But in certain regions the law of abstinence is relaxed in inns.

The moral impotence of a wife and son who would incur the grave indignation of the father of the family or would not obtain sufficient foods. But servants who are habitually impeded from observing the law must seek and choose another service, yet not with great inconvenience. Hence they are rather often excused, if they are permitted to observe the other precepts well.

Those who possess the faculty of eating flesh cannot of themselves transfer it to guests. Wherefore on forbidden days they must either omit invitations or set out licit foods. And an invitation must be declined, unless a proportionate inconvenience excuses. But one who, beyond expectation, is invited to a dinner consisting of illicit foods will often be excused, to avoid offenses, scandal being cut off. But those who spend several days with parents or friends careless of ecclesiastical law can and must easily ask for licit meals, or, if another cause is added, will obtain a dispensation.

— Causes excusing from fasting. Labor excuses workmen and artisans who must exercise grave labors. And because they seem to have a proper title in custom itself, even the stronger are excused. Nor, if they rest on one or another day, do they then seem to be bound by the law.

They are presumed, in doubt, exempt who undertake laborious works of piety or charity: such as preachers who preach almost daily for about an hour; professors who teach the higher sciences for an hour, provided they prepare the lessons by study and labor; teachers of lower schools who daily teach for 4 or 5 hours; those who serve the sick with great labors.

By physical or moral impotence or excessive difficulty, the sick, the weak, convalescents, pregnant women, nursing women, and all who from fasting suffer notable pain of the head or stomach, are excused; the poor who feed on bread alone with legumes; and those who from experience or probable reason have drawn the persuasion of grave harm.

Labor or inconvenience joined with other accidental causes excuses many who of themselves are bound. Thus tailors, barbers, painters, scribes are excused, if they cannot combine the suitable exercise of their art with fasting; those who, in undertaking a journey, in frequently preparing sermons, in arduous studies, in hearing many penitents or clients, would experience notable inconvenience from fasting. Serious indignation of the husband will excuse the wife.

— You ask whether on days of fasting you can undertake extraordinary labor by which you become unable to observe the law.

Provided the labor has true utility, and you have a just cause for not deferring it to another day, for example extraordinary profit or even loss of time, this seems licit according to the benign mind of the Church. The reason of delight from a journey, hunting, etc., does not suffice, unless sometimes, rarely, and not in fraud of the law, an equitable interpretation of the precept suggests an exception. Thus it does not seem that someone must be compelled through all of Lent to abstain from the honorable recreation of a long journey or of hunting. And there are works of charity, such as the service of the sick, so pleasing to the Church, that after taking counsel you can undertake them on days of fasting, as if commuting the precept into these works (cf. I, n. 221, 5).

— From fasting and abstinence a lesser cause can excuse through dispensation. To whom dispensation belongs we have already said, n. 876 and 861.

But from a particular cause of a great concourse of people or of public health, Ordinaries can dispense a whole diocese or some place in the diocese from fasting and abstinence (c. 1245, §2). That

exorbitant faculty can be extended neither to other things to be dispensed, for example festive rest, nor to other causes. A particular cause, for example of an extraordinary feast or fair, can recur even annually.

Observe also that a dispensation from fasting of itself is not valid for abstinence; nor does a dispensation from abstinence dispense from fasting.

Finally, a Superior to whom the reason does not seem sufficient for dispensing could complete the reason by enjoining other pious works: prayers, alms.

N.B. Prayers or alms which are not rarely imposed on those who use the faculties of a general Indult oblige only under light obligation; and the prayers are a burden attached to the day. And because of the more benign laws of abstinence, the use of the Indult has become less daily.

— Use of the Confessor. 1. Today it is preferable not to incline to the stricter side in estimating those things which are licit for fasters, both because the mind of the Church is to be supposed benign toward the few who observe, and so that these may grow in number.

2. The excusing causes themselves, especially when there is question of fasting, because of weaker health and persuasions of impotence, are to be taken more benignly than formerly. The Holy See demonstrates this by the very example of its dispensations. Nor without hope of success is the good faith of those to be disturbed who, on account of lighter causes, especially with a physician consenting, think themselves immune from the law of abstinence.
3. Yet the received customs of persons or places must be considered diligently. For according as the law is fully vigorous or, on the contrary, rather commonly neglected, it is relaxed imprudently or urged incautiously. Great prudence is needed especially with those who would easily desert the sacraments. It is already notable that by seeking a dispensation they wish to profess obedience. Wherefore they are to be exhorted that they at least be willing to do this.
4. Often what is lacking to one cause is supplied by another: for example poverty joined with labor or with a certain weakness.
5. Again one must avoid facility which removes the sinew of discipline and gradually, through indiscreet dispensations, suppresses the law. Concerning fasting itself, let us clearly indicate those things which can be taken with the law intact, and let us strive to obtain, if not total, at least partial observation. But especially let us foster the spirit of mortification, and today greatly move Christians to lead a life less alien from the character of the time which has been dedicated by holy Mother Church to Christian piety and immolation and the commemoration of Christ suffering or to obtaining peculiar graces.

Note On Tithes

— The precept of paying tithes is no longer among the common laws of the Church. The Code, c. 1082, merely confirms particular rights in this matter: "As regards the payment of tithes and first-fruits, particular statutes and laudable customs are to be observed in each region."

Summary

— Canonical exposition. I. Today the precepts of abstinence and fasting are distinct; nor does a dispensation from abstinence dispense from fasting, or conversely.

II. The law of abstinence forbids the use of flesh and of broth from flesh; it excludes no condiments. A condiment is whatever, liquid or not liquid, is used so that food may be made savory.

What flesh is must be defined by common estimation and use. Terrestrial animals, which are accustomed to live a long time outside water or are filled with warm blood, setting aside a more benign custom, are judged prohibited. As regards amphibians, in probable doubt one must answer for liberty.

III. The substantial law of fasting permits one meal through the day; but something of food is granted to be taken in the morning and evening, provided the approved custom of places concerning quantity and quality is observed. As regards quantity, they agree sufficiently that in the morning two ounces (60-63 grams) can be taken. In the evening, everywhere eight ounces, i.e., 250 grams, are permitted, and even more in certain regions. And indeed it is licit for each one to take that by which he may fast without grave inconvenience. Quality in the morning and evening, outside days of abstinence, must be attended to only by those who are held by the law of fasting. The exchange of dinner with the evening refection is expressly permitted. Nor would the inversion of the morning morsel and the evening collation be grave. Today drink does not break the fast, unless it is commonly taken as food.

IV. Days under the precept. 1. The law of abstinence alone is in force on individual Fridays.

2. The law of abstinence and fasting is in force on Ash Wednesday, Fridays and Saturday of Lent; on the Ember days; on the vigils of Pentecost, of the Assumption of the B. V. M., of All Saints, and of the Nativity of the Lord. It is easily obtained that Wednesday be observed for Saturday as regards abstinence in Lent.
3. The law of fasting alone is in force on all remaining days of Lent, except Sundays.

Excepting a feast in Lent, every law of abstinence and fasting ceases on Sundays and feasts of precept, where those feasts truly remain of precept; and on Holy Saturday from noon; nor are vigils anticipated.

V. Subject of the law. All seven-year-olds who habitually possess the use of reason are held by the law of abstinence; the law of fasting holds all from the completed twenty-first year to the beginning of the sixtieth.

VI. The faculty of dispensing belongs to the same persons who can dispense from the sanctification of feasts and in the same manner. But nothing is changed concerning indults, vows, constitutions, and rules of physical or moral persons; however, the manner of fulfilling them, unless something else is expressly established, can be taken from the Code.

Moral exposition. - I. Abstinence can be violated and observed in several refections by distinct acts, while the observance of fasting is indivisible on individual days, so that of himself he who by one will has determined not to fast would commit one sin. Yet even when the substance of the fast is preserved, or when a second full refection has not yet been taken, one can sin gravely, as if you take

illicitly up to 130 grams of food. But abstinence from flesh seems to be violated gravely by a quantity of 50 grams.

II. Excusing causes. 1. From abstinence. Infirmity, poverty, grave labors of certain workers, excessive difficulty of obtaining licit foods on a journey, moral impotence of a wife and of children who would incur the father's indignation or would not obtain sufficient foods.

2. From fasting. a) Workmen and artisans, even the stronger, are excused by custom itself; b) those are presumed exempt in doubt who fulfill laborious works of charity or piety, such as preachers and professors who preach for an hour almost daily or hand down the higher disciplines, provided they prepare the lessons; teachers of lower schools who instruct youths for 4 or 5 hours; c) those are excused who, on account of infirmity or weakness, from experience or probable reason have drawn the persuasion of grave harm; d) for a lighter cause dispensation excuses.

But from a particular cause of a great concourse of people or of health, Ordinaries can dispense a whole diocese or some place from fasting and abstinence. And by enjoining some pious work, the one dispensing could as it were complete the cause for dispensing.

Prayers attached to an indult of general dispensation oblige only under light obligation.

III. Action of the confessor. That more may fast, today it is preferable not to incline toward stricter parts in estimating what is licit for one fasting. The excusing causes themselves are not today to be taken rigorously. Yet attention must be paid to the customs of persons and places, lest we keep anyone away from the sacraments, or foster relaxation. Let us strive to obtain at least partial observation; and let us inculcate this, that Christians through the sacred Lenten time may lead a life less alien from the character of the sacred time.

N.B. Concerning tithes only particular rights are to be observed.

Title III: On the Censorship and Prohibition of Books

(cc. 1384-1405)

Usefulness. - The rules concerning the censorship of books are chiefly useful for clerics themselves; the rules concerning the prohibition of books affect all. In this matter one cannot first neglect what natural prudence already prescribes; then the faithful are to be warned that it is not enough that they attend to the Index of prohibited books, but that they must also look more to the general rules by which very many works are prohibited. Since writings come forth in such number, it will also help the priest to have at hand a book or periodical booklets which prudently instruct readers concerning the merit and dangers of works which are published in print.

— *Appendix XIX belongs to this section.* Historical. Cf. Appendix XIX.

— Introduction. In the fourth part of Book III, which is inscribed *On the Ecclesiastical Magisterium*, the Code assigns Title XXIII, consisting of cc. 1384-1405, to treating again the matter of the censorship and prohibition of books, which Leo XIII had entirely arranged anew by the celebrated Const. *Officiorum ac Munerum*, 25 Jan. 1897. And because it treats that matter anew, at the same time, from c. 22, it abrogates every earlier law, although in reality it differs little from the previous Constitution.

But while the latter had treated first of the prohibition and then of the censorship of books, now, with the order inverted, the chapter on censorship is placed before the chapter on prohibition.

By canon 1384, more general and introductory, the Church vindicates for itself the right of censorship and prohibition over the books of the faithful. At the same time it thus defines the extensive force of the canons, more clearly but more severely than before the Code, so that "what is prescribed under this title concerning books is applied to daily publications, periodicals, and any other published writings whatsoever, unless something else is clear."

> Therefore, of themselves, leaving these distinctions aside, the rules fall on sheets and booklets just as on books; on periodicals just as on separate works; on lithographed writings just as on printed ones, provided, however, they are published, i.e., become public property, or are spread among the people, or stand open promiscuously to all, and are not merely destined for selected persons, for example hearers (to whom others may perhaps be joined per accidens), so that they can be considered as a manuscript.

But to the general extension, which is presumed, there are exceptions, which, however, must be proved so that the presumption may be overthrown. But an exception can be clear either from the nature of the thing or from the context of the speech, as is said in c. 188, 7°. From the nature of the thing: thus prior censorship of a daily paper or of an image will have to be made otherwise than of a book; from the context of the speech: thus c. 1386 itself distinguishes books from daily papers and periodical booklets.

Chapter I: On the Prior Censorship of Books

— The censorship of a book must be distinguished from the license to publish it. Censorship, by the force of the word, means a sentence, a judgment; and from c. 1384 it is the authoritative review of a book by ecclesiastical power; wherefore it logically precedes license. Censorship immediately touches the book; license, the person writing. Censorship is necessarily particular and prior. License can be general, express, tacit, presumed; and its defect can be supplied by ratification. Ecclesiastical censorship by common law is assigned to the Ordinary of the place, because it is made concerning works which are rendered public property; license, from the Code itself, must also be given by the major Superior of a religion.

Voluntary omission of censorship, just as of license, is indeed of itself grave; yet omission of the latter more easily than of the former will be excused from grave sin on account of lightness of matter.

Therefore we shall separate license which is joined with censorship from separate license.

— Works to be subjected to censorship. "Unless ecclesiastical censorship has preceded, let there not be published, even by laypersons:

1° "Books of the Sacred Scriptures or annotations and commentaries on them (c. 1385);

2° "Books which regard the divine Scriptures, sacred theology, ecclesiastical history, canon law, natural theology, ethics, or other religious and moral disciplines of this sort; books and booklets of prayers, of devotion, or of religious, moral, ascetical, mystical doctrine and instruction, and other such things...; and generally writings in which there is anything which peculiarly concerns religion and uprightness of morals" (c. 1385).

> What peculiarly concerns religion and uprightness of morals will often have to be judged from the circumstances of place or time. For it happens not rarely that a question of political or social government, on account of the circumstances of a region, cannot be resolved toward this or that side without religion itself receiving much utility or detriment therefrom. In this matter one must stand by the judgment of Ordinaries, as is plain, although recourse to the Holy See, at least in devolutive effect, will always lie open.

3° "Sacred images to be printed in any way, whether they have prayers or are published without them" (c. 1385).

> Now all sacred images, not only new ones (*Off. ac Mun.*, 15), are to be subjected to censorship. An image must be called sacred which is published for worship or for fostering piety; for if they are proposed as specimens of eminent art and works of famous artists, there is no reason why, the end of the law entirely ceasing, they should be approved by ecclesiastical Superiors.

4° "Those things which in any way pertain to causes of beatifications and canonizations of the servants of God..." (c. 1387);

5° "All books of indulgences, summaries, booklets, sheets, etc." (c. 1388);

6° Collections of decrees of the Roman Congregations, to be published again (c. 1389);

7° Liturgical books and their parts, likewise litanies approved by the Holy See (c. 1390);

8° Every new edition or translation into another language of an approved work" (c. 1392).

The Code itself notes that chapters excerpted from periodicals, published separately, are not to be considered a new edition.

— Author of the license to be granted after censorship. 1. Unless approval, according to the quality of the matter, is more reserved (e.g., for liturgical books, summaries of apostolic indulgences), "license to publish books and images... can be given either by the local Ordinary proper to the author, or by the Ordinary of the place in which the books or images are made public property or in which they are printed...; yet in such a way that if any one of these Ordinaries has denied license, the author cannot seek it from another Ordinary, unless he has informed the same of the license denied by the other" (c. 1385).

2. "If license seems to have to be denied, the reasons are to be indicated to the author asking, unless a grave cause requires otherwise" (c. 1391, 2).

The obligation is passed over, if there truly was one, for authors who live in Rome to obtain the approval of the Cardinal Vicar of the City or of the Master of the Sacred Palace (*Off. ac Mun.*, 37).

— On the office and mention of censors (c. 1393). The office of a censor, if you look only at the words of the canon, is to judge concerning the doctrine of the book, not concerning its opportuneness; moreover he must give his judgment in writing. The recommendation is renewed that censors, in bringing judgment, follow not private opinions or opinions of their own school, but the common doctrine of Catholics and approved authors, all acceptance of persons being set aside.

Yet the censor will be able to warn the Ordinary concerning the inopportuneness of a book, indeed sometimes by the natural law of charity he will have to.

The censor's judgment is to be placed before the license to publish and, except in the rarest cases, his name. Yet this must never be revealed to the author before he has brought a favorable judgment.

Neither the words of the canon nor reason demand that the censor's name be indicated in the book itself. Not the words of the canon, for c. 1394 requires only that the license itself be published, with the name of the one granting it expressed; not reason: for mention is required so that there be evidence of some sponsor of the book. But for this it is enough that the censor's name be preserved in the archive. And in reality, both in Rome and outside Rome, the censor's name does not appear in many books.

— On license separate from censorship. 1. To the Ordinary of the place is reserved the judgment concerning the just and reasonable cause on account of which even Catholic laypersons may "write something in daily papers, sheets, or periodical booklets which are accustomed to attack the Catholic religion or good morals" (c. 1386, 2).

In an urgent case it will be licit to presume approval.

2. "Secular clerics are forbidden, without the consent of their Ordinaries..., to publish even books which treat of profane matters, and to write in daily papers, sheets, or periodical booklets or to

direct the same" (c. 1386).

3. Religious, that they may publish a book on any matter whatsoever or write in daily papers, sheets, or periodical booklets or direct them, first need the license of their own major Superior and then of the Ordinary of the place (cc. 1385, 1386).

All will easily perceive the increased severity of the law. For the cause for writing something in periodicals which are hostile to religion or good morals is subjected to the judgment of the Ordinary. The prohibition formerly made to clerics of directing daily papers or periodicals is now extended to every cooperation of some moment, which, for example, will be had by repeated, even smaller, compositions. For thus we interpret the word "to write," since the Code itself uses other words for bad and for good periodicals. Yet lest someone abuse this interpretation, the prohibition made above (c. 889, 2°) of publishing without prior censorship whatever "peculiarly concerns religion and uprightness of morals" is to be noted.

Finally, all religious are assimilated to secular clerics in this matter, which is an extension of the old law both as regards things and as regards persons (*Off. ac Mun.*, 42). The local Ordinary whose license religious need seems to be one of those three who are indicated in the preceding canon.

But the license of one's own Superior must precede the license of the local Ordinary. For c. 1385, §3 says: "Religious... must first obtain the license... of their own major Superior."

— Form of the license. "The license by which the Ordinary gives the power of publishing is to be granted in writing, to be printed at the beginning or at the end of the book, sheet, or image, with the name of the one granting it expressed, and likewise the place and time of the concession" (c. 1394).

But the obligation has been suppressed of printing in the title of the approved book the name and surname both of the author and of the publisher, and also the place and year of printing and edition. And here, unless we are mistaken, there is question only of the license which is connected with the censorship of books, so that books immune from censorship are not touched by this canon.

We have already admonished at n. 894 that the name of the one granting, but not likewise of the censor, must be printed; and for many writings it is practically admitted that there merely be placed: "With ecclesiastical approval."

Summary

— 1. General canon. Those things which are prescribed concerning books under title XXIII are to be applied to any published writings, unless something else is clear from the nature of the thing, as for the prior censorship of a daily paper and image; or from the context of the speech, as c. 1386 itself distinguishes books and daily papers from periodical booklets. Nor are penalties inflicted below under another title to be taken with the same extension.

I. Censorship and license. Censorship is the authoritative review of a book by ecclesiastical power; it is necessarily particular and prior; it is committed by common law to the Ordinary of the place; it immediately touches the book; and it logically precedes license, which is given to a person, can be

general, express, tacit, presumed, and is supplied by ratification. This license must also be given by the major Superior of religious.

II. Works to be subjected to prior censorship. 1. Books of Sacred Scripture or annotations or commentaries on them.

2. Books which regard religious and moral disciplines; books and booklets of devotion or religious instruction; writings which contain anything which peculiarly concerns religion and uprightness of morals.
3. Sacred images with or without prayers.
4. Those things which pertain to the beatification or canonization of Servants of God.
5. Writings on indulgences.
6. Collections of decrees of the Roman Congregations, to be published again.
7. Liturgical books and their parts; litanies approved by the Holy See.
8. Every new edition or translation of a work to be approved or already approved. Yet excerpts taken from periodicals, published separately, are not a new edition.

The proper office of censors, according to the norm of c. 1393, is to bring judgment concerning the doctrine of the book, according to common teachings, with the opinions of their own school neglected.

Yet they are not prohibited from making the Ordinary attentive to reasons of the religious common good which could dissuade from the divulgation of the book and on account of which the Ordinary would opportunely deny license for publishing the book. But this pertains less properly to their office. Wherefore c. 1393 treats only of the doctrine of the book.

After judgment has been brought, excepting arguments to be submitted to the Holy See, license is given by the local Ordinary either of the author, or of the publisher, or of the printer. License denied by one must be manifested to another from whom it is sought. The reasons for denied license are of themselves to be indicated to the author asking. The license is to be printed in the book. But it does not seem to be required that the censor's name be made public property.

III. 1. For writing anything in daily papers and periodical booklets which are accustomed to attack religion or morals, of itself, if time is available, the Ordinary of the place must be approached by all.

But secular clerics are forbidden, without the consent of their Ordinaries, to publish even books concerning profane matters, to direct daily papers or periodicals, or to give work to the same as writers.

Religious need the license of their own major Superior besides the license of the Ordinary, who seems able to be the same one to whom recourse can be made for censorship.

Chapter II: On the Prohibition of Books

— The competent author of prohibition (c. 1395).

The right and office of prohibiting books for a just cause belongs:

1° to the Roman Pontiff (by himself or through the Sacred Congregations) and to general Councils for the universal Church;

2° to particular Councils and local Ordinaries for their own subjects.

> That exempt religious are immune from the prohibition of the Ordinary is the more probable now because there is already silence concerning his faculty of acting as a delegate of the Holy See. Besides, the prohibitions of Ordinaries are said to be valid for their own subjects.

3° to the Abbot of a monastery of its own right and to the supreme Moderator of an exempt clerical religion with his Chapter or Council for their own subjects; "and the same, if there is danger in delay, other major Superiors can do with their Council, under this law, however, that they refer the matter as soon as possible to the supreme Moderator."

A prohibition from which someone has appealed to the Holy See must be observed until the matter is decided in his favor.

— The force of prohibition.

We have proved in our *On the Prohibition and Censorship of Books*, 5th ed., n. 26, that not only penalties, but also prohibitions, as such, are to be interpreted strictly.

Those things which were everywhere and not completely stated in the old law are now proposed clearly: "The prohibition of books effects this: that without due license a book can neither be published, nor read, nor retained, nor sold, nor translated into another language, nor communicated with others in any way."

"A book prohibited in any way whatever cannot be published again, unless, after corrections have been made, he who had prohibited the book, or his Superior or successor, has given license" (c. 1396).

> He publishes a book who, with his name given, spends effort on its diffusion, by which note he differs from one who merely prints a book. The author is very often at the same time the publisher. Therefore a book is published when it becomes public property. Miscellanies in which various excerpts even of a condemned book are contained are not a new edition of the book.
>
> The reading of a book means the immediate use of the book for understanding the concepts of the writer: whether for this reason you survey the book with the eyes or with the fingers, as the blind do.
>
> Therefore he does not read who hears one reading, for example a professor of apologetics while from a proscribed book he reads before his hearers passages afterward to be refuted; nor he who, to learn the art of reading unknown letters, merely strives, like children, to recognize

and pronounce individual letters. Nor does he read the book who reads excerpts in another volume.

To sell books is not the same as to have them for sale. The sale of a book to him who has license to read and retain prohibited books is not prohibited. But no one can have prohibited books for sale unless he has obtained due license from the Apostolic See; nor then may he sell prohibited books to anyone unless he can prudently judge that they are legitimately sought by the buyer. Moreover, books obscene by profession are excluded (c. 1404). According to the rules of cooperation and with attention to the use of places, it will be able to be tolerated that sellers sell under the spear or at public auction another's library which contains prohibited books (yet not books merely obscene).

— Books prohibited by the law itself (c. 1399). By the law itself are prohibited:

1. An edition of the text of Sacred Scripture or of any version made or published by non-Catholics.
2. Books of any writers whatsoever which defend heresy or schism, or tend in any way whatsoever to overthrow the very foundations of religion.

Not everyone who utters heresy defends it, but only he who tries to uphold or defend it by added reasons.

The foundations of religion are those preliminary truths of the natural order for religious worship itself, such as the existence of God, free will, the spirituality of the soul; and truths which are necessary for an adult unbeliever so that he may be led to embrace the faith: the force of miracles for proving, motives of credibility in general, but not at the same time the principal dogmas of the faith itself.

"To overthrow in any way whatsoever" is circumscribed by no definite mode, provided the intention or attempt of overthrowing is shown.

3. "Books which intentionally attack religion or good morals."

Although most understand by the name of religion the Catholic faith, we think that here there is rather question of divine worship as such, which is attacked by atheist or materialistic books or daily papers. Good morals signify that manner of life which agrees with the laws of natural uprightness, especially as regards chastity. Therefore pornographic works are proscribed, and also those which strive to overthrow good morals theoretically, provided they do this intentionally, or with a directly contrary intention, and this in a notable part.

4. "Books of any non-Catholics whatsoever which treat of religion by profession, unless it is clear that nothing against the Catholic faith is contained in them."

Any non-Catholics whatsoever are also the non-baptized. Their books concerning a religious argument are condemned because of presumption, which, however, yields to truth.

5. Unless they bear due approval before them: a) texts, annotations, commentaries, versions of Sacred Scripture; b) books and booklets which recount new apparitions, revelations, visions, prophecies, miracles, or introduce new devotions, even under the pretext that they are private.

By the previous law there were also prohibited, on account of the mere defect of approval, books and booklets of prayers, or those which handed down ascetical or mystical instruction.

6. "Books which attack or deride any of the Catholic dogmas; which uphold errors proscribed by the Apostolic See; which detract from divine worship; which affect ecclesiastical discipline, the hierarchy, or the clerical or religious state with insults" (c. 1399, 6°).
7. "Books which teach or commend superstition of any kind, sorceries, divination, magic, evocation of spirits, and other things of this sort."

Other things of this sort would be arts of having prophetic dreams.

8. "Books which establish dueling or suicide or divorce as licit; which, treating of Masonic sects or other societies of the same kind, contend that they are useful and not pernicious to the Church and civil society."

That societies may be similar to Masonic sects, it is necessary that they be secret and at the same time machinate, openly or secretly, against the Church or the State.

9. "Books which by profession treat, narrate, or teach lascivious or obscene matters."
10. New editions of liturgical books which do not agree with the authentic ones approved by the Holy See.

Editors are not prohibited from repeating certain things in their own place for the sake of greater convenience.

11. "Books by which apocryphal indulgences, or those proscribed or revoked by the Holy See, are spread abroad."
12. Pious images "printed in any way... alien from the sense and decrees of the Church."

— Books proscribed by particular decrees. 1. Of itself, once a denunciation has been received or by its own inquiry, it now belongs to the special Section of the S. C. of the Holy Office to examine and prohibit books and to foster the zeal of Ordinaries in this matter (c. 247, §4). It is not repugnant that per accidens another Congregation proscribe a book concerning a matter of its competence. And there are examples.

2. C. 1397, §1 warns that it pertains under a particular title to Legates of the Holy See, to local Ordinaries, and to Rectors of Catholic Universities - which, moreover, is the office of all the faithful, especially of clerics, of those who occupy a dignity, or excel in doctrine - that, insofar as there is opportunity, even with the causes indicated, they refer books which they judge pernicious to local Ordinaries or to the Holy See. Provision is made for secrecy for them. And

Ordinaries are warned that they be solicitous concerning books which are published in their territory.

3. Yet today it belongs to the Holy See alone to make the Index or catalog of prohibited books. Since that catalog contains particular decrees, it has by no means been suppressed by the Code. Wherefore it cannot be admitted what R. P. Prummer affirms, *Manuale, iuris eccl.*, Q. 419, that because of the silence of the Code books listed in the Index are no longer prohibited otherwise than insofar as they fall under one of the just-mentioned classes of prohibited books. Moreover the new Index was published in the year 1922.
4. From the preface of the Index of Leo XIII we know: a) when some book is prohibited, all its editions and translations are prohibited, saving a formal exception; b) later volumes of a work whose first volume is proscribed are to be held as suspect unless there is proof of the author's repentance; c) the clause *All works* does not strictly condemn the individual works of an author, but only works which treat of religion; but it renders individual works suspect, unless it is clear that the same are condemned by no general rule recited above in n. 900. I.e., directly it is prohibited that all be read, not, however, individual ones.

— Persons exempt from the law.

1. "S. R. E. Cardinals, bishops, even titular, and other Ordinaries, with necessary precautions employed, are not bound by the ecclesiastical prohibition of books" (c. 1401).
2. Those who in any way give work to theological or biblical studies can, as before, use any texts and versions whatsoever of Sacred Scripture, provided Catholic dogmas of faith are not attacked in the prolegomena or annotations and "the same books (sc. texts and versions of Sacred Scripture) have been faithfully and integrally published" (c. 1400).

When there is question of ancient non-Catholic versions, that fidelity seems able to be taken relatively, consisting in this, that the ancient version be published as it was, even if it contains not a few false things.

That faculty seems able to be extended to almost all priests if, observing the prescriptions and recommendations of the law, they continue by private study and readings to cultivate and increase those things which they learned in theological studies. For the faculty is conceded to those who give work "in any way" to studies of this sort.

N.B. The general license of reading classical books, even obscene ones, formerly conceded to those whom the nature of their teaching or office excuses, is now passed over in silence. This omission can be interpreted thus. Where there is no opportunity of seeking particular license (a general one, at least to this day, is conceded only most rarely), if the nature of the office or teaching makes reading of this sort quasi-necessary, the positive law ceases to oblige, either because it creates too great an inconvenience, or because its end then ceases contrariwise. But with the general license suppressed, all become more attentive to the grave cause required for someone to read books obscene by profession, and the liberty which perhaps some, deceived by reason of their office, could abuse is more restricted.

Moreover, by canon 1405 the rule always to be observed in this matter is opportunely recalled to memory: "No one is exempted in any way by a license obtained from anyone whatsoever from the prohibition of natural law of reading books which offer him a proximate spiritual danger."

— Author of the license of reading prohibited books.

Recourse is to be made to the Holy Office, to the Nuncio or Apostolic Delegate, or to the Ordinary.

The Nuncio or Apostolic Delegate can make license simply "with the cautions and under the limitations which will seem necessary or useful in individual cases, and which are in use with the S. C. of the Holy Office" (Faculties, n. 14).

By the name of Ordinary are also designated the Vicar general, the Vicar capitular, and major Superiors of an exempt clerical religion. The Ordinary, a special privilege being set aside, is able to concede the faculty "only for individual books and only in more urgent cases" (c. 1402).

> From the present style of the Holy Office, the supplicatory letter of a secular cleric or priest must be recommended by his own local Ordinary, that of a religious by his own Superior, while the recommendation of the confessor suffices for a layperson. Nor is it sufficient to indicate the end for which the license is sought, but the quality which explains the intention, for example of a student, a professor of such a University, is to be added.
>
> The license is like a personal privilege, which must be interpreted broadly and permits use everywhere. Wherefore, when it has been given concerning books, of itself it is valid concerning daily papers; yet an apostolic faculty of itself is not extended to books proscribed by the Ordinary. The motive of the concession, saving an express clause, does not limit use, so that if you read from curiosity, nevertheless you will have violated no positive law. Once license has been obtained, one is obliged by grave precept to guard prohibited books so that they do not come into the hands of others. Saving the rarest exception, the license excludes books obscene by profession.

— Penalties against violators of the law (c. 2318).

1. They incur excommunication *latae sententiae* reserved in a special manner to the Roman Pontiff who, "after the work has been made public property, are publishers of books of apostates, heretics, and schismatics which defend apostasy, heresy, schism, and likewise those defending the same books or other books prohibited by name through apostolic letters, or knowingly reading or retaining them without due license."

> The words printed by us in italics are new; and the word *knowingly* no longer falls upon "defending," which is a twofold extension of the prior penal law. Apostolic letters are letters immediately proceeding from the Supreme Pontiff. That a prohibition be judged made by name, it is necessary that it be designated at least by its proper title, individual or generic (for example, the catechism of the Carbonari). And from the interpretation of the earlier law, a prohibition made under the penalty of excommunication reserved to the Holy See can be required. The force of the general canon is this: that publishers, etc., of books which had been proscribed by name under simply reserved excommunication are punished by specially reserved excommunication.

2. They incur excommunication *latae sententiae* reserved to no one, not printers, but only "authors and publishers who, without due license, take care that books of the Sacred Scriptures or their annotations or commentaries be printed."

N.B. From c. 1384, only those things which are prescribed concerning books under title XXIII, part 4, book 3 of the Canonical Code are applied to other publications. Therefore penalties are not applied, especially since this is odious matter. Wherefore this excommunication does not affect writers of a work of smaller size than 10 pages in folio, which is called a booklet, nor of a periodical fascicle, at least a separate one.

— Obligation of conscience. 1. By the very law of nature, the use of a book which creates a grave danger of sin not excused by a proportionate cause is prohibited. And according to the proximity and gravity of the danger, the sin will be light or grave.

2. But it is sufficiently clear that positive laws oblige under sin, though lightness of matter is not excluded.

3. The publication of a prohibited book is regularly grave. For it is notable to spend effort so that a book be spread abroad which the legitimate Superior wills to be suppressed. Yet harmlessness and the minimal moment of the work seem able to be excused from grave sin.

4. Defense of a prohibited book, whether physical or moral through commendation, is grave of itself where there is question of a book whose reading is prohibited under grave obligation.

5. As regards reading, this is the general principle of estimation. Matter which of itself, or for most, would be grave according to the natural law on account of proximate danger is to be reputed simply, or for all, grave in violating positive law, even if per accidens, in a particular case, there would be greater or lesser danger.

This, departing from excessively severe opinions, we think we can further illustrate by certain applications:

a) any book which is prohibited is presumed to be prohibited under grave obligation. Yet if the reason for the prohibition shows the book to be gravely dangerous to no one, suppose a book innocent in itself, narrating miracles but lacking approval, we judge the sin of one reading such a book venial. Yet we would not wish to transfer this to the publication of sacred books, concerning which the Church demonstrates greater solicitude.

b) nor is the reading of a book prohibited under grave obligation grave unless a notable part is read, whether by extension or by the things contained.

If they are works which bring a special danger to faith or morals, because they are packed with insidious arguments or lascivious descriptions, we already judge it grave to read a few (5-6) pages of an unknown nature.

And any passage, even much shorter, will already be notable if it is gravely dangerous in itself, whether because of its obscenity or because of the sophistic reasons which it contains.

Other works become gravely dangerous only from prolonged commerce. Thus many books which are prohibited because of their tendencies. If you read less than a twelfth or tenth part of such a book, or,

if the work is very large, you do not complete 10 pages in folio, we think grave matter is not attained.

If it is clear that from a large part of a book the intrinsic reason of grave danger is absent and that the force of enticing the mind to read the rest is not notable, such a part seems to us able to be read without grave guilt. By separating physically or morally the part of the book which alone is the cause of the prohibition, the rest no longer seems to be touched by the prohibition.

As regards daily papers: a) it is grave habitually and morally to read bad daily papers as a whole, even if you omit the place especially repugnant to religion or morals; b) sometimes it will be grave to read one article peculiarly repugnant to religion and especially to morals; c) or to read with grave scandal of others, with attention to the quality and authority of the reader. But by reason of matter, it will be venial from time to time to read in them those things which do not attack religion except incidentally, or while omitting places especially dangerous, or without foreseen danger to run through one or another "number"; to read more often, indeed habitually, those things which it is clear are plainly harmless, for example business news: scandal always being excluded. Indeed, for a just cause, in singular cases all fault can be absent.

But although not so many newspapers have been proscribed either by particular decree or habitually fall under a general decree, he who seeks almost daily food from a newspaper less well affected toward the Church, little by little, as experience bears witness, suffers not a little detriment in his religion and faith: which we cannot prepare for ourselves without grave guilt.

The confessor will prudently try to obtain what he can in this matter, especially by attending to the danger of ruin.

6. Retention is prohibited under grave obligation if it is connected with danger of reading. It does not seem able to be prolonged beyond a month without grave guilt, unless on account of a plainly different use to which it is deputed, for example a sheet, every danger of reading being absent.

N.B. The celebrated protestations of Urban VIII in reporting miracles, etc., no longer seem prescribed by positive law. To librarians there is conceded the faculty of lending prohibited books.

On this grave matter cf. our *On the Prohibition and Censorship of Books*, 4th ed., Rome, 1906.

Summary

— 1. The Holy See and a general Council prohibit books for the universal Church;

2. Particular Councils and local Ordinaries, for their own subjects;

3. The Abbot of a monastery of its own right and the Supreme Moderator of an exempt clerical religion, with his chapter or council, for their own subjects; indeed, if there is danger in delay, the major Superior with his council. Appeal to the Holy See is conceded only in devolutive effect.

There are books prohibited by the law itself or by general rules, which c. 1399 enumerates. Others are prohibited by particular decrees. Once denunciation has been received, or from its own inquiry, the Holy Office or the local Ordinary, whose zeal is excited, prohibits books.

Prohibition forbids of itself publication, reading, retention, translation, sale, private or public, to one not having the faculty, or communication with others. The clause *all works* strictly prohibits only works treating of religion; but it renders the rest suspect until it is clear that they are forbidden by no general decree.

Exempt persons. Cardinals of the Holy Roman Church; bishops, even titular, and other Ordinaries are not bound by ecclesiastical prohibition. To those who in any way give work to theological or biblical studies are permitted any texts and versions whatsoever of Sacred Scripture, faithfully and integrally published, provided that in the prolegomena or annotations Catholic dogmas of Faith are not attacked.

Licenses in this matter are conceded by the Holy Office. Ordinaries, saving a broader indult or privilege, can concede the faculty "only for individual books and in only more urgent cases."

Apostolic Legates are furnished with a greater faculty.

4. Canonical penalties punish with excommunication *latae sententiae* specially reserved to the Holy See, after the work has been made public property, publishers of books of apostates, heretics, and schismatics which defend apostasy, heresy, or schism, and likewise those defending the same books or other books prohibited by name through apostolic letters, or knowingly reading or retaining them without due license.

They incur excommunication *latae sententiae* reserved to no one who are authors and publishers who, without due license, take care that books of Sacred Scripture or its annotations or commentaries be printed.

In these penalties, books are understood to be works which are not of smaller size than ten pages in folio, nor are separate periodical fascicles comprehended.

5. Obligation of conscience. By natural law the gravity of guilt is to be estimated from the proximity and gravity of the danger. By positive law: a) publication is regularly prohibited under grave obligation; b) defense, whether physical or moral, by commendation of a book whose reading is prohibited under grave obligation, will also be grave; c) reading will be grave if matter is read which of itself, or for most, generates grave danger by reason of extension or the things contained, which are especially dangerous. Retention which is connected with danger of reading is prohibited under grave obligation; and when protracted beyond a month it is of itself thought grave. If the reason why a book is prohibited is extrinsic to danger, neither reading nor retention seems always to be prohibited under grave obligation.

Treatise II: On Censures

Usefulness. - Concerning this especially canonical treatise, these things must chiefly be known in sacred ministries: a) how far penalties and censures can stand in the way of receiving or administering the sacraments; b) what things excuse from contracting them; c) how far they can be absolved or dispensed; d) what certain few censures, more easily known to those who by committing a delict are liable to these penalties, suppose.

Since most censures have each been declared in their own place in our work, it will be permitted to contract the discussion to a few things.

Article I: General Things Concerning Penalties and Censures

— I. Notions. 1. A censure is a penalty by which the correction of the delinquent is primarily intended. Wherefore it is called medicinal, and is distinguished from a vindicative penalty, which immediately follows upon the punishment of the delict.

But it is defined by the Code: "A penalty by which a baptized man, delinquent and contumacious, is deprived of certain spiritual goods or goods annexed to spiritual things, until, withdrawing from contumacy, he is absolved" (c. 2211, §1).

It always supposes a grave, external delict, consummated in its juridic character, joined with some present contumacy. Wherefore, for a past delict, to which no obligation, at least of repairing consequences, is joined, a censure cannot be imposed; but there lies place only for a vindicative penalty. Thus a thief can be punished by censure not because of the theft, but that he may restore what was taken.

But there are three censures: excommunication, suspension, interdict; but suspension and interdict can also be vindicative penalties.

2. Penalties which are established in the law itself are called from the law, or *latae sententiae*; while those are from man which have been imposed by way of precept or by a condemnatory sentence. "A penalty of *ferendae sententiae* added to a law, before a condemnatory sentence, is from the law only; afterwards it is from the law and at the same time from man, but it is considered as from man" (c. 2217). If a merely declaratory sentence is pronounced, the censure remains from the law, and is considered to have been contracted from the moment of the delict.
3. "A penalty is always understood to be of *ferendae sententiae*, unless it is expressly said to be of *latae sententiae*, or to be contracted by the very fact or by the law itself, or unless other similar words are used" (c. 2217, §2).

Nevertheless, not once only must censures concerning which those words are lacking be ascribed to penalties of *latae sententiae*. This happens whenever a censure is declared reserved

to the Ordinary or to the Holy See. For a censure of *ferendae sententiae* is necessarily reserved to him who brought the sentence.

— II. Author and subject of censure. 1. All who possess the power of making laws or imposing precepts by force of jurisdiction can annex censures to their law or precept.

Yet an Ordinary cannot bring another censure reserved to himself against a delict to which a censure reserved to the Holy See is annexed (c. 2247, §1).

2. a) They who hold the supreme principate of peoples, and their sons and daughters or those to whom there is the proximate right of succeeding in the principate; Cardinals of the Holy Roman Church; Legates of the Holy See, are subject only to penalties inflicted or declared by the Roman Pontiff. Nor are Cardinals comprehended by any penal law nor Bishops by suspension or interdict unless they are expressly named (c. 2277).

b) The impubes are exempt from penalties *latae sententiae*; but the puberes who have induced them to violate the law or have concurred with them in the delict, by physical or moral causality either necessary or principal, themselves indeed incur the penalty established by law (c. 2230). Here impubes can be understood as all who, even girls, have not completed 14 years.

c) Cooperators of the kind described under b) are held by penalties unless the law has expressly provided otherwise, while the other cooperators, by secondary and non-necessary action, escape penalties unless they are expressly named.

d) Affected ignorance, whether of the law or of the penalty alone, excuses from no penalties of *latae sententiae*; if the law has used words: has presumed, knowingly, studiously, etc., any diminution of imputability whatsoever, whether on the part of the intellect or on the part of the will, exempts from penalties of *latae sententiae*. If these words are lacking in the law, ignorance which was neither crass nor supine excuses from medicinal penalties, but not from vindicative penalties *latae sententiae* (c. 2229).

e) Grave fear of itself excuses, unless the delict tends to contempt of faith, or of ecclesiastical authority, or to the public harm of souls (c. 2229, §3, 3°).

f) An ecclesiastical penalty always supposes grave sin (cf. I, 63 and c. 2218, §2).

— III. Obligation of censure. A censure *latae sententiae* indeed holds the delinquent, conscious of the delict, by the fact itself in both forums; before a sentence, however, he is excused from observing the penalty as often as it cannot be observed without infamy (c. 2232, §1).

— IV. Absolution of censure. 1. A censure once contracted is not removed except by legitimate absolution; yet this cannot be denied as soon as the delinquent has withdrawn from contumacy. But once removed by absolution, it does not revive unless the burden imposed under penalty of reincidence has not been fulfilled (c. 2248).

2. But some censures are not reserved (for absolution), others are reserved.

Concerning the various reservations and absolution, cf. what was said, nn. 473-476.

Only observe that absolution from censure in the sacramental forum is already contained in the customary form of absolution from sins; in the non-sacramental forum it can be given in any manner whatsoever, yet, for excommunication, a form is handed down in the ritual books which it is fitting to observe (c. 2250, §3).

Moreover c. 2252 does not strictly impose in danger of death the admonition concerning recourse to be made, which c. 2255 enjoins to be made by the confessor who in more urgent cases absolves from reserved censures.

— Unless perhaps scandal given or the special gravity of transgression requires otherwise, the violator of a law which has no sanction placed upon it (you may say the same of the violation of a precept) cannot be punished unless first an admonition has been made with threat of penalty.

A vindicative penalty is now recognized by this sign: that it is brought for a definite time or in perpetuity. Brought without a term, or indefinitely, it is equated with a perpetual one. When the day to which it was brought arrives, the vindicative penalty ceases by the fact itself; while a censure is not removed except by received absolution.

— I. On Excommunication. 1. Excommunication is a censure by which someone is excluded from the communion of the faithful with the inseparable effects enumerated in the Code. An excommunication solemnly imposed is called by the special name anathema.

2. Excommunicates: a) some are to be avoided, others not. No one is to be avoided unless he has been excommunicated by name by the Apostolic See, has been publicly denounced, and in the decree or sentence it is expressly said that he must be avoided, or unless he has notoriously laid violent hands upon the person of the Supreme Pontiff; b) some are before such a sentence [printed/OCR: "have avoided the sentence"], others have been marked by a condemnatory or declaratory sentence of censure.

3. Effects of excommunication. It deprives: a) of the right of assisting at divine offices, preaching excepted; b) of the reception of the sacraments (which nevertheless are validly received), and, after a declaratory or condemnatory sentence, also of sacramentals; c) of licit confection and administration of the sacraments, saving the temperaments indicated at n. 211; d) of indulgences, suffrages, and the public prayers of the Church. Yet priests can privately and with scandal removed apply Mass for an excommunicate; but, if he is one to be avoided, only for his conversion. Moreover, an excommunicate is removed from legitimate ecclesiastical acts (e.g., the office of sponsor); he is prohibited from performing ecclesiastical offices, from placing acts of jurisdiction; from electing, presenting, nominating; he cannot obtain ecclesiastical offices. For the validity of acts, an excommunicate who is to be avoided, or who by sentence has been condemned or declared excommunicated, must be distinguished from another excommunicate (cf. cc. 2259-2266).

Communication in profane matters is not imposed as to be avoided except with an excommunicate to be avoided, and the excuse of kinship, service, and reasonable cause is admitted, so that this prohibition is not judged grave (c. 2257).

— II. 1. "Interdict is a censure by which the faithful, remaining in the communion of the Church, are prohibited from the sacred things" enumerated in the Code.

It is distinguished into personal, by which certain persons are directly prohibited from those goods, and local, by which in certain places the dispensation or reception of the same is forbidden. It is subdivided into general, of some territory or people, and particular (cf. cc. 2268-2276).

Interdict from entrance into a church contains the prohibition "that someone celebrate divine offices in church or assist at them or have ecclesiastical burial; but if he assists, it is not necessary that he be expelled, nor, if he is buried, is it necessary that the corpse be removed" (c. 2277).

— III. 1. "Suspension is a censure by which a cleric is prohibited by office or benefice or both" (c. 2278). Therefore it directly deprives at least of the licit use of ecclesiastical power. And it can be total or partial. Suspension brought without addition is understood as total, and it carries with itself all the effects indicated by the canons. Partial is suspension from office, which forbids every act of the power of order and jurisdiction, indeed of mere administration competent from office, except the administration of the goods of one's own benefice (c. 2279, §1); and suspension from benefice. And there are more partial ones. Thus suspension from jurisdiction forbids every act of the power of jurisdiction for both forums, both ordinary and delegated; suspension from divine things forbids every act of power which someone obtains either through sacred ordination or through privilege; from orders, every act of the power of order received through ordination; from sacred orders, every act of the power of order received through ordination in sacred orders; from exercising a certain and definite order, suspension prohibits every act of the designated order, and besides the conferral of the same order and the reception of a higher order and the exercise of this, if it has been received after the suspension (c. 2279, §2, 3°-5°).

2. Suspension from informed conscience is an extraordinary remedy, whose use is not licit if the Ordinary can proceed by the ordinary juridic way without grave inconvenience. But it consists in this, that the Ordinary expressly, by simple decree, declares that he, from causes known to himself, imposes suspension. The Ordinary must be certain concerning the delict and its gravity; he can never act thus on account of a notorious delict (cf. cc. 2186-2191).

Article II: The Censures *Latae Sententiae* in Force by Common Law

In the Code there first occurs a very logically ordered distribution of penalties according to the varied nature and reason of delicts. For our use, we shall enumerate censures in order according to their severity. Those which pertain to moral theology have almost all been explained in their own places.

I. Excommunications

— I. Excommunications most specially reserved have been brought:

1. against him who has thrown away the consecrated species or has carried them off or retained them for an evil end (c. 2320).

Therefore there are punished the thief who throws away the species in order to steal the pyx, and the impious man who carries off or retains the consecrated species for sacrilegious abuses;

2. against him who has laid violent hands upon the person of the Roman Pontiff (c. 2343);

3. against one guilty of the absolution of an accomplice (c. 2367). Cf. what has been said at n. 502;
4. against a confessor who has presumed directly to violate the sacramental seal (c. 2368. Cf. what has been said at n. 524);
5. against those violating the secret of the Holy Office concerning the information required about candidates for the episcopate (cf. resp. S. C. Cons., 24 Apr. 1917, *A.A.S.* IX, 232);
6. against those who, having a part in the conclave, shall have directly or indirectly violated the secret in those things which regard the election of the Roman Pontiff and which are transacted in the conclave or in the place of election (*Vacante Sede*, Pius X, 25 Dec. 1904, nn. 51, 52).

You should observe that both of the latter are governed by a more severe law, since outside danger of death they cannot be absolved even by the Major Cardinal Penitentiary himself. But in practice the same Cardinal will be the smoother and safer way by which absolution can be obtained from the Supreme Pontiff.

— They incur an excommunication specially reserved to the Roman Pontiff:

1. apostates, heretics, schismatics (c. 2314);
2. those suspected of heresy, if, having been warned, after six months they do not amend themselves (c. 2315).

The following are suspected of heresy: those favoring the propagation of heresy or communicating in divine things with heretics (c. 2361); those who enter into a pact concerning the non-Catholic education of offspring or who procure its baptism or education outside the Catholic Church (c. 2319); those who sacrilegiously treat the consecrated species according to the norm of c. 2320; those appealing from the decrees of the Roman Pontiff to a Universal Council (c. 2332); those who, with hardened mind, for a year have remained sordid in excommunication (c. 2340); those who are ordained simoniacally, ordain, or administer other sacraments (c. 2371);

3. those publishing books of apostates, heretics, or schismatics which defend apostasy, heresy, or schism; those defending or knowingly reading the same books or books prohibited by name through apostolic letters (c. 2318; cf. n. 901 [apparent intended cross-reference: n. 904]);
4. one not promoted to the priesthood who simulates the celebration of Mass or hears a confession (c. 2322);
5. those appealing to a universal Council (c. 2332);
6. those impeding the letters or acts of the Holy See or of its legates (c. 2333);
7. those issuing laws, mandates, or decrees against the liberty or rights of the Church; those recurring to any lay power whatsoever to impede the exercise of ecclesiastical jurisdiction (c. 2334).

"Those issuing," by force of the word, are only those promulgating, and Cerato, *De censuris*, n. 96, comprehends only them. Yet the more common opinion, relying on the interpretation of the old law, also embraces those who establish the same things either by individual will or by common and efficacious suffrage. Cf. *Epitome Iuris*, III, 684.

In the other part of the censure, recourse is understood as efficacious, and as made to some lay power;

8. those dragging before a lay judge a Cardinal, a Legate of the Holy See, a higher official of the Roman Curia, or their own Ordinary (c. 2341. Cf. n. 12 on the privilege of forum);
9. those laying violent hands upon a Cardinal, a Legate of the Holy See, a patriarch, archbishop, or bishop (c. 2343; cf. n. 10);
10. those usurping or detaining, by themselves or through others, the goods or rights of the Roman Church (c. 2345);
11. forgers of letters of the Holy See and those using forged ones (c. 2360);
12. one falsely denouncing a confessor for solicitation before Superiors (c. 2363; cf. n. 569).

— III. They incur an excommunication simply reserved to the Roman Pontiff:

1. those making gain from indulgences (c. 2327).

They make gain from indulgences who strive to obtain monies either for the obtaining, or for the concession, or for the publication of indulgences, even in favor of a pious cause. From the moment the money has been accepted, the excommunication is contracted. All, and no longer only those inferior to bishops, as in the Constitution *Apostolicae Sedis*, are punished by this penalty.

— 2. Those giving their name to a Masonic sect (c. 2355).

Sects here are distinguished by two notes: 1. by secrecy, by which, whether members or leaders, they are bound as to the constitution, ends, and means of the sect; 2. by machination, secret or open, against the Church or legitimate civil powers.

Religious or clerics giving their name to a sect of this kind must be denounced to the Sacred Congregation of the Holy Office.

You ask what things must be required for absolving him who has given his name to a Masonic sect?

1. If the faculty has been sought from the Sacred Penitentiary, its prescriptions must be observed, and recourse must be made to it if any difficulty seems to obstruct the execution.

But the Holy See is accustomed to require, besides separation from the sect and repair of scandal, abjuration of the sect [printed/OCR: "stopping up of the sect"] (excepting children and the dying), the handing over of books, manuscripts, and signs pertaining to the sect into the hands of confessors, so that they may be transmitted as soon as possible to the Ordinary, or at least, if just and grave causes demand it, burned; and the injunction of a grave penance with frequency of the sacraments.

2. Therefore we shall prudently try to obtain these things, even when recourse to the Holy See was not necessary. If too great a difficulty has obstructed this, at least those things must be required which the natural law demands: the suppression of cooperation, the repair of scandal, the revelation of a harmful secret. But let us explain the obligations in such a way that we seem to require nothing which is opposed to "honor."

Nor are those immediately to be dismissed unabsolved who, in order to avoid penalties, do not break off all communication with the sect, if the communication is neither scandalous, nor useful to the sect, nor spiritually dangerous to themselves (cf. d'Annibale, I, 391, note 4).

Those will be able to be absolved more easily who no longer attend meetings, but, for grave reasons, abstain from formal repudiation.

A dying man, near to death and who seems to be constituted in good faith, will be able to be absolved if in general he subjects himself to the authority and mandates of the Holy See. But the scandal is to be repaired in the best way in which it can be, even after death;

— 3. those absolving without faculty from an excommunication most specially or specially reserved to the Holy See (c. 2338);

4. those communicating in a delict or in divine things with an excommunicate to be avoided (c. 2338);
5. those dragging before a lay judge a Bishop, a Prelate *nullius*, or a supreme religious Superior (c. 2341);
6. those violating the cloister of nuns, and nuns illegitimately going out from the cloister (c. 2342; cf. n. 145);
7. those violating the cloister of Regulars (c. 2342; cf. n. 145);
8. those usurping ecclesiastical goods (c. 2346);
9. duelists and their accomplices (c. 2351; cf. tome II);
10. clerics in sacred orders and those bound by a solemn vow of chastity, attempting matrimony, and their partners (c. 2388; cf. n. 128);
11. simoniacs in offices, benefices, and dignities (c. 2392; cf. tome II);
12. those removing or changing a document from the episcopal Curia (c. 2405).

— IV. They incur an excommunication reserved to the Ordinary:

1. those entering into matrimony before a non-Catholic minister (c. 2319);
2. those contracting matrimony with a pact that offspring be educated outside the Church (c. 2319);
3. those knowingly offering children to be baptized by a non-Catholic minister (c. 2319);
4. those knowingly handing over children to be educated in a non-Catholic religion (c. 2319);
5. those making, distributing, or exposing false relics (c. 2326);

6. those laying violent hands upon simple clerics or religious (c. 2343; cf. n. 12);

7. those procuring abortion, the effect following (c. 2350; cf. tome II);

8. a religious apostate from religion (c. 2385; cf. n. 155);

9. professed of perpetual simple vows contracting matrimony, and their partners (c. 2388; cf. n. 137).

— V. They incur an excommunication reserved to no one:

1. those publishing without license books on Sacred Scripture (c. 2318; cf. n. 900):

— 2. those daring to order or compel that unbelievers, apostates, non-Catholics, censured persons excluded by c. 1240 be given ecclesiastical burial (c. 2339).

Unless before death they have given some signs of repentance, the following are deprived of ecclesiastical burial: 1. "notorious apostates from the Christian faith, or those notoriously attached to a heretical or schismatic sect, or to a Masonic sect or other societies of the same kind; 2° excommunicates or interdicted persons after a condemnatory or declaratory sentence; 3° those who killed themselves by deliberate counsel; 4° those who died in a duel or from a wound received from it; 5° those who have ordered their body to be given to cremation; 6° other public and manifest sinners" (c. 1240, §1).

To remove scandal in certain cases, as c. 1240, §2 insinuates, every funeral pomp will sometimes have to be denied; in doubt about this matter, the Ordinary will have to be consulted.

Ecclesiastical burial embraces three things: the transfer of the corpse to the church; the obsequies celebrated over it; its deposition in a place legitimately deputed for burying the faithful. Wherefore several authors, Cerato, n. 64; Eichmann, *Strafrecht der Kirche*, §41; Cappello, *De Censuris*, n. 173, think that the censure is not contracted by those who merely order inhumation, but not the sacred rite; nevertheless most judge that these are affected by the censure, e.g., Creusen, III, 538: that severity is required by the interpretation of the old law, by the end of the law, and by the manner in which the rights of the Church are violated today. Yet we would not wish to call the more benign opinion improbable, especially if we consider the number of those who are ordered to be deprived of burial.

Although even private persons can compel, nevertheless those ordering or compelling can be understood only of public powers. But those who are compelled by law are immune from censure, since a daring act is required.

Finally, on 30 March 1859, the Holy Office declared that it can be tolerated that non-Catholic blood-relatives be brought into the family tomb of Catholic families, to avoid greater evils.

Concerning cremation, let these things be noted. A twofold cremation must be distinguished: one which is sometimes commanded for reasons of public health or of promoting anatomical science; this the Church tacitly tolerates; another which attacks the very inhumation of bodies in a general way. This the decrees of the Holy Office severely forbid, as one which is opposed to the reverence of the Christian body, which is alien from the usages of the Church, and which is propagated with a mind hostile to religion. As is clear, those alone who by their own will have chosen cremation for themselves are to be deprived of ecclesiastical burial. Besides, giving one's name to sects which

promote cremation is forbidden; and never (therefore not even if an inheritance can be entered upon for this reason alone) is it licit to cooperate formally with cremation by command or counsel (S. Off., 27 July 1892). Material cooperation, with due cautions, for a proportionate cause, will sometimes be able to be tolerated: for example, that of workers who are hired in cemeteries. He also will sometimes be able to be excused who accompanies the corpse of a blood-relative or connected person as far as the place of combustion, scandal having been removed (Genicot-Salsmans, II, n. 628);

— 3. those omitting the apostolic beneplacitum for alienating ecclesiastical goods (c. 2347). Ecclesiastical goods are goods which belong to an ecclesiastical moral person.

Alienation designates every act by which ownership is either transferred or, a right in the thing having been conceded, diminished, e.g., sale, exchange, the constitution of a passive mortgage or servitude, the renunciation of an active servitude; and also a lease beyond nine years.

Besides the other conditions of every ecclesiastical alienation, the apostolic beneplacitum must be sought when there is question of precious things, or of things which, according to the estimation of experts, exceed the value of 30,000 lire or francs; or when the value of the lease (for individual terms) exceeds 30,000 lire or francs (cc. 1532, 1541).

But things are precious to which there belongs a notable value because of art or history or material (c. 1497, §2). But a notable value can be estimated at about 1000 lire or francs.

Those lire seem able to be taken as gold money, lest the value itself be too uncertain.

N.B. Nor can notable relics or relics of great devotion be alienated or transferred without the permission of the Holy See (c. 1281, §1);

4. those compelling someone to embrace the clerical or religious state (c. 2352);
5. one knowingly omitting to denounce a confessor by whom he has been solicited (c. 2368; cf. n. 611).

Although this censure is reserved to no one, nevertheless he cannot be absolved from it unless he has satisfied the obligation or has seriously promised that he will fulfill it.

II. - Suspensions

— I. They incur a suspension reserved to the Holy See:

1. from divine things: those presuming to receive orders from an apostate, heretic, schismatic, or censured person (c. 2372; cf. n. 737);
2. a general one: a bishop consecrating a bishop without the mandate of the Holy See, and his assistants (c. 2370; cf. n. 683); those knowingly, through simony, ordaining or being ordained, administering or receiving sacraments (c. 2371; cf. n. 673).

II. They incur a suspension reserved to the Ordinary:

from office: those dragging before a lay judge a simple cleric or religious (c. 2341; cf. n. 12).

III. They incur a general suspension reserved to the major Superior: fugitive religious (c. 2386; cf. n. 144).

IV. They incur a suspension reserved to no one:

1. from hearing confessions: one absolving from reserved cases without faculty (c. 2366);
2. from divine things: one presuming to hear confessions without jurisdiction (c. 2366); one presuming to resign an office, benefice, or dignity into the hands of laymen (c. 2400); a capitular Vicar unduly granting dimissorial letters for ordination (c. 2409; cf. c. 958);
3. from the order received: one ordained without dimissorial letters, before the age, or by leap (c. 2374; cf. n. 737);
4. from jurisdiction: a Prelate *nullius* not seeking the blessing within the due time (c. 2402, §2; cf. 322, §2).

III. - Interdicts

— I. They incur an interdict specially reserved to the Holy See:

moral persons appealing to a universal Council (c. 2332).

II. They incur a personal interdict reserved to no one:

those who have given cause to a local interdict or to an interdict upon a community (c. 2338, §4).

III. They incur an interdict from entrance into a church reserved to the Ordinary:

those spontaneously giving ecclesiastical burial to those whom the law prohibits (c. 2339).

Summary

— I. On penalties in general. 1. Penalties are established in law as *latae sententiae*, which are incurred at the very moment of the delict, without a sentence, and as *ferendae sententiae*, which require condemnation. Penalties are of *ferendae sententiae* unless they are expressly or equivalently said to be contracted by the fact itself or by the law itself.

2. Before a sentence, at least a declaratory one, he who cannot observe it without infamy is excused from observing the penalty.
3. If the amendment of the delinquent is principally intended, the penalty is medicinal; otherwise it is vindicative. A medicinal penalty is a censure, which always supposes a grave delict, external, consummated according to the description of the law, and joined with contumacy, i.e., with some evil will from which there must be withdrawal. If there is withdrawal from this, the penalty does not cease by the fact itself, but the guilty party has the right of obtaining absolution.

A penalty established by law is also incurred by one who has concurred in the delict by physical or moral, necessary or principal causality.

The impubes escape penalties *latae sententiae*, and so do Cardinals, unless they are expressly named.

Affected ignorance excuses from no penalties *latae sententiae*; nor does crass or supine ignorance, unless the law has used the words: has presumed, knowingly, studiously. Simple ignorance excuses

from medicinal penalties, but not from vindicative penalties which are established without the words "has presumed" or similar words.

Grave fear of itself excuses, unless the delict tends to contempt of faith or of ecclesiastical authority, or to the public harm of souls.

II. On censures. 1. They can annex censures to a law or precept who can make laws or command by force of jurisdiction.

Concerning the reservation of censures and absolution, cf. what has been said in the treatise on Penance. There are three censures: excommunication, suspension, interdict.

II. Excommunication directly excludes from the communion of the faithful; and consequently: a) it deprives one of the right of assisting at divine offices, preaching excepted, of the licit reception of the sacraments, and, after sentence, also of sacramentals, of the licit confection and administration of the sacraments, saving the temperaments indicated where the sacraments were treated; of indulgences, suffrages, public prayers; b) it prohibits the attainment and execution of offices, acts of jurisdiction, election, presentation, nomination: for validity, an excommunicate to be avoided and one declared excommunicated must be distinguished from another excommunicate.

An excommunicate is not to be avoided unless, in the decree or sentence, the Apostolic See has expressly said that he must be avoided, or unless he has been a notorious striker of the Supreme Pontiff.

III. Suspension prohibits by office or benefice, or by both; it is total, or partial in various ways.

Suspension from informed conscience is had when the Ordinary, to avoid grave inconveniences, declares by simple decree that he imposes suspension from causes known to himself. The Ordinary must be certain concerning the grave delict, which is not notorious.

IV. Interdict directly prohibits from sacred things. It is distinguished into personal and local, which can be general or particular.

Interdict from entrance into a church prohibits participation in divine offices in church, and ecclesiastical burial.

V. On certain absolutions or censures. 1. He who absolves an adherent of a Masonic sect by force of a faculty given by the Sacred Penitentiary must observe its prescriptions, and must recur to it if a difficulty arises. He who absolves without recourse, for example by force of a privilege, must always prudently require what the natural law requires: suppression of cooperation, repair of scandal, revelation of a harmful secret. And unless too great a difficulty obstructs, he will prudently ask the other things which the Holy See is accustomed to require.

2. On the apostolic beneplacitum in alienation. Alienation designates every act by which ownership is either transferred or, a right in the thing having been conceded, diminished, and also a lease beyond nine years. The apostolic beneplacitum must be sought when there is question of precious things, or of things which, according to the estimation of experts, exceed the value of 30,000 lire or francs, or when the value of a lease made beyond nine years, for individual terms, exceeds the same sum.

But precious things are things in which there is a notable value of art or history or material. Notable value can be estimated at about 1000 lire or francs. And the lire seem able to be taken as gold money.

Nor without the permission of the Holy See can notable relics or relics of great devotion be alienated or transferred elsewhere.

3. On those compelling that ecclesiastical burial be given. Those ordering or compelling are understood as those who, endowed with public authority, command, or those who compel others by force or fear. If they themselves are compelled by law, they do not act with rash daring, which here is required for the censure. And since ecclesiastical burial embraces the obsequies and deposition in a sacred place, this censure seems to certain commentators not now to punish merely inhumation alone in a sacred place.

Cremation which is commanded by no different reason of public utility is so prohibited from being chosen by Christians in place of inhumation that formal cooperation is never excused.

Appendices

To n. 33. - Appendix I. Historical-Liturgical Appendix on the Canonical Hours

I. Historical Evolution of the Office

The Jews contemporary with Christ and the Apostles were accustomed twice, or even three times each day, to pour forth certain prayers and to sing certain psalms; indeed, for this purpose, at the time of the morning and evening sacrifice which was offered in the temple, they were accustomed to assemble in the synagogues. The first Christians seem to have deputed the same hours to prayer; whether they intended thus to continue the usage of the Jews is not clear. In the sole document of the end of the first century which we have, i.e., the *Teaching of the Apostles*, the Lord's Prayer recited three times each day is commended.

Then in the third century, Tertullian testifies to us the custom of praying each day at certain definite hours: first in the morning, as night began, and during the day at the third, sixth, and ninth hour. He calls only the two former lawful, as if commanded by law. But the prayer was made at home and privately (*De oratione*, c. 25).

Hitherto liturgical worship, certainly not in its whole structure and essential parts, but in its accidental parts, had been very uncertain and varied. But in the fourth century, having obtained a more stable form even in these things, it was divided into a few types, of which some were proper to the Eastern churches, others to the Western churches. Thus there were born the Alexandrian, Antiochene, Edessene, Neocaesarean, Armenian, and Constantinopolitan liturgies in the East; in the West, however, the Roman, Milanese, Gallican, and a little later the Mozarabic; to these certain of the principal doctors of the Church added authority.

By the work of St. Ambrose there was introduced into the Milanese church the antiphonal chant of psalms, sprung from Syria, by which the faithful people is divided into two choirs which sing alternate verses. The same Saint also introduced the custom of singing in church poetic hymns composed by himself, which afterwards from his name were called "Ambrosian." From this church both usages were diffused through the whole West.

In Gaul the faithful, assembled in church, "began and closed the day with morning and evening hymns." Whether at Rome, besides the customary vigils celebrated on the night of Easter and on the anniversaries of martyrs at their relics, definite times of praying were to be observed publicly is doubted. Eusebius of Caesarea certainly asserts the universal usage of morning and evening celebration in churches in his Commentary on the Psalms, which he wrote after the year 350 (*In Psalm.* 64, vv. 10, 11).

In the many monasteries multiplied at that time, some order of praying must at least by custom have been defined, which could not differ much from the order of the Egyptian and especially Syrian monks, and therefore, besides the morning and evening office and the three hours of the day, contained the nocturnal office or vigils. That office differed from the diurnal offices only in time; but since it was performed each night after necessary sleep had been taken, it differed from the ancient

vigils, which were sacred watches drawn out through the whole night but celebrated only at certain times.

In the three following centuries, the fifth, sixth, and seventh, what the order of praying and singing was in the many monasteries then founded elsewhere and at Rome we know well enough from rules and similar documents. The most celebrated is the course according to the rule of St. Benedict. All those orders have the nocturnal office; most also have lessons in the individual hours. But the ecclesiastical office of the Gallican, Celtic, and Mozarabic liturgy is rather often declared by various decrees of councils in its public parts, i.e., in Mass, Matins, and Vespers. But the whole order of that age is set forth by writers. Thus St. Isidore of Seville hands down the Mozarabic order (*De off. eccles.* 1, 3 ff.), and St. Gregory of Tours the Gallican order.

But concerning the Ambrosian course almost no documents exist. As regards the order of the Suburbicarian Churches, the daily office of vigils is named, which on ordinary nights consisted of three or four psalms and as many lessons and responsories, at least from the seventh century, while on Sunday it always had nine psalms, lessons, and responsories (*Liber diurnus*, ed. Sickel, p. 77).

But as regards the City itself, in the fifth, sixth, and especially the seventh centuries, monasteries had been attached by the Pontiffs to certain Roman basilicas, whose monks discharged the office of the hours in those churches; and this already from the beginning consisted both of the nocturnal, morning, and evening office, and of the threefold diurnal office. Soon there were added the hour of Prime and Compline, which nevertheless were sung by the monks in the dormitory itself. St. Benedict seems to have used this office, such as already existed in the sixth century and which was called Roman, in composing his own course; for this is not dissimilar to the Roman course of the eighth century; it differs from it especially in Vespers, which have only four psalms, in the third nocturn of Sunday, in which three canticles are sung in place of psalms, in the division of the Psalter, etc.

Already at the beginning of the eighth century, by the splendor of ceremonies, the perfection of rites, the harmonious composition of parts, and the sweetness and nobility of chant, the Roman course so excelled that it was introduced and diffused into very many monasteries of England, into very many churches of Gaul and Germany, and soon, by royal decrees, into the whole empire of the Franks. Thus Amalarius, bishop of Metz, used the Roman antiphonary and responsory corrected by Hadrian I in order to restore the usages of his own church, which had once been introduced there from Rome but had been deformed, to their native purity. Yet because he retained not a few things from the usages of his own church, the office which thence arose was called Roman "Gallicanized." Diffused through all Gaul, it was afterwards partly received into the Roman church itself. But the ancient liturgies, slowly and imperceptibly, yielded place almost everywhere to the Roman (*Liber de Ordine Antiphonasii*, P.L. 165, 1293).

The Roman course of this age consists of three kinds of offices: offices of Sundays and ferias through the year, offices of solemn feasts or of the season, and offices of Saints. Documents describe the almost entire structure of each. It is enough to indicate briefly those things in which they are especially like or unlike modern offices.

As regards the Sunday and ferial office through the year, the division of the Psalter among the various days of the week and the hours of each day was altogether the same as in the modern office, i.e.,

before the reform of Pius X. The whole Psalter was divided into two parts, of which the first (ps. 1-108) was distributed among the seven nocturnal offices, the other (109-150) among Vespers, with the numerical order always observed; except, however, for twenty-five psalms which, with the numerical order disregarded, were each placed in its own place according to the sense which it bore, either in Matins (Lauds), or in the Hours, or in Compline. At Rome the "Roman Psalter," i.e., the ancient version of the psalms corrected by St. Jerome in the year 383, was used; but in Gaul the "Gallican Psalter," or the second Hieronymian correction of the same version (a. 392), was used. The individual Hours had their beginning at once from the verse *Deus in adiutorium*. In each, except Prime and Compline, a lesson was made; in none, however, did hymns have a place. To terminate the Hours, except in Sunday and festive Matins and Vespers, and, as it seems, in Prime and Compline, in place of the verse *Dominus vobiscum* and the prayer (collect), *Kyrie eleison* and the Lord's Prayer were said. After this prayer there were recited "chapters of prayers" (*preces nostrae*), but not in Prime and Compline. Only Vespers and Lauds, and the second and third Sunday nocturn, had antiphons; but these were sung not only before and after the psalms, but besides after individual verses (up to the ninth century). Compline consisted only of four psalms with the canticle *Nunc dimittis* and a prayer. This Hour was preceded by a spiritual reading held in the refectory or another place, almost as we shall soon say of Prime. In the daily nocturns, after the sung verse *Domine labia mea aperies* and Psalm 94 with its invitatory, twelve psalms were sung (with the doxology *Gloria Patri* added after every fourth psalm), then, after a verse had been said and a blessing given to the lector, three lessons were recited, each of which was followed by the conclusion *Tu autem Domine. Deo gratias* and the chant of its own responsory. (The responsories seem first to have been born at Rome, and there long before the sixth century.) The lessons were taken both from Sacred Scripture and from the treatises and homilies of the holy Fathers. (Hence the homiliaries of Alanus, abbot of Farfa, and others.) In the Sunday nocturns twice three psalms were added, of which the first were sung with an antiphon, the others with alleluia. Each series of psalms was likewise followed by three lessons with their responsories; the former of these were taken from the treatises of the Fathers, the latter from the Pauline epistles; soon the Gospel of the Sunday with a homily was joined beneath. *Te Deum* (a symbol written in the fifth century) was customarily sung only on the birthdays of the Roman Pontiffs, after the last responsory. We have already spoken summarily above of the psalms sung at Matins. But at this Hour besides, the same canticles as today in Lauds of the second schema were to be sung, and were divided in the same order among the days of the week. In its other parts Matins was altogether similar to Vespers, except that the canticle *Benedictus* took the place of the canticle *Magnificat*. But to Prime, or even sometimes to Terce, the exercise of Chapter was joined: after the general confession and absolution of all (*Confiteor* and the rest), and after Psalm *Miserere* had been sung, some spiritual reading was made; then the president noted the things to be corrected and ordered the things to be done, and, after the threefold invocation *Deus in adiutorium* had been sung and the verses *Respice* (the last of Psalm 89) had been said, he gave the prayer: *Dirige Domine corda*. In the ninth century there were introduced among the exercises of chapter the reading of the martyrology, accusations concerning faults committed ("culpa"), and the final blessing.

The offices of Saints, first celebrated only in the places of burial or of title, and merely juxtaposed to the ferial offices of basilicas, were in the eighth century finally admitted among those offices by an indivisible bond. Those feasts were divided into greater and lesser: the lesser, besides the lessons of the nocturn, brought scarcely any change in the Sunday or ferial office; but the greater had proper

Vespers and Matins, and the whole nocturnal office. Indeed, in certain principal feasts, the first nocturnal office was celebrated immediately after Vespers, but on the following night another office was made from the Common of Saints or from the Sunday or feria.

Solemnities of the season had altogether proper offices, already very similar to those of today; on the night of Easter there were only three psalms, because on it the office of vigils had already to be celebrated, which lasted almost until dawn. Of the other solemnities, certain had a double nocturnal office, as we have said of certain feasts of Saints; in this usage there seems to us to appear a vestige of the ancient distinction between vigils properly so called and the nocturnal office. From that usage besides it is probable that the name of double feasts arose.

From the end of the eighth century to the beginning of the twelfth century, the office of the hours at Rome remained almost unchanged, especially since Gregory VII preserved it immune from imprudent changes and abbreviations. But after this age, at least outside the City, it underwent several changes. Antiphons were no longer repeated after individual verses; lessons were always more compressed; "Ambrosian" hymns (from the Benedictine office) were introduced into the individual Hours; the symbol *Quicumque* was added to Prime, and common commemorations of the Blessed Virgin Mary and of all Saints to Vespers and Lauds; indeed, besides the office of the day itself, not only the whole office of the Blessed Virgin Mary but also the office of the dead (Vespers, Nocturns, and Lauds) had to be sung almost daily. But even at Rome, in the twelfth century, the office of the basilicas, except the Lateran, underwent certain changes. Only the stational liturgy seems to have remained intact in them.

Therefore in the same twelfth century a peculiar office was formed in the pontifical Curia, very similar to the office described above. At the beginning of the thirteenth century this was conceded to the Friars Minor, accommodated by them to their own utility, and by their work diffused through the universal Church; it finally returned to Rome, and there, having again been assumed into the use of the Curia, a short time afterwards it was imposed by Pope Nicholas IV on all Roman churches.

The modern office, entangled with too many additions, enriched with too many feasts of Saints and dishonored by spurious lessons, indeed by manifest fables, was first reformed by St. Pius V; but other Pontiffs took care to perfect this reform, especially as regards the legends of Saints and the composition of hymns. Yet no reform up to this point had been sufficient.

Indeed soon, with the Pian reform in this part deserted, many feasts had been established or restored to the detriment of the other offices. Therefore in the eighteenth century Benedict XIV created a new commission; this, undertaking a reform of the whole work, submitted it to the Pontiff. He, not much approving the proposed plan of reform, himself set himself to the work, when he was overtaken by death.

And thus it has come down to the present process of reform initiated by Pius X a few years ago; among the others this is the most radical. What has already been done up to this point for restoring somewhat the offices of the season is sufficiently known; but as regards the division of the Psalter, the new law can be expressed summarily thus: not only must all the psalms be recited through the week, but each once. Among the further labors of reform will be both the correction of the text of the Psalter, which will follow the new edition of the Vulgate, and the more perfect cleansing of the legends of martyrs and Saints.

II. Parts and Books of the Office

The various parts of the office can be referred to four heads: prayers, chants, lessons, and brief formulas of salutation and other things of that kind.

The eight Hours, one nocturnal and seven diurnal, are better distinguished than seven Hours in all; for the latter cannot be done unless Matins and Lauds are joined into one Hour. For the former division responds better to tradition and to the true composition of the office, and it observes the law of the psalmist: *Septies in die, laudem dixi tibi et media nocte surgebam ad confitendum tibi* (Ps. 118).

For a rather long time the diverse parts of the office (psalms, antiphons and responsories, hymns, lessons) were presented in separate books. Then they were joined, according to the order of the composition of the office, in several tomes, of which the former (*libri matutinales*) handed down the nocturnal office, the last (*liber diurnalis*) the diurnal office.

Indeed, especially for the convenience of travelers, the whole office was enclosed in one book, which, with chant suppressed, besides the lessons noted only the beginnings of antiphons and of other chants, because clerics were thought to know all the rest by memory. The lessons themselves had been compressed to very few verses. These books had the name of breviaries. The more frequent use of these did not a little bring it about that even the choral office itself was abbreviated; indeed, today the office of the breviary and the office of the choir are one and the same.

I. M. H., S.I.†

To n. 214. - Appendix II. Historical-Liturgical Appendix on Baptism

I. Ceremonies

1. For the sake of greater clarity and of far more frequent use, we assume the baptism of infants, in whose present Roman rite we can distinguish three parts: the first at the doors of the church; the second, indeed in the church, but up to the laying aside of the violet stole; the third from the taking up of the white stole to the end of the ceremonies. In the baptism of adults, the entrance to the baptistery follows the second part.

Outside the church, these ceremonies take place.

1. The preliminary dialogue, in which, with the minister asking, the sponsor declares on behalf of the infant the intention of seeking the faith which would give eternal life, and is admonished by the minister concerning the added condition of observing the commandments.
2. Two series of actions with formulas: a) *Accipe signum. Preces nostras... Omnipotens... Exorcizo te... Deus patrum nostrorum.* The priest breathes three times upon the one to be baptized, adjuring the devil that he depart from him. He signs the forehead and breast with the sign of the cross, with hands also imposed. He exorcises salt, of which he places a very small quantity in the mouth of the infant;

b) the other series, sufficiently similar to the preceding. Exorcism, imposition of the cross on the forehead, of the hands on the head, with the formulas: *Exorcizo te... Ergo maledicte... Et hoc signum...*

aeternam. After the command has been made imperatively to the demon, the priest is permitted to introduce the infant into the church, covering the same with the end part of the stole.

Within the Church, while the priest keeps the violet stole. In the very introduction into the church, the recitation of the Creed and the *Pater*. Then the repeated exorcism: *Exorcizo te omnis spiritus immunde*, etc. With his finger moistened with his saliva, the priest touches the nostrils and ears: "*Ephpheta*." Satan, his works, and his pomps are rejected three times. With the oil of catechumens the infant is anointed on the breast and between the shoulders.

After the priest has taken the white stole. The candidate is ordered to profess the faith three times. Then, after an affirmative answer has been given to the question "Do you wish to be baptized?" the infant is baptized.

Brief ceremonies follow: anointing with chrism (*Deus Omnipotens*), imposition of the white linen on the head (*Accipe vestem*); the blessed candle handed to the sponsor (*Accipe lampadem*).

The neophyte is dismissed: *Vade in pace et Dominus sit tecum. Amen.*

This order of baptizing infants is nothing but the abbreviated order of the baptism of adults, accommodated to the condition of little children (cf. *Rituale*, t. 2, c. 4).

II. Historical

1. Ceremonies of the seventh century, the Gallo-Roman rite.

That rite, so manifold with repeated exorcisms, already of itself suggests the suspicion of a thing which from many successive parts has been made one and simultaneous. And in truth, it is composed of several ceremonies which, in the seventh century, were celebrated on several distinct days within Lent, from the beginning of the third week up to the Paschal night. This is testified to us especially by the Gelasian Sacramentary of the more ancient recension (ed. Wilson, Oxford, 1894, p. 46 ff.) and by the ancient Order which is counted in the seventh place among the "Roman Orders" (these Orders were made public by Mabillon in *Museum Italicum* II, Paris, 1724).

Concerning this Gallo-Roman Order of the seventh century it is enough for us to have observed these things. Then there were preserved the rites by which in former times postulants were first admitted among the catechumens, and then were enrolled among the "competentes," i.e., candidates proximate to baptism. Wherefore seven scrutinies were made (or rather, at that epoch were considered to be made), i.e., examinations of the candidates with exorcisms; these were performed not by a priest but by an acolyte (exorcist?). But on the day of the third scrutiny, the symbol of faith, the Lord's Prayer, and the beginnings of the four Gospels were handed down to the catechumen. These scrutinies are still represented in the present order of baptizing adults by three signations, or impressions of the sign of the cross upon the one to be baptized. While today, by the interrogation "Do you wish to be baptized?" baptism, both of infants and of adults, is separated from the threefold profession of faith, then the threefold immersion was performed in such a way that the immersions occurred immediately after the professions of faith.

Those going out from the pool were dried by sponsors or godmothers with the linen which today is figured by the small white linen which is imposed upon the baptized person. Immediately after baptism, the neophytes returned into the church, and there received the sacrament of confirmation

from the bishop and were admitted to first communion. They had to keep the white garments until the following Saturday (*in albis*). They laid them aside on the immediately following Sunday.

The pure Roman order of the same age, as far as it is permitted to conjecture from the Sacramentary sent by Hadrian I to Charles the Emperor in the year 876, was much more meager. Yet the most beautiful ceremony of the handing down of the Gospels is Roman.

2. In the Roman order of the sixth century (described in the letter of John, Roman deacon, to Senarius, P.L. 59, 399 ff.) the following are already noted: admission of the postulant into the catechumenate; catechesis; imposition of the hand; renunciation, exsufflation, and imposition of salt; enrollment of the catechumen among the competentes. Then the scrutinies are named; these are not yet, as in the seventh century, simple ceremonies, but true examinations concerning the faith of the candidates. There were not seven, but only three, placed on the third, fourth, and fifth Sundays of Lent, and therefore outside the rite of Holy Saturday. Among the scrutinies the symbol was handed down. Also enumerated are the touching of the ears and nostrils, but made with oil; the anointing of oil on the breast alone. Finally there are reported the threefold immersion "in the name of the Trinity," the anointing of chrism on the head of the one baptized, and the taking of the white garment.
3. The Romano-African baptismal order in the fourth and fifth century.

The principal witnesses of this rite are St. Augustine, here and there in his works; Pope Siricius, in the letter to Himerius 2 (P.L. 13, 1134); likewise Pope St. Leo, in sermon n. 40, n. 2 (P.L. 54, 269); the author of the book *De Sacramentis*, l. II, c. 7, n. 20 (P.L. 16, 429).

Catechumens were divided into two classes. Catechumens of the first class were not immediately prepared for baptism; yet they were taught the doctrine of faith, and were frequently subjected to signation and imposition of hands; they received exorcised salt. This state was prolonged for several years. For from the fourth century catechumens incline to defer initiation until the last moments of life. Then they passed into the class of the elect or competentes, who were prepared to receive baptism at Easter. The names of the elect were proposed at the beginning of Lent. They were subjected to scrutinies or examinations and exorcisms; the symbol and prayer were handed down to them, and they had to "return" it by recitation.

After the last scrutiny the anointing of oil was made. But on the very day of baptism, after the last and solemn return of the symbol and of the Lord's Prayer, there followed the threefold renunciation and the threefold profession of faith (in the same way as today). After the professions of faith the immersions were made; the anointing of chrism and the handing over of the white garment followed. Concerning this anointing it is asked whether it pertained to baptism or to the subsequent confirmation.

4. The African-Roman baptismal rite before the fourth century.

The principal documents are the works of Tertullian, St. Cyprian, and the Egyptian Ecclesiastical Constitution (*Apostolike Paradosis* of Hippolytus of Rome), edited several times.

Catechumens had not yet been divided into two classes. The exercises of the catechumenate were already almost similar to the exercises of the later age. Yet catechumens were already compelled to

the renunciation by which they renounced all duties connected with danger of idolatry, spectacles, etc. But there is not yet question of the handing down of the symbol. After the preparation of the catechumenate the candidates were called competentes and were suitable for receiving baptism. But the baptismal ceremony itself consisted of three rites: renunciation, profession of faith, and immersion, which we have described above.

III. Circumstances of Baptism

1. Time. From the beginning, Easter and Pentecost were deputed to the solemn conferral of baptism; to these, in certain Churches, other feasts were joined. Thus Clovis was baptized on the birthday of the Lord. But baptism was administered at the end of the vigils of Easter and Pentecost.
2. Tertullian already names sponsors (godparents) (*De Baptismo*, c. 18, 19).
3. The name began generally to be imposed around the second century, when the usage of the baptism of little children became general. Yet already in the fourth century, through St. John Chrysostom (*In Genes.*, Hom. 21, n. 3. P.G. 53, 179), the Church exhorted Christian parents to give their children the name of a man of conspicuous virtue. Nevertheless, the best Christians then without scruple kept the names Isidore, Apollonius, Dionysius, which had long been taken from pagans; nor did St. Martin change his name.
4. The place of baptism. Baptism in the open air, in a river or pond, which place in the sixth century St. Augustine of Canterbury and in the seventh Paulinus of York used, must have been rare from the beginning. For domestic churches (in private houses), and at least from the third century public churches, were available for the ceremonies of worship. Baptism was also performed in the catacombs, which at first were reserved for burials. Let a witness be the pool in the catacomb of St. Priscilla, which is assigned to the fourth century. In the fourth century there already existed baptisteries distinct from basilicas. The most celebrated is the Lateran, which draws its origin from Constantine, although few traces of the origin survive. Forms varied, yet in such a way that the octagonal and circular prevailed. Chapels for dispensing confirmation and Holy Communion were sometimes joined to the baptistery.

On account of the baptism of infants becoming strong in the sixth century, baptismal fonts were substituted in place of pools. Yet fonts were not conceded to all parishes. The recent canonical Code first granted to parishes the formal right of having fonts.

5. The ordinary minister of baptism for a long time was the bishop, whose intervention is still attested by the blessing of the oil with which those to be baptized are to be anointed; and c. 772 says that it is fitting that, if it can conveniently be done, the baptism of adults be conferred in the vigil of Easter and Pentecost in churches, especially cathedral and metropolitan churches.

From the eleventh century, the priest became the ordinary minister. Yet in a case of necessity every layperson can baptize. This, however, was sometimes denied to women.

6. The manner of baptism. Complete or partial immersion (with infusion) was formerly the general usage, which persevered in the Western church until the end of the Middle Ages, and is still used in the East. This usage is more conformable to the etymology of the word *baptizein*, which is to immerse. Yet from the beginning infusion was admitted for the sick and in a case of necessity; this mode is already mentioned in the *Didache*, c. 7, n. 4.

E. de M., N. r.

To n. 261. - Appendix III. Historical-Liturgical Appendix on Confirmation

I. The Present Roman Order of Confirming

After the optative salutation ("May the Holy Spirit come upon you," etc.) and the introductory formulas ("Our help," etc.), the bishop, extending his hands over them, recites the prayer: "Almighty eternal God," etc., in which, having recalled the benefit of baptism received, he calls down upon them the sevenfold Holy Spirit; with the seven gifts of the Holy Spirit enumerated, he finishes the prayer with a blessing and a longer conclusion. Then, wearing the miter and, according as, with attention to the number of those to be confirmed, it is more expedient, either sitting upon the faldstool or standing, he proceeds to the anointings. He addresses the individual candidates by their own name, anoints them on the forehead with his thumb in the form of a cross, saying, "I sign you with the sign of the cross," etc. Finally, he gives a light blow to the cheek of the confirmed person, saying, "Peace be with you." With the antiphon "Confirm this, O God" sung, and with the prayer of the bishop over those confirmed and the solemn blessing of the bishop, the ceremony is ended.

II. Evolution of the Rites

1. Preliminary observation. Through the first three centuries there was the usage of joining the ceremonies of baptism with the ceremonies of confirmation, so that it could be doubted whether the anointing which follows essential baptism first pertained to baptism or to confirmation. The separation of ceremonies became more general after, in places remote from the episcopal city, a priest or deacon ministered baptism, but the bishop, in the visitation of the diocese, ministered confirmation.
2. Now let us observe a few things concerning the three principal rites.

A. Imposition of hands. Contrary to what is done in most Eastern liturgies, in the Latin Church there has been preserved, distinct from anointing, the imposition of hands, which alone is mentioned in Scripture, and which, as some think, for a long time alone was used in Gaul, Spain, and northern Italy.

In the Eastern Church no other imposition of the hand is had except the one which is joined with anointing and which even now in the Latin Church is held as the sole essential one.

In the distinct imposition of hands, the minister prays as the Apostles did (Acts VIII, 15-17). From very ancient memory, the formula contains two parts: thanksgiving for baptism received, or at least commemoration of baptism, and a prayer that the Holy Spirit be sent. Similar formulas are found in the Eastern rites themselves.

B. Anointing. Sacred Scripture is silent concerning anointing, where it speaks about baptism or confirmation. Yet certain words of Sacred Scripture, for example those by which St. John (1 John 2, 20.27) commemorates the anointing which the faithful received from the Holy One, from God; or those by which St. Paul (2 Cor. 1, 22) presents himself with the faithful as confirmed in Christ and anointed: "But he who confirms us with you in Christ and who has anointed us is God: who has also sealed us and given the pledge of the Spirit in our hearts," either show an anointing then made, or contributed to inducing it. It is certain that it existed in the second century. In the first part of the third century, Origen expressly mentions the anointing of Chrism (Hom. 6, c. 5, P.G. 12, 472. Cf. cc. 580). Yet not in all monuments of that age is the grace of the Holy Spirit joined so closely with baptismal anointing. In the most celebrated place of the letter to Decentius, c. III, Innocent I (401-407) teaches us that anointing is joined with the very consignation (impression of the sign of the cross), which seems to have been introduced in the fourth century. Behold the words of the Pontiff: "To presbyters, whether apart from a bishop or in the presence of a bishop, when they baptize, it is licit to anoint the baptized with chrism, but with that which has been consecrated by a bishop; yet not to sign the forehead with the same oil, which is due to bishops alone, when they hand down the Paraclete Spirit" (P.L. XX, 555). Hence the twofold anointing which is still used in the Latin Church: one at the end of baptism, the other in confirmation.

From the fourth or fifth century, the Eastern Churches preserved only one anointing, which certainly pertains to confirmation and obtains the principal place, so that among the Syrians the whole body is anointed.

C. The usage of consignation also could have flowed from Sacred Scripture, 2 Cor. 1, 22 (l.c.) and Eph. IV, 30: "And do not grieve the Holy Spirit of God, in whom you have been sealed unto the day of redemption." Already in the third century it seems to have had joined to it the formula: "In the name of the Father," etc.

Concerning the origin of the light blow, much has been disputed. In ancient documents, only the kiss of peace is mentioned.

The form of the sacrament in almost all Eastern liturgies is declarative. Thus in the Byzantine rite: *sphragis doreas tou hagiou Pneumatos* - "seal of the gift of the Holy Spirit" - which form is already demonstrated in the fourth century. A similar one occurs in the Gelasian Sacramentary, p. 86 of the cited edition: "The sign of Christ unto eternal life. Amen." The present form appears from the tenth century.

II. Confirmation in Apostolic Times

From Acts VIII, 14 and 17, and XIX, 1-7, we receive these things. Peter and John are sent to the Samaritans already baptized expressly so that they may confer the Holy Spirit upon them; Paul, at Ephesus, orders twelve persons, who had received only the baptism of John, first to be baptized, and then he himself imposes hands upon the same. Therefore, although the name of confirmation is not yet used, nevertheless a sacrament distinct from baptism, and the Holy Spirit conferred by imposition of hands, are well discerned.

III. Principal Names of Confirmation

In the Acts of the Apostles there occurs the generic name of imposition of hands; or even the effect of the imposition is mentioned (Acts VIII, 17-19 and XIX, 6, and II, 38 with X, 45. Cf. Hebr. VI, 4). In the first three centuries the completed mystery of initiation through baptism and confirmation is designated by certain words, such as *he teleiosis*, perfection. From the fourth century these words become proper to those confirmed. Among the Greeks, only the word *sphragis* has been preserved. Among the Latins, from the third century the word *signaculum* seems reserved to confirmation, without excluding the use of the word Consignation. Finally the definitive appellation of the West, Confirmation, is already used here and there in Gaul from the fifth century. Let canon 2 of the Council of Orange (441) be an example: if "in baptism, because of any necessity whatsoever, he was not chrismated, in confirmation the priest (i.e., the bishop) will be reminded" (Hefele-Leclercq, *Hist. des Conc.* II, p. 432).

Time, place, number. Through several centuries, confirmation immediately followed baptism. Only from the thirteenth century did the custom become strong of deferring this sacrament to the age of reason; this has been approved by the Roman Catechism and the Code.

The place was not the baptistery, but a special building (*Consignatorium*) or the church, or chapels joined to the baptistery.

Number. Already St. Cyril (*Procatechesis*, P.L. 33, 365.366) desires for the enlightened that they receive "the indelible seal of the Holy Spirit." And if, in the first centuries, hands were imposed upon converted heretics so that they might receive the Holy Spirit, that ceremony, in which nothing but imposition of the hand is ever mentioned, the rite of anointing and consignation being omitted, cannot be confused with confirmation.

E. de M., S.I.

To n. 279. - Appendix IV. Historical-Liturgical Appendix on the Sacrifice of the Mass

I. Notions and Divisions

Although principally it is sacrifice and communion, nevertheless the Mass is not only this. For the Mass (the Mass itself, and not merely the external ceremonies, as someone might say) consists also of mutual salutations (*Dominus vobiscum. Et cum spiritu tuo*, etc.), exhortations (*Oremus, Sursum corda*, etc.), lessons (epistle, Gospel, etc.), hymns and canticles (introit, *Gloria in excelsis*, gradual, etc.), and very diverse prayers (collects, the eucharistic prayer, that is, the canon with its preface, the Lord's Prayer, etc.). Whence the Mass, if it is taken integrally, appears as the solemn rite of those assemblies by which the faithful of the Church are gathered, of which the divine sacrifice itself is only a part, yet the principal part.

According to the varied degree of solemnity, there is distinguished the papal Mass, pontifical Mass, solemn Mass, and low Mass. From the papal Mass, especially as it was celebrated in ancient times, the others arose, which therefore must be explained from it. Thus many things in low Mass are explained by this: that the celebrant by himself alone is accustomed, according to his powers, to do and sing all those things which in solemn Mass are sung or done either by the celebrant, or by the sacred ministers, or by the choir. Why, for example, must the priest hold the book while he reads the

Epistle, but not while he reads the Gospel, except because the subdeacon reading the Epistle, but not the deacon singing the Gospel, holds the book in solemn Mass? Why, when the lessons or parts to be sung by the choir are recited by the priest, must the book be placed at the corner of the altar? Why, while saying *Munda cor meum*, *Sanctus*, *Agnus Dei*, does he not impose hands on the altar, except because these did not originally pertain to the ministry of the priest in solemn Mass? But that now he recites the same things in a low voice even in solemn Mass proceeds from this, that the solemn Mass itself has again been somewhat changed by the very rite of low Mass.

To solemn Mass also (or at least sung Mass) and conventual Mass, which is part of the choral office and of itself must always be sung, private Mass is opposed.

But since all Masses contain the same sacrifice, are offered equally in the name of the whole Church, and at the same time can be offered by special offerers; and since private Masses themselves are not rarely read before a frequent assembly of the faithful, imitate solemn Masses by their rite, and historically have gradually flowed from the use of those Masses, we shall more truly deny that private Masses are of a different nature from solemn ones, so that all Masses are to be called formally or virtually public. Wherefore the exterior participation of the people (which nevertheless sometimes, on account of circumstances, will not be expedient) seems more congruent with the nature even of private Mass.

Every Mass is divided into two continuous parts. The former is brought to the end of the Gospel or Creed; the latter is led from the following *Dominus vobiscum* all the way to the end. The former consists of lessons and chants; the latter of the oblation (offertory) and consecration of the gifts, besides communion with thanksgiving. The former is didactic, the latter sacramental. The former is called the Mass of the catechumens, the latter the Mass of the faithful, because even catechumens could be present at the former, but only the faithful at the latter. Hence perhaps moralists did not judge the former part, if omitted by the faithful on a feast day, to be a grave sin.

II. Evolution of the Ordinary of the Roman Mass

The Ordinary is called the whole structure of the Mass with the parts common to all Masses, excluding those things which vary with the various feasts.

How it has varied, while being substantially the same, we shall sketch in a few words.

From the first beginnings up to the reform of Pius V (a. 1570), five ages must be distinguished in the formation of the Mass.

1. Before the peace of the Church, i.e., in the first, second, and third centuries, the affinity between the Eastern liturgies and the Roman seems to have been much stricter than today; not only did the whole structure consist of the same principal parts, but the principal prayers and rites were the same; the same arguments of prayers were developed in the same way, indeed sometimes in the same words.

In the Roman church already in the second century (in other churches, at least in the fifth century) the Mass of the catechumens and the Mass of the faithful were joined, although perhaps in the beginning they had been separated. For it is probable enough that the Mass of the catechumens arose from the rite observed in the sabbatical assemblies of the synagogues, and soon used by Christians in

solemn vigils and in the assemblies which they had on individual Sundays before light. On the contrary, the Mass of the faithful seems to be the exemplar of the Last Supper celebrated by Christ and of the eucharistic institution. These were the principal parts of the Mass of the catechumens: the entrance of the celebrant to the altar; his salutation to the people; lessons from the epistles of St. Paul and of the other Apostles and Fathers; the chant of psalms; litanic prayers (such as are made today in that part of the litany of all Saints in which the response is *Libera nos Domine* or *Te rogamus audi nos*); the dismissal of the catechumens. But in the Mass of the faithful: the oblation of gifts made by the faithful, i.e., of bread, wine, and water and of other things, which immediately after the canon were blessed at the words *per quem haec omnia*; solemn prayers (almost as today in the Mass of Friday in Parasceve); the eucharistic prayer with its preface; within this prayer, the "sanctification" or consecration of the bread and wine with water into the body and blood of Christ, effected through the narration of the institution (*Qui pridie*); then the commemoration of the passion of the Lord and of his resurrection and ascension (*Unde et memores*); the calling forth of the Holy Spirit or of the Word upon the consecrated oblations (*Supplices te rogamus*)[(1)]; intercession for the living and the dead; the solemn elevation of both species; after the eucharistic prayer had been recited, the rite of fraction and commixture; the chant of the Lord's Prayer; the kiss of peace; communion of the celebrant and ministers and of the whole clergy and people; the prayer of thanksgiving; the dismissal of the faithful proclaimed by the deacon.

[(1)] Epiclesis is called an invocation by which the Holy Spirit, or even the Word, is suppliantly entreated that he descend upon the offerings and transmute them into the body and blood of Christ. That there was once in the Roman Canon an epiclesis of the true name is denied by some.

2. From the beginning of the fourth century to the year 600, the history of the liturgy is more obscure, and there is no document by which we have an integral description of the Mass. In this age the canon of the Mass was reduced to its present form. Besides, the order of the whole Mass was completed by the chant of psalms and antiphons at the introit, at the offertory, and at communion. But the gradual chant and alleluia after the Epistle seem to be more ancient. The hymn *Gloria in excelsis* (a Greek morning hymn translated into Latin by St. Hilary (?)) began to be sung in certain Masses. From the fifth century two lessons were read; whether already before this there were two alone or more is in controversy. The prayers at the beginning of the Mass of the faithful fell into desuetude. A trace of them subsists in the word *Oremus*, which today is said before the offertory.

3. In the seventh century and the following centuries up to the middle of the eleventh, because of the great number of liturgical books and treatises, the liturgy is much better known. In the first part of the ninth century these were the solemnities of Masses. At the entrance of the celebrant an antiphon was sung by the choir, then immediately *Kyrie eleison* was recited by the clergy (a vestige of the ancient litanies). *Gloria in excelsis* was sung much more often. The people having been greeted with these words, *Pax vobiscum* (in place of today's salutation *Dominus vobiscum*), the celebrant sang the collect, which the people concluded with the word Amen. Then the lector read the canonical lesson; the cantor sang the gradual and alleluia. Then the deacon read the Gospel. The Nicene Creed followed (at Rome not before the eleventh century). After this, oblations were brought by the whole people and by the celebrant himself, while the choir sang the offertory. Then the corporal was spread upon the altar, and on it were

placed the paten and one chalice. In these soon there was arranged by the deacon that number of offered breads, and that quantity of wine was poured in, which would suffice for the communion of all. After he had washed his hands, the celebrant, the secrets having been recited, sang the preface, and after the hymn *Sanctus* had been sung by the choir, "entered into the canon." The things which follow were done almost as today, except that immediately after the consecrations no elevation was made, nor adoration, and before communion the solemn breaking of the breads was made; this rite, because of the custom of using small hosts, was necessarily abolished. The final blessing was given before the proclamation of dismissal, so that this truly terminated the Mass.

This is the description of solemn Mass; but the use of celebrating private Masses, and several of them in a day, had become very strong. Yet these do not seem to have had a special rite.

4. From the year 1050 to 1200 extends the age which reaches from the reign of Gregory VII, defender of the ancient Roman liturgy, to Innocent III, who himself also deserved well of the liturgy. In all Masses, yet especially, as is fitting, in private ones, it was gradually conceded to celebrants that they add various prayers recited privately, for devotion, both at the beginning of Mass, and at the offertory and at communion. A great number of these prayers existed in books, and from them the celebrant chose the ones he wished. New rites also were introduced, for example the rite of today's oblation of bread and wine. Yet the structure and principal parts remained intact. Thus it happened that several varieties were born in the Roman rite itself (e.g., the rite of Paris and of the Dominicans; the rite of Lyons and of the Carthusians; the rite of Liege). This new form of the Mass, born in Gaul and in Germany, thence transferred to Rome, was there admitted in some measure into the pontifical Curia itself.

The following are chiefly to be noted: the priest was accustomed to say Psalm *Introibo* with its antiphon when he was going to the altar, but to make the confession at the altar itself. Among the prayers which could be said at the offertory and communion, today's prayer *Suscipe sancta Trinitas* was already present and had very many and diverse formulas for the diverse "intentions" of Masses.

5. In the thirteenth century the order of Mass as it was celebrated in the Roman Curia was conceded to the Friars Minor, who soon diffused it through almost the universal Church. Although this order was already very similar to ours, nevertheless private prayers and certain secondary rites did not yet have fixed structures. This brought it about that soon a great variety again penetrated into the new rite itself. In the same thirteenth century there was introduced the custom of elevating the host immediately after the consecration, then the use of elevating the chalice, soon genuflections and the striking of the little bell and of the bells.

Finally, in the year 1570 Pius V took care that the Roman Missal, restored by decree of the Council of Trent, be published; Clement VIII, Urban VIII, Leo XIII, and Pius X were content to review it, with few things which pertain to the Ordinary changed in it.

On the Canon

The present Canon takes its beginning from the words *Te igitur* and is completed by the doxology *Per quem haec omnia... omnis honor et gloria, Per omnia saecula saeculorum. Amen.* But in antiquity the preface

was often counted within the limits of the canon, so that the canon or eucharistic prayer, after the conclusion of the Secret (*Per omnia. Amen*) and the salutation (*Dominus vobiscum*), began from the acclamations *Sursum corda*, etc. (which are most ancient and common to all liturgies). The text and order of the canon already at the end of the seventh century were almost the same as today. Yet in the prayer *Te igitur*, the words *et Antistite nostro N.* are omitted in several manuscripts; the words *et omnibus orthodoxis... fidei cultoribus* likewise are more often lacking and certainly are interpolated. In the *Memento* of the living, no space is left for inserting names; the words *pro quibus tibi offerimus* either are always omitted.

In the prayer *Hanc igitur*, according to a certain more recent recension, after the words *familiae tuae* these are added: *quam tibi offerimus in honorem...* The *Memento* of the dead is lacking in several manuscripts, because it had a place only in Masses of the dead; yet it must certainly be numbered among the more ancient parts of the canon. The place for inserting names is always indicated by express words; but between the words *pacis* and *ipsis* no space is left. From diverse documents it can further be concluded that the Roman Canon had already at the beginning of the fifth century been reduced to the present order and contained several of today's prayers, namely: *Quam oblationem. Qui pridie. Unde et memores. Supra quae* (besides the words *sanctum sacrificium, immaculatam hostiam*, added by St. Leo the Great). *Supplices. Memento defunctorum* (to be said in certain Masses); the final doxology; indeed, although less certainly, *Te igitur* and the *Memento* of the living; this, however, without any names of the living, but on the contrary offering the faculty and space of commemorating all those saints whom anyone wished. Therefore the prayers which were lacking were added in the following centuries, chiefly, as it seems, in the fifth century. The last words of the prayer *Hanc igitur, diesque nostros*, etc., are reported to have been added by St. Gregory the Great. Finally, the words *mysterium fidei* seem to have been taken from the Gallican liturgy into the Roman; perhaps formerly they were said not by the priest himself but by some minister.

On Communion

With the oblation communion is closely connected; for through it the sacrifice is extrinsically consummated. For through communion with the victim the faithful participate in its state; but by the sacrifice they were already professing that they wished to enter upon this state. Therefore the integral notion of communion is not had where Christ, whose body and blood we eat in it, is not considered as he is the victim offered in the Mass. Every communion, even received outside Mass, preserves this relation to the sacrifice.

I. M. H., S.I.

To n. 316. - Appendix V. Historical Appendix on Fasting Before Mass

316. - On the fast to be observed, historical. Acts of the Apostles 20, 7 and the letter of Pliny to Trajan, X, 97, 98, are understood by most concerning a eucharistic celebration which was customarily done in the evening; at which hour fasting seems excluded. Yet Tertullian also mentions a celebration before dawn (*De corona militum*, c. 3. P.L. 2, 79.80). That the sacraments of the altar are to be celebrated only by fasting persons is testified to us by the Third Council of Carthage (397), c. 29 (Mansi, III, 885). At least somewhere an exception was made on Thursday in the Lord's Supper, when the Lenten fast itself was interrupted. Yet the Council of Laodicea (around 380), c. 50 (Harduin, I,

798), wants the fast to be observed on that day also; this is confirmed by the Trullan Council, in whose canon 29 the exception of the Lord's Supper is expressly removed, admitted in the Third Council of Carthage, in the canon mentioned above (Harduin, III, 1071). A special canon 808 urges an obligation distinct from the obligation of fasting to be observed before communion; and by canon 277, §5, dispensation is reserved to the Holy Office.

To n. 324. - Appendix VI. On the Origin of Sacred Vestments

Our chasuble is the ancient paenula, which afterwards, even in lay use, was called planeta or casula. And at first it was entirely closed.

The dalmatic was a tunic of the wealthy, which draws its name from Dalmatia, where it was invented. For some time, only the deacon who attended the Pope could wear the dalmatic.

The alb represents the linen parts of ancient clothing.

The maniple comes from the small cloths or linens which were carried in the hand.

The stole is said to come from the orarium, or oblong and wide linen which was carried around the neck and served either for veiling the mouth or even for wiping it.

The cincture and amice (from the eighth century) were added later from the clothing of monks, which was the clothing of the humbler.

The pallium alone is of primary ecclesiastical origin, and indeed Greek. It is of more recent use (cf. Battifol, *Etudes de liturgie et d'archeologie chretienne*, 1919, p. 83).

To n. 341. - Appendix VII. Historical Matters Concerning Churches and Oratories

In the first centuries, before 313, at least at Rome, the interior part of certain houses was deputed for carrying out sacred rites, so that churches existed, in this sense, as domestic churches. Those places, since there was no dedication to saints, borrowed their name from the possessor of the house. Outside the City, however, in cemeteries and above the catacombs, in cells not large, the funeral rites of the dead and the anniversaries of death were celebrated. This gave origin to the cult of the martyrs. Moreover, already in the third century buildings destined for sacred things were deliberately constructed.

After the persecutions, these churches evolved into the form of great buildings, which imitated those spacious buildings where the people, safe from the weather, could transact their mercantile or judicial business, and which, from their very splendor, were called basilicas, royal buildings. Then also, because of the growing cult of the martyrs, churches were built in the place where a martyr had lived or had died; and his name was given to the church itself. Later they began to place beneath the altar, or in the altar itself, part of the body or a linen cloth or oil from the sepulcher of the martyrs, so that by the end of the seventh century in every church there were certain relics of the martyrs. Outside the City great sacred buildings were erected over the sepulchers themselves or in a place as near as possible.

A basilica was of rectangular form and consisted of a great hall divided into several naves by columns.

The name church was given from the very assembly of the faithful, ἐκκλησία, according to that saying of Augustine: "The Church is called the place where the Church is gathered" (*Quaestiones in Heptateuchum*, 3, 57, P. L. 34, 703). From the form often used they were called basilicas; which name then became proper to the greater churches. It was also called Κυριακή, the Lord's house. The appellation house of the Church also occurs, οἶκος τῆς ἐκκλησίας.

The consecration of a church appears already immediately after the persecutions, and indeed with a solemn rite (cf. Eusebius, *Hist. Eccl.*, 10, 3).

Already from the fifth century a distinction is shown to have been made between churches, which were the greater sacred buildings, and lesser ones which were called (cf. Council of Chalcedon, year 451, can. 6 and 8, Harduin, II, 603) *martyria*, *ptochia*, and which today would be called chapels or oratories. Oratories were chiefly called the chapels of monasteries or those joined to the houses of monks.

Oratories were afterward divided into public and private. The necessity of distinguishing an intermediate genus introduced the word semi-public oratory, which is read in the third doubt proposed in Nivern., and to which a response was given on March 8, 1879 (*Decr. authent.*, n. 3484). But the formal distinction into three species is handed down in a decree of the S. R. C., Jan. 1899 (*Decr. authent.*, n. 4007). Concerning the present juridic notion cf. *Summa Novi Iuris*, n. 474 and *Epitome*, II, n. 498.

The prohibition of celebrating in a violated church is urged so severely by canon 1173, §2 of the Code, that if the violation occurs during the time of divine offices, these must cease at once, and the Mass must be dismissed before the Canon or after Communion. If the violation occurs between the Canon and Communion, the Mass must be continued, but only up to Communion.

Nevertheless, in a case of true necessity, for example if on a Sunday the people are already present in the church to hear Mass, and reconciliation cannot be done immediately, approved authors think that it is lawful for the bishop, or, if he cannot be approached, for the rector himself of the church (by which name, for this case, we think that one is here meant who in fact then presides over the church) to permit Mass in the violated church. Cf. Matthaeus a Coronata, n. 29. This will hold by a stronger reason concerning a church simply execrated. Public edification, however, will have to be considered. For the Catholic people could even be offended if they see Mass celebrated in a church not reconciled. How sacred places are violated was stated in the second volume.

To n. 344. - Appendix VIII. Historical Matters Concerning Altars

In the first centuries there was no prescription concerning the material of the altar, so that wooden, stone, and metallic altars existed. Nor was the form defined, so that even a three-footed table was used. By canon 26 of the Council of Epaone (517, Harduin, II, 1050), stone altars are prescribed. But even afterward, for quite a long time, indeed even in the eleventh century, wooden altars are still found.

The consecration of an altar distinct from the consecration of the church is already prescribed in canon 14 of the Council of Agde (506, Harduin, II, 999).

The use of celebrating over the sepulcher of the martyrs in cemeteries gave occasion to placing the relics of saints in altars, so that thus altars had three principal parts: the table, the support, the sepulcher (Wernz, III, 463). Nevertheless, still in the rigor of law, Ferraris denied the necessity of relics (*Prompta Bibliotheca*, Altare, n. 14-17) in the middle of the eighteenth century; today, from c. 1200, §2, 2°, it cannot be doubted.

If you consider the ancient use of the pagans, the name altar, as of a larger structure, is more aptly fitted to fixed altars, while the sacred stone should rather be called a portable *ara* than a portable altar (cf. Leclercq, *Dict. d'archeologie*, v. Autel; Matthaeus a Coronata, n. 100).

To n. 366. - Appendix IX. Historical-Liturgical Matters Concerning Holy Communion

I. Concerning the rite of Holy Communion. From the beginning one must distinguish Communion in a church (domestic or public) and Communion made at home, outside any sacred rite at which persons were assisting.

1. In a church. In the first centuries the faithful joined their Communion with the Communion of the celebrant. The rite of the fourth century (of which several parts are more ancient) is described thus in book 8 of the *Apostolic Constitutions* (ed. Funk, 1905, I, 512, 518) and in the fifth mystagogical catechesis of St. Cyril of Jerusalem. The celebrant or deacon says: "Holy things for the holy"; the people respond: "One Holy, one Lord, Jesus Christ." The bishop communicates himself. Then those who are to communicate approach, the clerics in hierarchical order, and the faithful. The minister places the host in the right hand of the communicant, under which the left is placed. He pronounces these words only: "The Body of Christ." Then the deacon presents the chalice, saying: "The Blood of Christ, the chalice of life." To each formula the communicant responds: "Amen." During Communion, Psalm 33 is sung, "I will bless the Lord at all times," in which is read: "Taste and see that the Lord is sweet."

In Gaul, from various councils of the seventh century, we gather that the usage was that women received the sacred host in a linen cloth. From the ninth century the usage of communicating oneself becomes rare.

Until the Middle Ages, one who was to communicate received the Eucharist standing.

Around the seventh or eighth century, for drinking the sacred Blood, they began to use the tube which even now, in the solemn papal Mass, the deacon and subdeacon use.

In place of the formula "The Body of Christ," already in the three preceding centuries, especially in the apocryphal Acts of the Apostles, optative formulas occur, similar to that which is used today in the Roman rite.

At the beginning, for example with St. Justin, the deacon distributed Communion under both species; then from the fourth century, only the chalice.

Communion outside Mass had the Mendicant Orders as its chief authors, lest the faithful be detained longer in church. Hence there was introduced the proper rite of administering Holy Communion, which chiefly imitated the method of ministering Viaticum at the close of the Middle Ages.

To infants Communion was given under the species of wine alone.

Then the custom of dipping the consecrated bread into consecrated wine, and of mixing a little consecrated wine with a great quantity of unconsecrated wine, prepared, with the fear of profanation also acceding, the suppression of the chalice in the Roman rite for non-celebrants. Already in the thirteenth century the usage of Communion under the species of bread alone had become general. Finally, Communion at home under both species was forbidden to Latin non-celebrants by the Council of Constance (1415) against the Hussites.

2. Communion outside the church. In the age of Tertullian (*Ad uxorem*, book 1, c. 5) and St. Cyprian, the faithful consumed at home the consecrated species of bread which they had brought with them from the church. This usage was chiefly that of monks, and in the East it remained up to the ninth century. Communion was carried to the sick under the species of bread. Eusebius narrates for us a very ancient fact (*Hist. eccl.*, book 6, c. 44) concerning Dionysius of Alexandria (d. 264-265), who ordered that a boy carry to the dying Serapion a particle of the host to be consumed with a little water.

To carry Communion to the absent was per se the office of the deacon. But during persecutions, laymen themselves carried Holy Communion to confessors. For a long time thereafter (ninth, tenth, eleventh centuries), laymen were able to carry Communion to those dangerously ill. This was also permitted in the twelfth century by the Council of London in a case of necessity (Mansi, XXI, p. 511).

Concerning penitents themselves the First Council of Nicaea (325) established, according to a law which it calls ancient, that in the crisis of death they should not be deprived of the last and most necessary Viaticum.

From the fourth to the eighth century the Church had several times to resist the custom of communicating the dead.

II. The subject of Communion. 1. From the beginning it was required that a man be baptized and without sin (*Didache*, c. 9, 14; St. Justin, *Apol.*, c. 66). From at least the fourth century he had to be fasting (Canons of Hippolytus 150, 151, 205; cf. Leclercq, *Monumenta ecclesiae liturgica*, nn. 2682, 2683, 2727, etc.).

Little children, in the first age of the Church, were by no means excluded from the sacred table (cf. St. Cyprian, *De lapsis*, c. 25, P. L., 4, 484). Communion was for a long time customarily administered to them immediately after Baptism and Confirmation. Nor did this custom wholly vanish, except after the Fourth Lateran Council (1215) prescribed Paschal Communion for only those faithful who had attained the age of discretion. Then the Council of Trent, in chapter 4 and canon 4, denied the necessity of Communion for infants. Finally, on August 8, 1910, by a decree of the S. C. of the Sacraments, the age of first Communion was more defined.

III. The frequency of Communion. In the first centuries the faithful were accustomed both to assist together at the sacred rite and to communicate. But Mass was not celebrated daily; yet they were also refreshed at home by the sacred banquet.

The usage of daily Communion is shown especially in the African and Egyptian Church at that time. This usage gained greater force in the fourth century, though not in such a way that bishops and

faithful were wholly of one mind on the matter. Already from the fourth century complaints began to be made about diminished fervor. Soon most of the faithful communicated only on the more principal feasts. And moved by a certain kind of reverence, the monks of the Middle Ages rarely used the sacred banquet. Several councils, for example the Council of Agde (506), required that at least three times in the year (at the Nativity of the Lord, at Easter, and at Pentecost) one approach the sacred table. The Fourth Lateran Council was content with one annual Communion.

From the sixteenth century, by the authority of the Council of Trent and the pious efforts of St. Charles Borromeo, St. Francis de Sales, and religious orders, such as the Society of Jesus, a more frequent usage was restored; its laws and conditions, after the Jansenist plague was overcome, Pius X authentically defined in the decree *Sacra Tridentina*.

IV. Feast, Procession, Exposition, Prayer of Forty Hours.

1. The feast at Liege, after the revelations of St. Juliana of Cornillon, instituted in the year 1246, became universal by the decree of Urban IV, after the miracle of Bolsena. St. Thomas can be called the redactor of the most pious Bull *Transiturus*.
2. The first solemn processions were celebrated not long after the feast was instituted. They were already being held at Cologne before the year 1279. Concerning these, the first general Bull, *Ineffabili*, was given in the year 1429 by Martin V.
3. In the year 1304, the Ordinary of Strasbourg declared that it was lawful that, at first vespers, Matins, and the Mass of Corpus Christi, the Most Holy Sacrament be placed on the altar. Soon the usage of exposition was propagated and had to be constrained within prudent limits.
4. Already before the sixteenth century there existed an adoration of Forty Hours before the sepulcher of Christ, in which the Redeemer was thought to have remained for forty hours. The custom, transferred from the sepulcher to the Most Holy Sacrament, was approved by Paul III in the year 1539. Clement XI composed its ceremonial in the year 1705.

E. de M., A. I.

To n. 393. - Appendix X. Historical Matters Concerning Fasting Before Holy Communion

The general law of preserving the natural fast before Communion already existed, without doubt, in the fourth century. St. Augustine (*epist. ad Ianuarium*, n. 8, P. L. 33, 203) bears witness to it for us in these words: "For on this account it pleased the Holy Spirit that, in honor of so great a sacrament, the Lord's Body should enter the mouth of a Christian before other foods; for therefore this custom is observed throughout the whole world." And the observance is inculcated by the so-called *Apostolic Constitutions* and by monuments which refer to them or are connected with them. Among these stand out the Egyptian Church Constitutions (which, as is probable, are the *Αποστολική παράδοσις* of St. Hippolytus of Rome, toward the beginning of the third century).

Thursday in the Lord's Supper was excepted; the reason for this exception, by no means mystical, is indicated to us thus by St. Augustine. "For I do not think this was instituted except because many, and almost all in most places, were accustomed to bathe on that day... And because some fast, it is offered in the morning on account of those dining, because they cannot bear fasts and baths together;

but toward evening on account of those fasting." The holy Doctor derives the very usage of bathing from the custom of those to be baptized, who then, after laying aside the filth contracted by the Lenten observance, disposed themselves for Baptism by purification of the body (*op. cit.*, n. 9, 10).

Where we treated of fasting before Mass, we alleged the canons of the Council of Laodicea and of the Third Council of Carthage, which urged the obligation of fasting even on the Lord's Supper. Already before the fourth century Tertullian, besides the celebrations before dawn, mentions the bread which (at home) "we are accustomed to taste before every other food" (*Ad uxorem*, l. II, c. 5, P. L. 2, 1296). Yet in the first times, as is manifest from 1 Cor. 11, 20, the taking of food preceded the eucharistic banquet.

To n. 439. - Appendix XI. Historical-Liturgical Matters Concerning the Sacrament of Penance

I. Historical development. In order that we may omit many things which are disputed among Catholics themselves (for example, concerning the interpretation of places in which confession made to God alone is commended), and hand down only those things which serve our purpose and plainly suffice, three epochs are conveniently distinguished concerning the administration and use of the sacrament of Penance.

The first epoch, from the beginnings up to the fourth century. Penance is exhibited as the second plank after shipwreck, as another Baptism, but one that is laborious. Grave fault makes the sinner a debtor toward the Church and toward God, if indeed the Church is one with Christ. Public confession for occult sins, as the Council of Trent itself testifies, was never commanded by the Church; but the arguments by which the use of private penance and secret confession is demonstrated from the first centuries are set forth at length by R. P. Galtier, S.J., *Dict. d'Apol. d'Ales*, v. Pénitence, from n. 311. Yet he who sought penance showed himself ready to take up the public state of penitents. Therefore the ordinary process embraced these parts:

a) the petition for penance, on account of grave faults, directed to the bishop or to a priest delegated by the bishop. The accusation or confession itself accompanied the petition;

b) after the accusation had been made, the reduction of the guilty party to the state of penance, and his exclusion from the offering of the sacrifice and its participation by Holy Communion. This exclusion (which in the East had various grades) was at first prolonged for several years, then, already from Innocent I (417), only up to Thursday in the Lord's Supper, unless grave sickness required a swifter reconciliation;

c) on Thursday in the Lord's Supper (the last liturgical day before Easter), reconciliation with the Church and thence with God. The one reconciled did not for that reason put off the state of a penitent; but, to the end of life, he had to persevere in the works of a holier life. Public penance was conceded only once. The reconciliation of a penitent who was not sick was per se reserved to the bishop. But by the very reconciliation with the Church the sinner was judged to have recovered the peace of Christ.

Nor, during the first three centuries, did there exist a special liturgical rite for conferring absolution. None, moreover, is required by the nature of this sacrament. For the sentence can be signified by the

competent judge once every will of dismissing sins has been set forth (cf. d'Ales, *Dict. d'Apologétique*, Pénitence, III, col. 1791, or Xiberta, *Clavis Ecclesiae*, p. 32).

As is clear, an administration of penance of this kind supposes a relatively rare use. In the rite of admission to the state of a penitent, which otherwise is little known, there was a certain imposition of hands, a vestige of which can be discerned in the present rite, in which the priest, with his right hand raised toward the penitent, says: "May he have mercy on you... Indulgence, etc." A prayer also was said by the minister. In his treatise *De Pudicitia*, which Tertullian composed when he was already a Montanist, thus, reproving Pontiff Callistus on account of his indulgence, he describes the reconciliation of the penitent sinner thus: "You indeed, bringing the penance of the adulterer into the church to entreat the brotherhood, prostrate him in the midst, wrapped in sackcloth and ashes, arranged with dishonor and horror, before widows, before presbyters, invading the hems of all, licking the footprints of all, holding the knees of all; and over that exit of a man, with as many allurements of mercy as you can, good Pastor and blessed Pope, you preach, and in the parable of the sheep you seek your goats, and fill the other sheep also with fear lest your sheep again leap out of the flock, as if from then on that were lawful which was not lawful even once, especially while you are indulgent" (c. 13, P. L., II, 1003).

In the second epoch, from the fourth or fifth century to the twelfth-thirteenth, many catechumens deferred Baptism, and many baptized sinners deferred penance for a long time. Again, however, the more fervent faithful began to seek penance from devotion. The state of penance thus undertaken became honored and was regarded as very meritorious.

In the East, already in the fourth century, public penance seems to be removed by desuetude. And canonical epistles, for example those of St. Basil the Great, wished to order the manner of penance. In the West, although public penance persevered there to the eleventh century, the very custom of the barbarians of establishing for various delicts a compensation by a pecuniary fine (*Wehrgeld*) could contribute to changing ecclesiastical discipline, so that not a perpetual state of penance but definite expiations were prescribed. Hence also it was lawful to have recourse to penance several times. These expiations, first defined very severely in penitential books (in which they were contained; propagated from Great Britain into various parts of Europe, these books already had their beginnings from the fifth century), and at least in a broad sense prescribed for the confessor, subsequently had to be tempered, so that they were entrusted more to the prudent judgment of the priest.

Then also, on account of the greater frequency of confessions, the entire administration of the sacrament was permitted to priests who shared episcopal jurisdiction by delegation or office.

The juridic formula of absolution was not yet well determined, since the efficacy of remission was attributed indiscriminately to the whole rite. Thus the deprecatory formulas, which were then circulated, are more easily explained, such as the following: "Holy Lord, Almighty Father, eternal God, who through Jesus Christ your Son our Lord deigned to heal our wounds, we humbly ask and beseech you, we your humble priests, that you deign to incline the ear of your goodness to our prayers, and remit all crimes and forgive all sins, and give to this your servant, for punishments pardon, for sorrow gladness, for death life" (from Morin, *Commentarius historicus de disciplina in administratione sacramenti paenitentiae*, where, in book VIII, c. 7 ff., several examples are found).

Around the sixth century, as we learn from the Gelasian Sacramentary (ed. Wilson, p. 14), at Rome penitents on Wednesday of Ashes were received by the priest; over them, covered with haircloth, prayer was poured out, and they were shut up in a monastery until Thursday in the Lord's Supper.

On Thursday in the Lord's Supper they were solemnly reconciled. Mass was begun without the Introit and without *Dominus vobiscum*. After a preliminary prayer of the priest, the penitents, brought in by the deacon, lay on the ground in the church. In their name the deacon, using a rather long but very beautiful formula, sought reconciliation for those who by their tears had merited pardon. An exhortation of the Pope or priest followed. The ceremony ended with prayer and eucharistic prayer.

In the Mozarabic rite, however, reconciliation, which was called Indulgence, took place on Friday in Parasceve. After the preludes in which are found the Reproaches, "My people, what have I done to you," the office was begun with three readings: a prophetic one, from Isaiah 52, 53; an apostolic one from 1 Cor. 5, 6; and an evangelical one, of the Lord's Passion composed from the four Gospels. Afterward those assisting, who are all addressed by the names of penitents, are invited three times to prostrate themselves and implore divine mercy. Then the archdeacon, turning himself to the whole assembly of clerics and faithful, exhorts them to cry out: Indulgence. When silence has been restored, the same archdeacon sets forth the image of the Good Shepherd who gave his life for his sheep, and then invites them to pray. The bishop expresses the prayer of the kind of rhythmic litanies, to which, with new cries, Indulgence is answered (We beseech you, Lord, Indulgence, etc.). There follows the collect, which the bishop alone recites in the name of all, imploring divine clemency in favor of the penitents. Again Indulgence is cried out; the same prayer of the bishop follows with other formulas, the same order nevertheless being preserved. A third series of cries and prayers is had. In this third recitation the final prayer is omitted, and the Office of the Adoration of the Cross and the Mass of the Presanctified is continued (Duchesne, *Origines du culte chrétien*, pp. 463-465).

In the third epoch, from the twelfth-thirteenth century, the theological construction of the sacrament was made, which the Council of Trent authentically sanctioned. But the very necessity of submitting sins to the keys of the Church seems to preserve the primitive notion of reconciliation with the Church, which signifies reconciliation with God. And even now the prayer *Misereatur*, etc., can be called a vestige of the deprecatory formulas which formerly were used. The present formula of absolution is to be traced back to the thirteenth century, although even then it varied accidentally.

II. The names of confession. The words by which, in various languages, access to the sacrament of Penance is designated are of the same origin: *Confessio*, *Confession* (in French and English), *Biecht* (in Flemish), *Beicht* (in German); they indicate spontaneous accusation.

III. In the administration of penance, besides the bishop and priests, deacons intervene in an extraordinary manner, and also, in the East, monks. St. Thomas also testifies to us to the usage of confessing to a layman, when a priest is lacking. But then, as is clear, what is had is not the sacrament but a certain sacramental. Several synods after the thirteenth century forbade deacons to impart absolution.

E. DE M., S. F.

To n. 504. - Appendix XII. Historical Matters Concerning the Sacramental Seal

I. Name. In sermon 58, which in P. L. is placed under the name of St. Peter Damian, but which rather seems to be ascribed to Nicholas of Clairvaux (1176), we read: "Let him (the priest) see, moreover, that he never makes any mention, or consents to anyone speaking, concerning those things which he has received under the seal of confession" (P. L., 144, 833). Thus he hands down to us at the same time the universal obligation of the seal and the name which it received in the Middle Ages.

II. The antiquity of the obligation. Secret confession, permitted even in the first centuries, carried with it so manifestly the obligation of not divulging those things which had been committed to the good faith of the priest or bishop, that there can be no doubt concerning the consciousness of this obligation had even then. Therefore, according to Sozomen, the penitentiary ought to be a prudent man, a lover of silence (*Hist. eccl.*, 7, 16, P. G., 67, 1459); and in St. Ambrose they praised the fidelity by which he covered faults known to him from confession (*Vita*, XXXIX, P. L., 14, 40); and around the year 400, Asterius of Amasea promised security concerning the preservation of reputation and esteem to penitents (P. G., 40, 369). Cf. Galtier, *Dict. d'Apologet.*, v. Pénitence, n. 127. But no one who knows that we, even in the explicit knowledge of matters of faith, are subject to the law of progress, will wonder that by degrees a more distinct and complete account of this sacerdotal office was acquired, and that the doctrine concerning the sacramental seal was fashioned by successive increments. And so:

Past opinions. 1. Concerning the origin and peculiar nature of sacramental secrecy, for a rather long time nothing was said explicitly. At the end of the ninth century, Hincmar of Reims (880) warns that by the oracle of the Holy Spirit it is known to have been provided that the secret must be kept. He himself forbids Communion to be denied to one who openly denies the crime which he has confessed: "For what is it to be unwilling to communicate with one who has confessed a crime, except to publish the confession of the crime?" Supposing a priest who, after having taken an oath about telling the truth, is questioned concerning a sin known to him from confession: "placed between two dangers, he chose to neglect the lesser concerning the oath, so that he might avoid the greater, lest he become a betrayer of confession" (P. L., 126, 625, 634, 675. *De divortio Lotharii et Tetbergae*). Lanfranc (1089), after he had extolled how intimate the communication between confessor and penitent is in these most beautiful words: "Two consciences pass into one, namely that of the one confessing into that of him to whom he confesses, and that of the one judging into that same one who is judged," not obscurely calls upon the peculiar reasons of divine law in this reprobation of the violator of the secret: "He violates the sacraments of confession, because he does not believe the penitent baptized by confession; and, as far as is in him, he destroys the second Baptism, that is, confession; nor does he guard the unity of conscience, nor does he fear that God has come together in his judgments. He sins against the unity of the Father and of the Son, since, by whatever publication, he has divided the unity which is between God the Father and the Son, represented to himself in the one confessing... He blasphemes against the Holy Spirit when he reveals what was entrusted to him in the faith and advocacy of him who is the remission of sins, showing that with him the Holy Spirit is not an advocate" (P. L., 150, 626, 628). Observe how he insists upon the taking away of sins through the use of the sacrament, so that one absolved can no longer truly be called a

sinner; and he wishes to have as unsaid what, on account of the unity of the two, remained as it were in the sinner's own conscience.

2. Is the force of this secret so absolute that it suffers no exception? Certainly St. Raymond, in the *Summa*, labors in the case of a heretic who confesses heresy from which he does not wish to withdraw, and refuses to denounce heretics. Some, as he says, think that it can be said to the bishop: "watch over your sheep, because there is a wolf in your flock." But he himself seems to permit revelation "both because that man does not do penance (since he does not wish to be converted), and because he does not keep faith, since he is a heretic and an infidel: therefore faith is not to be kept with that man." And many other things, he adds, can be said.

There were also not lacking those who excepted the case in which revelation was necessary for protecting the king or the republic. And, while James I was reigning, on May 3, 1606, Garnet, S.J., when he had refused to reveal a conspiracy known to him from confession, died as a martyr of the absolute obligation of the seal.

3. With regard to the extension of the obligation, is it enough to avoid the danger of revelation, or are certain uses of sacramental knowledge forbidden even without such danger?

In the first centuries it was permitted to the prudent judgment of the confessor that he impose public penance even for secret sins: which today would be said to be forbidden by the seal. Yet it can be explained by the consent of the penitent, who, if he was using the sacrament, was judged to accommodate himself to the received usages concerning penance (cf. Galtier, l. c., n. 125, 126).

But, with the danger of revelation removed, down to the seventeenth century most permitted that the confessor use sacramental knowledge either for the good of the penitent, for example, for taking away from him an occasion of sin, or for the good of the community, for example, for keeping away a harmful subject. Yet already Claudius Acquaviva, in the year 1590, prohibited superiors of the Society of Jesus from every use of sacramental knowledge for government; this Clement VIII forbade to all superiors in the year 1593. Finally, on November 18, 1682, the Holy Office judged that the proposition was altogether to be prohibited which permitted the use of knowledge acquired from confession with a burden for the penitent, if a greater burden of the same penitent would follow from non-use (Denzinger, n. 1220).

By an excess also in the opposite direction, Scotus, in IV Sent., d. 21, q. 2, ad 1, denied to the penitent himself the faculty of efficaciously dispensing from the obligation of sacramental secrecy; and Richard of Middleton, in IV Sent., d. 21, art. 4, q. 1, marked as a lie a revelation made with the consent of the penitent, since human knowledge concerning the matter was lacking.

III. Canonical sanctions. 1. St. Leo the Great (450, Ep. to the bishops throughout Campania, c. 2 etc., P. L., 54, c. 1210) determined that in every way the presumption, which he says is contrary to the apostolic rule, of demanding a public recitation of sins, should be removed, since secret confession suffices: "For that confession suffices which is first offered to God, then also to the priest who approaches as intercessor for the offenses of penitents."

2. At the end of the ninth century the *Paenitentiale Summorum Pontificum* punishes the violator with perpetual exile. The Fourth Lateran Council (1215), in the celebrated chapter *Omnis utriusque*

sexus concerning annual confession, punishes the violator of the seal with perpetual confinement in a monastery (Denzinger, n. 438, or c. 12 *De poenitentiis et remissionibus* (V, 38)). Afterward, however, St. Raymond has these things concerning this: "If he has done this, let him be deposed and go wandering in ignominy all the days of his life" (*Summa*, De poenis, L. III). Finally the Code, c. 2369, §1, strikes the confessor guilty of direct violation of the seal with excommunication reserved to the Holy See in a most special manner; it makes the one guilty of indirect violation liable to various penalties, as also the interpreter and the persons to whom knowledge has come, if they have rashly violated the secret. (Cf. on this argument R. P. Kurscheid, O.M., to be cited with other writers in the Bibliography, t. IV).

To n. 616. - Appendix XIII. Historical Matters Concerning Indulgences

1. The power of binding and loosing handed over to the Church avails not only for faults and for the eternal punishment joined with grave sin, but by an equal or stronger reason also for remitting temporal punishments. Yet it demands a discreet use, since the Supreme Pontiff himself is not simply the lord, but the administrator and prudent dispenser of the rights and goods of the Church. Concerning this matter this point occurs for observation: the relaxation of eternal punishment, which is joined by an indivisible bond with sanctifying grace restored, is always reasonable, on account of the supreme indigence of men, provided that the essential conditions are fulfilled. The same also is necessarily gratuitous, since it cannot be compensated by any satisfactory work, and it accompanies the very moment in which man becomes capable of satisfying, that is, the infusion of grace. By contrast, a gratuitous remission of every temporal punishment would be opposed to the present economy itself. For from the beginning celebrated penance is a laborious baptism. Therefore, since God is not accustomed to grant to penitents an immediate condonation of all temporal punishment, can the Church, by a gratuitous remission of sins even as to punishment, wish to make that divine disposition void? Wherefore satisfactory works were imposed on penitents for a fuller remission of punishments. Yet the imposed works themselves, whether indefinitely in the assumed perpetual state of the penitent, or later defined by the estimation of the minister, acquired a greater satisfactory force from the power and intention of the Church.

According to primitive discipline, by those penitential works satisfaction was made at the same time to the Church and to God.

2. When she mitigated these penances, whether by appointing smaller ones from the beginning, or by relaxing those already imposed, examples of which relaxation certainly occur already in the fourth century, the Church, by taking account of circumstances and by sparing spiritual weakness, could either merely not exact them, or truly, on account of an extraordinary fervor of contrition or expiation, remit them efficaciously. In the former case, the Church did not think that she was condoning anything in the forum of God (cf. the epistle of St. Cyprian to Antonianus, P. L., 3, 785, or Vind. 55, co. 2, pp. 638); but in the latter God held ratified in the heavens the sentence which the Church pronounced on earth concerning sin. Immediately also it appears that remission itself can be of a twofold kind. For the Church can relax defined penances, and then by her absolution so many punishments will be remitted in the forum of

God as would have been expiated by the penances; or she can simply dispense indefinitely from every punishment owed, whatever it may be, so that the absolution ought to operate upon every temporal punishment.

The motive, moreover, of a more rapid or more benign reconciliation with the Church was also the letter of peace handed over by martyrs. And insofar as the intercession of the martyrs moved the bishop so that he truly remitted some of the penitential works, that concession was efficacious also in the forum of God, so that this remission, founded on the merits of the martyrs, came nearer to our present-day indulgences.

From the seventh century out of England and Ireland into the remaining parts of Europe there began to be propagated "redemptions," by which imposed penances could be commuted into other good works, especially prayer and almsgiving, whether synods expressly conceded this, or custom was tacitly admitted. (To this propagation the Germanic usage *Wergeld*, by which offenses were compensated by pecuniary compensation, seems to have contributed not a little). Those commutations, first conceded in particular cases, were soon permitted more generally (with perhaps the added assent of the penitential priest), "so that commonly the option was given to the penitent either of performing the penance or of choosing a redemption of this kind" (Morinus, *Commentarius historicus de administratione sacramenti Paenitentiae*, etc., L. 10, c. 16, n. 4).

In these beginnings indulgences more properly so called were preformed; these, having arisen in the eleventh century, no longer converted defined works into smaller ones, but in general, on account of a good work fulfilled, then remitted imposed or to-be-imposed penances wholly or in part. And just as the imposed works would have satisfied the Church and God, so that the very commutation of works was efficacious in the forum of God cannot seriously be doubted.

Not immediately, but gradually, the very relation to imposed or to-be-imposed penances was neglected.

The distinction of the power by which indulgences were conceded from sacramental jurisdiction was increased by St. Thomas by his explanation concerning indulgences (cf. *Supplementum*, q. 25-27), by which the Church does not simply remit temporal punishment, but at the same time offers an adequate payment of the debt from her treasury, constituted from the superabundant merits of Christ and the satisfactions of the saints.

This doctrine, accepted by the Supreme Pontiffs, became common in the Catholic school. And it has two consequences. Since, as St. Thomas says, the dispensation of the treasury of a society belongs to him who presides over the whole society, the power of conceding indulgences is recalled to the Supreme Pontiff. Then, since besides the good work which is performed, the inexhaustible treasury of merits is offered, there is no longer, as in commutations, some necessary proportion between the prescribed work and the expected fruit; rather a reasonable cause of offering, on account of such a work, the merits and satisfactions of Christ and of the saints suffices.

3. In an indulgence for the living, the Church at the same time absolves, using her jurisdiction, and offers payment; in an indulgence for the departed, she offers the same payment by way of suffrage or prayer, supported also by some work to be fulfilled by a living person, as Sixtus IV himself explained in his Bulls, of which the first is August 3, 1476.

4. Alexander II seems first to have conceded an indulgence for the living, in 1063, when he lightened penance and conceded remission of sins (as to punishments) to those who had destined themselves to go into Spain to fight against the Moors. Yet more celebrated is the indulgence, even plenary, which Urban II promulgated in 1095 in the Council of Clermont for crusaders. Observe that in both concessions the prescribed work was such that of itself it could avail for commutation.

Already from the thirteenth century the scholastics began to teach that there was power in the Supreme Pontiff that he might also concede indulgences to the departed. But only in the fifteenth century did Callixtus III grant the first indulgences for the departed. The first preserved Bull, however, is that of Sixtus IV, August 3, 1476.

5. Therefore, if by this sole note, otherwise essential, of the remission of temporal punishment owed and not paid we describe an indulgence, from the beginning the Church used such a power; but the full present-day notion says that the remission is outside the use of the sacrament of penance, not by way of commutation, nor by simple absolution, but, jointly with the use of jurisdiction upon the living or with the use of her intercession in favor of the departed, through the offering of the merits of Christ and of the satisfactions of the saints. The concession requires a just cause, which for the most part, though not necessarily, is found in the utility or excellence of the good work itself.

Observe that properly such indulgences are conceded nowhere in the Eastern Church; but Easterners can gain the indulgences of the Latins under the same conditions under which Latins can. Very recently, May 24, 1923, the Sacred Congregation for the Oriental Church obtained an indulgence for those reciting a little prayer for Russia (A. A. S., XV, 295).

Cf. Boudinhon, *Sur l'histoire des indulgences, à propos d'un livre récent* (Lea), *Revue d'Histoire et de Littérature religieuses*, 1898 (III, p. 454 ff.); Beringer-Hilgers, *Die Ablässe*; Galtier, *Dict. d'Apologétique*: v. Indulgences; Nicolaus-Paulus, *Geschichte des Ablasses im Mittelalter, vom Ursprunge bis zur Mitte des 14 Jahrhunderts*, I. Band, 1922.

To n. 649. - Appendix XIV. Historical-Liturgical Matters Concerning Extreme Unction

I. Evolution. In the first centuries, from the Apostle James himself (*Epist. cath.*, V, 14 s.), of whose words Trent gave us the authentic interpretation, we have these things, and these alone: If a believer is sick, let the presbyters of the Church be called, who are to pray over him and anoint him with oil in the name of the Lord. And if he is in sins, they shall be remitted to him; by which words sacramental grace is indicated. Then an insinuation concerning Extreme Unction occurs in Origen (*In Lev.*, Homil. II, 4, P. G., XII, 418-422) and St. John Chrysostom, *De sacerdotio*, II, 6, P. G., XLVIII, 644. In the first years of the fourth century the Euchologium of Bishop Serapion of Thmuis brings us the text of prayers over the oil of the sick, or over bread and water; and a more ancient document is had in the so-called *Testamentum Domini* (I, 24).

If the priest consecrates oil for the healing of those who suffer, placing before the altar that vessel (containing oil), let him say thus in a low voice: "Lord God, who hast granted to us the Paraclete

Spirit, the Lord, the saving name, the immovable (Spirit), who is hidden from the foolish but is revealed to the wise; Christ, who dost sanctify us, who by thy mercy hast made wise thy servants, whom thou hast chosen by that wisdom of thine; who hast sent to us sinners the knowledge of thy Spirit; who art the healer of every disease and passion; who hast given the charisma of healing to those who through thee have been made worthy of that gift, send upon this oil, which is the type of thy richness, the complement of thy beneficent compassion, that it may free those who labor, heal the sick, and sanctify those who return, when they come to thy faith: since thou art mighty and glorious unto the ages of ages." The people: "Amen" (*Testamentum Domini*, ed. Rahmani, Moguntiae, 1899, p. 49. On the consecration of the oil of the sick).

The first explicit testimony, however, is offered to us by Innocent I, in his celebrated epistle to Bishop Decentius (416), in which he hands down the Roman custom in these words: "Certainly, since on this matter, as on the others, thy charity wished to consult, my son Celestine the deacon also added in his letter that this was placed by thy charity, which is written in the epistle of the blessed Apostle James: If anyone among you is sick, let him call the presbyters, and let them pray over him, anointing him with oil in the name of the Lord. And the prayer of faith shall save the sick man, and the Lord shall raise him up, and if he has committed sin, it shall be remitted to him. This without doubt ought to be received or understood concerning the sick faithful, who can be anointed with the holy oil of chrism, which, confected by the bishop, it is permitted not only to priests, but also to all Christians to use, for anointing in their own necessity or in that of their own. For the rest, we see that this was superfluously added, that there should be doubt concerning the bishop, since there is no doubt that it is permitted to presbyters. For therefore it was said to presbyters, because bishops, impeded by other occupations, cannot go to all the sick. For the rest, if a bishop either can, or judges someone worthy to be visited by himself, he can without hesitation both bless and touch with chrism, since it belongs to him to confect chrism. For this cannot be poured upon penitents, because it is a kind of sacrament. For to those to whom the remaining sacraments are denied, how is one kind thought able to be conceded?" In this text, observe that the confection of the oil is reserved to bishops; that its ministration pertains to bishops and to presbyters, yet in such a way that the faithful seem somehow to be able to supply for them; but that Extreme Unction cannot be ministered to penitents before their reconciliation, since they are excluded from the sacraments.

While that use of holy oil by the faithful themselves is insinuated, not for that reason is that use declared sacramental, just as confession made to laymen was not a part of the sacrament of penance. On this question cf. Boudinhon, *Revue du clergé français*, 1911, t. 68, p. 722 ff.

The Mozarabic Ritual, which R. D. P. Ferotin judges to have been composed before the barbarian invasions, treats of Extreme Unction. In the Gelasian Sacramentary (sixth or seventh century) the formula for blessing the oil of the sick is repeated (Thursday in the Supper of the Lord), with four prayers over the sick man (ed. Wilson, London 1915, p. 30 and 281). Similar things are set forth in the Gregorian Sacramentary (ed. Wilson, p. 44 and 206 ff.). Finally, thirty-three Orders of the ninth and tenth centuries (made public by Martène, *De antiquis Eccl. ritibus*, l. I, c. 7, art. 4) set before us the ceremonies then in use, of which a great part, as is very likely, reflects more ancient usages, while other parts are still in use. For in these is found: a) the blessing of the place where the sick man lies; b) confession and, if there is need, reconciliation of the penitent; c) unction and joined viaticum; d) the final blessing.

a) The present blessing of the room consists merely of the salutation "Peace be to this house," sprinkling with lustral water, and three prayers. Formerly it was often done with a more solemn apparatus. Water and incense were brought from the church. During the sprinkling the *Miserere* was sung. From many prayers there is already had the prayer *Introeat* and "Lord God, who through the apostle," which is now recited after the unctions.

b) The sick man, if he wishes, today confesses after the *Asperges* and the blessing of the room. And the *Confiteor* is always recited with absolution. Ancient Orders of the ninth or tenth century report to us a dialogue between the sick man and the priest. Thus has Order I (Martène, p. 302): "Why have you called us, brother? - That you may deign to give me unction. - First prepare yourself for pure confession; afterward you will receive holy unction." There follows a prayer said by the minister and confession. To confession, in the Middle Ages, was often joined the recitation of the seven penitential psalms, the recitation of which during the unctions is still commended by the Roman Ritual to those present. There were proper antiphons; the litanies of all the saints were said, sometimes with special petitions for the sick man. The ceremony had its end with long prayers for him.

c) Unctions. There was a great diversity of unctions, as also of the formulas which were recited at the same time. Order XVI (Martène, pp. 342, 325) mentions unctions on the head, on the eyes, on the nostrils, on the lips, on the throat, on the breast, on the shoulders, on the hands, on the feet, on the place "where the pain is more imminent," and "at all the joints of the members." All the formulas begin in the same way: "I anoint thee," "I inunct thee." Order II mentions fifteen unctions and adds: "But by this number of fifteen we make crosses of holy oil over the sick man" (Martène, p. 303).

In his work on Extreme Unction, P. Kern distinguishes five classes of formulas: prayers, optative forms, indicative forms, imperative forms, and mixed forms. The present form, which is optative, occurs from the ninth century, but only in the sixteenth century does it become of general use.

d) Final blessing: Order IV (Martène, p. 106) reports about fifteen prayers which the priest recites after he has anointed and communicated the sick man. Several begin from the words: "May God bless thee..." And already several Orders mention the use noted in the Roman Ritual of handing a cross to the sick man at the beginning of the ceremony, and of leaving him the cross, if he has none.

Often, in the Middle Ages, Mass for the sick man was said immediately after the unction. In the sixteenth century the Roman Ritual was stably constituted.

II. Principal names of Extreme Unction. In the Latin Church, in the fifth century, in the cited place of Innocent I is found "holy oil of chrism"; in the eighth and ninth centuries, "Unction of the sick," "sacred oil." "Extreme Unction" first occurs in a doubtful text of the first part of the seventh century, in the fifth statute which is ascribed to St. Sonnatius of Reims (600-631) (P. L., LXXX, 445). The name is propagated especially from the twelfth century because of the authority of the School. The Greeks principally call this sacrament the Oil of prayer, *Euchélaion* (Εὐχέλαιον), which name is already read in the sixth century.

E. DE M., S.I.

To n. 668. - Appendix XV. Historical-Liturgical Matters Concerning the Sacrament of Order

1. On the distinction of the various grades, already in the third century, in the letter of Pope St. Cornelius concerning the schism of Novatian, to Bishop Fabius of Antioch, the major and minor orders are enumerated thus: "Therefore did that defender of the Gospel not know that there ought to be one bishop in a Catholic church, in which nevertheless he knew (for how could he have been ignorant of it?) that there were forty-six presbyters; seven deacons and as many subdeacons; forty-two acolytes; fifty-two exorcists and readers with doorkeepers; finally widows, with the sick and needy, more than fifteen hundred" (Euseb., *Hist. eccl.*, VI, 43, 11). To each region of the City there were assigned one deacon, one subdeacon, and, as it seems, six acolytes.

Those eight grades are found in not a few churches of the first centuries; but in the East, acolytes, exorcists, and doorkeepers do not seem to have obtained a place in the clergy.

Since they did not wish to exceed the septenary number of deacons, of apostolic origin, subdeacons were constituted, to whom was committed the care of the sepulchers of martyrs, relics, sacred vessels, linens, and liturgical vestments. In sacred offices the subdeacons received the offerings and offered to the archdeacon the water to be poured into the chalice.

The first grade of minor order is that of acolytes, who, since from the beginning of the fifth century they had a part to fulfill in the Eucharistic office, especially in the rather complex rite of breaking, in pontifical Masses, the Eucharistic bread, can themselves be called helpers of the deacons. They also carried into the various parishes of the City the *Fermentum*, that is, a particle of the bread consecrated in the Mass of the Pope.

In antiquity, however, the lectorate excels, which existed in the second century. In great number, and sometimes gathered into schools, lectors prepared themselves for ecclesiastical ministries. Gradually, however, the readings were no longer committed to them; and in the eighth century the epistle began to be read by the subdeacon. At Rome the school of lectors gradually passed into the school of cantors, traces of which exist from the seventh century.

Exorcists were first faithful persons endowed with a special charism of expelling demons. When they were constituted in an ecclesiastical grade, the discipline of energumens was committed to them.

Concerning the doorkeepers, who watched over the doors of the Church, there is little discussion in the sources.

Concerning tonsure, cf. the things said above, n. 28. Only in the tenth century was tonsure the mode of enrolling men among clerics.

II. Concerning the minister of ordinations, we observe that already by the fourth canon of the Council of Nicaea (325) it is prescribed that several bishops be present at episcopal consecration; and that already in the eighth century there are found traces of privileges of abbots conferring first tonsure and minor orders.

III. Concerning the age of those to be ordained. The ancient discipline was more severe, so that it required thirty or thirty-five years for the priesthood, twenty-five for deacons. Adhering to the vestiges of his predecessors, Pope Zosimus decreed that adolescent lectors could be promoted to a higher grade only in the twentieth year of age. Then for four years they had to remain acolytes and subdeacons, and for five years deacons.

IV. Ordination by leap is prohibited in the thirteenth canon of the Council of Sardica (fourth century); yet less attention was paid to some omitted minor orders, especially the doorkeepership.

V. Days of ordinations. Since in Acts of the Apostles, c. 13, v. 2, 3, they imposed hands upon Barnabas and Paul while fasting, it was natural to appoint fasting days for ordinations. Ordinations in the first centuries, as the *Liber Pontificalis* reports to us (narrating the deeds of the Pontiffs), had customarily been done in the month of December. Gelasius (492-496) mentions the four times and the Saturday before Passion Sunday as days of ordination of priests and deacons; Pelagius (555-561) invites a deacon named Latinus that he be ordained priest at Rome on Holy Saturday. Thus the present days have been alleged. Alexander III (1159-1181) himself first decreed that the subdiaconate be conferred on the same days.

The consecration of bishops was already done on a Sunday in the fifth century. Since deacons and presbyters were ordained on Saturday in the celebration of the vigil, it was quite consonant with the nature of things that the ceremony, prolonged until Sunday morning, should be completed by the consecration of bishops. In the tenth century the feasts of the Apostles were added.

That ordinations were done within the solemnities of Mass is witnessed by the most ancient liturgical books, for example, the Leonine Sacramentary.

VI. Historical matters concerning the rites. In the various ordinations the Roman rite and the Gallican rite are mixed, though in an unequal ratio.

1. Tonsure. Today: a) the bishop invites prayer for those who are "about to lay down the hair of their heads" (*Oremus, Fratres dilectissimi*); b) he confers tonsure while the one being tonsured says "The Lord is my portion, etc." and the choir sings Psalm 15 (*Conserva me Domine*); c) he prays over those tonsured (*Praesta quaesumus*); d) Psalm 23 is sung: *Domini est terra*; e) a new prayer is made for those tonsured (*Adesto Domine*); f) the surplice is imposed (*Induat te Dominus*); g) a third time prayer is made for those tonsured (*Omnipotens*); h) there is a final exhortation, in which the bishop warns those tonsured that they have been enrolled into the clergy.

Now, in the supplements which, in the Frankish Empire, Alcuin added to the Sacramentary which Adrian I had sent to Charlemagne, and which is called Gregorian, there are found (pp. 181, 182, ed. Wilson) the formulas: *Oremus Fratres*; *Dominus pars*; *Praesta, omnipotens Deus*; *Adesto Domine*: these are the more ancient parts of the ceremonies.

For the formula *Omnipotens*, the third prayer for those tonsured, is found only in the tenth century; the chant of Psalms 15 and 23 and the imposition of the surplice, in the twelfth and thirteenth centuries; the formula *Induat te* finally in the fifteenth century.

2. The composition of the four minor orders is the same. Those to be ordained are ordered to approach and are called by name. The Pontiff explains and inculcates the office of the new grade. The instruments are handed over; a prayer is recited over those enrolled (*Deus Patrum... Oremus Fratres... Deus Patrum... Domine sancte*); finally, by another prayer of blessing introduced through *Oremus, Flectamus genua*, and which is said without the miter (*Domine sancte*), the ceremony is concluded. To the acolyte, however, two other prayers are added.

In the ancient Roman liturgical books no ceremony occurs for the ordination of doorkeepers, lectors, and exorcists, which was not performed solemnly. As to acolytes, in a pontifical Mass the one to be ordained presented himself to the celebrant, during Communion, holding a sack in which the Eucharistic bread to be broken was to be placed. The Pontiff blessed the candidate, saying: "Through the intercession of the blessed and glorious ever Virgin Mary and of the blessed Apostle Peter, may the Lord save and guard and protect thee."

Gallican documents, the *Statuta ecclesiae antiqua* of the sixth century, the *Missale Francorum* of the end of the seventh century or the beginning of the eighth, and the Pontifical of Egbert of York (732-766), contain the greater part of the rites and formulas which are used today in these ordinations.

3. Concerning the subdiaconate. The ordination is composed in the same way as for the minor orders, except that the litanies and another exhortation of the bishop were added.

In the ancient Roman rite, the Pontiff, during Communion, presented an empty chalice to the one to be ordained, and blessed him with the formula also used for acolytes.

Mention also, as it seems, was made of the title of the subdeacon, that is, of the Roman parish to which he was ascribed. The Gelasian Sacramentary (p. 22) contains this formula: "With the help of the Lord God and our Savior Jesus Christ, we have chosen into the order of deacon or presbyter that subdeacon or deacon from that title (sic)."

Besides that handing over of the chalice and the designation of the title, most of the rites and formulas by which subdeacons were ordained are Gallican. They are found in the *Statuta ecclesiae antiqua* and in the *Missale Francorum*. More recent, however, are the handing over of the maniple and tunicle, and especially of the amice and book.

4. Concerning the diaconate and presbyterate: a) In the Gelasian Sacramentary (ed. Wilson, pp. 22-30) the Roman rite is indicated to us thus. Soon the future ordination is announced by the Pope: "With the help of the Lord God, etc... we have chosen... that man. If anyone has anything against these men for God and on account of God, let him come out with confidence and speak. Yet let him be mindful of his own Communion." On Saturday, in the Mass of the vigil, the ordination properly such was done.

In those to be ordained deacons there was an invitation to pray (*Oremus dilectissimi...*), which are the beginning of the present prayer: *Oremus fratres carissimi* as far as "may preserve the gifts." Then the litanies; then the imposition of hands upon the head of each; then the prayer *Deus collator*, which is found in the Leonine Sacramentary (ed. Feltoe, p. 120), but today has not been preserved; and the Eucharistic prayer beginning from *Vere dignum est*, almost the present preface, which the Pontiff interrupts today to place his hand on the head of each, saying: "Receive the Holy Spirit unto strength, etc."; finally, the embrace.

In those to be ordained priests the process was the same, but with diverse formulas (*Oremus fratres dilectissimi* and *Oremus carissimi* of the present liturgy), and the present *Vere dignum*.

In the Gallican rite the ordination itself began as now in the Roman rite, with the interrogation made to the people concerning the manner of life of the candidate. The people answered: "He is worthy." There followed the invitation to pray: *Commune votum* (which prayer has been preserved in the

ordination of deacons); a prayer said with extended hands (*Domine Sancte, Pater fidei*), which is now recited at the end of the ceremony. In that rite also the ceremonies were the same for priests and for deacons; but the allocution for presenting the elect has been preserved (*Quoniam, fratres, ecclesiae navis*); the prayer which the Pontiff said by extending his hand, together with all the presbyters, upon the head of those to be ordained (*Deus, sanctificationum omnium auctor*) is now found after the handing over of the chasuble. Finally there was the anointing of the hands with the present formula, except for the beginning: "Let these hands be consecrated." Here again is discerned the mixture of the ancient Roman usage and the ancient Gallican usage. For the rest, in the sixth or seventh century the handing over of the instruments was introduced, concerning which the ancient sacramentaries are silent.

5. Episcopate. Formerly there was the same general process which was used for deacons and presbyters: examination; invitation to pray; litanies; imposition of hands with a twofold prayer (collect and Eucharistic prayer). Although it was of great moment, it is not that Roman examination, but the Gallican one, which has been received into the present Pontifical. The ancient one, however, has been preserved in the third part of the Pontifical, under the title "Concerning the evening scrutiny," etc. The imposition of the miter and gloves is rather recent; more ancient is the handing over of the book of the Gospels, the pastoral staff, and the anointing.

E. DE M., S.I.

To n. 739. - Appendix XVI. Historical-Liturgical Matters Concerning the Sacrament of Matrimony

I. Concerning the rites. 1. Present discipline. Since by divine law matrimony-sacrament is effected by the consent alone of capable parties, but by ecclesiastical law only this is imposed upon Catholics for validity, that they signify consent before a competent priest and two witnesses, no rite is essential; and, outside Mass, laudable usages or ceremonies of individual dioceses can be preserved. Therefore two parts are to be distinguished in the rite of the celebration of matrimony: the ceremonies with which the expression of consent before the priest and witnesses is clothed, and these can and do vary; and the solemnization of matrimony by Mass and blessing. That solemnization is not strictly imposed but is commended, and is to be carried out according to the Roman liturgy.

The variable part from the Roman Ritual is this: the spouses are ordered to join their right hands. The priest, after he has received their mutual consent unto matrimony, adds: "I join you in matrimony, in the name of the Father and of the Son and of the Holy Spirit," and sprinkles the married couple with lustral water. Then he blesses the ring of the bride, which the bridegroom inserts upon the finger of the bride, while the priest says: "In the name of the Father and of the Son and of the Holy Spirit." Finally several prayers are recited by the priest.

The Mass for bridegroom and bride recalls from Psalm 127 the happiness of the household where the fear of the Lord reigns. The Epistle recites the admonitions of St. Paul from the Epistle to the Ephesians, in which the union of Christ and the Church is proposed as the type of the love and affection of a spouse. The Gospel inculcates the indissolubility of matrimony. After the *Pater Noster*, the Mass is interrupted for the solemn blessing of the bride: it consists of two prayers, of which the

second, the longer, is very beautiful. After *Ite Missa est*, the wishes of the Church over the spouses are expressed by the celebrant, and an argument of exhortation is suggested to him.

2. Origin of the ceremonies. Although, before the Council of Trent, the Church prescribed no form of consent to be observed for validity, nevertheless from the first times a special Mass was said, or certain rites, for example, the nuptial veil, had to be done at the end of the ordinary Mass. Already Tertullian (*ad Uxorem*, l. II, c. 9, P. L., I, 1302), in his magnificent description of Christian marriage, commemorates the intervention of the Church thus: "Whence shall we suffice to narrate the happiness of that matrimony which the Church conciliates, and the oblation confirms, and the blessing seals?" By Innocent I (402-417), in the epistle to Victricius, bishop of Rouen, c. 6 (P. L., XX, 476), there is mentioned "the blessing which is imposed through the priest over those marrying." The Leonine Sacramentary, which is assigned to the sixth century, contains formulas for the nuptial veiling (ed. Feltoe, pp. 140-142), of which the collect, secret, and postcommunion have been transferred to the Mass for bridegroom and bride.

From there also, with a few changes, the Ritual prayer *Respice quaesumus* is repeated. In the special Mass which the Gelasian Sacramentary proposes (with proper Preface and *Communicantes*), two prayers are had after the *Pater Noster* (as now) and a third before the Postcommunion. Nicholas I (858-867), in the *Responsa ad consulta Bulgarorum*, c. 3 (P. L., CXIX, 979, 980), first rather completely hands down "the custom which the holy Roman Church received in antiquity and holds hitherto..." The passage stands thus: "After the sponsals, which are the promised covenants of future nuptials, and which are celebrated by the consent of those who contract these things and of those in whose power they are, and after the bridegroom has betrothed the bride to himself by pledges through the finger of faith, marked by a ring from him, and has handed over to her before guests from both sides the dowry pleasing to each with a writing containing this pact, either soon or at a fitting time, lest namely such a thing be presumed to happen before the time defined by law, both are brought to the nuptial covenants. And first, indeed, in the church of the Lord they are stationed with the offerings which they ought to offer to God through the hand of the priest, and so finally they receive the blessing and the heavenly veil... Yet he who passes to second nuptials does not receive that veil. After this, however, having gone out from the church, they wear crowns on their heads, which are always accustomed to be reserved in the church itself... But we do not say that it is sin if all these things do not intervene in the nuptial covenant, just as you say that the Greeks assert... and on this account, according to the laws, the consent alone of those concerning whose unions the matter is being treated suffices."

We are taught by Duchesne (*Origines*, etc., p. 454) that this Ritual is the ancient Ritual of the Romans, to which the sacrifice of the New Law has been joined in place of the pagan sacrifice. In the prior part it contains the sponsals, that is, the manifestation of the consent of the spouses and parents; the handing over of the pledges, that is, of the ring made by the bridegroom to the bride; the written consignation of the dowry before witnesses of both parties. In the other part there is had the celebration of Mass before the married couple, the blessing or veiling, and the coronation at the departure from the church.

The veiling is omitted in the Roman Ritual, although it is most ancient and is already mentioned by Siricius (384-389), in the epistle to Himerius, c. 4 (P. L., XIII, 1136), and by St. Ambrose (epist. 19, 7, P. L., XVI, 984).

Formerly mutual consent and the handing over of pledges pertained to sponsals.

II. Concerning the closed time. By canon 52 of the Council of Laodicea (between 340 and 361), the celebration of matrimony in the time of Lent is forbidden (Harduin, *Coll.*, I, 790). The prohibition is confirmed in the forty-eighth among the chapters of Martin, bishop of Braga (Harduin, III, 397). The Council of Benevento (1091), c. 4 (Harduin, VI, p. 2, col. 1696), decrees thus: "From the day of Septuagesima until the octaves of Pentecost (elsewhere, until the octave of St. Pascha), or from the day of the Lord's Advent until the octave of Epiphany, marriages are in no way to be contracted." By the Council of Trent, Session XXIV, *De Ref. Matr.*, c. 10, only solemn celebration is prohibited from Advent until the day of Epiphany, and from Ash Wednesday until the octave of Easter, inclusive.

E. DE M., S.I.

To n. 852. - Appendix XVII. Historical Matters Concerning the Sanctification of Feasts

From the beginnings of the Church the faithful began to appoint for divine service one day of the week, the day which they called the Lord's day (Apoc., I, 10) because of the resurrection of Christ. But while the sanctification of the sabbath was chiefly contained in observing sacred rest, the Lord's day was rather sanctified by the divine offices at which all were accustomed to be present. For on that day Christians came together to break the Eucharistic bread and to sing divine praises, which is proved for us by the sacred books of the New Testament (Acts of the Apostles, 20, 7; 1 Cor. 16, 2; Apoc. 1, 10).

Also as a sign of joy, "on the Lord's day we deem it unlawful to fast, or to adore on the knees" (Tertullian, *De corona militis*, 3, P. L., 2, 70). This interruption of fasting and, according to many, the recitation of prayers with the body erect, was also observed on Saturday, which day, especially in the Eastern Church, was for some time accustomed to be celebrated.

Besides, other feast days also were appointed.

Further, moreover, the obligation of hearing Mass is commemorated from the beginning of the fourth century in the acts of Councils. Cf. the Council of Elvira (306), c. 21; the Council of Sardica (343), c. 11 (Harduin, I, 252 and 647).

As to cessation itself, Tertullian already commemorates it, writing: "On the Lord's day... we ought to beware of every habit and office of anxiety, deferring even business, lest we give any place to the devil" (*De oratione*, c. 23, P. L., 1, 1191). In the so-called *Apostolic Constitutions* (a collection composed not earlier than around the year 400) it is prescribed that "servants shall work five days, but on Saturday and Sunday shall be free in the church on account of the doctrine of piety; for we have said that Saturday indeed has the rationale of creation, but Sunday of resurrection" (VIII, 33). Yet the Council of Laodicea (around 361) also witnesses that the discipline of the Church in this matter was mild, since c. 29 forbids Christians to be idle on Saturday, but asks of them Sunday rest if it can be observed; and under the name of a certain Judaism it disapproves the custom of those who on the Lord's day refused to ride on horseback or by carriage or to carry out domestic business. Indeed St.

Jerome shows us holy virgins who, on the Lord's day, after the sacred offices had been completed, "were intent upon the work distributed, and made garments either for themselves or for others" (Ep. 108, 19, P. L., 22, 896). Constantine the Great sanctioned the first written law concerning cessation in the year 321, yet excepting the cultivation of fields, "lest by occasion of a moment the advantage granted by heavenly providence perish" (L. 3 Cod. III, 12, *De Feriis*); by the same edict it is also prescribed that "all judges... shall rest on the venerable day of the sun." This was gladly approved and received by the Church. Thus ecclesiastical judges are prohibited from conducting forensic business on Sunday by the Council of Tarragona, c. 4 (516, Harduin, II, 1428). Spectacles, dances, and indecent songs are prohibited on Sunday in the Fifth Council of Carthage (401, Hefele, II, 8, 81), c. 5, and in the Council of Orleans (538, Harduin, II, 1428), in which servile works which are not permitted to be done on Sunday are already described. Thereafter many decrees occur.

To n. 872. - Appendix XVIII. Historical Matters Concerning Fasting and Abstinence

At the end of the second century, St. Irenaeus, in Eusebius, *H. E.* (P. G., 20, 501), bears witness to the Paschal fast, by which, relying on Luke 5,35, "when the bridegroom shall be taken away from them, they shall fast," Christians were accustomed to observe a complete and continuous fast "on the days on which the bridegroom was taken away," that is, Friday in Parasceve and Holy Saturday; with some extension, many enlarged this to the whole Holy Week, from Monday to the night after Holy Saturday.

Besides, since they did not wish to yield in fervor to the Pharisees, who (cf. Luke, 18, 12) fasted twice in the week, on Monday and Thursday, they themselves, on station days, or Wednesday and Friday, observed a half fast, by which they were refreshed only with bread and water after sunset. Certain more fervent persons began to observe this also on Saturday. This was done regularly, for certain days were excepted. They did not fast in Paschal time, because then the Lord is with us (St. Jerome, cited in Dist. 76, c. 7).

St. Leo the Great (440-461) testifies that at Rome there was a fast for forty days morally so called, referring this usage to the Apostles themselves. Already in the fourth century the Council of Nicaea (325) speaks of Lent. This prepared for Baptism and for absolution, and it included fasts of varying character and duration (it was not daily). In general, this fast consisted in a single meal, from which meat, eggs, milk foods, and wine were excluded.

St. Leo the Great also testifies for us to a spring fast in Lent, a summer fast at Pentecost, an autumn fast in the month of September, and a winter fast in the tenth month (Dist. 76, c. 6). First three times in the year, then four times, that fast was strictly prescribed (cf. Decree of Gratian, D. 76, c. 1).

They fasted also on the vigils of the principal feasts.

In the seventh century the number of forty days was completed in place of thirty-six, by which it was judged that as it were tithes of the year were offered to God (Cassian, *Collat.*, 21, c. 24, 25).

Down to the twelfth century, he who ate before Vespers was not considered to fast. Wherefore, so that his officials could dine at a suitable time, Charlemagne permitted Vespers to be celebrated earlier in Lent, so that one could already eat at the second hour. Then many began to eat at the ninth hour (or the third after midday), which St. Thomas demonstrates to be just. From this came the Flemish

name: *noenmaal*. At the end of the thirteenth century, supper was placed at the sixth hour (midday). Yet so that they could defer eating until after Vespers, Vespers were anticipated.

From the sixteenth century many mitigations were introduced.

From the seventh century, the Rule of the Master testifies that it was permitted to take some liquid around evening. In the thirteenth century drink outside meals is permitted. St. Thomas, 2, 2, q. 147, art. 6, ad 2, allows electuaries to be added. This becomes general usage in the fourteenth century. Thus, at the end of the Middle Ages, a certain refection from herbs and fruits was permitted, during which the *Conferences* of Cassian were read, whence it was called by the name Collation.

Fish were introduced by usage; the scholastic doctors admitted this usage (2, 2, q. 147, art. 8, ad 2).

The permission of drink and the doctrine of St. Thomas concerning electuaries led to a little morsel, which was formally permitted in the response of the Sacred Penitentiary for the Canadian region, November 21, 1843.

Down to Benedict XIV, a probable opinion joined the two precepts of abstinence from meats and fasting inseparably, so that when one ceased, the other ceased. Then he himself, in the encyclical letter *Non ambigimus*, May 31, 1741, for those dispensed in the eating of meats, confirmed the obligation of one meal, and besides decreed that meats and fish should not be set out together as dishes; which he prohibited under grave sin.

The sanction was sometimes very severe. A Capitulary of Charlemagne punishes with death him who should eat meat through holy Lent.

For a long time it was doubted concerning the age at which the obligation began. The opinion of St. Thomas prevailed, who placed the beginning at the end of the third seven-year period (2, 2, q. 147, art. 4).

Workers formerly were not simply dispensed. Eugene IV dispensed them from fasting around the year 1440.

Among the Greeks abstinence must be observed at least for 180 days in the year. On fast days this abstinence imposes xerophagy, which prohibits meat, fish, eggs, milk foods, oil, and wine. Less rigorous abstinence prohibits meat, eggs, and milk foods, and sometimes fish. Monks never use meats; and, except for a few days, they are bound to xerophagy.

To n. 889. - Appendix XIX. Historical Matters Concerning the Censorship and Prohibition of Books

1. Particular decrees by which books were condemned are already had in the First Council of Nicaea (325), against the book of Arius, *Thalia*; then against the books of Pelagius, of the Manichaeans, etc.

The first catalogue of prohibited books is in the decree which, under the name of Gelasius (496), was received in the Decree of Gratian, D. 15, c. 3. Sometimes it is celebrated as the first Roman Index.

Besides the works of heretics, the fabricated acts of martyrs and apocryphal penitential books were then condemned; afterward, in the Middle Ages, also treatises of the magical arts.

From the end of the thirteenth century (1299), on account of the abuses of heretics, provision began to be made lest the Sacred Scriptures be read imprudently by the people, especially in the vernacular tongue.

In the sixteenth century it was necessary to proceed more sharply against depraved books. Wherefore several particular Indexes of dioceses or kingdoms appeared.

Paul IV first issued the Roman Index in the year 1559; but in the year 1564 there appeared the Index of Pius IV, called for by the Council of Trent, to which are prefixed the so-called Tridentine rules, or ten general decrees concerning the proscription of books. This Index, as regards its substance, remained down to Leo XIII.

Yet Sixtus V prepared a new edition of the Index, which, with certain books removed, Clement VIII completed in the year 1596. Here occurs the clause *Opera omnia*, by which a writer who seemed worthy of universal proscription was marked.

In the edition of Alexander VII (1664), the books which previously were distributed into three classes were arranged in alphabetical order.

Benedict XIV gave an excellent edition (1758), after first prescribing the most wise Constitution *Sollicita ac Provida*, July 9, 1753, concerning the method to be observed in the examination and proscription of books.

In the year 1900, Leo XIII, with the general Tridentine rules also reformed, promulgated a new Index for the whole world. The new general rules are contained in the Code.

II. Even before the law concerning previous censorship existed, there were not lacking holy and learned men who would hand over suspect books to the Supreme Pontiff for examination, or who would seek his judgment and counsels concerning their own books.

A certain previous censorship was imposed by particular law, for example, of the University of Paris (June 5, 1366), upon masters.

After books began to be printed with type, the University of Cologne, praised by Sixtus IV on March 18, 1479, went before by example in exacting censorship.

But the first pontifical Constitution concerning the previous censorship of books has as its author Innocent VIII, November 17, 1487. Alexander VI, in the Constitution *Inter multiplices*, June 1, 1501, issued a general prohibition, for the four ecclesiastical provinces of Germany, that books should not be printed unless the archbishops or competent Officials had first been consulted. Then in the Fifth Lateran Council (1515), Leo X, on May 4, 1515, prohibited under grave penalties that anyone should presume to publish any writing without the previous recognition of the bishop or, in the City, of the Vicar and the Master of the Sacred Palace. The Council of Trent confirmed this decree, then increased by the rules of Clement VIII concerning the printing of books, until the rigor of the former law was mitigated, by an express law for the Pontifical State, by Pius IX in the year 1848, and elsewhere by the custom of places. Leo XIII sanctioned and defined this benignity more, and now the canonical Code does so.

Meanwhile particular provisions were also made concerning liturgical books and concerning books written on a certain argument in places which are subject to the Sacred Congregation of Propaganda

Fide. For more on these matters, cf. our *De Prohibitione et Censura librorum*, ed. 4, or Hilgers, S.I., *Der Index*.

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Proemium

Article I: Argument and Disposition of the Volume

Ordering and Notions of Things

1. Argument of the volume. In this volume of our moral work, which borrows its special name from the virtue of chastity, in the first place we have proposed to hand down all those things which books or booklets on the Sixth and Ninth Precepts are wont to contain; yet rather briefly, since concerning these matters we have already spoken more fully in the special volume *On Chastity and the Contrary Vices*[1].

But the duties of chastity vary according to the condition of persons, who can be betrothed persons de futuro, spouses, and persons altogether celibate. And because, besides the duties of piety and charity, concerning which there is treatment in vol. II, *On the Duties of the Virtues*, the remaining duties which spouses owe to each other are rather intimately connected with chastity itself, we have judged it better to transfer the whole moral section on matrimony here. This advantage is added, that our volume III may thus be shown more to be principally canonico-liturgical.

[1] A doctrinal and moral treatise, second edition, XII-420 pp. 1921.

2. Disposition of the volume. This plan has led us to arrange the volume, which consists of one book only, so that, after an introduction concerning sexual matter has been premised, there would follow:

Treatise I, On the virtue itself of chastity and on the contrary vice;

Treatise II, On the duties and chastity of betrothed persons de futuro;

Treatise III, On the duties and chastity of spouses;

Treatise IV, On the chastity of the rest;

Treatise V, On connected modesty, on immodest acts, and on disguised lust.

May God grant, by the intercession of the Immaculate Mother of Christ, that this book may be for many not only a reminder of virtue and vice, but, most especially, a persuader to purity!

Article II: Introduction Concerning Sexual Matter

Usefulness. A sufficiently distinct knowledge of bodily constitution and function is required, so that several moral solutions can be given and understood in their foundation.

I. Fecundation. , by which provision is made for the human race by multiplication, requires that some zoosperm or nemasperm (spermatozoid) should have penetrated the feminine ovule. This penetration occurs in the ovary or in the oviducts, that is, the uterine tube.

2. To this fecundation the genital apparatus of each sex is adapted:

a) The male organs are the twin testes or testicles, which before birth are hidden in the abdomen, but from the birth of the infant are contained in the scrotum, and in which the zoosperms are elaborated. These glands are at the same time sources of an internal secretion which is mixed with the blood, and to which are attributed the signs of virility (beard, hairs in the pubic region, masculine voice) and the force of nourishing, through the so-called "hormones," the sexual appetite. - There are besides two deferent canals (vasa deferentia), very slender, which from the testes through the abdomen and prostate flow together into the urethra as ejaculatory canals. But the secretion of the testes is led to them through the epididymis, or a canal often folded back on itself, so that, under the exterior skin, it seems to be, as it were, an interior tunic of the testes. Moreover several little canals (10-15) first bring the same secretion to the epididymis itself. They are called afferent canals or cones. - Then, there are two seminal vesicles, which, placed between the rectum and the urinary bladder, are so called because formerly they were thought to be receptacles of the nemasperms, whereas now they are considered rather as the organ of a certain secretion. This secretion, together with secretion from the end of the deferent vessel, from the prostate, and perhaps from the glands of Littré and Cowper, accompanies the flow from the testes. - Then there is the prostate, which is a gland hidden in the abdomen under the urinary bladder and the seminal vesicles, through which the ejaculatory ducts and the urethra pass. - Then the two glands of Cowper, which, situated under the prostate, also flow into the urethra.

Then there is the urethra, or urethral canal, which is the lower part of the male member and emits both sperm and urine. - Finally, there is the male member (penis, little rod, mentula, veretrum), which is constituted by two joined cavernous bodies, under which the urethra is. It is erected when it is filled with blood. The glans, very excitable, holds the extreme part of the member and is covered by the prepuce, a membrane which by no means adheres to the glans.

Under the prepuce, at the root or crown of the glans, the so-called smegma of the prepuce is gathered, which among many, when the prepuce has been drawn back, must sometimes be removed, lest it become foul-smelling or even impel to masturbation.

b) The female organs of generation are: the vulva, under which name come the exterior parts of the woman's genitals, i.e.: the large lips, which are two folds of the exterior skin, these alone being seen externally; the small lips, or nymphae, i.e. two smaller folds, situated between the large lips, where smegma of the same nature as the smegma of the prepuce, frequently needing removal, is produced; the clitoris, or very small penis without a urethra, which is an instrument of pleasure and is delightfully erected.

Then there is the vagina, of cylindrical form, always closed by the three coverings of which it consists. Its opening[1], among virgins, is regularly covered by a membrane, called the hymen, which is wont to imitate the figure of a half-moon, so also that it does not cover the whole opening. In the vagina there are glands named after Bartholin, which, in very vehement heat, emit a fluid rather similar to the fluid emitted by the man in seminal emission: this emission is feminine pollution, and was formerly thought to be the woman's semination. - Then there is the uterus or womb, which, rather similar to a small flask, is, by its lower part, which is called the neck, inserted as it were into the vagina[1], while the upper part, or body of the uterus, has a triangular form. In the middle of the neck, the interior part of which is called the tench's snout (*museau de tanche*), there is a small mouth by which the uterus communicates with the vagina. But the interior surface of the vagina and of the uterus is wrinkled. -

Then there are the fallopian tubes or oviducts: they are two canals, nearly 10-12 centimeters long, which communicate with the uterus through the so-called uterine opening. - The ovaries, or two glands, to the right and to the left of the uterus, by which eggs are produced.

The oviducts are not constantly applied to the ovaries. But they end in a certain kind of shell or end of the tube (*pavillon de la trompe*), which, at the time when the mature ovules fall from the ovaries from the so-called vesicles of Graaf, is adapted to the ovaries so that it may receive the ovules which are afterward led through the tube toward the uterus. This time recurs nearly every month. When no fecundation has occurred, the ovules are emitted through the vagina together with blood dripping drop by drop: this is called the menstrual flow. It ceases during pregnancy. - Finally, the breasts or paps are destined for producing and giving milk.

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[1] The opening of the vagina is placed between the urinary meatus, or the mouth which, placed under the clitoris, is destined for emitting urine, and the anus.

[1] By that insertion there are effected, on the right and left of the neck, in the vagina itself, two bends or recesses where part of the sperm can lie hidden before it penetrates the uterus.

Virginity. , or the viridity of intact flesh, i.e. of flesh immune from libidinous contact, is demonstrated by no physical indication in the male, while, in the female sex, physical virginity designates that apparent integrity of the body which consists in the preserved seal or enclosure of virginity.

Most persons, especially the more ancient, place the virginal enclosure in the hymen; nevertheless the hymen can be absent from birth; it is broken for various other causes; nor is it always torn in the first acts of copulation. Therefore others place this enclosure in a certain contraction and compression by which the parts of the opening of the vagina are constricted, until they have been dilated by carnal copulation. But neither from this side is an altogether certain sign had.

Male seed. , or sperm, contains, besides the nemasperms, fluids distilled or secreted through the other glands, so that there is obtained a liquid mixture which can flow and be ejaculated. This is complete sperm, or sperm strictly so called, in which the zoosperms swim. Besides these zoosperms, the testes contribute almost nothing to that fluid. If zoosperms are lacking, there remains, on account of the other fluids, sperm or male seed more broadly so called.

The female seed is seen to be constituted by ovules.

Intervention of the threefold life. The production and emission of sperm, the spontaneous production and falling of ovules, and the very conjunction of each element, or fecundation, are, according to themselves, functions of the vegetative life, like the chewing and assimilation of food: they occur in plants. But provident God joined sensations and delight to a function so useful and so necessary for preserving the species, by which the sensitive life, or inferior psychic life, intervenes. Then these sensible affections are perceived by higher cognition and are ruled, at least in part, by rational appetite, so that the higher psychic life with imputable action is by no means excluded. Hence venereal delight, venereal appetite, sexual instinct.

1. Venereal delight. can be described as the proper delight of an operation generative in itself, so that it is felt fully or perfectly in the operation itself, but incompletely in its beginnings. But that operation is copulation. This denotes penetration of the erect male member, with effusion of seed, at

least broadly so called, into the vagina of the female, who herself is accustomed to have her own motions attracting the seed and to experience a delightful heat.

In each effusion, nemasperms are contained in an immense number, which they estimate at 250,000,000 to 200,000,000. If the man has perfectly penetrated the vagina, already in the very act of copulation many nemasperms enter the uterus. But such is their motion that they traverse the hundredth part of a meter within ten moments (minutes). Moreover the beginning of the vagina is distant from the opening of the uterus by 2 1/2 to 3 1/2 centimeters; but by 10 to 15 centimeters from the fallopian tubes, where, if they meet the female ovule, which descends by a slow motion, fecundation is wont to occur, unless it occurs in the ovaries themselves. Therefore, when all things proceed in the best way, fecundation already takes place after an hour and a half from the completed copulation.

2. Both complete and incomplete venereal delight is described materially as a delightful change of the organs proximately serving generation.

For rightly understanding this description, one must beware: **a)** lest you think that the organs of generation are, simultaneously and in all their extension, the seat of venereal pleasure. This seat, in the man, is the male member, especially the glans by which it is terminated; in the woman it is the clitoris, the vagina up to the uterus, and to some extent the nipples of the breasts. Wherefore they think the woman's venereal delight is greater than that of the man; **b)** lest you confuse the seat of pleasure with the place whence excitation can proceed. Thus, from the exciting place, they distinguish in the woman papillary, uterine, and clitoral pollution; and even in the man touches exercised on parts neighboring the sexual organs, which have a nervous affinity, can excite venery. And in more distant parts secondary centers are observed, for example the lips, where a touch of the surface can induce or increase venereal stirring. Nor is contact needed. Through the other senses also, whether immediately, or especially through the mediation of phantasy, which alone suffices, man is excited; **c)** lest you think that delight is so proper to those organs that you exclude or deny the participation of other parts, while not a few moderns contend that sensations are perfected in the brain itself; **d)** lest there be too much attention to this, that that very change of the organs itself be perceived as delightful. Let one who, from a phantastic representation, obtains at the same time both a change of the sexual parts and a delight distinct from the purely sensible, not doubt that he experiences venereal delight.

3. But the more accurate or formal definition of venereal delight is: a psychic state brought on by venereal sensation and a joined affection.

But venereal sensations are: **a)** an external sensation, so called from an exterior object or cause, when by the contact itself in the glans, etc., the proper titillation of the sexual organ is excited; **b)** kinesthetic sensations, by which the situation or motion of the sexual organs is perceived, when they arise from a strictly venereal impulse, for example from an obscene phantasm, or are directed to a strictly venereal act, copulation or emission of seed; **c)** organic sensations brought on by the blood with which the cavernous bodies of the penis and clitoris are filled, especially those which are joined with the emission of seed at least broadly so called.

Moreover those sensations induce an affection (*impression, sentiment*) of pleasantness (*de bien-être*), either pure, as in the complete act, or mixed with some less pleasant tension, as in an incomplete or

not yet perfect act.

— In what manner the delight of the sensitive order is special it is useful to indicate more accurately. Now indeed it is special insofar as it is taken as incorporated in the sensation, and effects something one with it. But if the enjoyment of the subject is taken according to itself, the more probable opinion today holds that various sensible enjoyments (*jouissances*) taken as if separated from the cause do indeed vary in intensity and in unequal participation of body and soul, but are reduced to one common satisfaction generically or specifically, so that the moral specification must be derived from the cause.

In joy, or higher delight, the object not merely brings satisfaction, but, being reflexively known, estimated, and loved, enters the delight itself and changes it, so that this separation cannot be had, and joys are truly specifically diverse.

Venereal appetite. The affection of pleasantness brings about prosecutive tendencies which compose appetite. Therefore the inferior venereal appetite, spontaneously, as satiative, embraces the complete act; if it is not complete or is altogether lacking, it is spontaneously borne through sexual instinct to completing the same or to procuring it by apt actions.

When reason intervenes and complies, there is then added a formal pursuit of rest in the possessed good, or of preserving the pleasantness and increasing it artificially.

This appetite can be sound or regular, which, both in force or intensity, and in the mode in which it is excited, and in the object to which it is borne, is adapted to human nature; and it can be infected by various vices, i.e.: **a)** considered in its force or intensity, it can labor under anesthesia or hypesthesia, when it is none or too weak; or, on the contrary, it can rage too much through hyperesthesia, which in the man is called satyriasis, in the woman nymphomania; **b)** considered in its object or term, it can be borne either toward one's own body, or toward the same sex, or toward another genus, in animals; **c)** considered in the mode of excitation, it can be excited by things which commonly do not excite others, for example by sight or touch of an animal or of a material object, or not be excited in circumstances which commonly would be the cause of grave heat. The vices sketched under **b)** and **c)** are called by the common name, besides their proper names, paresthesias.

Sexual instinct. strictly so called is an innate propensity toward sexual acts which procure venereal delight.

Observe, therefore, that it does not incline toward generation as such, but toward copulation, which of itself denotes an order toward generation.

But in man there must also be considered sexual instinct broadly so called, which seeks the very person of the other sex on account of secondary sexual characters[1], i.e. on account of psychic and somatic qualities which render the intercourse of one sex with the other sex pleasant or agreeable. But since at the same time the whole body is present close by, this pursuit of the person remotely disposes to venereal delight. The passage from spiritual appetite to carnal appetite is rendered more difficult or easier according to the nature of the affection and of the qualities attracting.

For the affection can be one of piety, as between father and daughter, mother and son, between brothers and sisters; and then the very reverence which enters that affection is wont to restrain carnal appetite. It can be simple friendship, founded on intellectual, moral, supernatural endowments; and

this, placid, tranquil, without envy, seeks bodily demonstrations of kisses and embraces less even than piety. It can be love, or an affection similar to that which is wont to join both spouses. This affection between strangers is of suspect honesty, contains a certain mutual handing over which, since it lacks a useful end, gives place to scruples; it is wont to be fostered between two only, with others jealously excluded; and it impels to frequent significations of affection, which are wont to render the mind unquiet. Founded more on typical bodily qualities, it frequently induces physiological changes in the genital organs themselves, so that a carnal appetite is mixed with the more noble one.

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[1] Primary characters result from the genital apparatus itself.

Sensible delight, merely sensible. Carefully to be distinguished from venereal delight, just described, is sensible delight, whether that special delight of the exterior senses, for example the touch of a soft thing, which can also be obtained in the sexual organs, or the less defined delight which is brought by an affection depending on sexual instinct broadly so called. And when the passage to carnal commotion is easy, that delight is called sensible-carnal, and those who indulge it are said especially to favor sensuality.

Merely sensible is the delight of sight, hearing, and touch without relation to the sexual appetite.

It also happens, because love properly spiritual and carnal love are helped by a similar and allied bodily disposition and affection, i.e. by a similar coenesthesia[1], that, on account of the physiological law of association, a man, especially a male, while he fosters a spiritual, indeed a religious affection, unwillingly suffers certain motions of the flesh. According to that law of association, two affections which have a similar repercussion in the body can be excited by that very repercussion, just as also one repercussion can induce the other.

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[1] Do not confuse kinesthetic sensations, by which the situation and motion of the organs are perceived, with coenesthetic sensations, or sensations common to several operations.

Extension of the sexual appetite in man. It is also proper to man that even in another person of the same sex, indeed in his own person, he finds sources of satisfaction either broadly or strictly sexual. Whence, even without any perversion or inversion of appetite, he can yield to sexual instinct broadly or strictly so called in his intercourse with persons of the same sex or alone, and can will to procure for himself sensible-carnal or strictly carnal delight. Think of the dangerous friendships of adolescents of the same sex in boarding schools, which, by the aforesaid marks of love, are distinguished from friendship properly so called.

Venereal instinct. impels to various contacts which, by new stimuli, increase carnal excitation. Nor does what is called the appetite for "contacts" have any other signification than a carnal one among brute animals. In man, on the contrary, kisses and embraces can also be commanded by a noble affection, for example of piety or friendship, or by a dangerous affection, not yet, however, carnal.

These things must be accurately distinguished, observing especially whether the propensity is moderate, quiet, content with the accustomed signs of affection, or, on the contrary, tends toward excessive and unusual demonstrations: this avidity introduces suspicion of a carnal affection.

Carnal motions or acts. which are strictly sexual now seem to have been sufficiently declared. They are in every use of venereal things as such, or in any "actuation" of the genital apparatus, which from

the end of the work is destined to procreating offspring.

Therefore, besides the complete use of natural or unnatural copulation and of pollution, there are, in the man, a pleasurable, not every nervous, erection of the member and agitation of the member; in the woman, a delightful erection of the clitoris and contraction of the vagina.

Force of phantasy. By the phantasms themselves sensations can be represented and similar effects brought about as by exterior sensations.

For in the brain itself there is a center of excitation; another is had in the spinal cord; a third, in a certain part of the genital apparatus.

Summary

1. Fecundation, which is wont to occur in the ovary or oviduct, requires that some zoosperm should have penetrated the feminine ovule.

2. Zoosperms are elaborated in the testicles, which at the same time are sources of an internal secretion by which, through the so-called hormones, the sexual appetite itself is nourished; while the feminine ovule, nearly every month, from puberty to the age of about 50 years, which thence is called menopause, spontaneously falls with a flow of blood, menstruation. Complete male sperm contains besides fluids secreted through other glands, in which the zoosperms swim.

3. To the function generative in itself, or copulation, God has joined the proper delight which is called venereal, and which is materially described: the delightful change of the organs proximately serving generation; but formally it can be defined: a psychic state brought on by venereal sensation and a joined affection. It can be complete or incomplete: the latter tends toward the complete.

4. Venereal appetite denotes concupiscence of that delight; and it can be sound or regular, such as commonly is had, or labor under the vice of anesthesia or hypesthesia, hyperesthesia, and paresthesia. It can exist without or with the participation of reason.

5. Appetite is fostered by sexual instinct, which, strictly taken, is an innate propensity toward sexual acts which induce venereal delight; but, taken more broadly, it seeks the person of the other sex on account of secondary sexual characters.

6. Sensible delight is contained in every enjoyment of the sense. Merely sensible delight excludes venereal delight; sensible-carnal delight is a less defined bodily satisfaction which easily passes to carnal commotion. The voluntary pursuit of sensible delight, if it is either excessive or is borne toward the sensible-carnal, which, in unmarried persons, can always be called excessive, is called sensuality.

7. A carnal motion, or a strictly sexual act, is had in any actuation of the genital apparatus which, from the end of the work, is destined for generating offspring.

Therefore there is, besides the complete use of the faculty, in the man an erection pleasurable in itself and agitation of the member; in the woman, a delightful erection of the clitoris and contraction of the vagina.

A threefold center of venereal excitation is had finally: the brain, the spinal cord, and part of the genital apparatus.

8. Bodily integrity in the female alone is regularly demonstrated by a visible indication, i.e. either by an intact hymen or by a complication of the parts.

Treatise I: On the Virtue Itself of Chastity, and the Opposed Lust

Usefulness. Not only the scientific proposition of duties, but also noble human endeavors are aided by knowledge of the virtue which presides over them. But not less than the combat is inevitable, knowledge of the discipline which brings forth victory is necessary.

Article I: Notions and Divisions

— The greatest delight of the bodily order, which is joined with the use of the generative faculty, demands a moderating virtue, which is chastity. This, such as it would exist in the natural order, inclines man to moderate the sexual appetite according to the laws of reason. It is placed under the genus of temperance as a species.

Observe the distinction which intervenes between the formal object of this virtue and the formal reason for preserving order in the use of the faculty. Operation generative in itself denotes an immediate order to the good of the species; temperance immediately places order in the acting man himself, who subjects his inferior appetite to reason. But the good on account of which that order is deserted is a delightful good. And thus, through the command of reason over delight, toward which virtue helps, provision is made immediately for the good of man, mediately for the good of the species. Therefore the formal reason of the precept and of the virtue which is placed in charge of preserving the precept is diverse.

— By reason of matter, chastity is distinguished into matrimonial chastity, which, for spouses, moderates the appetite of venereal delight, and extra-conjugal chastity, which does so for persons loosed from the matrimonial bond.

By reason of the accompanying purpose, chastity is called perfect, which bids farewell to every carnal delight, even that which is made honorable by matrimony. This is virginal chastity, in a person who has voluntarily admitted no complete venereal satisfaction.

The very pursuit of virginity can be directed to perfection, when it emulates the purity of the angels, who do not experience carnal pleasure, are alien in mind from seeking it, and do not have to fear the contagion of vices and the seduction of allurements. Therefore angelic chastity: **a)** sincerely and fully preserves every affection alien from carnal pleasure; **b)** insofar as is fitting and the ability is had, strives to preserve the body free from every carnal motion; **c)** keeps itself immune from the contagion of secular corruption. And it reaches the summit when, every servitude of the sense having been repudiated, the mind enjoys no sensible delight as such.

The pursuit of perfect chastity is called continence, under which name also comes the persevering will of chastity in interior difficulty. For because most must struggle with a propensity to lust, strictly speaking they have not attained the acquired virtue of chastity. For acquired virtue connotes facility of act. Wherefore, in place of chastity, they possess the virtue of continence, which Aristotle calls a

mixed virtue on account of the remaining difficulty. Nevertheless a certain facility of prompt victory can be acquired by the habit of energetic resistance.

Those who join the purpose of perpetual virginity with integrity of the flesh satisfy the conditions of the aureole of virgins, i.e. they merit an accidental but distinguished reward on account of the special victory which they have won back in the fight against the flesh, and on account of the liberality by which they preserve their heart, or affective life, for Christ. (Cf. *On Chastity*, n. 155 sqq.).

Matrimonial chastity consists in a threefold grade. First, and this necessarily, spouses have the destiny of so fulfilling all duties that they do not exceed the limit of conjugal flesh; in a more perfect grade, carnal mingling is exercised for the sake only of having children; third, and at the highest grade, spouses preserve perfect continence. (Cf. St. Augustine, *Against Julian the Pelagian*, l. 3, c. 21, n. 43, and l. 4, c. 2, n. 10. P.L. 44, 724 and 741).

— The vice opposed to chastity, lust, signifies the inordinate appetite of venereal delight. It is opposed to chastity by excess, while insensibility is opposed to the same by defect, which declines the due use of venereal things in matrimony. Lust is distinguished into complete or perfect lust, which infects the consummated use of the venereal faculty, and imperfect or incomplete lust, which is the beginning of the former. The acts of imperfect lust are some interior, namely base desires; others exterior, as libidinous looks, touches, conversations, etc. The acts of perfect lust are both natural acts, which do not repugn to nature in this respect, that, the nature of the act being considered, generation can follow, and unnatural acts, which violate the very order toward generation.

Lust can be directly, or in itself, willed, and indirectly willed, or permitted, when something else is intended from which carnal pleasure follows, not beyond foresight, but beyond intention.

Article II: Discipline of Chastity

Necessity of discipline. Since the use of the generative faculty is reserved to spouses, and since in matrimony itself many circumstances impose perfect chastity, or at least abstinence from the complete venereal act, even through long intervals, the necessity of an education which prepares chaste and continent souls must be proclaimed universal. And that it is done so negligently or so confusedly is greatly to be grieved.

But a more general and a special preparation must be distinguished. Each must be solicitous concerning the body, concerning the sense, and concerning the mind.

To this pertain the arts to be commended: that they procure a body healthy, strong, immune from defects which stir the flesh; that they snatch incentives from the sense; that they strengthen the command of the will; that they fashion a soul noble, generous, imbued with humility and Christian piety. Therefore there are negative parts, which ward off carnal stimuli, such as certain physical defects, sensual sights, filthy speech, vain loves; and positive parts, which truly affect man toward purity. Let the body be exercised physically enough that an honorable weariness, after labor not useless or unpleasant, may anticipate temptations; let intellectual and spiritual food be given to the soul, especially Eucharistic refreshment.

— You ask here concerning the usefulness of revealing the mysteries of life. A question not a little disputed today, and examined by us rather fully in *On Chastity*, n. 186-201, seems able to be prudently solved by these conclusions.

1. Neither is natural ignorance to be destroyed of itself, nor is artificial ignorance to be procured. And such an explanation of sexual matters must be given, not one which increases, but one which lessens, solicitude about sexual matters. Therefore it must be graduated and, insofar as can be done, accommodated to the curiosity or necessity of individuals.

2. That we may propose a few things concerning its individual parts: the explanation of sexual perversions is useless for the profane and easily harmful, at least for the phantasy of women. Nor does it help to explain venereal diseases before the age at which illicit commerce with the other sex is to be feared. There remains the process of generation with the connected phenomena. Concerning these, it seems that this must be said:

a) The revelation of the maternal office, of procreation from the flesh of the parent's body, of the long time during which, not without cares and inconveniences, the child is carried, then to be brought forth by laborious birth and nourished by maternal milk, does not excite the phantasy, and satisfies curiosity, since it furnishes an explanation which seems sufficiently adequate. Moreover it appears most efficacious for generating the very useful affection of piety. Wherefore to every son or daughter seriously asking, it can be given without inconvenience and with profit;

b) The mother should not hesitate to give the true reason of the menstrual flow which the daughter has experienced. But when a son asks about nocturnal pollution, either parent should say that it is natural. And the son is to be preserved from fear of disease, which is wont to depress the soul not a little. Having gained this occasion, parents will repeat admonitions that, even for preserving his forces intact, he should abstain from touches that are not very modest, and that if he should have any doubts about these things, he should ask either parents or confessors;

c) As regards sins, the confessor by prudent questioning or by the very indications of accusation, and parents by direct observation, must, as it were, accompany the pubescent child. If some suspicion of depraved touch or of a troubled conscience rightly arises, let them give him courage to manifest doubts, and admonish him concerning the obligation of chastity. According to the disposition and age of the child, they will see whether or not the intrinsic reason of the sin must already be explained;

d) After the completion of humane studies, a fuller notion concerning human generation seems generally to be given even spontaneously to those who are ignorant. The chaste young man is then at that age at which, his powers having been strengthened, that knowledge can be said to be harmless, while childish curiosity would easily suggest an attempt at experience, and at which it is fitting that he learn to pursue virtue with deliberate mind. Care must also be taken lest a chaste adolescent incautiously run into dangers, or be ridiculed on account of ingenuous and candid words, and thus be forced to act more timidly with companions, nor be able to unfold a manly spirit.

For girls also who, as they say, are preparing to enter the world, it is generally to be desired that, whether by the mother or by another trusted person, they be taught clearly concerning human generation. Moreover, it is very useful that, unless they have been given a higher vocation, they hear, even expressly, lectures in a higher school concerning the end, burdens, and sanctity of legitimate love. For not a few spend days in futile things, indeed in vain dreams and in dangerous friendships;

others, modest and fearful in a childish way, others freer by inconsiderate familiarity, are seen; they begin to burn with imprudent love toward young men not very worthy, ignorant of obligations which perhaps they would have repudiated, ignorant of their rights, ignorant of the manner by which they may bear the yoke worthily and opportunely at the same time. Thence marriages are contracted which give modest hope of a blessed and Christian life. If a school is lacking, let books be supplied which explain the ends, dignity, rights, and duties of Christian marriage chastely and clearly[1].

3. It is sufficiently agreed that one must abstain from lies and that silly fables by which children are deceived are to be rejected.

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4. As regards the method to be employed: **a)** certainly, concerning the merit and excellence of chastity, concerning the detriments of impurity, both physical and moral, let there be strong speaking, even openly in the school itself, in a sermon, in explaining catechism, or on another occasion seized. But with all Catholics and most prudent writers, we disapprove of a collective or common exposition of sexual matters in elementary and middle-grade schools of itself: both because that instruction cannot be adapted enough to the variety of pupils, and because it almost invites the pupils to discuss these things among themselves after school; **b)** private information, however, belongs to parents and to the director of the soul. Let no one else do this without the consent of the parents. But let private information be brief, simple, without apparatus, and let it avoid a form which would suggest phantasms less chaste. (Cf. at the end of the treatise n. 136). **c)** As regards vulgar adolescents, who are wont to be ignorant of nothing, these, even openly, in schools or patronages, are to be led on to considering higher things. Let them know how to flee depraved companions according to their powers, and let the good grow accustomed, by positive alliances, to aid the good and strengthen the fragile. Those who are found ignorant of these matters seem to be instructed.

This is the sum. For enlightening the mind, for deterring from dishonesty, for exciting the love of chastity, many things can be handed down openly, even in boys' schools. But the culture of chastity nowhere commands or suggests a public declaration of the mysteries of life, at least as regards the nature of carnal commerce and human generation. Nor do we place the hope of purity in revelation itself, as such, but we admit it as a part, not the principal one, of rightly understood sexual pedagogy, which proposes to assist adolescents by a more ordered method, so that more than now may arrive at mature age without moral shipwreck; and we approve opportune indications which: **a)** prevent the revelations of evil counselors; **b)** prevent young persons from carrying a soul troubled by physiological phenomena; **c)** turn those more exposed and more mature away from illicit commerce; **d)** summon marriageable girls away from the dissipation of trifles and dangers; **e)** introduce between parents and children a stronger bond of confidence and love; **f)** render conscious virtue stronger, and procure a better understanding of the dignity of the Blessed Virgin Mary and of the benefit of the Incarnation.

[1] To us the little book written by Françoise Harmel seems to be recommended: *Une grave question de l'éducation des jeunes filles: La chasteté*, Paris, 1921.

Summary

I. 1. Chastity, an acquired virtue, under the genus of temperance, inclines man to moderate the sexual appetite according to the laws of reason.

It is distinguished, not formally but materially, into matrimonial and extra-conjugal chastity; and, in a person who is loosed from the bond, it is brought to perfection by the purpose of complete abstinence, especially if he pursues angelic immunity.

2. Continence is either the pursuit of perfect chastity, or the persevering will of chastity in difficulty.

3. To chastity by defect is opposed insensibility, which declines the due use of venereal things; but by excess, lust, which is the inordinate appetite of venereal delight. Lust can be complete, or perfect, and incomplete, or imperfect. Perfect lust is distinguished into natural and unnatural. But imperfect lust has interior and exterior acts. Moreover every lust can be directly willed or merely permitted.

II. 1. The discipline of chastity, both the more general and the special, must be solicitous concerning the body, concerning the sense, and concerning the mind; it has negative parts, which ward off the stimuli of the flesh, and positive parts, which truly affect man toward purity.

2. To sexual pedagogy belongs a prudent revelation of the mysteries of life, not collective, but given or offered individually according to opportunity and necessity. Natural ignorance is not to be destroyed, nor is artificial ignorance to be procured. But in knowledge of the maternal office there is no slight usefulness for increasing an affection of piety toward the mother; just as there is to be dispelled the timidity or fear which the natural phenomena of the menstrual flow or nocturnal pollution are wont to beget in the ignorant. Care must also be taken that adult girls, by knowledge of their noble vocation, be called away from futile pursuits and loves.

Treatise II: On the Duties and Chastity of Betrothed Persons De Futuro

Usefulness. Moral doubts by no means slight are begotten by matrimonial promises; moreover, in directing betrothed persons the confessor not rarely hesitates, doubtful of counsel. These things reveal the usefulness of the present treatment.

Order of speaking. The Treatise consists of two articles. In the former, there will be treatment of matrimonial promises themselves; in the latter, of the chastity or intercourse of betrothed persons.

Article I: Usefulness, Notion, and Effects of a Matrimonial Promise

I. Usefulness of a promise. Matrimony can be promised honorably and usefully. Honorably, because it is a good thing and necessary to the human race, although the continent life of itself surpasses conjugal life. Usefully, because the security of a promise fosters peace of soul, and, if faith has been mutually given, gives place to an intercourse by which the betrothed can make mutual experience of qualities, affections, and propensities, so that the indissoluble covenant of matrimony may be contracted more prudently, and they may conceive and foster that nobler friendship which will strengthen the nuptial covenant and meanwhile renders a pure and chaste life easier for the young man. Wherefore the Church, although she does not require sponsals, nevertheless favors them.

II. Various nature of a promise. 1. As every promise, the promise of matrimony can be unilateral, and then, according to the obligation undertaken, be of mere fidelity, which of itself does not oblige under grave sin, or of justice, which obliges under grave sin from the time when it has been accepted by the other party.

A bilateral or mutual promise, made under grave obligation, between persons fit in law, effects sponsals. But all who are naturally capable are fit, therefore even, although some doubted, impubescent persons, provided they are bound by no bond either of present matrimony or of an incompossible promise, nor detained by an impediment of matrimony.

Unilateral promises are to be made less of, since they are often vain or are made for extorting acts that are less lawful.

2. Conditioned sponsals also are valid. By their nature, do sponsals made between impeded persons hold, under the condition: if the Pope dispenses? Before the Code, this was disputed, rather from positive law. Against this condition there could be objected a detriment brought to the authority of the Church, which will be able to judge less freely concerning the opportuneness of the dispensation. But, at least if there is question of impediments in which the Supreme Pontiff is wont to dispense, and causes for dispensing are present, that inconvenience is rather fictitious. Wherefore we judge that the condition restricted to these impediments is valid, since from present positive law nothing contrary can be gathered. (Concerning the law before the Code, cf. Wernz, t. 4, n. 95, 96).

3. Vitiated by grave and unjust fear, they are indeed valid, in our opinion, but they can be rescinded by him who has suffered the fear. Some think the same to be null: but for the party who has been injured by fear, the nullity of the contract favors and profits him less than the faculty of rescinding; for this takes every option away from him.

4. The general rules concerning error also are to be applied here. Therefore sponsal promises infected by substantial error, understood broadly concerning a very notable quality, are not valid. Accidental error, however, which gives cause to the contract, gives the right of withdrawing to the deceived party, especially if she has been deceived by the fraud of the other.

— You ask what bodily defects must be manifested opportunely by those about to marry.

Occult defects must be manifested which render nuptials pernicious or damaging, as is every contagious disease; or notably useless for the ends of matrimony, as sterility, physical incapacity for giving birth without danger of life, a weakness which would oblige the other spouse to perpetual or long-lasting continence. Among damaging defects is also placed the occult pregnancy of the woman, which exposes the man to the danger of nourishing offspring not his own.

Occult defects which render nuptials merely less desirable need not be manifested if they cannot be manifested without proportionate inconvenience: thus a girl cannot without infamy reveal herself to have been deflowered.

Nevertheless one must act prudently here, and the very disposition of the man is to be explored, who, if he is suspicious and irascible, could esteem himself gravely offended. Nor is the happiness of matrimony to be opposed to grave danger. Sometimes there will be cause for restoring, by the aid of a skilled physician, the external signs of virginity.

Defect of substantial form. Fictitious promise.

Made otherwise than by writing signed by the parties[1] and by the Ordinary or pastor or at least two witnesses, every matrimonial promise of Catholics lacks the substantial form prescribed by canon 1017, §1. And a formless promise, whether unilateral or bilateral, even sworn, as such, no more than a fictitious promise, begets any obligation of conscience.

Nor will the publication of this law be a little useful for avoiding many deceptions for incautious girls. Nevertheless each promise fraudulently made, as a damaging deed, begets the obligation of repairing damages.

Not rarely it happens that adequate reparation is only in matrimony. Suppose a girl deceived by the reasonable hope of matrimony to be pregnant from fornication. Then, if, with attention to the social condition of both parties, especially to civil culture itself, there is hope of a happy marriage, we shall persuade, as far as can be done, that this be done. But if such hope is not had, it is most grave to impose perpetual servitude on an unwilling party, nor is it useful even for the deceived girl that she be joined to such a marriage. Wherefore then it will be better that, besides support for the offspring to be born, she accept a dowry by which she can suitably contract nuptials.

Observe that the counselor must act circumspectly. For if there are young seducers, there are also malicious women who, either spontaneously or at the instigation of the mother, set snares so that they may obtain either a husband or money. Nor must immediate belief be given to a girl who, after fornication has been admitted, says that she is pregnant by someone; but it must be accurately seen

whether perhaps she has also sinned with others, and without sufficient cause names as father a young man from whom she has expectation of more abundant money.

Moreover, even aside from cunning, if too great a distance of persons or other circumstances demonstrate that the promise could not have been anything except prodigal or fictitious, the girl's error is to be imputed rather to her own imprudence than to the fraud of another, so that the obligation of reparation is lesser. Although equitable compensation is always to be commended.

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[1] If either party or both parties do not know how to write, or cannot do so on account of a physical impediment, that must be noted for validity, and another witness must be used, who with those named above signs the promise.

Parents to be consulted. By the very affection of reverence, also by confidence in their experience and love, and by the importance which there is in matrimony for the name and prosperity of the family, sons and daughters will be moved, before they promise nuptials or allow matters to be brought to the point where they are changed with difficulty, to seek counsel from their parents. To omit this of itself is grave. The sin can become light or even none, if the negligence of the parents, or the excellence of the occasion, or the difficulty of asking, has not made them seriously unwilling. Indeed it can happen that such is the disposition of the parents that it counsels silence concerning these negotiations.

A promise illicit from the object, or of a matrimony to which the parents justly are opposed, is invalid by the natural law itself; a promise illicit only from the mode, or of a matrimony to be approved, but with the consultation of the parents omitted or their authority neglected, is not therefore invalid.

III. The effect of a valid promise is that of itself it obliges to contracting nuptials. And furthermore, after true sponsals, common sense dictates that the betrothed are held by mutual obligation not only of refusing another matrimony, but also of abstaining from every other carnal commerce, so that those who sin luxuriously with others may be considered unjust in some way. And especially the bride cannot, by admitted fornication, render herself notably less desirable. Wherefore most think that fornication of the bride with another adds to the sin a grave species to be accused. Nevertheless the matter is disputed, so that the confessor can lay aside solicitude, not indeed concerning the counsel to be given of fidelity, but concerning that accusation.

Yet canonically, as we have seen, and this also for sponsals which were celebrated before the Code, an action is not given except for repairing damages. Nevertheless the obligation of conscience subsists even after the sentence of the judge, unless the other party has accepted the sum set by the judge in such a way that she must be said to have renounced her right. But he who withdraws without cause sins gravely, although he validly contracts another matrimony, and thereafter licitly uses it.

Just causes for withdrawing from promises. The common good itself, to which it pertains that happy marriages be contracted, demands that sponsals and promises of matrimony be able to be dissolved for grave causes. And first it must be noted that sponsals do not impede the choice of a better state, sacerdotal or religious. The best cause for dissolving a promise will be the renunciation of the promisee or mutual consent.

But grave causes are enumerated: **1.** error giving cause; **2.** unjust fear; **3.** a too notable change of condition: this according to many is had after matrimony contracted with another person, or after entrance into religion, even if the matrimony has been dissolved or the novice or professed person

has deserted religion. And it is certain that it is entire for the party who has not changed state to break off the sponsals. The condition itself is not sufficiently changed by acquired or lost riches, so that of itself there is thereby place for dissolving the sponsals. But circumstances can permit more; **4.** fornication of the bride, and also of the bridegroom, especially if there is question of an honorable girl who desires a truly Christian matrimony, permits that the innocent party withdraw from the sponsals; **5.** the departure of the bridegroom into a region too distant or diverse; **6.** the dissent of the parents, not indeed directly, but indirectly, on account of consequences in the marriage, will often give sufficient cause of withdrawing, especially if it was not foreseen. If it was foreseen, he who nevertheless deliberately promised matrimony seems at least from equity to be induced to compensate the damage; **7.** finally, whenever, all things considered, the marriage is foreseen to be going to be unhappy, a just reason will be present for withdrawing from the sponsals.

Article II: On the Chastity and Intercourse of Betrothed Persons

I. Lawful things among betrothed persons. - N.B. By the name of betrothed persons here are called not only those who are bound by a valid sponsal pact, but all those for whom, whether from a pact of this kind or from an equivalent introduction of one into the house of the other, there is a certain and mutual hope of matrimony.

1. Honorable significations of love are altogether lawful between betrothed persons, according to the custom of the country, for example kisses, moderately used. Nor is sensible delight, not carnal, which accompanies a demonstration of this kind, to be rejected. For the end of conciliating and fostering mutual love in order to matrimony is honorable; and delight follows the nature of the operation.

2. But because no handing over of bodies has been made by sponsals, and sponsals prepare matrimony by the union of souls alone, they can indeed permit venereal delight, which easily, in the present condition of men, accompanies or follows the more general sensible delight, but they cannot deliberately seek or admit it. Rather, they must resist and positively renounce the rising carnal motion. And on account of the danger of consenting to carnal delight, betrothed persons are to be dissuaded from seeking kisses or conversations expressly and deliberately for the sake of sensible delight. But they are to be led to propose to themselves a higher end.

But what if the bridegroom asks for or impresses a kiss outwardly honorable and customary in appearance, but which the bride suspects or even knows is asked for or impressed with an affection or intention less good? Since the exterior act is good, she will have an easy excuse from the circumstances if consent is given to that alone.

Things to be counseled. 1. Since betrothed persons are very prone to excesses, they are to be admonished that they mingle tender conversations temperately and rather sparingly, nor exceed the native custom of upright persons in demonstrations. Especially let them beware of more frequent kisses, of kisses given on the lips rather than on the cheeks, of amorous embraces: for these are wont to move the flesh gravely. Although some excess is not immediately to be condemned as mortal; nor is that circumspection to be advised which permits nothing except a constrained manner of acting: a counselor too severe is little heard.

But betrothed persons should formally repudiate venereal delight. And that he may act sincerely, the bridegroom who, in demonstrating affections, feels pollution more imminent, must gently interrupt

the demonstration, if he can do so conveniently.

2. As much as is necessary for avoiding dangers of this kind, the bride, through parents or a person endowed with authority, is to be especially exhorted from the beginning not to permit anything illicit. Let her know that this is not only wicked, dangerous to reputation, and damaging to her liberty of withdrawing, but also rather opposed to future happiness and to the present constancy of the young man. To present constancy, since a person easily consenting to sin is esteemed less, since nuptials are rendered less lovable to him who already before has obtained everything which he could seek in the conjugal state alone. To future happiness, since, at least in part, she will have rendered vain that wise ordination of divine Providence by which the new burdens of matrimony are relieved by new joys.

At the same time let her know that more things can more easily be exercised by her than by the young man without carnal commotion. Wherefore, with charity itself impelling, let her not admit many significations of love, still less solicit them, but let her follow this brief rule: let her not perform more than what can be performed before others, especially parents.

Moreover, the longer nuptials must be deferred, the more moderately one must act, lest the sponsals become a proximate occasion of sin, and because by too much intercourse disgust is easily generated.

For preventing dangers, the frequent use of the sacraments through the sponsals is greatly to be advised.

Duties of parents. Since betrothed persons are very subject to evil temptations, parents commit a grave sin when the intercourse of the betrothed has not been a care to them, or when they imprudently permit them to be alone. Therefore scruple is to be struck into them.

— Betrothed persons who frequently fall into sins which without sponsals they would avoid, if matrimony is rather near at hand, are regularly to be treated as persons dwelling in a necessary occasion. This, therefore, by apt means, caution and use of the sacraments, is to be converted from proximate into remote.

But if matrimony cannot be made soon, even then not rarely it is to be held as a more or less necessary occasion, either because the danger does not arise from the special circumstances of that intercourse, or because the occasion of matrimony is of singular value and will with difficulty be present again. Where a reason of this kind exists, one will have to act almost in the same way as in the former hypothesis.

If an excuse of this kind is lacking, a proximate occasion which is not more easily converted into remote is of itself to be deserted.

But if, as not rarely happens, it cannot be obtained that the betrothed soon marry or break off or suspend their commerce, at least let visits be made rarer, with cautions used, and, especially from girls, let assiduous access to the sacraments and use of a stable confessor be required.

Summary

I. Not only honorable but also useful is a promise of matrimony, especially bilateral, since it fosters peace of souls, prepares happier marriages, and meanwhile aids chastity itself. These promises are subject to the general rules of promises; they can be absolute or conditioned; but all, if there is question of nuptials of Catholics or of mixed nuptials, must be made in the solemn form of writing

duly signed. Nevertheless a promise fraudulently made, even invalid, begets the obligation of repairing damages, and hence also, sometimes, of contracting nuptials. But this obligation must be imposed circumspectly.

Moreover he sins by fraud who has concealed occult defects by which nuptials are rendered pernicious or damaging, or notably useless for the ends of matrimony; proportionate inconvenience excuses from revealing defects which render nuptials merely less desirable.

2. But promises of themselves are not to be made without consulting parents. Although an action is not given for urging the celebration itself of matrimony, nevertheless he sins gravely who withdraws from validly promised nuptials without the consent of the other party or without grave cause, which is judged to be present whenever the marriage is foreseen to be going to be unhappy.

Betrothed persons cannot promise nuptials to others; and, sinning luxuriously with others, they are considered unjust in some way: nevertheless the gravity of the circumstance of sponsals is disputed.

II. 1. Betrothed persons have, in the sponsals themselves, even broadly so called, a just cause for demonstrating mutual love by customary signs.

2. Nevertheless they can consent to no venereal delight. But for receiving a kiss outwardly honorable, although vitiated by intention, they will draw a sufficiently easy excuse from the circumstances.

Treatise III: On the Chastity and Duties of Spouses

Chapter I: Notion and Ends of Matrimony

Usefulness. It is something principal to know accurately what matrimony is, or that state on account of which the virtue of chastity can be said to exist, and in which alone the appetite that is ruled by chastity finds its legitimate satisfaction.

I. Ends of matrimony. 1. The sexual conjunction to which man is borne with such great force must have its lawful use. But it will have it in the state or condition in which, in the manner which human nature requires, provision is made for the birth of men, or for the multiplication of the human race: for this is the manifest end why the faculty of generating and the appetite itself exist. Moreover that state is matrimony. In it, by a moral and loving mingling of two persons, one principle not only of generation but also of long-lasting education and perpetual vigilance is prepared for offspring, if any is to be. This unity is strengthened by a perpetual bond which, by the persuasive unitive force of mutual love, has been freely contracted, and, for the baptized, is supernaturally consecrated by the sacrament itself. Nor, without that necessity of human offspring, would the perpetual and indissoluble firmness of matrimony be well explained; although love itself inclines toward a perpetual and complete donation or communication of itself.

Wherefore the very generation of offspring is demonstrated to be the primary end of the institution of matrimony, although this destination is less immediate and less manifest than when there is question of the sexual function itself.

This is corroborated by the oracles of ancient wisdom. St. Thomas proves this said by the Philosopher: "Male and female are joined in human beings not only on account of the necessity of generation, as in the other living beings, but also on account of domestic life, in which there are certain works of man and woman"[1]. And this other definition: "Matrimony is the consortium of common life and the communication of divine and human law"[2]. With this agrees the definition of Roman law: "The conjunction of man and woman, containing an undivided custom of life": concerning which definition interpreters observe this, that the end of generation is attached by no express words. Nor have there been lacking, in the earlier age, those who thought that a certain matrimony could take place between a man and a woman without the handing over of bodies for generative acts.

To the point Palmieri[3]: "Offspring is the primary end of matrimonial copulation, although not the only one, I concede. It is the end of the matrimonial bond itself, distinguish: immediate, I deny; mediate, I subdistinguish: it is the only end or essential to the essence of matrimony, I deny; it is some end, indeed also primary, I concede."

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2. For indeed, through the satisfaction which it offers to insolent concupiscence, matrimony provides for the honorable life of both spouses. For this reason it is said to be as a remedy of concupiscence.

3. At the same time, on account of the proper qualities of each sex, both spouses mutually complete and perfect each other. Hence a third, secondary end of matrimony is added: mutual help.

These three ends can be called the ends of the work. The first end can be called generic, or of the genus, insofar as it is immediately related to the good of the species; the second and third ends are

immediately individual or personal.

4. Love, by which persons are as it were mingled, the proper qualities and inclinations by which one sex completes the other, the necessity or usefulness of instituting offspring, which unity demands the powers of each parent, all these things impel spouses to live together in a stable and more universal manner. Hence a conjugal society is spontaneously entered, from which a domestic society flowers, so that both can be called most natural. Cultivated nations, especially of the West, obeying that invitation and impulse of nature, already before Christ was born understood that a certain more general friendship and communion of life pertained to the perfect nature of matrimony, and accommodated the civil regime to this. Since this domestic society prepares the way for political society, and increases it with very many goods, it adds to matrimony an end formally social.

[1] *Summa theologica*, 3 p. q. 41, art. 1, c.

[2] Ibid. q. 44, art. 3, 4°.

[3] *De matrimonio*, thesis III.

II. Twofold nature. Therefore matrimony can be taken more strictly and more broadly. Matrimony strictly taken, *in fieri*, or as a contract, can be described: "A contract and sacrament among the baptized, by which a man and woman mutually and legitimately hand over their bodies to acts by which provision is made of itself for the multiplication of the human race." *In facto esse*, or as a state, matrimony designates the very conjunction or bond induced by the contract. Matrimony taken more widely is defined by Roman law: "The conjunction of man and woman, containing an undivided custom of life" (Inst. L. 1, t. 9).

— The order of relations, to be preserved between spouses, is adapted to the requirements of the primary end. And this observance of order also serves the second and third end wonderfully.

Nevertheless, in weighing the obligations of spouses, the broader nature by which matrimony is conceived among us, beyond the manner in which it always and everywhere ought to have existed, is not to be passed over.

Summary

1. The venereal appetite, which exists on account of the propagation of the human race, obtains its legitimate satisfaction in the state in which provision is made for the due birth of men, that is, in matrimony.

Therefore the primary end of matrimony, but not the immediate or only end, is the due propagation of the human race. There are added the end of calming concupiscence; of mutual help; and, especially among cultivated nations, the formally social end of constituting domestic society.

2. Matrimony accepted more strictly *in fieri*, or as a contract, and among the baptized as a sacrament, has as its object the handing over of bodies for acts by which provision is made of itself for the due propagation of the human race; *in facto esse*, or as a state, it denotes the bond induced by that contract, and which obtains a special firmness from the sacrament.

Taken more broadly, it is the conjunction of man and woman, containing an undivided custom of life (Inst. L. I, t. 9).

Relations between spouses must be required according to the primary end, with any contrariety excluded. In weighing mutual obligations, the broader nature of matrimony cannot be neglected.

Chapter II: Who Can Contract Matrimony

Usefulness. It is manifest that very grave questions depend upon matrimonial capacity rightly understood. The controversies themselves of today confirm the importance of the matter.

I. Principle. "All can contract matrimony who are not prohibited by law" (c. 1035).

But the prohibition can be of natural law or of positive law.

II. Intellectual incapacity. They cannot validly marry who, on account of a defect of judgment, are incapable of every contract; for the nature of a contract is essentially in matrimony. The same must be said of those who are ignorant of, or do not sufficiently perceive, the common nature of that contract. We say the common nature, because ignorance of the sacramental dignity does not prejudice the validity of consent.

Therefore: "c. 1082, §1. That matrimonial consent can be had, it is necessary that the contracting parties at least not be ignorant that matrimony is a permanent society between a man and a woman for procreating children."

It is not required that the parties know the necessity of carnal copulation; it seems sufficient that they know that offspring is obtained and begotten by the mother by a certain concurrence and familiarity of the parents.

But although ignorance after puberty is not presumed, nevertheless care must diligently be taken that the contracting parties celebrate matrimony instructed concerning their whole right and office. (Cf. *Epitome*, II, n. 369).

Marriages made in lucid intervals are valid but illicit, unless the danger of an unsuitable education of the offspring is removed, and a grave cause is present. (Thus Wernz, *Ius Decretalium*, IV, n. 41).

In a positive doubt about capacity, the half-witted and deaf-mutes not perfectly instructed are not to be prohibited from matrimony, although such marriages are little to be desired.

By the natural law no age is required for the validity of the matrimony of those in whom neither judgment nor knowledge is lacking. But knowledge is not presumed in one impubescent. By the positive law of the Church and of every cultivated nation, however, a minimum age has been established, before which nuptials cannot validly be contracted.

Besides intellectual capacity, physical fitness of body is required, concerning which something must be said a little more fully on account of controversies which have arisen, and on account of the connection with the faculty of carnal and generative commerce.

III. Physical incapacity. 1. A twofold physical potency comes here to be considered: potency of coition, or of perfecting copulation, and potency of generating. But because it happens that the matrimony even of those in whom potency of generating is not lacking remains sterile, and because it helps to make a beginning of speaking from notions which abstract from the controversies of today, it is better to admit a generic description of sterility, which is the state or condition of spouses who do not generate children. This sterility in turn is then distinguished from its cause into sterility which flows from the very impotence of generating, and sterility which proceeds from other occult or

manifest causes. But impotence itself can be either organic, which is more easily detected in the very defect of the organs, or functional, which is revealed by no defect of this kind.

Therefore the question is what physical impotence induces impotence of matrimony, and this from the natural law itself. For positive law, on account of a proportionate cause, can render persons unfit for matrimony who labor under no natural incapacity.

2. With what certitude must this capacity itself be present? There is no reason why we should recede from the general norm which demands that a positive aptitude for the state be present at least probably.

Indeed Sanchez, *Matr.*, l. 7, d. 103, n. 10; Reiffenstuel, in l. 4 t. 15, n. 26; Schmalzgrueber, in the same title, n. 56 and 57, and several others said that he sins mortally who had not laid aside doubt concerning his potency before matrimony. And indeed examination of the doubt is necessary from the natural law. Nevertheless, if the doubt perseveres, from the Code itself c. 1068, §2, matrimony is not to be impeded. Moreover, as is clear, the party who doubts concerning his potency is bound by natural justice itself to manifest the probable defect to the other party, lest this latter be deceived in a most grave matter.

But when no serious contrary indication is had, moral certitude of capacity is gathered from the natural presumption itself. Nor is a physical examination of capacity then required. Nevertheless, where that presumption is lacking, especially where it is converted into a contrary moral certitude, a positive argument of capacity must be supplied.

3. Now indeed, the natural potency of coition perseveres of itself as long as the appetite of copulation itself is had; not likewise the potency of generating. After a certain age, old men no longer have prolific semen. The so-called process of "involution" occurs even earlier for women, so that it is morally certain that, some years after the critical age at which the menses cease, the ovaries are atrophied or even no longer found. Wherefore Sacred Scripture itself regards births in old age as miraculous. Think of the promise made to Sarah and Elizabeth.

With this moral certitude the presumption concerning capacity of generating cannot be composed.

4. What potency, whether of coition or of generating, is necessary so that matrimony can consist?

These things are certain: **a)** Generative force without the force of coition does not suffice. Fecundation indeed is possible without copulation; and by medical art it will perhaps be able to be made truly probable, even without any pollution. Nevertheless, a man and woman to whom the faculty of copulation is perpetually lacking must be declared, without ambiguity, incapable of contracting matrimony.

For the handing over of bodies, which is the object of matrimony, is made immediately not for generating offspring, but for carnal commerce, which is the natural way to that generation;

b) As long as old persons preserve the faculty of copulation, they are not to be prohibited from matrimony. The perpetual practice of the Church proves this, which reason confirms. For a great propensity toward copulation has not been taken away. Moreover it seems to repugn to the order of nature that a natural propensity, or a mingling of bodies, be deprived of every lawful use for a great part of men;

c) Eunuchs or castrated men, who lack both testes or have been deprived of them, are incapable of matrimony. This was declared by Sixtus V in the celebrated response to the nuncio of Spain and afterward admitted by all Catholic doctors. The matter was previously disputed, and, according to Ledesma (*De magno sacramento matrimonii*, q. 58, art. 1), on account of the controversy itself their marriages were permitted;

d) Those who wish to impede the fruit of sexual conjunction and contract `de futuro` under this condition place a condition contrary to the substance of matrimony and therefore marry invalidly. For they introduce, as R. P. Ojetti very well observes (*Synopsis*, n. 2113), into the very act of celebrating matrimony an obligation which, as contrary, destroys another obligation which is necessarily undertaken from that same act. St. Bonaventure himself already acutely discerns what difference there is between those who by a pact concerning the sterility of offspring directly attack the institution of matrimony, and those who by nature or art have been made sterile: these can marry. (Cf. in 4 S. d. 31, art. 1, q. 3.)

But it is less certain how far the very power of generating must be present. For if we consider matrimony simply as an institution primarily ordered, by means of acts of sexual conjunction, to generating offspring, its fundamental law or even constitution seems able to be conceived in various ways. For:

a) Only those acts of copulation could be permitted to the spouses which could be positively useful for human generation. This severity in the first centuries, indeed also afterward, had patrons, so that they prohibited copulation with a pregnant or nursing wife. Today the more benign opinion has altogether prevailed. This alone is disputed, whether, after impotence consequent upon a valid matrimony, it prohibits the use, at least completed in a broad sense, or not;

b) This also could have been established by God, that habitual potency of generating, and therefore of attaining the primary end of matrimony, should be essential;

c) But the sole essential capacity could also have been the potency of truly coiting. For with this power had, and its right use commanded, the due multiplication of the human race is sufficiently provided for, and provision is made for the honesty of morals by the expedient faculty of satisfying the immense propensity to carnal commerce.

The modern style of the Curia is adapted to the third explanation. For a woman whose ovaries have been removed is not barred from matrimony.

Speculatively, three opinions are freely proposed.

Some, adhering to doctrines which for many centuries were admitted in the Church, call those only and all those impotent who are incapable of copulation apt in itself for generation. Wherefore they think a man impotent who, incapable of erection, cannot penetrate the female vessel; a eunuch and one who has undergone vasectomy, because he cannot pour forth prolific semen; a woman who is deprived of a vagina or bears it occluded, because in her the faculty of any copulation is lacking. But a woman from whom both ovaries, even perhaps with the uterus, have been removed, they call merely sterile, because the contribution of the ovary and uterus follows copulation.

This opinion is perfectly adapted to the present use of the Curia.

Others, whose line Dr. Antonelli leads, call impotent for matrimony not only those who are incapable of copulation, but all who, on account of a physical defect of organs, cannot generate through copulation. Therefore for them an excised woman is impotent. They argue from this, that matrimony, with the primary end excluded, cannot be had; and against the patrons of the former opinion they object that these are not very coherent in demanding on the part of the man a semination fecund in itself, while they call potent a woman who can supply no seed, that is, ovule. But the responses of the Holy See they explain either because, since the matter is controversial, in doubt the marriage of these persons is not to be impeded, or because there was question of a woman not perfectly excised[1].

R. P. Arendt, with the long tradition of the school, holds that only those labor under the impediment of impotence who are incapable of copulation apt in itself for generation. Nevertheless those who know with physical certitude that they are impotent for generating cannot validly consent to matrimony, as he himself thinks, because their consent cannot be borne toward the primary end of matrimony, or the end of the work. But if that physical incapacity is unknown, they validly contract matrimony, on account of the natural presumption of capacity for generating, which perseveres until the contrary is most certainly manifested. Nor does it hinder the validity of matrimony if after the celebration of matrimony an incapacity of generating, even if it precedes matrimony, is detected, because the spouses were not affected by the impediment of impotence, and, on account of presumed capacity, consent reached the very end of the work, that is, of matrimony.

Against the first opinion there can be objected the defect of consequence noted above; it is not so clear what the classical doctors would have thought if they had known that the ovule necessary for fecundation is supplied not in the very heat but afterward.

Against the other opinion stands the very novelty of the theory, and the perversion of the classical notion of the impediment of impotence, which, with common voice, the doctors professed to flow not from impotence of generating but from impotence of coition. Add the too many and occult causes of nullity, and, in this most grave matter, the logical necessity, hitherto unknown, of a bodily examination before nuptials, so that provision may be sufficiently made for the validity of matrimony.

Against the third opinion it will be conceded with difficulty that in wholly the same objective circumstances a valid consent can or cannot be given according as impotence of generating was unknown or manifest. For in neither case is that consent vitiated by a direction positively opposed to the primary end of matrimony; indeed, by the argument of c. 1085, it is not repugnant that by affection it embrace generation itself, just as knowledge of the nullity of matrimony does not necessarily exclude matrimonial consent. But if you argue not from a subjective defect but from the objective term of it, the ignorance or knowledge of the parties does not change that objective reason. And if you insist by saying that the conditions of the generative function are such that manifest defects alone can shake the validity of matrimony, will not others answer that this is an indication why potency of generating ought not to be essential to the validity of matrimony?

But each opinion labors in explaining the marriages which are permitted to old persons. Even if we admit the rarest cases of senile fertility, these do not take away the moral certitude of impotence of generating among old persons, so that individual persons cannot, without further examination, say that they are probably potent. Nor did the ancients flee to these subtle explanations; but several at least, and these most excellent, affirmed impotence of generating among old persons, and at the same time taught that their marriages nevertheless were valid, because, in the present order, marriages can

be contracted honorably either for the sake of receiving offspring or for the sake of calming concupiscence. This, according to the most erudite Esmein[1], is the common doctrine of the Middle Ages. Nor did they understand St. Thomas otherwise, to whom St. Bonaventure can be added. Both Tancred and St. Raymund, in order to exclude from matrimony those who are incapable of copulation, reason thus: "For since every matrimony comes about either for the sake of receiving offspring or for the sake of incontinence, the impossibility of coiting removes each cause" (In *Summa*). "What if a man cannot generate or a woman conceive, can they contract matrimony?" To this interrogation Goffredus of Trani responds: "I respond thus; for although in the matrimony of such persons both causes of matrimony do not have place, nevertheless it suffices that the other is not lacking."

"As is clear from the universal tradition of the Church," says Ledesma, *De magno matrimonii sacramento*, q. 58, art. 1, "the marriages of old persons are valid, nevertheless old persons have impotence of generating, as is manifestly clear." Sanchez, *De matrimonio*, l. VII, d. 92, n. 26: "The Church everywhere admits old persons to entering it," that is, matrimony, "although it is certain that their seed is sterile... Because, although that matrimony is frustrated of the primary end, which is the generation of offspring, nevertheless it obtains the secondary end, namely satisfying concupiscence, true copulation being had; which suffices for its validity. And thus St. Thomas maintains in 4 d. 34, q. un., art. 2 ad 3, received everywhere by all theologians and professors of pontifical law, with a few excepted... whom Barbosa very well attacks, L. 1, p. 1, n. 98, *De solut. matrim.*"

Schmalzgrueber, in L. 4, t. 15, n. 2, says: "Impotence for generating can be given without the former," impotence for copulation, "as happens in old persons."

What of the fact that Laymann (L. 5, tr. 1, p. 4, c. 11, n. 1) and several other distinguished doctors used these or similar words: "Impotence is one thing for generating offspring, which is called sterility, and this, if it alone is present, brings no impediment to matrimony."

As regards us, we would not wish to propose as it were a fourth opinion. Nevertheless we advert that all things in the first opinion can be said more coherently, if the reason why castrated men are incapable of matrimony is gathered not precisely from the lack of seed strictly so called, but from the fact that, on account of cutting away, the internal secretion itself which fosters the very faculty of copulation is suppressed, so that, on account of a lethal wound of that faculty, they cannot undertake the perpetual obligation of copulation. Nor did Sixtus V himself give this reason for his opinion, that castrated men could not generate, but because "from marriages of this kind no utility comes, but rather the allurements of temptations and incentives of lust arise." For they thought that castrated men were not sated by copulation but excited. (Cf. Ojetti, l. c., n. 2399.)

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[1] This subtle evasion is shown to be sufficiently futile also by this reason, that no solicitude was had concerning whether the fallopian tubes were excised or not. But when the way is suppressed, impotence of generating remains.

[1] *Marriage in Canon Law*, I, p. 249, 250. "One of the ends of marriage was attained, and this sufficed to render it valid."

Impotent and sterile persons. 1. From what has been said thus far we gather that those are undoubtedly impotent who, on account of a defect of structure or disease, or even on account of psychic causes, are incapable of copulation. Thus the man is impotent whose penis so opens that he cannot pour seed into the vessel, or the woman who lacks a vagina or whose vagina is not penetrable;

he is impotent who, on account of disease or weakness or even aversion of soul, cannot erect himself, just as the woman is impotent who, on account of vaginismus, or spasmodic constriction of the muscle or sphincter of the vagina, holds the opening firmly closed and does not tolerate contact.

The man who has been deprived of both testicles is also impotent.

Most place among the impotent those who have undergone section of each deferent canal or double vasectomy. This is less explored by us, because the excitatory internal secretion is not suppressed, nor, in our opinion, has sufficient attention been given to that difference by which a man after vasectomy differs from a eunuch.

Are men impotent who pour forth aspermatic semen, such as those who have kept very small testicles, similar to little peas? This is disputed. You may say the same of him who emits only dead zoosperms.

For a woman whose ovaries, indeed whose uterus, have been removed, nuptials are permitted, although, as we have seen, there are not lacking those who pronounce the same woman either impotent or incapable of matrimonial consent.

2. Impotence, whether it is explained by a physical or psychic cause, can be absolute, with respect to any person of the other sex, and can be relative.

3. Sterility for some is merely a defect of fecundation which experience demonstrates, but which no cause at least organic explains; while others hold the very impotence of generating as sterility.

Impediment of impotence. Nevertheless, impotence does not dirimently impede a matrimony to which it is subsequent; nor does it take away the habilitation for contracting nuptials, unless it was perpetual, i.e. unless it cannot in any way or at least without a grave operation be healed.

Nevertheless, when the operation has been done, the impotence ceases, as is clear. What therefore if one who will certainly and soon admit the surgeon's hand contracts matrimony? We judge that this matrimony is not valid, because until it has been removed by the surgeon's hand, that man must be said to labor under perpetual impotence.

A positively doubtful impotence is practically none. Nevertheless it is necessary that potency be present probably. The presumption itself supplies a sufficient probability indeed. But if the very potency of generating is required, this in old persons is no longer probable, so that not even from presumption can matrimonial capacity be attributed to them. Therefore by the very necessity of having at least probable capacity the first opinion is confirmed.

Impotence can be absolute toward all or relative.

To the point the Code, c. 1068: "§1. Antecedent and perpetual impotence, whether on the part of the man or on the part of the woman, whether known to the other party or not, whether absolute or relative, dirimently impedes matrimony by the law of nature itself.

"§2. If the impediment of impotence is doubtful, whether by doubt of law or doubt of fact, matrimony is not to be impeded.

"§3. Sterility neither dirimently impedes nor impedes matrimony."

Summary

I. All can contract matrimony who are prohibited neither by natural nor by positive law (c. 1035).

II. Intellectual capacity. By natural law those are barred who are incapable of every contract, or who do not sufficiently perceive the common object of this contract.

Marriages are valid, although of themselves illicit, which are celebrated in lucid intervals of the insane.

And in a positive and probable doubt, matrimony cannot be impeded.

III. Concerning bodily capacity. 1. A twofold impotence is to be attended to: of coiting and of generating.

The potency of coiting is essential to matrimony. Most are content with this potency, while nevertheless requiring that the organs of the man permit copulation apt in itself for generation.

Some more recent authors furthermore require potency at least organic of generating.

R. P. Arendt denies that they can consent to valid matrimony who, at the time when they contract, labor under manifest impotence of generating.

The first opinion rests upon a long juridic tradition, upon the general permission given to old persons of contracting matrimony, and upon the secondary end of matrimony subsisting.

The other opinion appeals to the primary end of matrimony, with which excluded, as they say, matrimony cannot be had.

The third opinion invokes the necessity of consent to the primary end. This consent cannot be given unless, at least from natural presumption, some capacity of generating can be gathered.

We judge that the first opinion stands better if the incapacity of eunuchs is drawn rather from the defect of perpetual potency of coition.

A positive doubt of impotence is practically none. Nevertheless it is necessary that potency probably be present. The presumption itself supplies a sufficient probability indeed. But if the very potency of generating is required, this in old persons is no longer probable, so that not even from presumption can matrimonial capacity be attributed to them. Therefore by the very necessity of having at least probable capacity the first opinion is confirmed.

Impotence can be absolute toward all or relative.

2. Sterility for some is the mere fact of those who do not have children; while for others it is also the very impotence of generating joined with the power of coiting.

3. But the impediment of impotence is not had except by antecedent and perpetual impotence.

4. Certainly impotent are all those who, on account of a defect of structure or disease or even on account of psychic causes, are incapable of copulation. Also impotent is the man who lacks both testicles. For most, he also is impotent who has undergone vasectomy; concerning this conclusion we doubt. Concerning the man who pours forth aspermatic semen or semen without living zoosperms, and concerning the woman whose ovaries have been removed, the matter is theoretically disputed.

Moreover, even that impotence to which an end can be put only by a grave operation is judged perpetual.

Chapter III: Preparation for Matrimony and Its Right Constitution

Usefulness. This chapter must contain not a few things by which priests will be able opportunely to perform their office of counselors. At the same time it vindicates the rights of parents, which today are too much neglected.

I. Prudent Preparation for Matrimony

I. Compared parts of the confessor and pastor. To the pastor and confessor, in apt preparation for matrimony, parts sufficiently similar are incumbent. The former, however, more from justice, the latter more from charity, must give labor so that marriages are contracted only under favorable auspices. The part of neither is to act as if procurators of marriages, a thing which abounds in envies and dangers; but each must be a prudent counselor both of parents and of betrothed persons. The pastor, however, will give responses and suggest counsels more from his own investigation and knowledge; the confessor, more from the indications supplied to him. The inquiry concerning impediments to be foreseen pertains rather to the proper province of the pastor. Nevertheless, opportune interrogation by the confessor cannot be neglected, if the things said in confession introduce suspicion of some occult impediment. Reckless marriages are more prudently and effectively cut off by general counsels before a definite occasion has offered itself than when excited desires and ambitions have begun to blind parents and children, and an easy revelation of the counsel given can render the priest who dissuades odious. Therefore:

II. Among parents these things are to be procured:. a) that a strong and generous formation render sons and daughters apt for the burdens of matrimony; **b)** that they turn away from matrimony those little apt, for example from weakness of body; **c)** that, within the limits of congruent unions, they permit to their children, especially females, a conscious and free option of a person truly loved[1]. And that the option may be conscious, it is necessary that the daughter who seems about to live a secular life has seasonably drawn a sufficient notion concerning sexual matters, concerning the mutual rights and duties of spouses, and that this instruction to be done not be committed to the husband after nuptials; **d)** that they yield to no destructive ambition by which they seek splendid rather than happy nuptials for their children; **e)** that they desire and strive to prepare for their children only such nuptials in which an intimate conjunction of souls ennobles and strengthens bodily conjunction.

But at no price should the pastor and confessor make themselves accomplices of illustrious or rich parents who pursue for a son corrupt in abandoned morals an angelic bride, ignorant of evil and deceived in the qualities of the bridegroom.

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[1] Nevertheless parents are by no means prohibited from fostering commerce and joining acquaintance with those families in which desirable nuptials offer themselves almost spontaneously to their children. Indeed this is greatly to be advised, so that children may be preserved from reckless counsels and loves.

III. 1. Especially upon young men there must be inculcated what Augustine himself already admonished, that by human dignity and equity itself it is demanded that they preserve themselves pure for the bride whom they require pure for themselves[1]; nor is any dispensation had in matrimony

itself from the strong command by which reason must hold the passions subjected, since more and more frequently the necessity of continence in every state is imposed by civil culture itself; furthermore, that an undefiled approach to matrimony contributes very much to the happiness itself of marriage, and a human, not brutal, use of the rights of matrimony.

2. A daughter must be admonished that she be mindful of her own worth, that she not hand herself over as cheap merchandise to the first buyer, but defer much to the authority of good parents, who are solicitous only concerning her true utility. Let her consider how worthy of confidence the young man must be to whom she hands herself over wholly to be possessed!

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[1] Cf. Serm. 132, P.L. 38, 735: "Such as you wish those wives to come to you, such ought they also to find you."

IV. Illicit marriages, marriages to be dissuaded, marriages to be desired. 1. From c. 1060 itself, we know that by divine law also those marriages are forbidden which bring a grave danger of perversion, such as frequently are not only those which are joined between a Catholic and a non-Catholic party, but also, and no less, those which are contracted with a person alien to Catholic piety, or, what is worse, hostile to religion. Besides perversion of the intellect, today moral perversion is to be feared, from the too famous abuse of matrimony through neo-Malthusian arts, which are to be imputed either to one or the other of the betrothed persons or especially even to the parents of the wife. Wherefore Christian prudence obliges the Catholic and pious party to render himself more certain concerning the very faculty and facility of an honorable life. Nor indeed can the conjugal life be happy or safe which morally forces one of the betrothed persons to perpetual complicity, at least material, with the sins of the other.

2. Marriages are also to be dissuaded where concord of souls cannot be perfect; nor can the betrothed truly become intimate, one to the other.

3. But marriages are to be desired which join persons physically apt, of the same or similar civil culture, agreeing concerning true religion and right morals, so that they may mutually aid and perfect each other, and give to the earthly fatherland, as also to the Church militant, children who will someday be citizens of the heavenly fatherland.

Sufficient instruction in mutual duties. is to be procured. **1.** The things which must be known are nearly these: **a)** that among spouses all acts are lawful which of themselves are necessary or useful for generating offspring, although, from the side of the extrinsic end, a venial disorder can occur; **b)** that equal is, as regards those acts, the right of each one to ask them, and equal also the grave obligation of not denying them, unless they are excused by grave inconvenience (cf. 1 Cor. 7, 3-5); **c)** that acts will be mortal which of themselves would impede this end of the propagation of the human race. And let those about to marry be raised up into confidence in divine Providence; **d)** that consummated acts against nature are mortal, or acts which of themselves are, as it were, begun pollution, when they are done in those circumstances in which copulation will not immediately be had; **e)** that other things among spouses are free from grave fault, or even from every fault, if there was a just cause.

2. These things will more aptly be handed down through a book or through upright married persons. Nevertheless to a pious bridegroom, if there is need, something, more, can be said cautiously by a priest. But to a man little religious, the confessor will often more prudently demonstrate merely in

general the sanctity of that state, the dignity of the wife, the reverence due to her, and how much more humane morals, a happy matrimonial life, and especially the perseverance of mutual fidelity and love, demand that the spouse not be taken up as an instrument of pleasures.

3. With the bride a briefer conversation will have to be had. If she is conscious of the use of matrimony, the things said above should be explained to her in a more general manner; but if she is ignorant of the matter, she should be sent, for instruction, to a pious mother, a religious matron. And if it is at hand, let a little book be supplied by which the mutual duties and rights are explained clearly and honorably at the same time.

It will also be good counsel that she not defer confession long after matrimony, in which she may obtain the solution of fuller doubts.

II. Right Constitution of Matrimony

I. Honorable ends of the contracting parties. The primary end of the institution is not to be obtained or pursued in individual marriages. For the fitting propagation of the human race does not require this, provided there is no action against the primary end, but, in the proper action of marriage, the order to that end is substantially preserved.

Therefore matrimony is contracted honorably: **1.** For the end of generating and educating offspring, who may be useful to the state and to the Church, or who at least may be heir of the heavenly kingdom; **2.** As a remedy of concupiscence, intending nothing else, according to that saying of St. Paul: "For it is better to marry than to burn" (1 Cor. 7, 9); **3.** For mutual help or conjugal society, and therefore even with a pact of preserving continence, provided nothing is done against the primary end of matrimony; **4.** For honorable ends extrinsic to matrimony, not contrary to the intrinsic ends, for example for composing peace between kingdoms or families, for preserving the splendor of the family.

Concerning him who in matrimony merely seeks the pleasure of the flesh or the satisfaction of the appetite of excellence, from the noble place or opulence which he thence enjoys, concerning him, I say, who seeks these things, with the mode of temperance nevertheless preserved, there returns the controversy concerning one acting for the sake of delight, which we examined in the general part n. 117. Nevertheless, considering the gravity of the matter, it is scarcely conceived how a reasonable choice of state can be commanded by the pursuit of delight alone.

II. An honorable manner of contracting. demands: **1.** That the contracting parties be in the state of grace if and when they receive the sacrament. Yet because they are not consecrated ministers, those who contract in mortal sin are guilty of one grave sacrilege only, and this insofar as they receive the sacrament, not insofar as they minister the sacrament. But the material cooperation which one betrothed person gives to the other contracting in the state of mortal sin is for the most part excused by a proportionate reason.

2. That the ecclesiastical prescriptions concerning the celebration of matrimony be observed.

3. That they then give properly matrimonial consent when the substantial form is observed. Wherefore Catholics are to be admonished that they reserve it for the moment when they appear before their competent priest and two witnesses for entering matrimony. Before the civil magistrate it is lawful for them to have only this intention truly, of admitting the civil sanctions and obligations to

the matrimony which they have already contracted or are about to contract in the face of the Church. Nor therefore do they have anything to fear for the civil validity of their act, since, in this cause, the very reason of liberty of conscience and religion demands that the civil magistrate be content with consent so expressed. Otherwise, recent patrons of free love could never celebrate valid civil nuptials.

Summary

I. 1. Both the pastor and the confessor must be, not procurators of marriages, but prudent counselors of parents and betrothed persons. The pastor more from justice and his own inquiry; the confessor more from indications supplied to him, which nevertheless must be completed by opportune interrogation. Moreover souls are more prudently and effectively turned away from reckless counsels generally than recalled from recklessness already begun.

2. Let parents procure that their children be physically and morally apt; that they dissuade nuptials from the little apt; that they allow their children a sufficiently free option; that they put happy nuptials before splendid ones.

3. Let young men preserve themselves pure for the chaste matrimonial covenant; let the daughter be mindful of her own dignity and worth.

4. Illicit are marriages which induce grave moral danger; to be dissuaded are those from which perfect concord cannot be hoped; to be desired are those which are contracted between persons physically apt, of similar civil culture, agreeing concerning true religion and right morals.

5. Sufficient instruction in mutual duties is to be procured; nevertheless let this be done prudently and cautiously by a priest, who therefore will send the bride rather to a person of her sex or to a well-written little book.

II. 1. Ends of the contracting parties. Matrimony is contracted honorably for the generation of men, as a remedy of concupiscence, for mutual help, even with a pact of preserving continence, and for other honorable ends not contrary to the intrinsic ends. Delight itself is not forbidden to be sought moderately. Nevertheless an exclusive pursuit of delight does not seem able to be composed with the gravity of the state undertaken.

2. The betrothed, when they receive the sacrament, must be in the state of grace; otherwise, as receiving, but not as conferring the sacrament, they would be sacrilegious. The material cooperation of the other betrothed is for the most part excused by a proportionate cause. Ecclesiastical prescriptions concerning the celebration of matrimony must be observed; and consent must be given when the substantial form is employed, i.e. before the pastor and witnesses.

Chapter IV: Duties of Matrimonial Chastity

Usefulness. The necessity of this chapter is too manifest to be demonstrated. But day by day there increase in number cases concerning lawful and unlawful things between spouses, and concerning the material cooperation of spouses in the sins of the other.

Article I: On the Complete Use of Marriage

I. What Copulation Is Lawful

I. Honesty of the object. 1. Perfect copulation, by which both spouses, from the carnal conjunction of both, with the semination of the man within the vagina of the wife, are said to become one flesh, is honest from its object. It is required besides that it be honest from the end and from the circumstances.

II. Honesty of the end. 2. With attention to the end, copulation is honestly asked for generating offspring, for testifying love, for quieting concupiscence; for nature itself assigns these utilities to conjugal copulation.

But the petition of the other is a sufficient reason for rendering, unless grave harm stands in the way, whether one's own, or that of the other spouse, or that of offspring already conceived.

One's own harm: it is a disease with which the one asked is affected, or whose contagion he has certainly to fear. Yet a grave reason for consenting, lest the one asking formally sin, especially lest he become an adulterer, lest domestic peace be absent, permits the spouse to admit that copulation, provided death does not seem to threaten from the copulation. For then only the most grave and most urgent necessity of avoiding a serious danger of killing or of infamy will excuse the copulation.

Harm of the other spouse, who, for example, on account of cardiac disease is prohibited from every use of marriage. Yet the obligation of denying, which is from charity and piety, does not subsist with grave inconvenience; for more easily than one's own harm can the harm of another willing person be put after. Nevertheless a most grave inconvenience is required so that one can cooperate in a copulation from which death threatens the other who is asking.

Harm of offspring already conceived, for example danger of abortion. For offspring has an inviolable right that harm not be brought upon it. Therefore the material cooperation of the one rendering the debt demands the excuse of harm at least truly grave and involuntary: the reason of avoiding another's sin does not suffice.

As to offspring to be conceived, certainly it will always profit this more to be born thus (for example infected by disease) than not to be born. Nevertheless the essential subordination of spouses to the species imposes upon them a positive duty of caring that offspring be born vital and healthy. Wherefore we agree with those who do not permit the use of marriage with this kind of foreseen harm except on account of danger of incontinence, or another proportionate cause, which is the more easily present because fecundation after copulation is uncertain, nor is the harm of the offspring to be conceived so certain.

Wherefore: **a)** very rarely is such a danger from a future birth established, on account of which there is a grave obligation of abstaining from the use of marriage (Gen. II, 544, 5°); **b)** to those laboring from phthisis only moderation in use is to be preached: they harm themselves rather than others, nor always gravely; yet attention must be paid to the morbid state and to the counsels of the physician; **c)** for a grave cause it can be tolerated that one who is affected by venereal disease ask copulation from the other, who has been warned and consents, which the other, on account of this kind of cause, is safely permitted to render, especially today, when sufficiently efficacious remedies seem to be at hand; **d)** for a grave cause, for example danger of incontinence, spouses must be excused so that they use marriage with the foreseen necessity of applying a remedy or rough treatment from which abortion follows per accidens.

But we shall concede this to the common opinion of men, that prudently, with the cause also of using marriage considered, we should dissuade copulations which fall into common reprehension, for example of those who have not sufficiently recovered from venereal disease.

Concerning copulation for the sake of delight, the things said in fundamental theology, n. 117, return.

III. Honesty of circumstances.

a) Who. No one who is capable of copulation is to be kept from the use of marriage. One who, after prudent investigation, is doubtfully impotent, both can contract matrimony conditionally and attempt copulation, so long as some true hope of potency remains. Nor will the pollutions which thence follow per accidens be imputed to those spouses.

But one who labors under certain temporal impotence will not be able meanwhile to attempt copulation. If, however, the impotence in the man is a defect of erection which is hoped to be gradually corrected by repeated attempts, or in the woman vaginismus (i.e. excessive sensitivity of the vagina which admits no contact) which perhaps will admit penetration, the man will be able to exercise those attempts, provided he procures in the better way he can the introduction of semen. For the individual attempts can be regarded as so many rightly begun copulations. Therefore there will be place for applying the principle of the double effect. Indeed many permit the copulation itself simply, of whatever sort, to the spouse made impotent, provided he, being capable of erection, pours forth the semen within the vessel of the wife.

Perpetual sterility, even badly procured, now does not impede the use of marriage: it is enough that the authors of the sin expiate it by penance. But a temporal impediment (for example, if the oviducts have been tied) must be removed as soon as possible by those who wish to use matrimony: copulation otherwise done would be infected with the vice of onanism. But if for a few days it will have been incurable, the innocent spouse, not participating in the delict, is not deprived of his right of asking the debt. The other, however, must through abstinence, if it is not too difficult, recall his action to honesty, which could not have been honest except with the purpose of abstaining meanwhile from marriage[1].

Mutual promise of not using marriage can be taken away by the opposite consent. A unilateral promise can be remitted by the other. Wherefore the one promising, who has renounced his right, is nevertheless not prohibited from amicably asking the debt.

A vow of chastity changes no rights. Wherefore one asking illicitly, on account of the vow, is indeed to be turned away from his counsel, unless the other, who is free from the vow, wishes, by asking the debt, to render the matter wholly lawful. To one persevering in the purpose of asking, the other can assent. And likewise it must be said if each separately, with the other party assenting, has been bound by such a vow.

For a vow emitted during marriage without the consent of the other, if it is neither of asking nor of rendering, is null; if the vow is of not asking, in the wife alone it is valid, because the husband, by a similar vow, would render the use of marriage too impeded for his wife: wives, through timidity and modesty, are wont to shrink from asking the debt.

But asking is of itself impeded by a vow which had been made before matrimony. For a valid vow, as far as can be done, must be observed. Yet he renders rather than asks, and therefore acts licitly, the husband who asks the debt when he observes that the wife, not daring to ask, is in danger of incontinence. The same is also licit to him if within matrimony, with the wife assenting, he has emitted the vow. Moreover, for a wife who, ignorant of the matter, married a man who was bound by a vow, it can be too hard that she herself, by asking the conjugal act, should be forced to do violence to her own modesty. In these circumstances the husband also can and must, as if acting for the wife, ask the conjugal debt, as he understands it to be desired by the wife. But it is better to obtain a dispensation from the vow (Cf. Lehmkuhl, *Theol. mor.*, II, 1080).

But a simultaneous vow of chastity emitted by both with mutual consent, of itself contains an agreement by which each renounces his own right of asking (at least as to the exercise or use). Wherefore of itself neither can then either ask or render the debt, since the one asking asks without right. Yet the husband is not prohibited from using his probable power of irritating the vows of the wife and rendering her free. She can then remit the agreement and indirectly irritate the vow of the husband, so that she may recover an unimpeded use of marriage.

But sins done against the vow are opposed to religion alone. It is clear, moreover, that such vows are not to be made except seriously and prudently, and that spouses must be turned away from inconstancy of mind in a good purpose.

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[1] Nevertheless this obligation of recalling a past action to honesty is not perceived by all. Wherefore there will be one who will permit copulation to both simply, or with consideration of the difficulty of continence omitted.

b) When. Copulation is not prohibited either while the spouse is pregnant or while she is giving the breasts. Moderate diligence will have to be used, in the former case, to avert the danger of abortion if any should be present, especially in the first weeks.

During the time of menstrual flow, no positive prohibition now exists, but copulation then is to be dissuaded, lest harm be done to mutual esteem and love by an insolent and unbecoming petition of this kind, unless, for obtaining fecundation of a sterile wife, physicians advise that this time is to be chosen.

After birth, abstinence for one week, indeed for two weeks, is to be prescribed, because copulation then would be dangerous for the wife. But a sensible man will abstain from the use of marriage until the organs have been fully quieted, i.e. for about six weeks.

Nothing serious can be objected to copulation which takes place after a meal, after a bath.

When the wife is sick, the things said concerning copulation perhaps harmful return.

By no positive law is the use of marriage forbidden on the night before Holy Communion. Nor is the spouse to be held back from more frequent approach to the holy table on account of the conjugal debt. That sometimes, before more solemn days, spouses abstain by mutual consent, St. Paul himself seems to advise (1 Cor. 7, 5).

Those spouses also are to be praised who, imitating Tobias, have wished voluntarily to dedicate to God the first-fruits of their matrimony by a three-day abstinence.

c) How. 1. The natural mode is that the man, lying above, know the wife lying beneath and turned toward him. But no change of position will be mortal, so long as it permits sufficient semination within the vessel, so that the copulation of itself (other circumstances being omitted which can exclude that hope) brings a truly probable hope of fecundation. It matters little that part of the semen is lost beyond intention.

2. Application of the semen to the opening of the vagina does not bring a truly probable hope. And the very notion of true congress seems to be lacking, so that I would say rather that two simultaneous pollutions are being exercised. Wherefore we judge that this mode is never lawful. Nevertheless there are approved authors who concede it, when the other mode is here and now impassable, for example on account of the excessive heat of the man, who immediately experiences pollution, or on account of nervous incapacity of erection, or vaginismus. Wherefore, until the Holy See has decided the matter, with attention to that extrinsic probability of the opinion permitting it, we will not then condemn that use. But no Catholic author permits that this mode be employed with the counsel that offspring be avoided, or that, with the hope of fecundation diminished, a childbirth dangerous to the wife be forestalled.

But a modest penetration of the vagina already preserves the notion of true copulation. Wherefore that mode chosen studiously does not exceed venial fault.

It is consonant with nature, and is also to be commended for the sake of health itself, that both spouses experience the heat of pleasure at the same time. Yet because it seems sufficient for the law of union that the heats of both be morally joined, this is not grave, and, with some cause acceding, it will be without fault that, whether during copulation or immediately after copulation, the wife is brought by her own touch or by the touch of the husband to enjoy perfect pleasure. A just cause will be present if, on account of lesser heat, the wife could not be moved in the congress itself, or if the man himself is scarcely excited otherwise than by seeing the excitement of the wife and could complete the copulation. But the same cannot be permitted to the man after the wife has withdrawn herself: it would be delayed pollution.

d) Why. By intention contrary to the end of generation, spouses are altogether and under grave sin prohibited from doing anything positive by which conception is impeded or made less probable, at least if they have thought that they would effect a serious or notable difficulty. Thus the man could not, content with partial semination, withdraw himself and deliberately waste the remaining semen outside the vessel[1]. But to abstain from the better mode, which nevertheless was at hand, and to employ that mode which in itself is honest or only lightly sinful; to abstain, I say, lest offspring be generated, will not be gravely culpable.

Indeed, for the causes which explain it, the intention itself will be able to be good in itself (Cf. De Smet, *De sponsal.*, n. 209; Noldin, *De sexto*, n. 68).

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[1] It must be said otherwise if, by reason of the mode employed, part of the semen is poured forth per accidens or beyond intention.

e) With what aids. The Holy Office has rejected artificial fecundation whenever the semen to be infused must be obtained by previous pollution. - But if, for begetting offspring, it seems conducive that the semen, after it has been received in the natural way (not therefore in a condom), is then extracted so that it may be cast more deeply into the vagina, that matter seems to fall under no reprehension. It will also be lawful by some manner of puncture to take semen from the epididymis of the husband so that it may be infused into the vessel of the wife: for, without any venereal abuse, the end of matrimony will be obtained in this way.

If the man, in order to excite himself, has need of obscene images, their looking upon before copulation will be made honest by that utility and end. Yet desire of another person will have to be excluded. For it would be wicked to complete copulation with an adulterous mind. But he is not an adulterer who, as it were, clothes his own wife with another's beauty, so that thus he may increase affection toward his own spouse.

f) Where. A secret place is demanded by the very sense of modesty. Wherefore those who perchance are discovered in the act of marriage can break off the copulation, even with certain foresight of pollution (short of consent to the pollution).

From the reverence owed to a sacred place, it is evident that one must not there indulge the work of marriage. Yet those who have been shut up for a long time (for several weeks or for a month) in a sacred building, or are in danger of incontinence, are excused by necessity itself.

What if the marriage is of doubtful validity? 1. Before serious investigation of the matter, or before the marriage has been made certain by dispensation, the one doubting, for his part, must abstain from every active use, perfect or imperfect, of marriage; yet to the other party, living in good faith, he can and must render the debt. The case was authentically solved by Innocent III in c. 44 *De sent. excomm.* (V, 39). Nor is he forced to disturb that good faith by an admonition which would often be full of inconveniences. For possession of good faith gives to the asking spouse a certain right, which also, according to the opinion of Sanchez, prevails over the right of a prior spouse, which he says is uncertain because it is of an uncertain subject, i.e. perhaps of one not living (*Matr.*, l. 2, d. 42, n. 6; cf. c. 2 *De secundis nuptiis*, IV, 21). If the doubt is common, each must suspend every use of matrimony before investigation of the doubt or an obtained dispensation.

2. If inquiry is shown from the beginning to be going to be fruitless, or if the doubt, from inquiry made, has turned out invincible, most, on account of the right of possession, permit to those who contracted in good faith every use, even active and spontaneous, of marriage. And St. Alphonsus thinks sufficiently probable the opinion which contends that the right of possession suffices for this, even if no other probable reason can be alleged for the value of the marriage.

3. If the marriage was contracted in bad faith, i.e. with doubt concerning an impediment, a probable opinion even then concedes the use of marriage to persons thus married, on account of the principle: in doubt one must stand for the value of matrimony.

If, however, it is a question of doubt concerning the impediment of ligamen, many deny active use to either one doubting, or every use of marriage to both doubting. For the possession of the prior marriage, which the doubting spouse unjustly violated, can stand in the way. Thus St. Alphonsus, l. 6, n. 906, alleging c. *Dominus*, 2, *De secundis nuptiis* (IV, 21). "But in reality the Pontiff does not say there that abstaining from asking is necessary, even when after diligence the doubt remains. Besides, in the same place St. Alphonsus admits that the opposite opinion is more common, which can be confirmed from those things which St. Alphonsus discusses at the end of n. 904, contending that the sentences of law regard those who by a reflex judgment have not yet put away the doubt; and indeed he affirms this there also concerning the case of the doubtful death of a spouse" (Ball.-Palm. VI, 424).

But when litigation concerning the value of the marriage has been moved, the spouses preserve the right of asking and rendering which they had before the suit, and this until a twofold sentence for nullity has been passed.

What if, after a marriage of uncertain value but whose two parties certainly live, another marriage is contracted in good or bad faith, whose value depends altogether on the nullity of the prior one? For example, Caia deserts Titius, with whom she had celebrated marriage some weeks before, alleging this cause, that the intention of marrying had been lacking to her. Titius contracts other nuptials with Sempronia. Observe how this case differs formally from a case in which only the life of the prior spouse is uncertain. For the title or right of the latter was certain, but the possession, or fact, was uncertain; while in the present case the possession of the prior marriage is certain, but the right uncertain. Wherefore of itself the prior marriage is to be preferred. If, however, the person with whom he married second was ignorant of the matter and contracted in good faith, possession also supports this person, on account of which she can ask the debt. And the other marriage can also be preferred, if it is valid by a much greater probability. But one who in infidelity contracted doubtfully can, after baptism, make new nuptials with a Christian party on account of the privilege of faith.

You ask by what use matrimony is consummated. The common opinion is that matrimony is consummated by perfect copulation (cf. n. 52) (Wernz, *Ius Decr.*, IV, 432).

For then there has been a commingling of the seeds such as the ancients understood to suffice that the spouses become "one flesh"; and all admit that this is required and suffices for consummation (Cf. St. Thomas, *Suppl.* 3 P., q. 55, art. 4, ad 2). Lehmkuhl, however (II, 998), theoretically postulates that the woman has supplied a mature ovum in the usual way. Wherefore, concerning the consummation of marriage with a wife whose ovaries have been perfectly excised, doubt can be had (Cf. Wernz, IV, 432, note 51). This commingling of seeds is presumed in both fora if on the part of the man the act has been completed.

Formerly there were, for example, Ledesma[1], who, distinguishing the requisites for affinity and for the consummation of matrimony, said that not indeed for affinity but for consummation there sufficed a copulation through which the barrier of the woman is opened, even without semination: and this on account of the injury itself done to the woman.

Finally, what if conception has happened without copulation? Sanchez[2] affirms that the matrimony has been consummated, whom Lehmkuhl, l.c., favors, because in the conceived offspring the spouses have especially been made one flesh. Yet not a few today deny this, with C. Gasparri (*De matrimonio*, II, 1302).

Indeed, according to the opinion of Sanchez, l.c., by any internal reception of male semen into the vessel of the woman, even if it has happened without any copulation, matrimony is consummated. This opinion, formerly common, today seems to be less received in the Curia.

II. - What Use of Marriage Is Owed

[1] *Tractatus de magno matrimonii sacramento*, q. 58, art. 1.

[2] *De Matrimonio*, l. 7, d. 61, n. 15 (on account of those things which he says concerning simple internal reception of semen).

1. From justice the conjugal act must be rendered to the other spouse who asks it expressly or tacitly, yet reasonably and seriously. And this obligation is grave in its genus.

He does not ask reasonably who asks copulation in an unnatural manner (even if it is substantially honest), or too frequently, for example several times in the same night. Nor does he who asks in a state of madness or drunkenness, since the act is not human. And he who by prayers is led to change his counsel withdraws from the petition. That party asks tacitly who complains of the rarity of use or of offspring.

If, after the frequency of use has been considered, the matter appears light, to deny the debt sometimes will be able to be a light sin, if danger of incontinence is absent.

A just cause will excuse from rendering the debt, for example a harm to be feared, one's own rather notable sickness, and, as seems to us with many, the danger of bringing forth a dead fetus or monstrous or miserable offspring.

But offspring multiplied too greatly is not a just cause for denying the debt. For the intention of avoiding offspring could not be obtained without long abstinence, joined with too great danger of incontinence, which the other spouse is not bound to admit. At most, the matter could be arranged so that the use of matrimony is reserved for those days on which there is less hope of fecundation (i.e., according to Capellmann, after 14 days from menstruation until 4 days before the new menstruation).

It also happens that, from a psychological state and neuropathy, one spouse is invaded by an almost insuperable fear, for example, of birth or of offspring. Such a one is efficaciously to be exhorted to put away that fear; yet scruples are not to be cast upon him with slight hope of success, since the healthy spouse, in order to avoid graver evils, will easily remit enough from his own right, although the matter is unpleasant to him, so that the other may be excused from grave sin.

To the party who has fallen from his right by adultery (to which sodomitical or bestial copulation is assimilated), or by a valid abdication, for example that of a professed religious, the act will not have to be conceded from justice. To him who illicitly asks an act which the other can licitly do (as if the one who alone is bound by vow asks it), assent does not seem to be owed: the one asking, if he is repelled, is not reasonably unwilling.

— From charity and piety toward the spouse, the family, and the fatherland, copulation must be asked when it is necessary for averting an imminent danger of incontinence in the other spouse; or for strengthening peace and mutual friendship; or when the fatherland demands an heir of the kingdom, and the peace and tranquility of the family demand a son who may succeed the parents.

III. What Use of Marriage Is to Be Desired

— That use of marriage is to be desired which is made by mutual consent, willingly, and with moderate frequency. After the fervor of the first weeks, many hand down this norm for the stronger age, which is said to flourish between 25 and 40 years, that congresses be had twice or three times in the week. But since powers vary, others more prudently counsel that, artificial excitations having been removed, spouses rather obey desire arisen spontaneously.

Moreover the wife is to be reproved who has accused herself because she deliberately restrains excitement, whether under the false pretext of religion, or, what would be worse, because she is impelled by some anger or aversion of mind. But she is to be exhorted that in rendering the debt she show herself prompt and easy.

The man, on the contrary, who has accused excess is to be exhorted to a tempered, human, and becoming use of his right, without those sordid arts which, together with mutual esteem, lessen the happiness of marriage.

For the rest, the use of marriage is commanded to spouses by no positive law.

Article II: On the Incomplete Use of Marriage

I. On Mutual Acts

Principle. Imperfect venereal acts of themselves contain a certain beginning and preparation of the perfect act, or they are added to this as complements. These beginnings or complements participate in the moral character of the perfect use. Wherefore to those to whom the complete use of marriage is permitted, the incomplete use is of itself honest.

Again, however, since spouses are not obliged to exercise the perfect conjugal act, imperfect acts, even when the complement is lacking, keep their honesty. And as they dispose toward the perfect act and generation, so also they assist, or can assist, the secondary ends of marriage: mutual concord, indeed also the good of calming concupiscence.

Applications. These acts, according to themselves, even without a present relation to the complete act, are truly honest from the object, so that their delight also can be taken honestly. - With attention to the end, those acts are fully to be approved which are assumed so that the conjugal act may be exercised more easily and more perfectly; those also are honest which are employed for testifying love or for giving concupiscence sufficient satisfaction by which the fault of incontinence may more easily be avoided. Nor are spouses to be reproved who wish to draw from these acts moderate solaces and joys, which pertain to the virtue of eutrapelia. - With attention to the mode, the best counsel is that spouses, in their intimate conversation, should strive sweetly to compose personal dignity with tender affection, and should not wish to be delighted by base arts. Yet excluding affection for an unnatural act, or excessive danger of pollution, there is no mode which is forbidden to them under grave sin, or which cannot become honest on account of the end of marriage. - With attention to that efficacy, acts lightly influencing of themselves toward pollution, or which are joined with merely possible pollution, are never to be omitted under grave guilt on account of subsequent pollution: for this will always be accidental, and to be attributed to another non-voluntary cause, for example the excessive warmth of the spouse. These acts are chaste significations of love (kisses, embraces, tender

words), and even less chaste ones done in passing, or those which the very experience of the spouses demonstrates to be ineffective for inducing pollution of themselves (in ordinary circumstances). Nor then, on account of imminent pollution, are spouses forced to exercise the conjugal act, provided the danger of consent to pollution is removed. - Acts gravely influencing, or joined with probable pollution, cannot be exercised except in circumstances where, pollution urging, they can and will complete the conjugal act, or unless they are excused by a grave cause: for then either pollution is avoided or, on account of a proportionate cause, it is permitted[1]. These acts are, of themselves, impure venereal acts. - Finally, acts so lustful that of themselves they end in pollution as in a proximate term, or which are joined with morally certain pollution, are forbidden under grave sin to the spouses themselves unless in those circumstances where they can and will exercise conjugal copulation. Otherwise, they betray a depraved intention of lust, nor of themselves are they necessary or so useful for the honest ends of signifying love, etc. How pitiable is the wife of a man whom love itself does not suffice to turn away from exacting filthy arts!

N.B. - 1. Acts gravely influencing are not lawful beyond what a grave cause demands for them. Wherefore when they notice that pollution is proximately present, spouses must cease from those acts or interrupt them. Concerning this imminent excitement, one is to be warned by the other, if it can conveniently be done. Unless a grave reason does not permit delay, or unless copulation itself must be avoided for a grave cause, the acts are to be exercised in that place where, by the perfect use of marriage, the spouses can forestall pollution. The graver the danger of pollution has been, the graver the cause required that the acts be exercised elsewhere. Yet take this without anxiety, without troublesome comparisons. It is enough that the matters seem proportionate to a moral view.

2. On account of the very custom of marriage it happens that some acts, for definite persons, do not have that character of begun pollution which they are to be thought to have of themselves or for the most part. Thus there are spouses who know from experience that pollution is not imminent to them because they cease from begun copulation. Therefore, although other spouses generally cannot try that without grave guilt, these, after the circumstances have been prudently weighed, will be able for a grave cause to do it without grave guilt, or even, with attention to the cause and the rarity of pollution, without guilt, although sometimes pollutions happen.

3. Fault is more easily absent when copulation is prohibited by physical necessity than when only the will, even reasonable, of not having children stands in the way. Indeed, unless a truly grave cause underlies that will, such spouses, if pollution otherwise is imminent, must complete the copulation thus begun.

II. On Imperfect Acts Which Are Not Mutual

[1] Grave causes are judged to be the necessity of fostering mutual love which is growing weak; averting suspicion of infidelity or of propensity toward another person; cutting off the beginning of adulterous lust; compensating for the perfect use of marriage when the spouses cannot exercise it, or, for a just cause, do not wish to increase offspring by number; finally, the very petition of the other party made insistently, or so made that denial would be borne with difficulty.

1. Imperfect venereal acts, exercised by a spouse upon his own body, the other being absent, if they induce grave danger of pollution of themselves and for that agent, are for that reason prohibited under grave guilt.

When the spouse with whom the other wishes to have intercourse is present, if they are referred formally to copulation, they will be wholly honest, because of themselves they contain the utility of preparing the perfect act, which is honest and laudable.

2. Excluding grave danger of pollution, solitary imperfect acts, exercised while the spouse is absent, contain of themselves this inordination, that a spouse separately seeks for himself a pleasure which belongs to a common work. Yet that inordination is not indicated as grave by approved authors. There are indeed some who respond more severely, and St. Alphonsus himself, l. 6, n. 936, thinks that severity more probable and to be advised in practice. Yet the more severe opinion is refuted by its very consequences; for they gravely reprehend even the carnal [thing] concerning copulation had with one's wife. This would be full of scruples and dangerous for morals.

Concerning this question, Bucceroni writes these things in his special work *De sexto et nono praecepto*, art. IX.

> "These acts, if they are venial, are venial only on account of the extrinsic disorder of the agent. Wherefore... we say that even these acts exercised by one spouse only, entirely apart from the other, speaking of themselves, or from their intrinsic nature, probably contain not even venial fault. And the reason is: 1. because if these acts are intrinsically culpable, since the matter here is always grave, either they are gravely culpable or in no way; 2. because mutual touch of spouse with spouse is probably licit outside consummated copulation for this reason, that that touch from its intrinsic nature is ordered to copulation. Wherefore, just as it is lawful for spouses in consummated copulation, so it is lawful also in copulation only begun, which is contained in those acts. But any pleasurable touch of a married person of itself is referred to copulation, which is now licit to him. Therefore the light fault which can be present in these acts can also easily be excused by an honest end, because, for example, they are suitable for calming concupiscence, and for avoiding another grave sin."

— Lustful looking, readings, and conversations are gravely culpable in themselves for spouses only when either they foster adulterous desires or they induce grave danger of pollution; and the prohibition of reading books professedly obscene can be understood more benignly for spouses. Yet equally as celibates they must beware of books which pervert the intellect or inculcate false notions concerning moral matters.

Article III: On the Lust of Spouses

I. - On Conjugal Onanism

The Gravity of the Sin. 1. Complete pleasure sought by spouses, even in their mutual relation, in that mode by which at the same time they positively impede generation, i.e., the onanistic use of marriage, is intrinsically and gravely evil.

Catholic tradition, proceeding from the Holy Fathers and contained in the unanimous opinion of theologians and in the ordinary magisterium of the Church, testifies to this; and reason confirms it: for spouses exercise as individuals and in their own name an act which by its primary character is an act of the species, to be exercised by spouses representing the human species and acting for it. Therefore that act contains a substantial violation of the essential order, since it is against the order of the whole generative faculty.

2. The chief neo-Malthusian arts[1] are: a) interrupted coitus; b) mechanical arts of preventing the male semen from being able to penetrate the uterus. (The instrument which, for this end, the man uses is called a condom; while the plug applied to the uterus is called a pessary.) To this can be recalled the placing, within the vagina, of a sufficiently thin membrane in the manner of a pseudo-vagina, into which the semen is emitted. This is then drawn out with the semen; c) internal vaginal washing, by which, after copulation, the vagina having been washed, the semen is expelled. Washing done for the end of sterility is generally made more efficacious by antiseptic substances, by which the semen is killed; d) the sprinkling through the vagina of a chemical substance by which the sperm may be killed.

Concerning these arts the following things are to be observed: copulation is rightly begun by a man who abuses matrimony by mere withdrawal, and an act wholly licit is exercised up to that moment, while it is vitiated from the beginning if the man uses a "condom" - by the pessary which the woman uses copulation itself is not impeded - washing of the vagina takes place after perfect copulation. These things must be attended to for complicity. For:

3. When the man abuses matrimony by mere withdrawal, the whole malice of the act proceeds from the malice of the man; the wife lends her work to a licit matter. Wherefore, considering only cooperation, no special cause is required why she renders the debt; nor, if it is grave for her to be deprived of copulation, is she prohibited from asking copulation. Yet if by the repulse of the wife the husband can be brought sufficiently quickly to using marriage rightly, charity will oblige the wife to procure the amendment of the husband by a denial which is not grave for the wife herself. Likewise a husband whose wife, against the husband's will, wishes to use a pessary or to wash the vagina, must prudently use marital authority to correct the wife.

4. But lest he seem to consent to sin, and so that he may exercise fraternal correction, the other spouse must by warnings and prayers, repeated several times according to hope of fruit, turn the other away from this crime. That is, he must act in such a way: a) that it be clear to the other spouse concerning his persevering repugnance to that sin; b) that, if there is hope of fruit, he may recall the other to conjugal duties.

Gravely, on the contrary, will the spouse sin who, directly or indirectly, by complaints concerning numerous offspring, etc., draws the other into the onanistic use of marriage or confirms the other in it. And he must revoke his evil counsels.

5. The wife can in no way permit the husband to place a pessary in her, or to approach with the male member covered. She can yield only to prevailing force, almost as an unmarried woman who is oppressed. Cf. response of the Sacred Penitentiary, April 3 and June 3, 1916 (*De Castitate*, n. 263).

Wherefore threats of adultery cannot suffice that the wife passively tolerate the approach of the husband. This grave reason is added. If because of a cause of this sort we permit cooperation, which with difficulty will now be distinguished from formal cooperation, in the intrinsically illicit act of the husband, a convenient means is supplied to husbands for obtaining from pious wives whatever they wish. This notice will soon be spread: "Your pious wife resists you! Allege the will of committing adultery and she will concede to you what you seek." Yet by this general rule we do not wish to comprehend the altogether special case in which, because of concurrent circumstances, a most grave

moral fear is inflicted. Then it will belong to confessors to weigh all things prudently: both the things which the husband seeks, and what sort of fear is inflicted.

N.B. - The very full fruition of the woman must be morally joined with the use of marriage, perfect on the part of the man, lest the wife be able fraudulently and perpetually to seek for herself the full use of the venereal faculty outside the operation which of itself bespeaks an order to generation. Yet when copulation is broken off by the will of the man alone, they permit the wife, during the copulation or before it has been begun, to experience and admit perfect delight. (Cf., for example, Lehmkuhl, *Theol. mor.*, I, 1095.) But if from the beginning both have wished only imperfect copulation (with the man withdrawing himself without pollution), the studied procuring of complete pleasure can be conceded to neither, at any moment. But when copulation has been broken off, the wife can neither excite herself nor consent to full delight which has arisen. For that excitation can no longer be added as a complement to the conjugal act which remained imperfect.

[1] Malthus, in the celebrated work *Essay on the Principle of Population* (London, 1798), preached honest abstinence, "moral restraint," lest the propagation of the human race flourish excessively. Wherefore he was praised by Joseph de Maistre, and also recently by other Catholic writers. Cf., for example, P. Bureau, *L'indiscipline des moeurs*, P. 3, c. 10. The neo-Malthusians, however, teach and inculcate the same moderation by an artificial manner which deprives spouses of no delight.

Duties of the Confessor and the Preacher. Concerning a matter which is treated so openly, in the newspapers themselves, good faith can scarcely exist in penitents. Those who, while they frequent the sacraments, err in this matter are easily harmful to others by imprudent words or counsels; and because of a light indication, they think the matter is permitted or at least tolerated by the confessor. It is a question of a most grave evil which everywhere, on account of the common good, must be fought. These things having been weighed:

1. Confessor: a) unless by a positive indication it appears that suspicion of this vice does not fall upon the penitent, he will question unknown spouses by a general interrogation whether all things are well in matrimony, whether they are troubled by some scruple; b) those whom he has found to be onanists, he will regularly warn concerning their crime; c) if the spouse, with attention to the mode by which the excess is committed, can begin copulation well or admit it when begun, he will instruct that spouse concerning this faculty, lest he begin or continue to commit formal sins; d) in some rare case, where good faith has been surrounded by extraordinary circumstances, and the danger of scandal has disappeared together with the danger of excessive abuse, he will press down the fault in silence. Good faith will more easily be present in a wife who, having denied assent, thinks that she can cast all fault upon the husband, and does not distinguish among the modes by which the abuse is committed; or also in grave sickness. Nor then are excessive abuses to be feared of themselves.

2. Preacher: The preacher, especially the habitual one, or he to whom, as pastor, it belongs to provide for the salvation and good morals of the faithful, must hand on to the people the whole evangelical truth.

And these things are to be performed regularly and prudently. We say regularly, on account of accidental exceptions; prudently, with attention to the quality and authority of the sacred minister, with consideration of the people, who can be firm or weak in faith, at least in part immune from the contagion of the vice or already morally wholly indulging the vice, and long accustomed already to

have silent pastors; also with attention to the mode, which is not necessarily a vehement rebuke or increpation, but can also retain the sweetness of a calm exposition.

Come now, that we may define something more exactly, according to our powers, concerning a matter so grave and so daily:

a) negatively: never can a sacred minister, whether preaching or hearing confessions, so act, speak, or be silent that he deservedly seems to connive at onanism.

Nor can he foster by counsel, nor simply approve, sterility sought by imperfect penetration of the vagina (Holy Office, November 22-23, 1921, *Per.* XII), since he cannot be the author or approver even of a venial sin.

Never, even in the most miserable parish, can a pastor, conscious of general abuse, tolerate such a condition with a resigned mind in such a way that he no longer applies any attempt to eradicating it prudently.

Never, as confessor, can he absolve a penitent who at the time, certainly on account of his subjective ignorance, cannot be judged at least probably disposed.

b) Positively, however: in a parish in which the vice is not yet established or general, preachers and confessors must by open preaching and opportune warning in the tribunal of penance take care that there be no departure from right moral principles.

But in a parish where the abuse has already generally prevailed and by the long silence of confessors has been as it were strengthened, a new pastor can, before he denounces the grave obligation or openly condemns the abuse, prepare minds to receive the truth with ears well docile or at least patient, with the negative requisites just listed always meanwhile preserved.

A missionary preacher will be able to abstain from an untimely warning. And you should observe that, more than in secret confession, in public preaching of the divine word, obedience is to be given to the pastor who invited him, and much more to the Ordinary.

Moreover, effort must be made that by common counsels the deliberate action be more uniform and therefore efficacious. Nor is the duty to ask the local Ordinary in more difficult matters to be passed over, whose commands can also induce more uniform action.

Corollary. No washing of the vagina for expelling semen and impeding generation is licit, but it contains the guilt of attempted (usually vainly) onanism, just as the wife sins by intention who, by an ineffective manner (a vain remedy, restraining her own distillation, rising to urinate), has wished to render copulation sterile. Nor will she be able to obey a husband commanding such things, unless she first has warned him concerning his error.

Yet it is lawful from the vagina and from the uterus itself to expel non-fecundated semen which a woman, having suffered force, has received unwillingly: it is a mode of repelling an unjust aggressor.

Vaginal washing done for another end seems lawful already after an hour from copulation, since then it no longer morally impedes generation. Those who require an interval of six hours tacitly suppose that no loss of semen, not even partial, can be permitted.

II. - On Other Excesses

I. He who has completed the conjugal act outside the due vessel must declare this character of the sin, even if sodomitical affection was absent. For it contains a special violation of the sanctity of marriage, of the duty of mutual piety, and, if the wife was not formally an accomplice, injustice. But in what abominable part the thing was done does not regard the species.

He also is injurious who, when the other reasonably dissents, has interrupted copulation, even short of pollution, since each has a right to perfect copulation.

Pollutions excited by mutual touches are gravely opposed to the sanctity of marriage and to the duties of conjugal piety, so that the circumstance of marriage is to be indicated.

II. Complete pleasure sought or admitted separately by either spouse adds to the malice of pollution a grave malice against justice or the sanctity of marriage. For since, from the mutual handing over of bodies, one spouse possesses the body of the other for complete venereal use, if he has done it against the will of the other, he sins by the sin of imperfect adultery; but if the other spouse assents, he nevertheless without doubt has violated the sanctity of marriage, in which God wills that that faculty be reserved for the common use of both.

III. Exterior perfect or imperfect venereal acts exercised with other persons add to the malice of lust the malice of complete or incomplete adultery.

By the assent of the other spouse, the peculiar character of injustice is removed, on account of the universal principle: no injury is done to one consenting; yet there remains the special malice of violated sanctity of marriage, so that the sin does not become simple fornication, as proposition 50, condemned by Innocent XI, March 2, 1679, as at least scandalous and pernicious in practice, asserted.

Thus adultery committed against the will of the spouse and adultery committed with the assent of the spouse are specifically distinguished. Some deny this, because the right of the spouse is inalienable; but the consent by which injury is removed is not necessarily the consent of one alienating a right: the consent of one not opposing his right suffices. But it pertains to the very essence of a right that it always be in the power of the one having it to oppose or not to oppose the right.

Double adultery, which is committed by a sinning spouse with the spouse of another, must be accused as such, because, besides his own principal act, he must declare the complicity with the other's principal act; nor can he positively deceive the confessor, who without that declaration would understand adultery with one not married.

Shameful conversations are not judged to be terminated to the persons conversing in such a way that, from their quality, they put on a new species as such.

IV. Interior acts are to be judged from the object, which, when it is a question of a spouse, can be honest, or befouled by an adulterous or sacrilegious affection.

V. By marriage attempted with another person, the spouse sins most gravely against the sanctity of marriage, piety, and justice toward the other spouse. He also is unjust who illicitly separates himself from the other spouse, or asks for civil divorce.

Summary

I. 1. Lawful Copulation. Copulation, honest in object between spouses, by which, according to the opinion more received today, marriage is consummated, is lawfully asked for begetting offspring, for testifying love, for calming concupiscence, indeed for seeking delight temperately. But the petition of the other is a sufficient reason for the other to render, unless grave harm stands in the way, whether one's own, or that of the other spouse, or of offspring already conceived.

Very rarely will there be certainty of such harm from a future birth as would prohibit copulation under grave sin.

As to circumstances, one doubtfully impotent can attempt copulation; but not one certainly impotent, unless in the very attempt there is a probable remedy and the introduction of semen is procured according to his powers.

Even sterility badly procured, at least if it is going to be perpetual or long-lasting or if abstinence is too difficult, does not prohibit the use of marriage.

In weighing promises and vows, attention is to be given to the efficacy of a new mutual consent, and to the power of invalidating vows, whether indirect in each spouse, or probably direct in the husband. Vows, however, do not remove rights, but induce an obligation of religion.

Copulation is prohibited at no time, with the general laws of prudence and mutual friendship preserved.

No mode of copulation is prohibited, at least under grave sin, which permits sufficient semination within the vessel. Application to the mouth of the vagina does not of itself give sufficient probability of fecundation for that mode to be chosen, at least when another is possible. Besides, the very character of copulation seems to be lacking here.

To abstain from copulation on certain days, lest offspring be generated, is not grave; indeed it can be honest; but with direct intention it is not lawful in the act of copulation to squander even part of the semen outside the vessel.

By previous pollution, semen cannot be procured even for artificial fecundation. But useful means (even by images) for provoking the necessary excitation of copulation are not to be disapproved.

A secret place is required for copulation, so that spouses, if by chance discovered, can break off copulation.

One doubting concerning the value of matrimony is forbidden at least to ask copulation before investigation. If the doubt has been insoluble, the use of matrimony is not to be prohibited. Nor is it certain that the case of doubt concerning the impediment of ligamen must be excepted, at least if then a probable reason, independent of the possession of marriage, counsels the value of the new covenant. Nor does a suit having been moved concerning the value of marriage alter the faculty of copulation.

2. Copulation Owed. Copulation must be rendered from justice to the one reasonably and seriously asking it. Yet a just cause excuses from rendering the debt. Too greatly multiplied offspring is not such a cause.

Assent does not seem to be owed to one illicitly asking. The very right of demanding is lost by adultery or a similar abuse, as also by valid abdication of the right. Charity and piety themselves can impose the duty of asking.

3. The Use of Marriage to Be Desired is that which is done by mutual consent, willingly and with moderate frequency (the appetite itself having been considered). And it is to be commended that spouses experience the heat of pleasure at the same time. Yet for honesty it suffices that, the man's pollution outside the vessel being avoided, the heats be morally joined.

II. The incomplete use of marriage is permitted also to spouses, since it is referred to the complete honest act and assists at least the secondary ends of matrimony.

Wherefore, excluding affection for an unnatural act or excessive danger of pollution, no mode of imperfect act is forbidden to them under grave sin. Indeed, on account of the end of marriage, there is none which cannot become honest. Yet acts gravely influencing of themselves toward pollution cannot be exercised by spouses unless in circumstances where, pollution urging, they can and will complete the conjugal act, or unless a grave cause otherwise demands them. But acts joined with morally certain pollution (the direct effecting of pollution always excluded) are forbidden to them under grave sin unless in circumstances where spouses can and will complete copulation. Perhaps, on account of a most grave cause, a certain material cooperation of the spouse can be tolerated. But custom brings it about that certain acts for them no longer have the character of begun pollution.

The best counsel is that spouses, in their intimate conversation, strive to compose personal dignity with tender affection.

III. Excluding grave danger of pollution, solitary imperfect acts will be honest if they are formally referred to copulation; nor even when exercised separately do they seem able to be blamed under grave sin, since the order to copulation is never entirely removed.

IV. Lust of Spouses. The onanistic use of marriage is intrinsically and gravely to be blamed: since spouses then exercise, as individuals, with the order to the species violently dissolved, an act which belongs to the species and is for the sake of the species.

Yet if copulation is rightly begun or rightly done, the spouse who strives sufficiently to turn the other away from the deadly counsel can cooperate with that copulation materially and even actively, yet taking care not to procure for himself a separate venereal satiety. And because it is a question of a public and spreading evil, the preacher or confessor cannot by his silence connive at this profanation of marriage, but both, and especially the pastor, must take care lest the community be infected by this vice; and if it has been infected, they cannot refuse or interrupt work for its healing, with effort at once prudent and constant.

Special malice in spouses is had by: a) conjugal acts completed outside the due vessel, pollutions procured by mutual touches or separately;

b) perfect or imperfect venereal acts done with other persons (except conversations of themselves, since they are not judged to be terminated to the other person). These add to the malice of lust the malice of complete or incomplete adultery. The assent of the other removes the note of injury, but not the specific malice of violated sanctity of marriage, from adultery.

Interior acts are to be judged from the object.

By marriage itself attempted with another person, or by civil divorce, or by illicit separation from bed and board, one sins against the sanctity of marriage, piety, and justice.

Chapter V: Other Duties of Spouses

Usefulness. - In this brief chapter, besides inculcating the duties by which conjugal life is as it were completed, we propose to supply a gap in several manuals of moral theology.

After in the other volume, concerning the duties of the virtues, we said what rights and duties would arise for spouses from piety, it is enough that here we briefly touch upon fidelity of friendship and the obligation of cohabitation.

I. Fidelity of Friendship. Manuals of theology, too much, as it seems to us, pass over in silence that kind of infidelity by which one spouse, by the love which is called platonic, withdraws his heart from the other spouse so as to give it to an extraneous person, while leaving the body to the spouse for conjugal acts. Besides the fact that this is very dangerous to chastity itself, this alienation of mind is of itself a cause of grave and just sorrow to the deserted spouse, which detracts not a little from due piety. And it cannot be composed with the obligations tacitly undertaken in contracting marriage according to the usages received among cultivated European peoples. Wherefore we judge that it is opposed to justice itself and must be marked with the note of mental adultery. Finally, the right instruction of offspring also demands agreement of minds. Therefore we judge this infidelity to be charged as grave sin. Yet the consent of the other spouse here can be more efficacious for removing at least grave guilt than when it is a question of bodily adultery.

II. The obligation of cohabiting follows both the obligation of rendering the debt and domestic society. By the former reason the one is commanded to be sufficiently near, so that he can comply with the reasonable petition of the other. But domestic society requires a more continuous dwelling under the same roof. Therefore, against the will of the other, one spouse cannot be absent for a longer time without necessity. Except the case of adultery, which confers the right of perpetual separation.

Yet this obligation must be understood in a human manner. Wherefore, with a burden plainly extraordinary and not foreseen, the wife will not be bound to follow her husband into a distant region; and a more excellent good, or certainly one more owed and more necessary, can excuse spouses from cohabitation. By a prudent estimation it will have to be weighed when, according to the gravity of the cause, the husband or wife is judged absent longer than the obligation of cohabitation permits. A husband who is forced to be absent for a long time must take his wife with him, if he conveniently can. (Cf. St. Alph., 6, 939.)

To be absent, against the will of the other spouse and without sufficient cause, will be mortal:

a) as often as it includes a mortal denial of the debt;

b) if it has not been for a brief time: this will have to be weighed both in itself and from the harm or sadness of the other. Just causes can be: honest recreation, care of health, a necessity either of avoiding one's own harm or of protecting the family, or of administering family affairs, the requirement of the public good.

But neither, with the other assenting, will it therefore immediately be lawful to depart for a certain time without another just cause, unless "probable danger of incontinence in either one is guarded

against, no harm to the family follows, and scandal is absent" (Palmieri, *Opus theologicum*, tom. 6, tr. 10, n. 388).

In this matter it will be fitting that the richer aid the poor or humbler persons who, seeking a richer wage outside their fatherland, can easily there be exposed to many sins against religion and morals. Means must be applied to averting so great a harm of souls. Nor, insofar as there is opportunity, will confessors tolerate migrations which are a proximate occasion of sinning either for the separated wife or for the man.

A Connected Counsel. — A sharing of bedroom, not only of roof, is very greatly to be commended to spouses. For the separation of bedrooms, besides the fact that it offers an easy occasion for sins and suspicions, is shown to be not lightly harmful to mutual love, and, experience testifying, is a frequent cause of unhappy marriages and divorces.

On Separation and Divorce. — Separation from bed and board, opposed to cohabitation, cannot be introduced with a safe conscience unless because of adultery one party has given to the other the right of perpetual separation, or unless other imputable faults create a just cause of separation, regularly to be referred to the Ordinary.

Full civil divorce is still more opposed to the duty of cohabitation, if it is attempted with that mind that the indissoluble bond be broken. And even where the intention of the party seeking the divorce bears only upon a just separation, such a petition, scandalous of itself and dangerous to the morals of both spouses, cannot honestly be made unless grave reasons sufficiently overcome those inconveniences. A grave reason could be a founded fear lest adulterine children be imputed to the innocent husband, lest because of a defect of civil laws, divorce be pronounced against the innocent party in a manner harmful to patrimony or to the right instruction of children. And even if causes seem to be present which excuse, deference must be given to the authority of the Church in this way, that nothing be done unless ecclesiastical authority permits it.

Summary

I. According to usages received among cultivated peoples, spouses have wished to hand over to one another not only the body but also the heart in the conjugal pact itself. This accepted promise is gravely derogated from by a "platonic" love by which the heart is withdrawn from the spouse so as to be given to another person.

We mark this with the grave note of mental adultery. Yet the consent of the other can here remove grave guilt.

II. 1. Spouses must mutually furnish cohabitation to one another, tacitly promised, yet to be understood in a human manner, so that, against the will of the other spouse, the one cannot without grave fault be absent if thus he virtually denies the debt which he must render under grave sin, or if he is absent for a not brief time.

Indeed, not even with the other assenting will it always be lawful for one to be absent, with attention to a moral danger not removed or compensated.

2. The very sharing of a bedroom is greatly to be commended.

3. He fails in this obligation of cohabitation who illegitimately separates himself from bed and board, and much more who, without graver reasons and with ecclesiastical jurisdiction observed, seeks full civil divorce.

Treatise IV: On the Chastity of Others

The usefulness, common to the whole treatise, is not only the distinct knowledge of sins, but especially a good demonstration of the solutions which, in this matter, are received in the Catholic Church. When that demonstration is lacking, the convictions themselves waver: which, in a rough matter, is very harmful; or even exceptions are conceded, in singular cases, by which the integrity of the inviolate order of nature perishes.

— The excellence of honest celibacy above the conjugal state, which, after the Apostle, Catholic tradition teaches us, is confirmed by the very opinion of a false etymology. For already Quintilian had to disapprove the error of those thinking that the word *caelebs* was derived from *caelum*, because celibates would lead as it were a heavenly life[1].

This excellence proceeds chiefly from the additional pursuit of virginity. Concerning this pursuit a few things are had above, and we have spoken more fully in the work *De Castitate*. But, such a noble purpose being set aside, honest celibacy nevertheless merits for itself the praise of a more perfect command over vehement concupiscence, since outside matrimony every voluntary use of the generative faculty is prohibited, so that now we must treat only of lust or of sins.

This argument begets, in all who devote themselves to the amendment of morals, too great a solicitude for its usefulness to have to be demonstrated.

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[1] Thus Forcellini, *Lexicon*, v. *caelebs*. Yet the writer corrected by Quintilian derived the word *caelebs* from *caelum* rather on account of the felicity of exemption from a burden than on account of heavenly pursuits. Behold the words of Quintilian: "Gavius seemed clever to himself in saying *caelibes*, as if *caelites*, because they are free from a most grave burden, and this by a Greek argument; for he affirms that ἡϊθέους is said for the same cause." *De institutione oratoria*, I, 6, 36. Today the more accepted etymology, from κοίτη, bed, and λείπειν, to lack, explains *coelebs* as one deprived of the marriage-bed. But the matter remains uncertain.

Chapter I: On the Complete Use of the Venereal Faculty

Article I: On Complete Use According to Nature

I. Fornication. Complete use according to nature occurs in fornication, which, under the respect of lust, can be defined: natural, extra-conjugal copulation. And simple fornication is copulation which is vitiated only by the defect of marriage.

Concubinage, graver than accidental fornication, is had in the same species; it bespeaks a long-lasting carnal commerce, in intention and in fact, between the same persons, whether they have agreed expressly, or tacitly, concerning a habitual relation or custom. Where a concubinary relation is a reserved case, it requires a certain frequency of acts repeated not merely per accidens, but from a certain destination of the woman to the same man, or a certain custom of state.

Prostitution designates the condition of her who, prepared to give access to almost anyone, is accustomed to make gain from her body.

Every fornication, even when considered by the law of nature alone, is a mortal sin. This opinion, which must be held today on account of the common agreement of theologians, we confirm by this brief reason, that fornication deprives carnal commerce of the order which the good of the human species demands. On account of the necessity of the education of offspring, the good of the human species demands that copulation not be done except by two persons who have completed themselves as a principle of generation, which is done by marriage alone. Nor does the intention of the parties who wish to nourish the offspring in common well restore this order, nor does certain sterility of copulation restore this order, so that in every fornication this substantial violation of order is found. (Cf. the fuller and more ample demonstration in *De castitate*, n. 306.)

II. Additional Malices. Fornication, one species in the genus of lust, on account of various additional heterogeneous malices, receives diverse names and is ascribed to various species.

1. The conjugal bond having been despised, adultery is committed, concerning which see above n. 74-76.

2. When it is done with a person consecrated to God by a vow of chastity, at least by that vow which the Church has accepted, sacrilege is committed. He also is sacrilegious who fornicates (indeed who, in the Latin Church, uses marriage) with a person who is constituted in sacred order, even if this person has emitted no vow (cf. Cod. can. c. 132). And now, on account of complicity, he is sacrilegious who induces a sacred person to carnal sin, while he is not sacrilegious who, bound by vow or sacred order, impels a non-sacred person to sin with another, provided he himself remains free of lust. Violation of a private vow of chastity carries with itself only malice against religion; yet an extrinsically probable opinion makes violators of such a vow guilty of sacrilege, so that there is no practical obligation of distinguishing public vows from private in confession. And he who is bound to chastity from sacred order and as a religious contracts the same malice of sacrilege by a double title, which therefore he need not accuse distinctly in confession. But if both accomplices were sacred, this must be declared in confession.

Fornicatory copulation performed within a half-hour after Communion puts on the grave species of real sacrilege, just as solicitation itself in confession does. Performed in a sacred place, perhaps today it will not put on the malice of local sacrilege, because a sacred place is no longer polluted by it, unless it was so public that it constituted an impious use by which the sacred place is violated. A sacred place here is only a church or public oratory, dedicated to divine worship at least by solemn blessing.

III. Incest. Fornicatory copulation with consanguineous persons with whom, whether by natural law or by ecclesiastical law, nuptials cannot be made, at least without dispensation, adds to lust the malice of incest against piety.

And the same must be said of copulation with an affine. Indeed, since an affine is joined to another on account of a consanguineous person, "consanguinity and affinity make an inconvenience of the same character" (II-II, q. 154, art. 9, ad 2), so that each incest seems to be of the same species. Yet others deny this, for example Vasquez, in 3 p. q. 91, art. 1, d. 4, n. 11-12.

Neither line nor degree induces various species, since in all one specific piety is violated. Yet Lehmkuhl, I, 1050, after St. Alph., l. 3, n. 438, and others, wishes to except the first degree of the direct line, since the reason of piety is found in parents through itself, in others by participation. But when one thing is on account of another, both are of the same species. Nor, as Lugo observes, *Paen.* 16, 315, does it appear why they wish only the first degree to be excepted.

Yet it happens that another duty of piety, for example of right instruction, is violated, for example if parents sin with children constituted under their power: this will have to be declared. Thus also a son sinning with his stepmother while his father is living is atrociously injurious to the father himself.

— Special malice is contained also in carnal sin with a person spiritually related, and it is grave if there is a diriment impediment.

A special reverence also, distinct from the reverence of natural or spiritual relationship, is violated by fornication with persons legally related. But it is not certain that this is grave.

— Public honesty does not cohere with special duties of piety.

Wherefore the circumstance of violated public honesty by copulation with the mother, grandmother, or daughter and granddaughter, or with the father, grandfather, or son and grandson of the person with whom an invalid marriage had been contracted (knowingly or unknowingly), or with whom one sins by public or notorious concubinage (for example by merely civil marriage), is not to be declared under grave sin in confession.

— The oppression of an unwilling woman, whether she has been compelled by force or deceived by fraud, puts on the character of *stuprum*, which is opposed to justice. He is doubly injurious who at the same time takes away from an unwilling virgin the seal of virginity.

And besides, fornication which redounds to grave dishonor of the family or sorrow of the parents contains grave fault against charity.

When, however, *stuprum* is a reserved sin, it is understood as the unjust oppression of a woman who has preserved the seal of virginity. (Cf. Lehmkuhl, *Theol. mor.*, I, 1048.)

— *Raptus*, in moral theology, means the injurious deprivation of liberty inflicted upon some person for fulfilling lust. That force can be brought either upon the person whom someone abuses, or upon those under whose power she is.

She also is morally abducted who by deceit and fraud is deprived of her liberty.

Canonically, from this *raptus* there must be distinguished the *raptus* which dirimently impedes marriage and the *raptus* which is a delict punishable in the external forum. For the delict there is required the violent or deceitful abduction of an honorable woman from one place to another, whether for the cause of entering marriage or of fulfilling lust. To violent or deceitful abduction is equivalent the abduction of a consenting minor woman, done without the knowledge of or against the will of parents or tutors.

— A carnal sin committed with a person whose spiritual or moral good one must care for from an obligation of justice which cannot be dissolved by the consent of that person is also opposed to justice: thus a bishop, as to his own diocesans; a pastor, as to parishioners; a tutor, as to a ward; an instructor or superior of a college, as to pupils entrusted to him by parents. Cooperators of the pastor or superior are not held by this obligation of justice, but easily will be at the same time gravely scandalous.

A confessor sinning outside the occasion of confession does not have an obligation of justice, nor does a freely chosen spiritual father, at least when he uses no coercion or deception: for by mutual consent the special relation of direction is removed or interrupted. But one must speak more severely concerning him who is deputed to exercise the office of spiritual father, for example to a monastery.

Article II: On Complete Use Against Nature

I. Pollution,. so called from the liquid excretion which then is customarily emitted, means the separated complete act of the venereal faculty.

It can be involuntary and merely bodily: the non-delightful emission of seed by which those who are affected with spermatorrhea often suffer. This lies outside the notion of sin, but it is to be cared for, because it can become very harmful to health. - It can be involuntary and at the same time animal: that which, without a culpable cause and without consent, for example from an excited imagination, happens with pleasure by night, or even by day. - It can be voluntarily excited, or at least voluntarily admitted, and then it is a sin, which is called solitary, from the ordinary circumstance of the agent; softness, from the weakness of soul which it betrays; masturbation, from the more frequent mode by which it is committed (inasmuch as, not very scientifically, they understand masturbation as though a defilement made by hand).

1. That there is grave malice in voluntary pollution, or in pollution voluntarily admitted, even from the law of nature itself, is the common and certain opinion of Catholics. But in the demonstration they labor not a little;

a) some appeal to the useless emission of seed, whose exclusive destination is the good of the human species. That argumentation is subject to a double difficulty: nature herself, even against man's will, lavishes that seed. Why would the same thing not be lawful for me on account of a just cause? Indeed, useless profusion is permitted to men themselves in copulations which have no other

immediate utilities besides generation. Therefore seed is not prepared by nature on account of the generation of offspring alone. Accordingly, why it is not lawful by pollution to lavish what is permitted to be lavished in other ways will never be drawn from profusion as such, but from another reason which will manifest to us the formal malice of pollution;

b) others have placed the malice of pollution in perfect venereal pleasure. But the contrary is true: the moral judgment of pleasure must be taken from the operation to which it is joined, so that the first reason of goodness or malice cannot be found in it. Besides, pleasure is the immediate good of the individual, which can be referred to the species only mediately. Therefore the reason of malice would be individual, while all feel that by this sin one immediately sins against the good of the species;

c) others gather the reason of grave prohibition from intense pleasure, and this on account of the consequent danger of frequent abuse. These therefore approach:

d) those who flee to an extrinsic reason, arguing from the inconveniences or dangers of abuses which would be opposed to the good of the species if moderate pollution, or pollution in certain circumstances, were lawful or not gravely reproved.

We do not deny that force is present in this reason, observing that the harms are not gathered from acts as facts, but from lawful pollutions. Yet its perpetual efficacy can deservedly be doubted, for example when there is question of "physiological" pollution, or pollution on account of the health of the body; or of pollution which may serve the multiplication of the race, as in reproved artificial fecundation. And an extrinsic reason supposes an intrinsic reason, which must be detected.

Wherefore, deceived by this demonstration of theirs, there are already not lacking those who will indulge pollution procured by venereal excitation to him to whom, in a special case, a physician shall have declared that it is necessary either for driving away or for preventing a grave disease.

We use the brief argument already employed above. Voluntary pollution contains a substantial violation of the essential order, since the man or woman who pollute themselves exercise, as individuals, an act which was to be exercised by common work as an act of the species.

Consent to casual pollution also is gravely evil, because that consent is not a mere intellectual approval of a physiological fact, but brings a participation of the mind, a concurrence which influences the very delightful commotion, increasing it, and physically changes it. By this active participation reason is again snatched away by sense to enjoy singly an operation which can be loved only as pertaining to the species. This malice, although lesser in degree, is of the same generic (not specific) character as voluntary pollution, and is necessarily grave.

The argument made is confirmed by various considerations which make up the extrinsic demonstration to which most flee.

2. The malice of pollution differs specifically from imperfect lust, and this in both sexes.

For after it was discovered that every true seminal emission is absent of itself from female pollution, there were those who thought that it could be specifically reduced to imperfect lust. Those who derive the proper malice of pollution from the profusion of human seed will refute this opinion with greater difficulty.

But for us this easy argument is at hand. In both sexes, non-consummated acts of lust mean, according to themselves, the preparation of a consummated act, and they immediately draw their morality from order to the consummated act, while a consummated act is judged good or evil from the order to generation which it has or of which it is deprived. Therefore, although we concede that these acts are referred to the same complete species, nevertheless they differ specifically from one another as the begun and the completed, the beginning and the term, the means and the end. (Cf. the principle concerning specific distinction in St. Thomas, I-II, q. 72, art. 7, c. and ad 3; and vol. I, p. 446, 2.)

This principle must be held firmly; for the worst consequences flow in an easy channel from the opposite error.

Corollaries. 1. The essential malice of pollution is contained in the description by which pollution is defined: the separated complete use of the generative faculty.

2. Pollution of a man and of a woman do not differ in species, so that one who accuses pollution is not to be questioned concerning sex. Nor is it established that distillation is necessary for the notion of female pollution. Once a woman has declared "satisfaction," or satiety, she will be judged guilty of pollution.

3. Pollution of a young man and of an old man, of a pubescent and of an impubescent person who nevertheless is capable of copulation, and of a eunuch, so long as he remains capable of copulation, do not differ in species from one another. From those pollutions there differ in species the pollutions of infants, and of those in whom erection is lacking.

4. Because the part exists for the whole, to cut off the testicles on account of the health of the body is certainly lawful. Here no operation against nature is performed.

5. On account of a much lesser cause (for example, scientific experiment) it will be lawful directly to extract some seed, say by puncture, while always avoiding venereal excitation or use of the generative faculty.

— Natural nocturnal pollution objectively incurs no reprehension. Wherefore, while nevertheless guarding against the present excitation of lust, it is lawful to desire it with a simple affection, on account of the advantages which may follow it, and to rejoice over it when it has occurred. Yet it will not be lawful to intend any determinate one, or directly to procure it by a suitable means. For since it does not happen without commotion of the body and pleasure of sense, he who intends it completes and perfects the pollution itself in his mind. Nor can pollution which is artificially produced now be called natural. But he who experiences spontaneous emissions as more difficult or rarer can take a remedy so that evacuation in general may be made easier. He directly effects nothing else than to temper his body so that nature can act regularly. But it is not lawful to take a remedy while awake so that from it pollution may be had in sleep. For this would have to be called voluntary.

He who by itself or per accidens has sought complete use in vain, so that he has remained without the satiating pleasure which is the sign of complete use, has committed, in affection, the sin of pollution; in effect, the sin of non-consummated lust. But the impubescent, especially so long as they are sufficiently distant from puberty, are rather presumed immune from that affection, while that affection is very easily judged to be present in the impure attempts of eunuchs.

Specifications. 1. They vary in species: from the subject, pollution of an unmarried person, of a married person, of a person bound by vow; - from voluntariness, sought pollution and pollution simply admitted; pollution produced by a general appetite only of venereal pleasure, or even without a formal appetite of this kind, and pollution with a fornicatorian, or sodomitic, or bestial, or otherwise perverse affection; - pollution with an inefficacious desire of copulation or of another sin. - A special affection is customarily betrayed in the accompanying phantastic image.

2. Pollution does not vary in species either on account of the mode by which it is completed, or on account of the place of the body whose excitation has induced pollution. Yet there will have to be declared, on account of scandal, the complicity of another, or an easily accompanying affection of fornication, sodomy, etc.; pollution procured by another's touches, but not that which is produced by contact with a person unaware, for example one sleeping or in a crowd.

II. Sodomy. is defined as the lustful concubitus of two persons of the same sex.

For the moral essence of the sin no penetration into a certain vessel is required, while for the canonical notion of perfect sodomy emission into the anus seems to pertain. Performed with a boy, it obtains the special name of pederasty. Yet this word is also used to designate every sodomy; while the more benign or more general form of propensity to the same sex is called homosexuality.

The circumstance of agent or patient (the latter formerly was called *pathicus* or *mollis*) does not change the species, but in the patient pollution is not presumed as it is in the agent.

The circumstances of vow, relationship, and the conjugal bond add specific malices.

Pollution performed in the mouth is to be judged from the affection, as is the very use of a woman in another vessel, which is often marked by the name of imperfect sodomy.

From sodomy there must be distinguished mutual pollution by touches alone, to which, nevertheless, a sodomitic affection can accede.

III. Bestiality. is coitus with a beast. For the moral essence of that infamous sin, it is necessary that the sinner has wished to enjoy a beast; but it can very easily happen that someone has wished merely to use a smaller beast as an instrument of pollution, with fornicatorian affection.

For the canonical essence of the reserved sin, if nothing more severe has been declared, the concubitus of consummated copulation is required and suffices.

It does not matter of what genus or sex the beast may have been. That no offspring is to be feared from that abomination is today ascertained.

IV. Several other perversions against nature lack a proper name. They will be sufficiently accused if, excluding sodomy and bestiality, copulation against nature is declared to have been done.

Formerly they used to say many things concerning intercourse with a demon, in whose power this alone seems to be: that, under the figure of a human person or even of an animal, human seed having been brought, he may perform a certain artificial fecundation whose fruit will be a man. No fact of this kind is narrated today.

Comparative Gravity. 1. On account of the greater departure from nature, bestiality is, among those things which have a proper name, the worst sin of lust, although affection toward a demon contains a

most grave malice against religion. But it is clear that sodomy is worse than fornication.

2. The gravity of pollution. Although, considering only the genus of lust, pollution is graver than fornication, nevertheless absolutely it must be said to contain lesser guilt: scandal is absent, an accomplice is absent; it supposes a lesser boldness of will. And often affection against nature is absent.

Today, as pollution, it does not now violate a church. Wherefore, unless from the public manner in which it is done or from the cooperation of another it savors of formal contempt of a sacred place, we judge that grave guilt of local sacrilege is absent from that act.

3. Onanistic fornication. But fornication today is often done onanistically. According to affection and intention, this will be graver or less grave than perfect fornication. He who chooses onanistic copulation so that he may do less harm to the woman and to society is led by a less perverse affection than he who disregards the burdens to be feared by the woman so that he may more fully satisfy himself. But he who seeks pleasure without burden will sin more than he who has decided to bear the connected burdens with a resigned soul, so that he may act according to nature.

Indeed, fornication naturally completed differs specifically from fornication performed onanistically. But that distinction is unknown by most sinners; nor does an admonition seem spiritually useful. Wherefore the confessor will be able to abstain from questioning concerning the natural or onanistic mode. Yet he must prudently ask whether something perhaps has been attempted against offspring that may have been conceived.

SUMMARY

I. Extra-conjugal complete use according to nature occurs in fornication, which is natural extra-conjugal copulation.

It can be simple or be increased accidentally by concubinage or prostitution, or even be mixed with grave injustice by adultery, *stuprum*, or abduction; or with impiety, by incest, to which is referred copulation with a person spiritually or legally related; or with sacrilege if one sins, even by complicity alone, with a person consecrated to God by a vow (at least a public one) of chastity, or by sacred order in the Latin Church. (Violation of a simple vow of chastity always induces grave malice against religion.) Fornication admitted within a half-hour after Communion will also be really sacrilegious; and fornication performed so publicly in a church or solemnly blessed oratory that it effects an impious use of that place is locally sacrilegious. A carnal sin with a person whose spiritual care one must bear from office is also opposed to justice and piety.

But every fornication is, from the law of nature itself, a mortal sin, since that carnal commerce is deprived of the order which the common good of the human species demands.

II. Complete use against nature occurs: **1.** By voluntary pollution, which, in both sexes, is a sin of the same species, and, as a complete act, differs specifically from imperfect lust. Its essential malice is the separated complete use of the generative faculty. And it is grave, since it contains a substantial violation of the essential order: sinners exercise as individuals an act which ought to be exercised by common work as an act of the species. Pollution varies specifically according to the quality of the person, according to the accompanying affection, according to voluntariness, that is, according as it is sought or simply admitted.

Natural nocturnal pollution objectively incurs no reprehension. Yet it cannot be intended or procured by a direct means. Concerning indirectly voluntary pollution no solicitude seems to have to be borne.

2. It occurs also by sodomy, from which mutual pollution by touches alone is to be distinguished; and by bestiality, which, besides the act, supposes affection toward a beast; finally by several other perversions which lack a proper name.

3. The more one departs from the order of nature, the graver of itself is the objective malice of the act. Nevertheless solitary lust is less grave than fornication; and concerning fornication performed onanistically or naturally, one judgment must not be made. The various reason and intention must be distinguished.

Chapter II: On Imperfect Lust

I. On the Malice of Imperfect Lust

To Be Observed Beforehand. 1. Imperfect acts of lust which are materially conjoined with a perfect act constitute one sin both in species and in number. For the whole reason of specific distinction rested upon separation from the complete act. Therefore we are treating here of those acts in which one stops either in reality or in intention.

2. Nor in exterior acts does the distinction according to nature and against nature recur. The affection indeed can follow nature or be opposed to it; but an imperfect exterior act says nothing of this kind.

All interior lust is imperfect, which is retained in the mind or will; but exterior imperfect lust means any venereal movement, not of itself satiating, effected or accepted by an unmarried person.

Here there must be recalled what we said in volume I concerning the numerical distinction of sins and concerning internal sins, nn. 432-440 and 458-465.

— The intrinsic malice of all venereal pleasure directly sought or admitted outside matrimony is not controverted: every movement of this kind is outside the mean of chastity.

Concerning the gravity of the sin of lust, the first opinion holds some movements grave, others light, according to their distance from perfect satisfaction. That opinion rather belongs to an earlier age. - A second opinion teaches that venereal pleasures are grave from the whole genus. - A third, middle opinion, is defended thus by De Moya (Cf. 6, *Miscellanea*, d. 2, *De peccatis*, q. 2, § 2): "In venereal matters there is not given, morally and practically, smallness of matter; but physically and speculatively speaking, it cannot be denied."

Although no opinion has been condemned, nevertheless the first today must be held as improbable. For the second opinion, they argue chiefly from this: **a)** that, on account of insolent concupiscence, whose degree we cannot define, all direct lust carries with itself the permission of a grave movement, and this without any just cause; **b)** that, on account of our fragility, the will which deliberately embraces a lustful pleasure of lesser degree is in proximate danger of desiring complete pleasure, by means of an imperfect but grave act. By this kind of arguing one comes rather to defending the third opinion.

For us, in favor of the second opinion, this easy argument is at hand: in any venereal pleasure whatever, deliberately sought or admitted, there is found a substantial violation of the essential order which effects mortal sin. For in any delight of this kind, use is made, for an individual good and against relation to the species, of a faculty which is wholly immediately on account of the species.

For estimating sins as grave or light, consideration of quantity is useful then, when, on account of a modest quantity or intensity, the very quality of the action is so changed that it is no longer a substantial violation of the essential order. Thus modest violations of office allow the order of piety and friendship to remain substantially intact. But in any use whatever of venereal things outside matrimony, the same inversion of the essential order is detected. This manner of reasoning seems confirmed by the authority of St. Thomas, who, II-II, q. 154, art. 4, says that all lustful kisses, as

such, are mortal, because they contain consent to the pleasure of perfect lust, that is, if we are not mistaken, to pleasure specifically the same, and therefore vitiated by a similar perversion of order. (Cf. what was said concerning the theological distinction of sins, I, n. 404 and 417.)

II. On Exterior Acts

Principles. 1. There is one formal reason common to all lustful acts: they mean a use, indeed incomplete, of venereal things. Therefore, according to themselves, looks, touches, words, do not vary in species: they are reprehended as lustful. But the distinction between sins by efficiency and by assent remains, as we said in n. 96 concerning pollution. Wherefore, he who has sinned alone, whether by a look, or by touch upon himself, or by lustful reading, sufficiently accuses his sins by saying: so many times I had voluntary carnal movements; so many times I accepted movements arising.

Yet he will not be able to be silent about a vow by which he was bound, or a special affection by which he was led.

2. As often as culpable complicity has intervened, another's sin will have to be accused; and besides, exterior acts which, according to themselves, begin or prepare a complete act with another person participate in the specific malices of that complete act.

Corollaries. 1. The so-called distillation, or production, from other glands, before the expulsion of seed, of a thinner liquid, since it is nothing but a certain notion of imperfect lust, induces no new species, and therefore ought not to obtain special mention in moral theology.

2. Lustful touches, embraces, kisses are so terminated to other persons that their sex and special marks (of married persons, sacred persons) must be indicated. Done to an unwilling person, they are at the same time opposed to justice. Not likewise looks, unless desires or pleasures concerning sin with the person seen have acceded. Yet on account of complicity, the circumstance of vow by which the accomplice person was bound will have to be indicated.

Sins of Speech. 1. Conversations can be shameful in two ways: either because by a shameful mode of narration they excite lust in the present, and these are more strictly called obscene; or because they approve shameful deeds or prepare future ones, as if you have had a discussion concerning a dishonorable action to be perpetrated afterwards.

Conversations from lust concerning shameful matters do not begin a complete sin with those conversing. Wherefore, excluding complicity with a sacred person whom you have thus induced to violate a vow, and excluding also a violated office of piety toward a person committed to your cares, these conversations are sufficiently accused by saying: I spoke shamefully with one or several (adding, where there will have been need, consent to depraved pleasure). - Yet he who seriously approves a lustful work perpetrated by himself or by another, or expresses desire for it, will have to accuse that depraved affection. - He who only fictitiously approves these things offends chastity insofar as he derogates from the honor owed to virtue; but, excluding grave scandal, this is not judged grave. And the same must be said of him who takes glory from fictitious sins, especially when glory is sought, more than from the malice of the sin, from another circumstance of cleverness, boldness, etc. (Cf. t. I, n. 464 and 469.)

N. B. Observe that here we are treating of touches and words which in a conscious mode proceed from lust. Concerning others, treatment will be given below.

III. On Interior Acts

I. Depraved Thoughts. Morose Pleasure. Some interior acts excite the commotion of the flesh and, as such, are sought or admitted, for example obscene phantasms. This is the more frequent species of the sin which they accuse who accuse depraved thoughts or morose pleasure. And since these are not accustomed to please except as a cause of present pleasure, this rule has customarily been handed down: Those who, excluding desire, have shameful thoughts to accuse, ought to declare neither the object nor the shameful movement, unless there has been pollution. Not the object, since the affection is not toward the object but toward subjective pleasure, and therefore the variety of objects does not change the species; not the shameful movement: once the thought has been indicated, it is already sufficiently manifested, unless there has been pollution.

Rather than interior acts, they should be called acts of perfect or imperfect lust excited by an interior act.

II. More intellectual acts can be:

1. Simple complacencies in an object thought of, without desire or intention of execution. And then only the evil marks which please will compose and specify the sin. Here note that there is not necessarily a shameful complacency concerning the thought of a shameful thing, which thought can be good: such a thought is had by him who meditates a sermon against impurity; and also that complacency concerning the marvelous, rare mode by which an evil thing was performed is in itself indifferent (although easily dangerous).

2. They can be inefficacious or conditioned desires: these must be indicated according to the very nature of the conditions, which can remove every malice, or only some malice, or none. And note that when there is question of a thing intrinsically evil, it is unlawful that someone, as though grieving over the prohibition, should foster affection toward an evil thing, for example toward fornication.

3. They can be absolute or efficacious desires, which necessarily embrace all known marks of the concrete object. (Cf. what was said t. I, n. 46.)

— Concerning joy, which, as distinct from desire, contains approval of a past act, what has been said concerning desire returns. It is lawful to rejoice not over an evil thing, but over the good effect of an evil thing. But nocturnal pollution is not an evil thing, not even materially, provided it has been natural, and therefore has been excited by no masturbation (even involuntary). Yet it is certainly not lawful to foster by joy the carnal pleasure of pollution.

— Penitents, except for efficacious desire, are not accustomed to notice many species. Wherefore practically, if those who accuse thoughts are found culpable, let them be questioned concerning desires. Then, besides the number, and perhaps a general question whether they have anything to add or not, there does not appear of itself a reason why anything else should be asked.

SUMMARY

I. All imperfect lust, morally separated from the complete act, is intrinsically and gravely evil, because in any venereal pleasure whatever deliberately sought or admitted, use is made, for the individual good and against relation to the species, of a faculty which is wholly immediately for the good of the species, so that the essential order is substantially violated.

2. In all lustful acts there is one formal reason of malice: they all mean the incomplete use of venereal things. Yet the distinction between sins by efficiency and by assent remains. But the circumstance of complicity, and of the quality of the sinning person, and of scandal, can add species. Yet observe that conversations are not among the acts which are judged to begin a complete sin with another person.

3. By the name of depraved thought they most often accuse venereal pleasure sought or admitted through phantasms. More intellectual acts can be: simple complacencies, conditioned or absolute desires, joys concerning past acts.

Chapter III: On Indirect Lust

I. Principle. Thus far we have spoken of lust formally intended or admitted. Now we speak of lust badly permitted, or imputable in a voluntary cause. But the imputation of an effect which follows outside the intention supposes a positive duty of impeding that effect. Yet no duty, at least no grave duty, is demonstrated of impeding, by ceasing from an act of another order, a venereal movement to which one does not assent. For that effect of itself harms no one. Wherefore he who sincerely and truly does something else is not therefore compelled, at least under grave obligation, to cease from that action on account of a foreseen or arisen venereal movement and pollution itself.

But if he indulges venery, whether he is married so that he sins in no way or at least not gravely, or because, not married, he is already guilty of imperfect lust, then, since those acts of themselves imply order to the complete act, the virtue of chastity, which prohibits pollution, also prohibits, unless there is grave excuse in a spouse, an act with which pollution appears sufficiently proximately connected, so that foreseen pollution, although it follows outside the intention, is imputed to him who indulges that lust.

Much less, however, is a different action prohibited on account of a movement below pollution. But a lustful action of the same order, in unmarried persons, will effect one sin in species and number with the graver but imperfect movement, or badly tolerated movement. Hence we arrive at this conclusion: Only pollution is gravely imputed in the cause; nor is it imputed except in a cause of the same order, that is, a lustful one.

II. Corollaries. 1. On account of foreseen involuntary pollution, one must abstain neither from an honest action, such as riding, scientific study, etc., nor, under grave guilt, from an illicit action but of another kind, for example drunkenness, gluttony.

Yet he who notices imminent pollution and can easily avoid it and does not avoid it seems to commit a venial sin on account of the rebellion of the flesh not repressed or tolerated without cause, and some danger of consent. And one must act sincerely. In bed, the choice of position is free. But he who, when pollution is nearly imminent, assumes a position by which, on account of contact, pollution will be brought on, will he not, if he cannot allege another reasonable cause, be said morally to have sought pollution?

A movement below pollution is better neglected than that one should therefore cease from an honest action.

Here also pollution is to be distinguished from masturbation, which is at least a material sin. If it was foreseen and sufficiently connected, masturbation, but not pollution, will be imputed to a drunken man.

2. Nor does there seem to be a sufficient connection between nocturnal pollution and prolonged phantasms for nocturnal pollution not intended to have to be imputed to him who for days has spent time in lustful thoughts.

3. It will be lawful to drive away a non-venereal itching even with foreseen pollution. Yet practically they are to be exhorted rather to bear a tolerable itching, especially since it is accustomed to be

increased by friction, and to seek from a prudent physician a more efficacious and safe remedy. Itching not rarely has as its cause a neglected cleanliness of the genital parts.

But a venereal itching, or one which tends toward pollution, cannot be soothed: for it would be a voluntary excitation of pollution.

But there is no small difficulty in discerning these things. Certainly if the discomfort suddenly ceases once pollution has been obtained, and there is no longer an invitation to touch oneself, venereal itching is demonstrated. On the contrary, if the action immediately soothes the itching, if soothing is sometimes obtained without pollution, a sign rather of non-venereal itching is had. And because it is more ordinary, itching can be presumed not to be venereal.

— There are some who suffer in the genital parts an intolerable irritation of the nerves which is soothed by pollution. Let the confessor be content with this general indication: that they abstain from touches which directly procure pollution and not consent to the pleasure that has arisen; and let him otherwise leave them in good faith, as to the nervous agitation to which they yield.

There are some who pass great parts of the night, indeed whole nights, sleepless until pollution has been produced. Yet for them the direct effecting of pollution does not thereby become lawful. Nor does the studied choice of a position which through contact brings on pollution seem to be honest, unless another cause or reason explains and excuses the position.

SUMMARY

— The principle is: in the cause, only pollution is gravely imputable, which is badly permitted in direct incomplete lust or in imperfect acts of spouses.

For no duty, at least no grave duty, is demonstrated of impeding, by ceasing from an act of a different order, pollution or a venereal movement to which one does not assent.

Treatise V: On Modesty, on Opposed Acts, and on Masked Lust

Usefulness. - This treatise is a complement of the investigation concerning chastity, so necessary that without it many practical errors would be committed, nor could the responses of theologians be well understood.

Single Chapter

Virtue. Opposed Acts. Masked Lust.

§ 1. What the Virtue of Modesty Is. What Immodest Acts Are

— Modesty is the very virtue of chastity which, by its own inclination, persuades us to avoid every signification of lust, and, in looks, kisses, and touches, to flee every suspect pleasure, so that we may manifest and profess chastity and continence. It can be called chastity zealous for sincerity and security. By the noble zeal of modesty all chastity is strengthened; angelic chastity is prepared.

II. Various acts are called immodest which, by their very external species, are akin to lustful acts, but can be called ambiguous, because they can be exercised on account of an honest cause, or a suspect cause, or even a strictly lustful one. When they are exercised without a cause perfectly excusing them, they are opposed to modesty.

III. Because, in this matter, speech not rarely occurs concerning songs and obscene pictures, observe that not every nude thing can be called obscene. But commonly an alluring nude is called obscene; and it can be described: A shameful manifestation of the soul or solicitation in nudity. (Cf. *De castitate*, n. 180, 181.)

§ 2. General Principles and Rules

I. General Principles. 1. Concerning these acts, theologians, while they charge some with light sin and others with grave sin, render judgments which must be explained through a twofold presumption: one, of the danger of consent, which can be proximate in varying degree; the other, of self-deception, by which, in the absence of another cause, the act was really done from lust, which, in an unmarried person, is always grave. Wherefore we have ascribed these things to masked lust, or true lust, but covered over by a more honest appearance (*camouflée*).

2. But human presumptions can fall short of the truth. Wherefore rules are not proposed as universal but as general, so that a prudent confessor sometimes ought to turn aside from them in solving cases. Self-deception also can be excused by some good faith, so that before experience or admonition there may be place for the more benign explanation.

To both mentioned causes of dishonesty there accedes a third in persons who by their vocation ought to be examples of purity, sowers of immortality - that is, the reason of scandal, which is already grave if words or deeds notably diminish the estimation of the priestly order or religious state.

3. The pretexts which are customarily adduced are most often scientific study, but alien to one's state, some work of mercy, whether of caring for the body or consoling, indeed of spiritually helping the soul, or of dissipating ignorance, timidity, or scruples.

But they are chiefly employed by those who are drawn by sensual love, that is, by a love which is founded on bodily sympathy. This love, which is greatly distinguished from simple friendship and imitates the affection by which two spouses love each other, is so dangerous that, unless its vehemence is lessened by imposed moderation or by precautions employed, those who deliberately foster such love can be treated as constituted in a proximate and voluntary occasion of grave sin. (Cf. St. Alph., *Praxis Confessarii*, n. 65.)

These loves are most frequent among young persons of different sex (*flirt*), and not rarely then end in a bitter and harmful deception of the girl; among adolescents of the same college of boarders or of a girls' conservatory.

Here, however, a twofold kind must be distinguished: some wish to imitate love by way of a certain game, while others truly burn lustfully. Both kinds must be firmly attacked; but the latter (who are for the most part older, taking the active parts) are more strictly situated in a proximate occasion of grave sin.

They are, moreover, especially to be detested between a priest or religious and a person of different sex, or an adolescent committed to their care; between one spouse and an outside person. (Cf. what was said *De amore platonico*, n. 78.)

II. The rules can be proposed summarily thus: **a)** He who, without an adequate cause, does that from which, of itself or almost directly, he experiences either pollution or pleasure sufficiently proximate to pollution, is judged, practically and of itself, to sin gravely, on account of the true intention by which he is led or the proximate danger of sinning.

But such efficacy toward a grave carnal movement, partly relative or varying in various persons, is judged to be especially present in a truly immodest thing and in the lingering manner in which a look, touch, etc., is made.

Under this respect, they also distinguish decent parts of the body, which, in the region of which there is question, are displayed to all without offended modesty: among us these are the face, hands, feet; less decent parts, which from received usage and just custom are accustomed to be covered: the breast, legs, arms at least in part; finally indecent parts, which, morally everywhere from natural modesty, are covered with clothing: the genital parts and those proximate to them.

But acts which are condemned as mortal, at the same time, when they are done from lust, are judged grave under the notion of an exterior act. This must be attended to for certain censures, for example of one absolving an accomplice.

b) But the more an exterior act bears the appearance of a lustful demonstration, the more error of mind, assent to a carnal movement about to arise, and the seduction of another are to be feared. On the contrary, the more a just and honest cause explains our manner of acting, the less the action has departed from ordinary and customary things, the more easily it will have an honest explanation.

Now a few things must be said concerning individual applications.

§ 3. On Various Immodest Acts

I. - On the Immodesty of Words or Signs.

Order of Speaking. - Of itself, the logical arrangement of matters would demand that we treat successively of those who utter words or give signs, then of their cooperators, then of those who receive these things as hearers or readers. But the exposition will be clearer and easier if we take the beginning of the order from the object, and pass from words and other gestures to writings. Therefore:

I. Words and Gestures. 1. Of themselves, unless custom and related studies weaken their force, prolonged conversations concerning gravely obscene matters must be held as gravely illicit; but not isolated words or shameful witticisms, which are uttered playfully.

2. Tender words are gravely culpable between persons who love each other lustfully; they are dangerous and reprehensible between outsiders or those not betrothed, when they render love futile or sensual.

3. To sing gravely obscene little songs before others will be grave at least from the object. Yet for a short time, on account of grave poverty, they judge that those can be excused who cooperate by action or song in comedies not absolutely gravely shameful but notably dishonorable, unless, however, what we think must be added, they must sing shameful things which, as such, are received with applause. He who alone, without a witness, has sung such things will be able to be excused from grave sin if he attends more to the melody.

Hearers should at least strive to disapprove such things by silence. But in a person who neither by reason of authority must forbid these things nor by reason of condition must show himself averse from them, a certain blushing, a certain fear of a person smiling, are not judged grave.

Workshops and offices are often a necessary occasion. Having prudently observed the quality and character of the persons, let the confessor advise good young persons to decline shameful conversations not fearfully and timidly, but firmly and simply, and, by making an association, to render themselves stronger.

N. B. - The things which have been said concerning words can almost be transferred to gestures, since they are signs.

II. Immodesty of Writings. 1. They sin mortally, on account of scandal, who write or indiscriminately sell to all books or periodicals inciting to lust or hostile to good morals.

Sellers can be excused, from very grave necessity, for a brief time.

2. Without sufficient cause, which literary studies or commerce with literary persons can furnish: "They say, with Busembaum, Sanchez, Tamburini, and Sporer, that of itself it is only venial to read shameful books from curiosity, without shameful pleasure or its proximate danger (But confessors should diligently strive to prohibit this, as much as they can, in young persons; for from readings of this kind, universally, they draw great ruin of soul)." St. Alph., l. 3, n. 426. But the reading of a book entirely obscene will, in unmarried persons, rather have to be judged mortal.

3. Young persons must be greatly turned away even from slightly dishonorable readings: the anthropologists themselves testify that they are fuels of lust.

And prolonged reading often ends in lustful reading. And girls and women in general must especially be turned away from novelistic works, lest they hope for themselves a chimerical life, or, given over to empty dreams, lose time and moral force.

Adolescents who, moved by curiosity, look up the meaning of certain obscene words in dictionaries, commonly do not sin except lightly.

4. A certain special eagerness by which slippery matters are heard or read is explained partly by the novelty or rarity of the matter, partly by carnal inclination. But sinful approval of the will or deliberate venereal pleasure is not therefore had. (Cf. Ballerini, *Opus theol.*, t. 1, tr. 4, n. 541.)

II. - On the Immodesty of Sight.

First we shall treat of those looking, then of those who give occasion of being looked at.

I. On Looks. 1. A look, neither studied nor lingering, at one's own body, from curiosity or levity, is reputed of itself venial; likewise a look made in passing, from some levity or jest, at the less decent parts of a person even of different sex.

2. A look at a nude person of the other sex, or even of the same sex, if that person is loved with sensual love, or if the one looking is prone to a homosexual excess, just as a look at human concubitus, does not seem excusable from mortal sin, unless distance or mode has greatly diminished the danger.

Indeed they judge it mortal, in our regions, for a man lingeringly to fix his attention on the exposed breast of a woman.

N. B. - Looks at an indecent part of a body otherwise covered excite the flesh much less than looks at a person whose shameful parts alone are covered.

3. A look at a nude painting or sculpture must be estimated from the cause, from the mode of representation, and from the object. Painting is accustomed to sharpen the stimuli of the flesh more than sculpture.

— Hence you will ask concerning those visiting museums of art. Those reasons alone for going to museums of art are plainly to be approved which manifest a noble intention; for example, if someone, for exercising aesthetic sense, has wished attentively to consider a few things made with marvelous art.

On the contrary, it is altogether to be disapproved that someone should enter museums for seeing nude statues or pictures.

Visits made from futile curiosity will often have to be tolerated: then it will with difficulty happen that in looking at these pleasurable things nothing is conceded to sensuality; but the danger is compensated by no utility. Yet because the intention is not perverse, and no proximate danger of full assent to venereal satisfaction seems to be present, there is no place for grave prohibition; and custom itself brings some reason or excuse. Yet those going are to be warned not to fasten their eyes upon obscene things.

— Useful looks are lawful for physicians. But let them beware of a fictitious utility. And it is to be commended that a person of the other sex have a faithful companion.

Concerning painters and sculptors, some speak more severely than others. Insofar as there is need, art brings a just cause, and the prevailing opinion creates for magistrates and rectors of academies a necessity of tolerating various things. But a serious end of study diminishes the danger. Therefore:

a) Among rectors of an academy we shall try to obtain that persons are not exhibited beyond what is judged necessary; - that persons of different sex are not exhibited at the same time; - that students of different sex are not mixed; - that in exhibiting persons possible precautions be admitted: for example, that a person not take off clothing before painters or sculptors; that the eyes be veiled; that the shameful parts be covered, at least for affirming modesty; if it is done privately, that an honorable witness of the same sex be present; etc.

To individual painters and sculptors those things must be prescribed which convert a proximate occasion into a remote one.

II. On Those Who Offer Immodest Things to Be Looked At. 1. It can never be permitted that painters or sculptors paint or make images which are so obscene and so arranged that they can have no honest use. If they could serve some good end, for example anatomical art, but nevertheless honest use is foreseen to be lacking, "the art of painting," says Lehmkuhl, I, 827, "is not changed into an action evil per se intrinsically, but remains material cooperation." Tamburini, Castropalaus, and others think that this cooperation can be furnished from an altogether grave cause; Lehmkuhl, however, when the reason for asking is abuse toward lasciviousness, as commonly must be supposed unless the good use is established, requires "a most grave cause, such as fear of death or of extreme necessity, so that cooperation so proximate can be furnished without grave sin, and in addition it is required that the artist himself remove from himself the danger of depraved consent. Whether this can practically be hoped for is difficult to determine."

2. Concerning paintings or sculptures not obscene but sufficiently nude, there must be weighed the circumstances of the person asking, the place of exhibition, the harm to be sustained if they are refused, scandal, the efficacy of refusal, etc. For a timid painter or sculptor will of his own accord never make those things which are an occasion of temptations and sins for many.

3. Women "models" (*Modelli*) must besides decline every formal cooperation toward painting or sculpting indecorous things. Material cooperation, according to the general rules, will be able to be excused according to the gravity of the cause and the character of the evil. (Cf. Noldin, *De sexto*, n. 60.)

— You will ask concerning the clothing, insufficiently modest, of women and adolescents. **1.** In estimating the quality of clothing, not only the force of direct seduction must be considered, but also formal signification: we shall approve clothing which in a reasonable manner betrays a sense of modesty; clothing must be disapproved which, in concrete circumstances, manifests insolent boldness.

Clothing can also increase allurements, when by its elegance it supplies beauty, or when it turns the eyes toward the sexual organs or the forms of the body.

Custom has much force here.

2. Concerning less modest clothing (concerning plainly immodest clothing no question is raised), whether in dances or outside dances, these few things will be sufficient.

Those who give origin to usages of this kind are with greater difficulty excused from grave sin than those who merely accommodate themselves to a usage already received.

St. Alphonsus admits that this also holds concerning an exposed breast (l. 2, n. 54, 55). Yet he wisely adds: "For the rest, I do not doubt that the opinion, as related above, ought to be used with great discretion by a prudent confessor, lest he indulge the excessive license of women, which involves lust, since those living piously do not walk so... I do not doubt that an indecent custom of this kind must earnestly be restrained and extirpated by preachers and confessors, as far as can be done."

But this must always be urged, that clothing be adapted at the same time to custom and to modesty.

3. Indeed, in our days, in order that satisfaction may be made to the wish of St. Alphonsus, that excessive servitude by which Christian women are followers of tailors and prostitutes in the clothing they use seems to have to be shaken off; and by the aid of association this must be procured, that those who invent new styles of clothing may be impelled, by the very hope of profit, to devise and propagate clothing which is at once beautiful and modest.

4. Finally observe that not a few are allured and tempted more by the soft flesh of adolescents and girls than by the clothing of an adult woman.

— You will ask concerning the scenic plays of public theaters. Whether you consider the plots of most plays, or the connected dances (by which the sense is excited more than by the plays), or the nearly necessary or at least most frequent corruption of girls who place their work in these things, or the commerce and pursuits of those who frequent spectacles, theaters must be pronounced most alien from the evangelical spirit. Nor must one judge otherwise concerning "circuses," on account of the lascivious dances and clothing of the girls who take part in equestrian games.

Yet it is useful of itself that, for avoiding his sins, a wife accompany her husband; the decency of state also can require presence: in such circumstances let Catholics learn to act both fearlessly and honorably.

To attend, without necessity, very shameful comedies, and to watch those things which of themselves greatly move the flesh, is judged grave of itself, unless someone has experienced that he is little moved by these things. To attend comedies not very shameful from curiosity will be venial, unless grave scandal or one's own danger has more gravely forbidden the matter to you. Every fault will be absent if public office, a grave injunction of a master or parent, or a true utility of knowing these things, lest someone, to the detriment of his own action, seem too foreign in his own region, has supplied a just cause.

He who pays money merely to be present at spectacles of this kind furnishes material cooperation, which will have to be estimated from the general rules.

III. On the Immodesty of Imagination

1. A merely notional, or ideal representation of a shameful object, without imaginary imitation of the thing, is in itself neither evil nor proximately inciting. If it has been idle or useless, it will laudably be repelled; yet no scruple is to be had concerning it.

2. But a thing can be painted in the imagination as in a picture. Concerning this fictitious picture one must reason as concerning a true one:

a) To consider in passing something involuntarily present, with lustful intention excluded, will not be grave. If there has been a just cause of study, etc., there will be no sin.

Yet a cause for contemplating or gazing at an imaginary exhibition will be rarer than if a work made by art had to be considered.

But if attention has been commanded with lustful intention, grave sin will be committed.

With this intention excluded, the lingering consideration of a gravely obscene or gravely moving phantasm, on account of the proximate danger of assent, is infected with grave guilt, unless a just cause (if ever there is one) and the positive repudiation of pleasure remove at the same time the danger and the self-deception.

The lingering consideration of a thing lightly moving will be venial in itself, if a cause is lacking;

b) to excite images of this kind, or voluntarily to render them present, must be estimated by a similar reason: it will be grave if it is done from lust, or if, on account of the nature of the image, you expose yourself to a proximate occasion of assent; otherwise it will be a light sin or no sin, according as a sufficient cause has been lacking or excuses the matter.

Yet active procurement induces an aggravating circumstance. (Cf. Noldin, *De sexto*, n. 61.)

3. But the positive obligation of repelling impure and useless phantasms, although that repudiation is always laudable and commendable of itself, is not grave, except insofar as the proximate danger of assent to present pleasure must be taken away. That danger is judged to be sufficiently removed of itself by an interior act of displeasure made once or twice in the same temptation.

Once this danger has been removed, a light obligation does not exist except insofar as it can be fulfilled conveniently enough.

But the best mode is this: that, with every anxiety put aside and the aid of the Blessed Virgin Mary implored, the mind be positively diverted to other, healthier, higher things.

But he who knows himself subject to these temptations should, better outside the temptation, in the morning or evening, around the usual time of temptation, elicit a firm purpose; let him pray to God; and then, intent upon his own affairs, let him pass over these thoughts as though neglecting them.

But if they press the mind more, it will often be very useful to promise or perform some act of penance, or even to exercise an act of humility, as if you open the matter to a spiritual man.

But let the one impurely tempted beware, let him diligently beware lest he quickly judge himself guilty and thus be cast down in mind or disturbed; whence worse things are accustomed to happen.

It happens that more vehement temptations are brought on by physical excitation of the body. This must be explained by an excessively tight foreskin, which then not rarely must be removed by circumcision; or by uncleansed smegma of the foreskin, which then must prudently be washed away. If the commotion is more interior, it can be soothed by certain medicines, such as lupulin, adalin, camphor.

IV. On the Immodesty of Touch

I. On Kisses. 1. Kisses according to the custom of one's country can be disapproved only from the depraved affection of the agent, which, even in doubt, is not to be presumed. Nor are kisses given

from the affection of piety among near blood-relatives inciting. A noble affection of mercy can also prudently be expressed by kisses which are directed to an end plainly diverse from venery. Yet here one must already beware of self-deception and false pretext. In kisses thus honorably given on account of a just cause, the permission of a spontaneous carnal movement without voluntary complacency also becomes legitimate.

2. Kisses, even honorable ones, by which love is signified, are more inciting. Their honesty must be estimated from the honesty of the love. Made in passing, quickly, even when a cause is lacking, they are thought only venial.

Kisses too frequently repeated, especially on the mouth or lips, and embraces too prolonged, because they gravely move the flesh and have no cause among unmarried persons, are charged as grave, unless the carnal movement is positively repressed and, if pollution is more imminent, one ceases from them.

A dove-like kiss also is marked by graver reprehension, by which the tongue of one is received in the mouth of the other.

3. Therefore kisses practically are to be prohibited absolutely to those who, since they do not have matrimonial negotiations between themselves, can exercise them only from sensuality; especially to those between whom a suspect or less honorable love exists; and, also on account of scandal, between priests and outside persons.

From the general rules, the confessor will gather what, while he tries to obtain all things, he can sometimes tolerate as done in some good faith; let him be especially cautious and severe when there is question of those persons who profess perfect continence.

4. Kisses made in passing from some venial vanity, jest, curiosity, levity, or petulance do not exceed venial fault.

II. On Other Touches. 1. A touch of the indecent parts of one's own body, made from curiosity or levity, does not exceed venial sin, with scandal and danger of venereal consent nevertheless excluded. If it is done studiously and lingeringly, then it is reproved more gravely, because it is judged gravely inciting of itself.

If it is done for some natural and not evil end, there will not even be venial sin: as if by friction you wished to extinguish a non-venereal itching. (Cf. what was said n. 115.)

Even positive penances can be suspect. Therefore there are persons who, on account of the very custody of purity, ought to put aside hair-shirts and omit disciplines. Abstinences, fasts, and various acts of self-denial do not fall under this suspicion.

2. A touch of the less decent parts of another's body, made in passing, is not judged mortal. But for the most part kisses impressed upon parts of this kind or upon less usual parts are mortal, because they flow from lust or proximately induce it. (St. Alphonsus, l. 3, n. 417.)

3. A touch of the indecent parts of another's body, made in passing from petulance or curiosity, apart from affection and danger of venereal consent, can be excused from mortal sin, at least if the person is of the same sex and some occasion, for example of persons swimming together or washing themselves, has given place to petulance. (Sanchez, *De matrimonio*, l. 9, d. 46, n. 12.)

Similarly they excuse maidservants who touch the shameful parts of little children whom they dress, because this age moves less. Yet they must diligently be deterred from frequently making such touches, lest boys assume a depraved custom of touching themselves. But those who tickle infants in the shameful parts should be especially reproved. For the rest, it is objectively grave to excite venereal titillation of which an infant is capable.

The other nude touches of the indecent parts of another's body, especially if it has been of different sex or of a loved person, cannot be excused from mortal sin.

Indeed, touches upon the shameful parts of the other sex over clothing, even made in passing, are very suspect, although strictly and certainly they do not seem able to be condemned as mortal. (Sanchez, *De matrimonio*, l. 9, d. 46, n. 11; Palmieri, *Opus theol.*, t. 2, tr. 6, n. 892, who inclines toward the more severe opinion of St. Alphonsus, l. 3, n. 420.)

4. A touch of the genitals of brute animals is judged of itself venial. If it is carried all the way to the emission of seed, St. Alphonsus responds rather severely: but finally and at last the affection of the agent must be considered.

— Physicians and surgeons who, in exercising their art, must touch the bodies of others even in indecent parts, are excused from every sin on account of necessity. Nor does involuntary pollution stand in the way. Indeed, they must convert the proximate occasion of sin into a remote one. This is easier for them, since they are moved by an honorable and grave end, and, having implored God's aid, can strive more confidently.

Yet it is necessary that in these examinations and in the manner of doing them they not exceed measure.

Those who then sin formally are commonly situated in a necessary occasion. And you will bring them with greatest difficulty to abandon their art, even if they can. Wherefore it will be better efficaciously to turn those who are excessively lustful away from exercising a dangerous art while they are engaged in studies, or better still before they have chosen those studies. For the more remote they are from exercising the art, the less the occasion seems necessary, and the more easily they will be persuaded.

Several women have now today obtained the degree of medical art. That they should come to the aid of persons of their own sex in those matters in which they are proved to be equally skilled and fit as men can contribute to the greater cultivation of modesty. But since the experience is recent and still uncertain, sick women who ask for the work of physicians for themselves are not to be disapproved.

— You will ask what must be thought concerning dances. Omitting certain annual dances which are sometimes exercised in the country rather innocently and cannot be suppressed without danger of a greater evil, worldly dances, in the concrete, are such that, as far as social condition permits it, a true Christian should abstain from them and extricate himself from them. For if they are dance games, as now for the most part, unless they strictly represent martial actions, they express or imitate amatory deeds, for example by the pursuit by which the male follows the female. But in dances, at least from clothing, contact, and festive apparatus, all things dispose a man to sensual commotions.

Yet on account of a just cause, such as custom, the decency of one's proper state, the command of parents, to lead honorable dances or to attend them will not be illicit, unless there has been probable

danger of sin. Thus Ball.-Palm., *Opus theol.*, Tom. II, n. 995. But participation in dance games whose impure signification is sufficiently open will have to be declined.

Dances which are proposed indiscriminately to all, especially masked ones, furnish an easier occasion of ruin.

But dances of boys and girls already under this title must be disapproved, because they are a school of worldly vanity.

Before the last war it was disputed whether more recent dances, such as Waltz, Polka, Galop, were to be reckoned among dishonorable ones or not.

But now the matter has gone into something much worse. "No one is ignorant," the Supreme Pontiff recently wrote in the Encyclical *Ubi arcano* (*Per.* XII, p. 5), "how the levity of women and girls has passed beyond the limits of modesty, especially in clothing and dances, by whose more luxurious dress the hatred of the poor is stirred up." And his predecessor, Benedict XV, after deploring "the blindness of women, who, infatuated by zeal for pleasing, do not see how much, by that madness of clothing which they use, they displease not only every upright person, but offend God," added these things concerning dances: "But we pass over those dances which recently have come from barbarism into the custom of elegant people, one worse than another, than which nothing can be found more apt for stripping off all modesty" (*Enc. Sacra propediem*, Jan. 6, 1921. *A. A. S.* XIII (1921), p. 39).

Appendix: On Sexual Pathology

— As we noted above, n. 96-99, there are various perversions of the sexual appetite (sexual paresthesias).

In order that we may speak of the obligations of those who, in an unusual manner, either are moved carnally or, on the contrary, remain frigid:

1. Unmarried persons are forbidden to seek or intend venereal pleasures by unusual means as well as by usual means. And the proximate occasion of sin must be fled by all.

2. But by the distinction between pleasure strictly venereal and sensible carnal pleasure, these infirm persons will be helped, so that they can weigh the quality of the subjective affection and the gravity of the obligation. The sensible pleasure is not yet grave in itself.

3. But must they, on account of their special readiness for commotion, abstain from an action which is lawful for others, or at least is not gravely forbidden? Certainly they are greatly to be exhorted to take care of this without anxiety. We say this at least of itself. For the inconveniences of flight also must be weighed. And, with the danger of illusion and of consent excluded, this does not seem able to be prescribed under grave obligation, both because a precept of positively avoiding carnal movements is not demonstrated, and because to abstain from a thing which is lawful for others is already hard.

4. If certain things which move others leave these persons in a condition of perfect frigidity, they will have to abstain from these only insofar as the reason of scandal or positive law requires it. These, therefore, will be the privileges of that state.

— Concerning the imputation of depraved acts to those who are affected by psychic diseases, one must speak very circumspectly. (Cf. what we said in general theology, n. 103-104, concerning troublesome cases which occur in libidinous matters.) Here let it suffice to have noted that grave guilt itself can be had with diminished imputability; nor, universally or of itself, can those be excused who, truly awake during the night, indulge a depraved habit which by day they abhor.

Summary

I. Modesty is the virtue itself of chastity, which avoids every signification of lust and protects itself from occasions of sin.

II. Immodest acts are, by their external species itself, akin to lustful acts. Such acts can be done on account of a cause that is honorable, suspect, or strictly libidinous.

The judgments of theologians concerning these acts, when they are not perfectly excused, must be explained by a twofold presumption: of the danger of consent, and of hidden direct lust, that is, lust covered over by a pretext.

Presumptions can fall short of the truth. Therefore a prudent confessor will sometimes have to respond more benignly, sometimes more severely. These rules can be proposed: a) he who, without an equitable cause, does that from which, of itself, or as it were directly, he experiences pollution or a pleasure sufficiently proximate to pollution, is, practically and of itself, to be said to sin gravely, on account of the true intention by which he is led or the proximate danger of sinning. b) The more an exterior act bears the species of a libidinous demonstration, and the less the reason for acting is explained by a just and honorable cause, the more difficult it will be for it to be excused.

But efficacy toward a grave carnal movement is shown to be partly relative, or different in different persons. Yet in a thing truly immodest, and in the lingering manner in which looking, touching, or mental consideration takes place, this efficacy is commonly judged to be present.

These rules must prudently be applied to foul words, gestures, and writings, to immodest looks and touches, in which the principal agents, their cooperators, and those who undergo their action must be distinguished.

Immodest phantasms, concerning which there is a special question, can never, by a libidinous intention, either be stirred up, or fostered, or attended to. And if they move gravely, lingering consideration of them will generally be gravely culpable, because it contains a proximate occasion sought without utility. A grave obligation of positively repelling them is not demonstrated, saving the necessity of fleeing the proximate occasion. Quiet repudiation is to be preferred to anxious repudiation.

The scenic plays of theaters and modern dances must be judged alien from the evangelical spirit. Therefore these things must be declined by Christians, insofar as this can honorably be done.

Moreover, the excessive worldly servitude of Catholics in the clothing of women, girls, and adolescents is to be deplored.

In visiting museums of the arts, certain things sometimes will have to be tolerated; nevertheless only visits truly useful scientifically can be positively approved.

And generally one must strive more that the incentives of lust be warded off without scruple or timidity.

III. Those who, on account of a perverse sexual appetite, are carnally excited in an unusual manner, or remain frigid, have in common with the rest the obligation of declining every formal lust. Nevertheless, with the danger of illusion and of consent excluded, they are not bound under grave obligation to abstain from an action which is lawful for others, or not gravely unlawful. At the same time they can receive the advantage of their frigidity, insofar as, with scandal or the prohibition of positive law excluded, they are not bound to abstain from seeing, etc., those things which allow them to be perfectly frigid.

Conclusion of a Prudent Confessor

— In the first place, we wish this to be well noted: when, in the course of our work, we indicate what various documents or counsels are to be handed on to persons, according to various circumstances, we do not at all intend that these be handed on either in sacramental confession or by the confessor as such. Here there is need of great prudence and discretion. And in so delicate a matter, it is to be advised that what a priest can furnish through books or lay persons, he should furnish by this indirect manner. But here age, knowledge, the name of the confessor, the person whom he bears for his client, and the qualities of the persons who approach the confessor must be weighed. For the priest can be merely a confessor; he can, besides, be a pastor, a spiritual director in whom a young man has trusted for many years. One must act differently with a person of the weaker sex, differently with a man; differently with one pious and religious, differently with one little faithful; differently with one well known, differently with one unknown.

When in n. 21 we were treating of the revelation of the mysteries of life, we proposed no method of fuller revelation, when it seemed to have to be made. For since circumstances vary so greatly, we judge that no formula is to be proposed. In certain regions, pious priests have written excellent little books on this matter (for example, at Lyons, P. Guitton, *De la Chasteté*), which it will then suffice to hand over to be read. Nevertheless, these few things can be indicated. Let the instruction be simple, without solemn apparatus. - If a comparison must be used, let it be taken from the vegetable order rather than from the animal. - Let the sanctity and nobility of the action by which parents cooperate with God the Creator be set forth. Therefore let speech be made concerning the creation and infusion of the spiritual soul. Let the sanctity of the Christian body be recalled, as St. Paul gave us an example in I Cor., c. 3 and 6. With these things premised:

In causes of chastity and of the opposite lust, the confessor, although he cannot put forward false things, nevertheless must act so prudently that, as far as he can, he may avert from penitents the danger of falling; especially since it is often most difficult to pronounce with certainty concerning light or grave sin, concerning full or only imperfect imputation; and rash condemnation has not rarely led souls to despair, improvident hesitation to anxiety scarcely curable, and ill-considered excuse to destructive audacity. Therefore let him quiet the fearful with firm responses, yet at the same time efficaciously lead penitents, especially clerics and younger persons, to follow safer things, according to that saying: "In this matter of the sixth precept, it is necessary, as far as possible, to apply every severity." (St. Alph., *Homo apost.*, tr. 9, n. 34.)

But paternal severity, which keeps rash actions away, by no means excludes benevolence toward persons.

Yet in order that he may take counsel for his own security and perfection, let the confessor sedulously attend to this, that his affability remain supernatural, and that in no matter he seek himself.

Thus also he will exhibit himself courteous and benign, so that he gives place to no sexual affection among others.

Let him not be ignorant that beneath the covering of intense piety there can lie religious paranoia, which is rooted in a morbid but most vehement concupiscence. Let him not be ignorant that there are persons for whom, in order to experience pleasure, it is enough to speak with another about sexual matters. Therefore persons of this kind, especially unmarried women, can seek base satisfactions in the very tribunal of penance.

"Let him be mindful of canon 888, §2: Let him beware entirely... lest by curious or useless questions, especially concerning the sixth precept of the Decalogue, he detain anyone, and especially lest he imprudently question younger persons concerning things which they do not know. Indeed St. Alphonsus, l. VI, n. 632, approves these things already laid down by Busembaum: Questions in the matter of chastity ought to be few and cautious, lest he either give occasion for investigating or drawing out the confession, or teach or offend one ignorant, or expose himself or another to danger. - And if he fears these things, he ought rather to suffer something to be lacking from material integrity." Therefore, let him be silent - I say - not for conniving at sins, but often for avoiding conversations which accord little with the sanctity of the sacrament. Let him take care that the confession be made at once modestly and sincerely, and dispense the penitent from the necessity of narrating particulars, so that he in no way fear that the confession is incomplete because of these things omitted; let him dexterously detect depraved habits of adolescents in order to extirpate them. And let him implore light from God, so that he can take sufficient counsel for the correction of vices and at the same time remove from himself every suspicion of curiosity. Only when compelled by necessity let him appear to interrogate prudently concerning the right use of matrimony or concerning onanistic abuse, according to the responses of the Holy See.

To spouses he will advise that tenor of life by which, each being content with the other, they may live and grow in mutual love and esteem. Although he will not neglect to lead them on to more perfect counsels.

But others he will chiefly exhort to these things:

That they flee whatever things are strange and unusual in these matters.

That if there is a grave cause for seeing, reading, or handling something which can move sense, they keep a simple, not anxious, manner of acting.

That, excepting a just cause, they be occupied as little as possible in these matters, and strongly repel specious pretexts.

That, even in a necessary action, they study to avoid less pure affections and movements of the flesh.

That they esteem sincerity and strength of soul very highly and acquire them for themselves.

That they be mindful of human dignity and of the love by which Christ has espoused the soul of the faithful person to himself.

That they foster higher studies earnestly.

That they most frequently taste the heavenly food of the Eucharist, with that devotion by which it is fitting.

That, also by tender devotion toward the most pure Virgin, they foster in themselves not only horror of sin but an apostolic love of chastity, of which St. Paul handed down an excellent lesson.

In this way he will inculcate delicate and joyful purity; and he will form Christians of whom Athenagoras already said in the second century: "Since we have the hope of eternal life, we despise the pleasures of this life." (*Legatio pro Christianis*, n. 22. P. G. 6, 966.)

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