

MANUAL OF MORAL THEOLOGY

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VOLUME II

On Matrimony — with Treatise I, On the Sacraments in General

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Treatise I. On the Sacraments in General

(St. Thomas, part 3, qq. 60-65; St. Alphonsus, *Theologia Moralis*, book VI, nn. 1-94; *Homo Apostolicus*, tract 14, nn. 1-6.)¹

We shall deal first with the sacraments considered in themselves, then with the administration, and finally with the reception of the sacraments. Those things, however, which are treated by dogmatic theologians we shall touch upon very briefly, especially for this end, that there may be had a view of the whole doctrine, and that the connection between dogmatic and moral doctrine may appear.

¹ Cf. Billuart, *Summa S. Thom.*, part 3, treatise III; De Smet, *De sacramentis in genere*; Rath, *De Sacramentis in genere*; Pourrat, *La theologie sacramentaire*; Schanz, *Die Lehre von den Sakramenten der kath. Kirche*; Billot, *De Ecclesiae sacramentis*.

Dissertation I. On the Sacraments Considered in Themselves

Having handed down a summary notion of a sacrament, we shall speak first of the existence, essence, and division of the sacraments, then of their efficacy, and then of the effects of the sacraments.

Part I. On the Summary Notion, Existence, Essence, and Division of the Sacraments

1 **I. Summary notion.** By force of the word, a sacrament signifies every sacred thing. Here, however, it is taken more strictly and is defined: a sensible sign of a sacred thing sanctifying man, that is, of grace. Sacraments of the Old Law and sacraments of the New Law are distinguished. The former only signify; the latter signify and produce grace. Hence a sacrament of the Old Law is defined: a sensible sign, but not an efficacious sign, of grace; but a sacrament of the New Law is called: a sensible and efficacious sign of grace.

2 **II. Existence of the sacraments.** In order that the existence of the sacraments may be rightly set forth, the various states of men must be distinguished, namely: 1. the state of innocence in paradise; 2. the state of the law of nature, so named not to the exclusion of grace, but to the exclusion of the written Mosaic law. This state prevailed for the Israelites until the written law, and for others until Christ; 3. the state of the Mosaic Law, which for the Israelites lasted until Christ; 4. the state of the new or Christian Law. Now:

1. In the state of innocence, by the consent of all, no sacrament existed.
2. In the state of the law of nature, more probably at least one sacrament existed. Namely, considering the will of God to save all, there certainly existed a remedy by which little children would be freed from original sin. That this was a sensible sign of sanctifying grace, or a sacrament, is more probable, as the dogmatic theologians explain (cf. St. Thomas, part 3, q. 61, a. 3; q. 60, a. 5, ad 3; q. 61, a. 1).
3. In the state of the Mosaic Law, several sacraments existed, as is deduced from the Council of Trent¹ and from the decree of Eugene IV for the Armenians. Moreover, it is commonly admitted that circumcision was a sacrament. Other sacraments of this Law are enumerated: the consecration of priests, the eating of the paschal lamb and of the loaves of proposition, and purifications (cf. St. Thomas, I-II, q. 102, a. 5; part 3, q. 61, a. 3, ad 2).
4. In the state of the New Law there are seven sacraments, and these were instituted by Christ; this is of faith from the Council of Trent: "If anyone shall say that the sacraments of the New Law were not all instituted by Jesus Christ our Lord; or that there are more or fewer than seven, namely Baptism, Confirmation, Eucharist, Penance, Extreme Unction, Order, and Matrimony; or even that any one of these seven is not truly and properly a sacrament, let him be anathema."² That the said sacraments were instituted immediately by Christ, not by the Apostles under the inspiration of the Holy Spirit, is certain doctrine, although it is disputed whether it was defined by the Council of Trent as a truth to be believed with Catholic faith.

It is disputed how Christ instituted the sacraments. Some teach that Christ determined the matter and form only in general, commanding only an apt gesture and suitable words, and leaving the more exact determination to the Church; this is the opinion of immediate institution in general. Others judge that Christ prescribed this gesture in species and these words in species, yet in such a way that there is room for some latitude, insofar as the Apostles or the rulers of the Church can, not indeed abrogate the matter and form established by Christ, but determine them more exactly or more strictly, or even increase them by new elements, so that the very sign-value is, within certain limits,

subject to the will of the Church; this is the opinion of immediate institution in a perfectible specific form. Others admit immediate institution in a fixed specific form, so that the Church can do nothing directly with respect to validity by changing or adding anything concerning the matter or form.

¹ Session 7, canon 2.

² Session 7, canon 1.

3 III. Essence of the sacraments. 1. The sacraments of the New Law consist of things and words; this doctrine is declared in the decree for the Armenians. It is clear: 1. from Sacred Scripture, which expressly affirms this about several sacraments, such as Baptism,¹ Confirmation,² and Extreme Unction;³ 2. from the doctrine and use of the Church. For the rest, words and things can be understood morally, so that it suffices for words and things to be had equivalently.

2. Things and words in the sacraments stand to one another as matter and form; this doctrine is proposed in the same decree for the Armenians. It is clear from the fact that the thing of a sacrament, which of itself can signify several things, for example washing in Baptism, and therefore of itself is indeterminate in the being of a sign, is determined by words to a special signification; so that the thing is like matter, the determinable part, while the words are like form, the determining part.

3. The matter of a sacrament is customarily distinguished as twofold, remote and proximate. The remote matter is the thing which is used in the sacred rite, as water in Baptism; or the thing about which the sacramental action is concerned, as sins in Penance. The former is called the remote matter from which, the latter the remote matter about which. The proximate matter is the application of the remote matter, as washing in Baptism; or the action which is concerned with the remote matter, as the acts of the penitent in Penance.

¹ Matt. 28:19.

² Acts 8:15, 17.

³ Jas. 5:14.

4 IV. Division of the sacraments. The sacraments of the New Law are distinguished into:

1. Sacraments of the dead and of the living, according as they were primarily instituted for giving grace, namely to the spiritually dead; or for increasing it, namely in the spiritually living. The grace which is conferred on a man deprived of every degree of grace, or spiritually dead, is called first grace; the grace which is conferred on a man constituted in the state of grace, or spiritually living, is called second grace. The sacraments of the dead are Baptism and Penance. The sacraments of the living are Confirmation, Eucharist, Extreme Unction, Order, and Matrimony.

2. Repeatable and non-repeatable, according as they can be conferred on the same person more than once or only once.

3. Necessary and non-necessary, according as they ought or ought not to be received by individuals. Of those which ought to be received, some are necessary by necessity of means and precept, others by necessity of precept alone. Baptism for all (can. 737), and Penance for all who have fallen into mortal sin after Baptism, are necessary by necessity of means and precept (can. 901 and 906). The Eucharist is certainly necessary by necessity of precept (can. 859, §§ 1 and 4; can. 864, § 1); concerning necessity of means, it is disputed. Confirmation and Extreme Unction are

not necessary by necessity of means; whether they are necessary by necessity of a grave precept is disputed. Finally, Matrimony and Order are necessary only to the community; each of these matters will be developed in its own place.

4. Formed and unformed, according as, as soon as they are received, they confer grace, or, on account of an obstacle, at least do not produce it immediately. Of the unformed sacraments, some, when the obstacle has been removed, revive, that is, confer grace; others do not revive (St. Alphonsus, VI, 6).
5. Finally, a sacrament is called valid or invalid according as nothing or something is lacking for constituting it.

Part II. On the Efficacy, or Productive Power, of the Sacraments

⁵ The question is whether the sacraments truly produce grace, etc.; concerning the effects themselves there will be discussion in the following part. Now:

I. The sacraments of the New Law confer grace *ex opere operato*, or are truly efficient causes of grace. This proposition is established against the Protestants and Modernists, and is of faith from these words of the Council of Trent: "If anyone shall say that grace is not conferred through the sacraments of the New Law themselves *ex opere operato* ... let him be anathema."¹

II. The sacraments concur in producing grace only as instrumental causes; the principal cause, which uses the sacraments as instruments, is God alone; for no creature can, as principal cause, produce an effect which exceeds the order of every creature.²

III. The mode by which the sacraments concur in producing grace is explained in different ways. Some teach that the sacraments, which morally are actions of Christ, move God by an infinite and infallible power to confer grace (the doctrine of moral causality). Others judge that the sacraments do not immediately produce grace, but effect in the subject a title which, so far as lies in itself, demands grace (the doctrine of intentional causality). Others teach that the sacraments physically and immediately produce grace (the doctrine of physical causality). This is the opinion of St. Thomas (I-II, q. 112, a. 1, ad 2; III, q. 62, a. 1, 3, 4, 6).

¹ Session 7, canon 8.

² Council of Trent, Session 6, chapter 7.

Part III. On the Effects of the Sacraments

The effects of the sacraments are grace and character. The former is common to all the sacraments; the latter is proper to three, namely Baptism, Confirmation, and Order.

Section I. On Grace

6 I. Grace conferred. The grace which the sacraments confer is sanctifying grace and sacramental grace.

1. **Sanctifying grace.** a) All the sacraments confer sanctifying grace on those rightly disposed. This follows from what has been said concerning the efficacy of the sacraments. Moreover, to sanctifying grace there is attached either the infusion of the supernatural virtues and of the gifts of the Holy Spirit, namely if first grace is conferred; or the increase of the aforesaid, namely if second grace is conferred.

b) Baptism and Penance of themselves confer first grace; accidentally, namely if someone in the state of grace receives them in the due manner, they confer second grace, that is, an increase of grace.

c) Extreme Unction of itself and primarily confers second grace; of itself, but secondarily, it confers first grace. The other sacraments of themselves confer second grace, and accidentally, at least much more probably, first grace. The case obtains if someone in the state of mortal sin receives a sacrament in good faith and with attrition, which extends itself to all the sins committed. The reason for this opinion is that, according to Trent, the sacraments confer grace on those who place no obstacle. Now one who is in good faith and attrite places no obstacle to grace, as is clear from the sacraments of the dead (St. Thomas, III, q. 72, a. 7; q. 79, a. 3; Supplement, q. 30, a. 1; St. Alphonsus, VI, 6, 269 and 731).

2. **Sacramental grace**, that is, a certain divine help for attaining the end proper to such a sacrament (St. Thomas, III, q. 62, a. 2). What end is proper to each sacrament will be stated where there is discussion of the individual sacraments. Further:

a) That sacramental grace is conferred through the sacraments is deduced first from the Council of Florence, which declares: "Each sacrament is ordered to a proper and distinct end." But a sacrament cannot attain its proper end unless it produces an effect or grace proper to itself, in other words, sacramental grace. Then, if all the sacraments conferred the same grace, they would differ only in the external rite; nor would there have been a reason for instituting diverse sacraments; nor would it be clear why one is more necessary than another.

b) There is not one opinion of theologians about that in which sacramental grace precisely consists. According to the defenders of intentional causality, sacramental grace consists in actual graces proper to some sacrament, which are demanded by the same title as sanctifying grace. According to others, sacramental grace is sanctifying grace itself, insofar as it is given through such a sacrament; but sanctifying grace, given through such a sacrament, is ordered to the ends of such a sacrament, and consequently gives a right to receive, namely in due time, the actual graces by which the end of such a sacrament may be obtained. Thus, for example, sanctifying grace conferred in Baptism is regenerative and preservative of spiritual life; in Confirmation, strengthening and perfective, etc. According to the Thomists, sacramental grace is sanctifying grace with an intrinsic modification, by

force of which sanctifying grace is ordered to the effects proper to the sacrament, together with a right to receive actual graces in order to those effects. Hence, according to them, for example, sanctifying grace conferred in Baptism, by force of the aforesaid modification, is regenerative and preservative of spiritual life, etc.

7 II. The measure according to which the sacraments confer grace. 1. Sacraments distinct in species more probably confer unequal grace on those equally disposed. For sacraments differ in dignity; and to a more worthy cause there corresponds a more worthy effect.

2. Sacraments distinct only in number confer equal grace on those equally disposed, and unequal grace on those unequally disposed. The Council of Trent¹ expressly teaches this concerning Baptism. Hence it must also be presumed concerning the others.

¹ Session 6, chapter 7.

Section II. On Character

8 I. Existence of sacramental character. Three sacraments, namely Baptism, Confirmation, and Order, imprint upon the soul a character, that is, a certain spiritual and indelible sign, whence they cannot be repeated. This is of faith from the Council of Trent: "If anyone shall say that in the three sacraments, namely Baptism, Confirmation, and Order, a character is not imprinted on the soul, that is, a certain spiritual and indelible sign, whence they cannot be repeated, let him be anathema."¹ Canon 732, § 1, also teaches this.

¹ Session 7, canon 9.

9 II. Nature of sacramental character. The nature of sacramental character is explained in different ways by different authors. Yet all agree in this: that character is a spiritual quality, distinct from sanctifying grace, and is a power by which man becomes capable either of receiving sacred things, as in Baptism, or of handing on sacred things, as in Confirmation and Order (St. Thomas, III, q. 63, aa. 1 and 2). But they dispute, according as they defend either physical or moral causality, whether it is a physical power or only a moral one; wherefore consult the dogmatic theologians.

Scholion. On the Informity and Reviviscence of the Sacraments

10 I. Informity. 1. The informity of a sacrament consists in this: that the sacrament is validly received, but, on account of an obstacle, does not produce fruit, that is, grace. It is said to be on account of an obstacle, whether material or formal, according as it is placed inculpably or culpably.

2. Six sacraments certainly can be unformed; concerning Penance alone it is disputed whether it can be received informly, that is, validly but without fruit.

11 II. Reviviscence; concerning which several things must be explained.

1. **Notion.** Reviviscence consists in this: that a sacrament validly but fruitlessly received afterwards produces grace, when the obstacle has been removed and the sacramental sign has ceased. I said "when the sacramental sign has ceased." Hence, supposing that the Holy Eucharist, received with an obstacle, produces Eucharistic grace when the obstacle has been removed before the consumption of the species,¹ there would not be reviviscence of the sacrament, because the fruit would be produced while the sacramental sign remains.

2. The sacraments which revive are these:

- a) Baptism certainly can revive; this is clear from the fact that otherwise those who received Baptism without fruit would be unable to obtain the remission of original sin and of the other sins committed before Baptism. For original sin and the other sins committed before Baptism are not remitted except through Baptism received in reality or in desire. But those who have once received Baptism can no longer receive it: neither in reality, because Baptism cannot be repeated; nor in desire, because if a new Baptism is impossible, the desire for a new Baptism is also excluded.
- b) Confirmation, Order, Matrimony, and Extreme Unction much more probably can revive. Otherwise those who had received the said sacraments fruitlessly, even inculpably, would remain deprived of sacramental grace, which is so necessary to man in the various states of life; since Confirmation and Order cannot be repeated at all, Matrimony cannot be repeated while the same bond remains, and finally Extreme Unction, while the same danger persists, is at least not licitly repeated.
- c) Whether Penance can revive is doubtful: both because it is doubtful whether it can be unformed, that is, valid and fruitless; and because it can be repeated.
- d) The Holy Eucharist, at least if it has been received sacrilegiously, is almost commonly said not to revive: both because it can be repeated so often, and because there would follow the absurdity that one who had communicated very often sacrilegiously, if he afterwards truly repented, would immediately be heaped with grace.

3. **The time of reviving.** Baptism, Confirmation, and Order can always revive, since they can never be repeated, and by force of the character in some way continue in being. Matrimony can revive so long as the same matrimonial bond persists. Once it has been broken, sacramental grace either is no longer necessary, or can be acquired through a new marriage. Extreme Unction can at least revive so long as the same danger continues. Finally, Penance, if it must be numbered among the sacraments that revive, must be said to be able always to revive.

4. **The requisites for reviviscence.** If someone has sacrilegiously received a sacrament, or has sinned gravely after receiving it, there is required of itself contrition or attrition with sacramental absolution; accidentally, given good faith, attrition with a sacrament of the living received in good faith suffices, as is taught much more probably. The reason is that such a man is in the state of mortal sin. But in order that mortal sin may be remitted, and thus that place may be given for the reviviscence of the sacrament, there is required of itself contrition or attrition with sacramental absolution; accidentally, attrition with a sacrament of the living suffices (St. Alphonsus, VI, 6, 87, 444). Outside these cases:

- a) Attrition certainly suffices in order that Baptism and Penance may revive. For the disposition required in the very reception itself suffices.
- b) Of itself contrition is required, but accidentally attrition most probably suffices, in order that Extreme Unction may revive, because this sacrament, received in good faith with attrition, most probably produces fruit.
- c) Of itself contrition is required, but accidentally attrition more probably suffices, in order that Confirmation, Order, and Matrimony may revive, because those sacraments, received in good faith with attrition, more probably produce fruit (n. 6).

5. **The mode by which reviviscence has place** is explained in different ways, according as the causality of the sacraments is explained in different ways. Supporters of moral causality teach that the value of the sacrament received perseveres morally in divine acceptance, and, when the obstacle has been removed, moves God to the infusion of grace. Defenders of intentional causality say that there remains a title demanding grace, and that, when the obstacle has been removed, it produces grace. Defenders of physical causality attribute the reviviscence of Baptism, Confirmation, and Order to character; as for the reviviscence of the other sacraments, some of them deny it, others derive it from a certain habitual determination in the will, and others have recourse to moral causality for these cases.

6. **The degree of reviviscence** seems to correspond to the actual disposition of the subject.²

¹ Whether this has a place, see in the treatise on the Eucharist.

² Cf. Council of Trent, Session 6, chapter 7.

Dissertation II. On the Ministration of the Sacraments

Part I. On the Person Ministering

12 The minister of a sacrament is he to whom the administration of the sacraments belongs by legitimate authority. A twofold minister is distinguished, namely principal and secondary, according as the administration of the sacraments belongs to someone by his own authority, or by authority communicated by the primary minister. The principal minister is Christ as man. The secondary minister is only the priest of the first or second order. Except Baptism and Matrimony. Concerning these there will be fuller discussion in the treatise on the individual sacraments.

Part II. On the Mode of Ministering

Concerning the mode of ministering the sacraments, canon 731, § 1, notes these things in general: Since all the sacraments of the New Law, instituted by Christ our Lord, are the chief means of sanctification and salvation, the greatest diligence and reverence must be employed in administering and receiving them opportunely and rightly.

With these things premised, we shall speak first of the requisites for valid ministration, then of the requisites for licit ministration.

Section I. On the Requisites for Valid Ministration

13 I. For the valid ministration of the sacraments, faith and sanctity are not required in the minister. With respect to faith, this is of faith as regards Baptism;¹ certain as regards the other sacraments. With respect to sanctity, it is of faith.²

The reason is that "the ministers of the Church operate instrumentally in the sacraments ... but, as was said above, an instrument does not act according to its own form or power, but according to the power of him by whom it is moved" (St. Thomas, III, q. 64, a. 5). Hence the efficacy of the sacraments does not depend on the disposition of the minister (St. Alphonsus, VI, 13).

II. For the valid ministration of the sacraments there are required intention, and certain other things, concerning which we shall treat individually.

¹ Council of Trent, Session 7, On Baptism, canon 4.

² Council of Trent, Session 7, On the Sacraments, canon 12.

Chapter I. On Intention

14 I. Notion. Intention is here understood as the deliberate will of confecting a sacrament.

15 II. Division. Intention is distinguished:

- 1. By reason of itself** into actual, virtual, habitual, and interpretative. Actual intention is had when the minister, at the time at which he confects the sacrament, actually wills to confect it. It is reflex, or rather *in actu signato*, if there is had an express and formal volition of confecting the sacrament; it is *in actu exercito* if someone actually wills indeed, but nevertheless less expressly and formally, to confect the sacrament, as if someone, recognizing a rite as a sacrament, administers it under this recognition. Virtual intention is had when someone has actually and explicitly willed to confect a sacrament, and that will, though not actually, nevertheless perseveres virtually, so that he operates by force of the will once had, as if someone, from the intention of celebrating Mass, puts on the vestments and performs the other things, even if perhaps at the time of the ministry he is wholly distracted. Habitual intention exists if someone has actually and explicitly willed to confect a sacrament and that will has not indeed been retracted, but nevertheless does not persevere virtually. Interpretative intention is had when someone neither actually and explicitly wills nor actually and explicitly has willed to confect a sacrament, but is presumed to be going to will it if thought about it should occur.¹ (St. Alphonsus, VI, 15.)

2. **By reason of the object** into merely external and internal. Merely external intention is had when someone wills and outwardly seriously performs only the external rite, but lacks the mind of confecting a sacrament, or even intends the contrary. It is called merely external because, although in itself it is internal, nevertheless its whole object is external, namely only the placing of the external rite. Internal intention is had when someone wills the external rite insofar as it is sacred, or at least insofar as it is held as such by the Church.

By reason of the object, intention is further distinguished into determinate and indeterminate, according as the thing intended is certain and defined; or is uncertain, as if someone intends to consecrate only ten hosts out of a multitude of hosts.

3. **By reason of mode** into explicit and implicit, according as someone expressly wills such a sacrament known and thought of, or by a more general will wills such a sacrament, whether not known, or known but not thought of.

By reason of mode it is also distinguished into absolute and conditioned, according as someone intends to confect a sacrament independently of, or dependently upon, some circumstance or event; as if someone absolves another under the condition: if you are attrite; or: if you make restitution.

¹ Some call interpretative the intention which others call implicit habitual intention.

16 **III. The intention required.** It is of faith that intention is required, and indeed intention "at least of doing what the Church does."¹ In order that these things may be unfolded and completed, observe the following:

1. **In itself, actual intention is not required, but virtual intention suffices; habitual intention does not suffice, much less interpretative intention; fear, however, does not hinder intention.** I said:

a) Actual intention is not required, but virtual intention suffices. For it must be judged that the intention suffices which truly flows into the act or sacramental rite, and therefore can be called its cause. Such is not only actual intention, but also virtual intention. There is added the fact that actual intention is not always within man's power, and its necessity would give occasion for anxieties about the validity of the sacraments (St. Thomas, III, q. 64, a. 8, ad 3;² St. Alphonsus, VI, 17, 18).

Corollary. A priest validly acts who, in the customary way, betakes himself to the baptistery, confessional, or altar and there baptizes, absolves, or consecrates; for there is had at least virtual intention; indeed practically everywhere actual intention is present, even if remiss. Likewise, a priest validly consecrates who has placed on the corporal the hosts to be consecrated, even if at the time of consecration he does not think of them. Indeed, in general it must be said that one imprudently doubts the value of the act who has placed the required rite, unless he has expressly excluded the due intention (St. Alphonsus, VI, 18).

b) Habitual intention does not suffice; since it cannot be admitted that an intention suffices which in no way flows into the action of the minister; such is habitual intention (St. Alphonsus, VI, 16). Much less, as is clear, does interpretative intention suffice (St. Alphonsus, VI, 16).

c) Fear does not hinder, because, as we posit, it does not take away the voluntary (St. Alphonsus, VI, 19). Except, however, Matrimony, as will be said in its place.

2. **As regards the object, there is required the intention or will of confecting a sacrament.** This is established against those who judge that external intention suffices; in other words, that it suffices for someone outwardly and seriously to place the external rite, even if inwardly he does not will to confect the sacrament. This doctrine, first defended by Roland Bandinelli, and afterwards revived by Ambrosius Catharinus (1553), is today almost commonly abandoned and rightly seems to be rejected. For: 1. as we have said, it is of faith that intention is required in the minister, "at least of doing what the Church does." But these words seem to have to be understood according to the sense which they had in the schools, in other words, of the intention of doing what the Church intends to effect through the rite. 2. Proposition 28 was condemned by Alexander VIII: "Baptism conferred by a minister who observes every external rite and the form of baptizing is valid, even though inwardly in his heart he resolves within himself: I do not intend what the Church does."³ Here it seems entirely that there is discussion of one who outwardly and seriously places the external rite. Therefore this does not suffice. 3. The Roman Missal has these words: "If someone has before him eleven hosts and intends to consecrate only ten, not determining which ten he intends, ... he does not consecrate, because intention is required,"⁴ namely, as the Missal, according to the obvious sense, supposes, the intention of consecrating, and that a determinate one (St. Alphonsus, VI, 23).

It suffices, however, that the minister implicitly will to confect the sacrament, for example, that he will the rite as sacred, that he will to do what Christ instituted, what the Church does, what is asked by a Christian, etc.

Corollary I. A sacrament is not valid: 1. if someone places the external rite without any intention; this, for example, will have place if someone does not place a human act, as if he baptizes someone in sleep or drunkenness; 2. if someone performs the external rite for the sake of jest, mockery, or mere exercise.

Corollary II. A sacrament can be valid, even if someone does not regard the rite placed by himself as sacramental, provided he truly wills, for example, what Christ instituted, what he who admits the sacrament asks, etc. Hence heresy or infidelity of itself is not a reason for doubting the required intention;⁵ otherwise if there is added hatred of the Christian name, which, for example, we can easily suspect in a Jew.

3. **As regards the term, intention must be borne toward a determinate person or matter;** yet it suffices that the intention be directed to the person or to the whole matter present, without being directed to the parts individually. But he consecrates invalidly who would will to consecrate ten hosts out of eleven and would not determine those ten.

4. **As regards the mode, especially as regards a sacrament to be confected under a condition, several things must be noted:**

a) A sacrament conferred under a condition concerning the present or the past generally is valid or not valid at once, according as the condition is verified or not verified. I said "generally," because it is disputed whether a sacrament conferred under a condition naturally unknowable is valid; as if someone were to absolve another if he were predestined. Further, it seems this must be denied, because "since God has committed the administration of the sacraments to the knowledge and will of

men, a condition cannot be placed which cannot fall under human knowledge" (St. Alphonsus, VI, 26).

b) A sacrament conferred under a condition concerning the future, for example: I absolve you, if you will make restitution, that is, as soon as you shall have made restitution, generally is not valid, neither before nor after the condition has been fulfilled. Not before the condition is fulfilled, because there is not had the intention of confecting the sacrament before the fulfilled condition; not after the condition is fulfilled, because then the matter and form no longer exist (St. Alphonsus, loc. cit.). I said generally, because Matrimony is excepted, which follows the nature of a contract. But a contract entered into under a condition is perfected when the condition has been fulfilled.

¹ Council of Trent, Session 7, On the Sacraments, canon 11.

² St. Thomas in the cited place indeed says: "Although he who is thinking of something else does not have actual intention, nevertheless he has ... habitual intention, which suffices for the perfection of the sacrament." But St. Alphonsus responds: "By habitual intention here the holy Doctor without doubt understands virtual intention; for immediately after he adds thus: Suppose that when a priest approaches to baptize, he intends to do with respect to the one to be baptized what the Church does; hence if afterwards in the very exercise of the act his thought is carried off to other things, the sacrament is perfected from the force, note well, of the first intention" (VI, 18).

³ Denzinger-Bannwart, n. 1318.

⁴ *De Defectibus*, title 7, n. 1.

⁵ Holy Office, 18 December 1872 (*Collectanea*, n. 1392).

Scholion. On the Simulated Administration of a Sacrament

Authors do not agree in explaining the nature and morality of simulated or fictitious administration of a sacrament. It seems to us that the following must be said:

17 I. Notion. 1. Simulated administration of a sacrament, taken in the full sense, consists in this: that someone uses the matter and form of a sacrament, and this in such a way that he signifies the will of confecting a sacrament, which nevertheless he does not actually have (St. Alphonsus, VI, 60 and 61, where he denies simulation because matter and form are lacking).

2. Simulated administration, accepted in a less full sense, is had when someone uses the matter or form of a sacrament, and this again in such a way that he signifies the will of confecting a sacrament, which in reality he does not have (St. Alphonsus, loc. cit.).

Each simulated administration is called formal or material, according as deception of one's neighbor is intended as an end, or is chosen as a means.

3. Simulated administration of a sacrament, taken improperly, consists in this: that someone applies something which bears the appearance of the matter and form of a sacrament, or of either one, and this for the end that he may be judged to confect a sacrament.

From every simulated administration there differs the dissimulation of a denied sacrament, which has place when someone applies something which bears the appearance of the matter and form, or of either one, for the end that he may hide the denial of the sacrament; for example, if someone gives a blessing instead of absolution to one who is indisposed, lest the denial of absolution be disclosed to others (St. Alphonsus, VI, 59).

18 **II. Morality.** 1. Simulation of a sacrament, accepted in the full sense, is gravely evil, because it contains a sacrilegious lie, that is, a lie which, as having been committed through a sacramental rite, redounds upon the sacrament itself and inflicts grave injury upon it. Add that the said lie will often be gravely harmful. There is added proposition 29 condemned by Innocent XI: "Urgent grave fear is a cause for simulating the administration of the sacraments";¹ concerning which note: 1. by that proposition at least the simulation of a sacrament accepted in the full sense is condemned; 2. the authors of the said proposition understood it of material simulation (St. Alphonsus, VI, 59); hence formal simulation is to be rejected *a fortiori*.

2. Simulation of a sacrament accepted in the less full sense likewise seems gravely illicit, because the argument just brought forward also has force if the lie is committed through the partial rite of a sacrament.²
3. Simulation of a sacrament taken improperly of itself is quite probably not gravely illicit; for since the rite of the sacrament is applied neither wholly nor partially, the injury inflicted on the sacrament seems to be lacking, so that only a lie remains. I said of itself, because grave sin can be committed from another source, for example against charity or even against justice with respect to the subject to whom the sacrament, owed by charity or by justice, is thus denied.
4. The dissimulation of a denied sacrament, when there is a just cause, is of itself licit. For in the case neither is injury inflicted on the sacrament, nor is a lie committed, but only the truth is hidden (St. Alphonsus, VI, 59). I said of itself, because again grave sin can be had from another source, for example with respect to the subject, who can have a grave right that the truth not be hidden from him.

And these things which we have said concerning simulated administration of a sacrament, with the necessary adjustments, should also be applied to simulated reception.

Corollary I. It is neither simulation of a sacrament nor sin:

1. To place the matter and form for the sake of practice, because it is not signified that the sacrament is being confected, and therefore a lie is lacking; nor does the placing of the rite for the sake of practice inflict any injury upon the sacrament.
2. For the sake of avoiding infamy, to pronounce the customary words before one pretending to receive Communion, while not handing over the host but replacing it in the ciborium (St. Alphonsus, VI, 61). Nevertheless the case is little practical.
3. To enter the confessional and there speak to the confessor about some business. "For since matter and form are lacking there, I do not know how to understand where there is simulation of a sacrament" (St. Alphonsus, VI, 60). Nor is there a lie, unless someone "approached with the intention that bystanders believe that he is confessing" (St. Alphonsus, loc. cit.); otherwise if he did it in order to hide from others the fact that he was not confessing.
4. In contracting Matrimony, to which someone is compelled, to simulate consent; since consent of this kind is invalid, so that the matter and form of the sacrament are lacking. Nor is there sin because consent is simulated, since, on account of the opposing impediment, the words of consent can be uttered with a restriction that is not purely mental, so that a lie also is lacking (St. Alphonsus, VI, 62).

Corollary II. It is simulation of a sacrament, or at least grave sin:

1. To pronounce without intention the words of absolution over one who is indisposed, or the words of consecration over bread, or in the celebration of Mass to omit the words of consecration; indeed, also from chapter *De homine*, 7, *de celebratione missarum*, the priest who in Mass did not consecrate would sin more gravely than one who consecrated and communicated sacrilegiously (St. Alphonsus, VI, 59, 61).
2. To hand over a non-consecrated host as consecrated; here indeed there is not simulation of a sacrament, but cooperation in idolatry, at least material idolatry (St. Thomas, III, q. 80, a. 6, ad 2; St. Alphonsus, VI, 61).

¹ Denzinger-Bannwart, n. 1179.

² Cf. Holy Office, 6 September 1625 (Denzinger-Bannwart, n. 1489).

Chapter II. On the Other Requisites

In order that a sacrament be validly confected, besides intention these things are required:

19 I. The minister must place the external rite in a human manner, or by a human act. For it cannot be admitted that Christ instituted a sacrament in such a way that it can be confected by an act which is not human; as if someone wholly drunk or sleeping were to baptize. For the rest, in the case, at least practically, the required intention will also be lacking (St. Alphonsus, VI, 16).

20 II. The same minister must apply the matter and pronounce the form. If there is discussion of Baptism, this seems certain, both because otherwise the words of the form are not verified, and because the Sacred Congregation of the Discipline of the Sacraments¹ declared Baptism conferred in another way invalid, adding these words: Catholic doctrine holds most certainly that the matter must be placed by one and the same minister and at the same time the form of Baptism must be uttered; otherwise the form *I baptize you, I wash you* would labor under falsity (St. Thomas, III, q. 67, a. 6, ad 3). The same seems almost certain with regard to Confirmation, Extreme Unction, and Order, considering namely both the analogy with Baptism and the doctrine of theologians and the practice of the Church. There is added that otherwise the moral union in the sacrament does not seem to be sufficiently preserved. Except the sacrament of Penance, whose nature requires the contrary. With regard to the sacrament of the Eucharist, the question cannot be posed. For the rest, note:

1. Different ministers can validly minister a sacrament which consists of parts, if you grant that this occurs; concerning which consult the treatise on Extreme Unction, provided that the individual parts are placed whole by one and the same minister, that is, with their own matter and form. This is clear from what will be said in the treatise on Extreme Unction. Nevertheless, since that is gravely contrary to the rite, it is forbidden under grave obligation outside a case of necessity.
2. Even if a sacrament does not consist of parts, nevertheless several ministers can validly confect one and the same sacrament, provided that each places everything which is required for the sacrament. This is urged first, with regard to other sacraments, from the analogy with the sacrament of the Eucharist, which can certainly be confected by several at the same time. The reason is that the individual ministers do not confect the sacrament except in the person of Christ, and therefore in and with Christ they are one. Then, since the individuals, as we suppose,

possess the power of confecting the sacrament and exhibit all the requisites, it does not appear that anything is lacking to the conferral of the individuals (cf. St. Thomas, III, q. 67, a. 6; q. 82, a. 2, ad 2; St. Alphonsus, VI, 120, 232; can. 803). But this also is gravely illicit, except the consecration in the ordination of priests and the consecration of Bishops.

Even if several confect a sacrament, nevertheless it will be one sacrament, because Christ, who is the one principal minister, effects one thing through several (St. Thomas, III, q. 67, a. 6).

3. Finally, one and the same person can confer a sacrament on several at the same time, for example baptize or absolve several. Yet this too is illicit outside a case of necessity (St. Alphonsus, VI, 29).

¹ 17 November 1916 (A.A.S. 1916, p. 479); cf. Roman Ritual, title 2, chapter 1, n. 10.

21 III. The minister must confer the sacrament on a subject distinct from himself. This is drawn both from the common doctrine of theologians and the constant practice of the Church, and from the form of several sacraments. There is added that Innocent III declared null the Baptism which a certain Jew had ministered to himself in danger of death, adding this reason: "Since there ought to be a distinction between the one baptizing and the one baptized, as is clearly gathered from the words of the Lord, saying to the Apostles: Go, baptize all nations in the name, etc." (St. Thomas, q. 66, a. 5, ad 4; q. 82, a. 4, ad 2).¹ Except the Most Holy Eucharist and Matrimony.

¹ Cf. Decretals, IV, III, 42.

22 IV. The minister must duly unite matter and form, because they must constitute one sign. A moral union suffices, or rather that union by which the words of the form, according to common estimation, affect the matter and so constitute one thing with it (St. Alphonsus, VI, 9). Now:

1. In Baptism, Confirmation, Order, and Extreme Unction it certainly suffices that matter and form coexist in some part of themselves, or that one be begun before the other is completed. Likewise, it seems to suffice that the form be pronounced immediately before or immediately after the application of the matter. The reason is that even on this supposition the words "I baptize you," etc., "I sign you," etc., still seem to signify the actual application of the matter. There is added that the Holy Office several times resolved that the sacrament of the priesthood was not to be repeated in the case in which the Bishop had had his extended hand over the ordinands immediately before the prayer *Oremus*;¹ likewise in the case in which the ordinand had touched the instruments after the form had been uttered.² These resolutions seem also to be applicable to Baptism, Confirmation, and Extreme Unction. Nevertheless, the reason for doubting with regard to these three sacraments, especially with regard to Baptism, is taken from the fact that the Holy Office on 2 May 1858 declared that Baptism is always to be repeated under condition whenever "after the washing has been wholly completed, the form is pronounced, or conversely, when the pronouncing of the form has been completed, one proceeds to the washing."³ For the rest, a very brief delay would render the sacrament doubtful, but the delay of one *Our Father* would render it null (St. Alphonsus, loc. cit.). For liceity it is required that matter and form perfectly coexist.⁴
2. In Penance, because it was instituted after the manner of a judgment, a greater interval can intervene.
3. In Matrimony there is always had union of matter and form when the consent of one is placed, the consent of the other not having been retracted; for it has and follows the nature of a contract

(St. Alphonsus, VI, 9).

4. In the Eucharist there is discussion rather of the presence of the matter than of its union with the form; here, however, it is required that the matter be physically present, because otherwise the words "this" and "here" are not verified (St. Alphonsus, VI, 9).

¹ 12 September 1877; 30 November 1898; 14 December 1898.

² 17 March 1897.

³ Note, however, that at the time the response was given, the value of Baptism conferred in this way was doubted more than today. Considering this together with the declarations afterwards issued concerning Order, it is permissible to doubt whether the Sacred Congregation, if again consulted, would give the same response.

⁴ Roman Ritual, title 2, chapter 1, n. 8; title 5, chapter 1, n. 18.

23 V. The minister must use neither matter nor form substantially vitiated. Now:

1. A substantial change of matter is had when a thing is used which, according to common estimation, differs from the thing which the Church uses, as if in Baptism you should use wine instead of water. If, however, the matter is the same thing in reality, either wholly or as to the greater quantity, but is called by a different name and is used for a different use, it is rather doubtfully valid than certainly invalid, as if someone were to baptize with moisture flowing from a vine (St. Alphonsus, VI, 11).
2. A substantial change of form is had when the words, according to common estimation, have a meaning different from that which must be expressed according to the mind of Christ (St. Alphonsus, VI, 11, 221). If the change is made into words which can be taken in a twofold sense, namely a sacramental one and a foreign one, the change is substantial or accidental according as the minister intends the foreign or the sacramental sense; since even in the common intercourse of men an ambiguous sense must be determined by the speaker himself. Besides, it can happen that a change which, considering only the grammatical sense, is substantial, is in fact accidental or substantial according as it proceeds from inadvertence or ignorance, or from a heretical mind. Thus if someone in consecration, from inadvertence, were to say, "Here" in place of "This is My Body," the consecration would be valid; otherwise if he intended the word "here" in the sense of Luther, or adverbially (St. Alphonsus, VI, 110). For the rest, a change of form can occur:
 - a) By substitution of words, as if in Baptism it were said: I wash you, etc. But it is accidental or substantial according as the substituted words are synonymous or not synonymous.
 - b) By transposition, as if someone says: I baptize you, etc. This will generally be accidental.
 - c) By omission, as if in consecration the word *for* is omitted. It must be seen whether or not an essential word is omitted, namely one by which the due sense is taken away.
 - d) By corruption, as can happen because of stammering, haste, or inexperience, as if someone says: This is my *boby*. In the case the change is generally accidental.
 - e) By addition, as if in Baptism it is said: I baptize you in the name of the Father, who created you, etc. Further, a change of this kind is more easily substantial if what is false is added than if what is true is added; likewise if the change is made with a heretical mind than otherwise.
 - f) By interruption. Further:

a) Interruption of the words of the form is substantial or accidental according as it is or is not so great that the words before those hearing no longer effect the complete sense intended by Christ.

b) Interruption of the syllables of the same word, if it occurs by the interposition of several words or of one word, as if it were said: I bap- (be silent) -tize you, etc., renders the value doubtful. Otherwise if it occurs by a cough or a similar way and is very brief (St. Alphonsus, VI, 11, 221).

3. A substantial change, as one which renders the sacrament invalid, is a grave sin; an accidental change is gravely or lightly forbidden according as it greatly or lightly opposes the use and precept of the Church.

24 **VI. The minister must utter the sacramental form by voice**, that is, by the organs ordered to speaking. Therefore vocal pronunciation is required. Besides, at least practically, the pronunciation ought to be audible of itself, because it is doubtful whether pronunciation which of itself is not audible can be called vocal (St. Alphonsus, VI, 414).

Section II. On the Requisites for Licit Ministration

In order that the minister of a sacrament proceed licitly, first indeed he must minister validly; concerning this there has already been discussion. Then it is required that he minister legitimately, holily, according to the rite, to the worthy, and absolutely or under condition according to the circumstances.

25 **I. Legitimately**; namely, it is required that the minister have received from the Church a mission or some jurisdiction, in other words authorization, and that he not have contracted a penalty which deprives him of the use of order. Concerning the jurisdiction required there will be fuller discussion in the treatise on the individual sacraments.

26 **II. Holily**, that is, in the state of grace. Now:

1. The obligation of ministering the sacraments in the state of grace is clear from the reverence due to an action so holy. Nevertheless, a necessity excuses which is so urgent that not even an act of contrition can be elicited, for example if absolution must be granted immediately to one dying. For since the sacraments are for men, the harm of one's neighbor to be averted prevails over the reverence due of itself to the sacrament, and thus, when the higher law of charity urges, the irreverence is taken away.

Here, however, it is asked by some whether the minister also is excused who cannot elicit an act of contrition in time without danger of infamy or scandal. Further, theoretically this must be affirmed, because, granted the good will of the minister and his moral inability to repent in time, even the right of preserving reputation and, *a fortiori*, the obligation of avoiding scandal prevail over the reverence due of itself to the sacrament. But since practically sufficient time for eliciting an act of contrition is available, it can be said that the said excusing cause in fact scarcely exists (St. Alphonsus, VI, 33).

2. As regards the gravity of the obligation, receive the following:

a) The obligation of the state of grace is certainly grave if these three things occur, namely if: 1. the minister is consecrated; 2. he confects the sacrament; and 3. he does this by office, or as consecrated, or solemnly.¹ This is clear from the Roman Ritual, which declares: "Those ministering these things impurely and unworthily incur the guilt of eternal death";² and these words must at least be applied

to those of whom we are speaking. So also the Roman Catechism.³ The reason is that grave irreverence is had in this, that someone exercises an act so holy in a state so foul, whether as consecrated and furnished with sacramental grace, or as acting as minister and instrument of Christ and in His name, or with the said titles considered together (cf. St. Thomas, III, q. 64, a. 5, ad 3 and a. 6; St. Alphonsus, VI, 31, 32, 884).

b) It is disputed whether the following sin gravely: 1. a non-consecrated minister who confects a sacrament in mortal sin, namely a layman baptizing and those contracting Matrimony;⁴ 2. a consecrated minister who confects a sacrament, but not by office or not as consecrated, namely a deacon or priest baptizing in a case of necessity. Some affirm, because there is grave irreverence in this, that someone, whether he is consecrated or is not consecrated, whether he acts as consecrated or does not act as such, performs such sublime things in the name of and as an instrument of Christ. Others deny it, and judge that for grave irreverence it is required that someone act by office, and therefore confect the sacrament as public minister of Christ and of the Church. Thus St. Thomas teaches (loc. cit.), nor does St. Alphonsus seem to reject this for practice (VI, 32; *Homo Apostolicus*, tract 14, n. 6); all things considered, it can be held as practically safe. Likewise, a priest does not sin gravely who, while in mortal sin, only hears confession, yet in such a way that he resolves to elicit an act of contrition before absolution is to be given (St. Alphonsus, VI, 36).

c) It is further disputed whether a priest or deacon sins gravely who, while in mortal sin, does not confect, but only administers a sacrament. This question regards only the distribution of the Holy Eucharist. Further, St. Alphonsus, against many, affirms it, "because," he says, "a priest ministering the Eucharist in mortal sin inflicts grave injury on this sacrament, because, as a minister consecrated for dispensing it, he ministers it unworthily (cf. can. 845). And just as in the other sacraments the minister proximately concurs in the sanctification of those receiving through confection, so here he proximately concurs through dispensation, since the minister of the Eucharist cannot exhibit himself as minister otherwise than through dispensation" (VI, 35). There is added that Nicholas II compares a dispenser in the state of sin to a burning torch, which, while it illuminates others, consumes itself.⁵ Finally, the Roman Catechism favors this opinion.⁶

d) He does not sin gravely who, while in mortal sin, exercises other sacred functions, for example: 1. one who performs the functions of the Diaconate, Subdiaconate, or minor Orders; 2. one who performs consecrations, for example of Sacred Oil, and blessings; 3. one who touches or carries the Holy Eucharist or gives Benediction with the Most Holy Sacrament; 4. a priest who assists at Matrimony; 5. finally, one who preaches while in mortal sin does not sin gravely (St. Alphonsus, VI, 37-40).

Corollary. A minister who in mortal sin confects several sacraments in one continuous act commits as many sins as the sacraments he confects. The contrary must be said of him who by one moral action distributes the Holy Eucharist to several. Finally, he who celebrates while in mortal sin more probably commits four sins, namely he unworthily confects the sacrament, unworthily receives the sacrament, unworthily administers the sacrament to himself, and administers the sacrament to an unworthy person, again to himself (St. Alphonsus, VI, 35; vol. I, p. 201).

3. As regards the mode of recovering lost grace, one about to confect or administer a sacrament while constituted in mortal sin can recover grace either by an act of perfect contrition or by confession. If, however, there is question of confecting the Holy Eucharist, Confession is required

of itself; this is clear from canon 807, to be explained later. Besides, the confectio of this sacrament has its reception annexed to it. Further, he who has sinned mortally cannot receive the Holy Eucharist unless he has first received the sacrament of Penance (n. 179). With regard to the confectio of the other sacraments, it is indeed fitting to confess,⁷ but there is no obligation.

¹ The word *solemnly*, which in the case is commonly used, does not regard external rites, but signifies the same as *by office*.

² Title I, single chapter, n. 4.

³ Part 2, chapter 1, q. 17.

⁴ Nevertheless, they sin gravely insofar as they receive Matrimony in mortal sin.

⁵ Chapter 5, cause 15, question 8.

⁶ Part 2, chapter 1, question 17.

⁷ Roman Ritual, title I, n. 4.

27 III. According to the rite, that is, according to the rites prescribed by the Church. Rites, however, are customarily distinguished as essential and accidental, according as they belong to the essence of the sacraments or do not belong to it. Concerning the essential rite, that is, concerning the use of matter and form, there has already been discussion, so that it remains to speak only of the accidental rite. Concerning this, let these things be observed:

1. That there is an obligation of observing the rites is of faith from these words of the Council of Trent: "If anyone shall say that the received and approved rites of the Catholic Church, customarily used in the solemn administration of the sacraments, can either be contemned, or omitted by the ministers at their pleasure without sin, or changed into other new rites by any pastor of churches whatsoever, let him be anathema."¹ The obligation is likewise drawn from the Constitution *Apostolicae Sedi* of Paul V,² placed at the head of the Roman Ritual; likewise from canon 733, § 1, which establishes: "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." Yet this does not prevent certain rites from being called directive rather than preceptive; this is drawn both from the words of the Ritual and from the thing itself, as will be noted in its place.
2. The obligation of observing the rites is grave by its genus, so that he sins gravely who neglects the law in grave matter; this is drawn both from the importance of the matter being treated and from the penalties to be inflicted on incorrigible transgressors (cf. can. 2378).
3. Each person is bound to follow his own rite (can. 733, § 2). Now the rite to be observed in the Latin Church is contained in the Missal and Roman Ritual, the Roman Pontifical, the Ceremonial of Bishops, and the *Memoriale Rituum*.³

Note 1. The sacred oils which serve for administering certain sacraments must have been blessed by the Bishop on the most recent Thursday in the Lord's Supper; and old oils are not to be used unless necessity urges. When the blessed oil is nearly lacking, other unblessed olive oil is to be added, even repeatedly, but in a smaller quantity (can. 734). The pastor must request the sacred oils from his Ordinary and diligently preserve them in the church in safe and decent custody under key; nor is he

to retain them at home, unless because of necessity or another reasonable cause, with the permission of the Ordinary (can. 735).

Note 2. The reverence due to the sacraments also requires that they be conferred with the decency which the nature of the sacrament demands; to this also belongs due attention. Nevertheless, voluntary distraction is only venial, unless there is added danger of a substantial or at least notable defect. Yet voluntary distraction of a priest during consecration and communion is held by many as grave irreverence, namely because of the eminent dignity of the Sacrifice (cf. St. Alphonsus, VI, 14, 224, 410, dub. 5).

¹ Session 7, On the Sacraments in general, canon 13.

² 17 June 1614.

³ The *Memoriale Rituum* is a small book of rites given for the City by Benedict XIII (1723) and promulgated for the whole world by Pius VII (1827).

28 IV. To the worthy. The sacraments can be ministered only to the worthy, at least of themselves. But it suffices that worthiness be established as will be explained below. I said:

1. **They can be ministered only to the worthy.** He who ministers them to an unworthy person commits: 1. the sin of sacrilege, on account of the irreverent treatment of a sacred thing, that is, of a sacrament; 2. the sin of scandal, on account of cooperation in the sin of one's neighbor (St. Alphonsus, VI, 43).

2. **At least of themselves;** because, as if accidentally, the sacraments can be ministered to an unworthy person if there is present a cause by which both the irreverence which is contained of itself in ministration to the unworthy is removed, and cooperation in the sin of one's neighbor is made honorable. Causes of this kind are: violation of the sacramental seal, infamy, scandal, and other inconveniences to be avoided. From these things follow:

a) A sacrament must be ministered to an unworthy person if his unworthiness is known only by sacramental knowledge. For the rest, the following rules hold:

b) The sacraments are to be denied to a public sinner whether he asks secretly or publicly. The reason is that neither scandal nor infamy to be avoided makes the ministration honorable¹ (can. 855, § 1; St. Thomas, III, q. 80, a. 6; St. Alphonsus, VI, 44). A public sinner, however, is one whose crime is notorious either by fact, by law, or by reputation; he is occult as long as there is hope that the crime can be hidden.

c) The sacraments are to be denied to an occult sinner if he asks for them secretly, that is, before the priest alone, or before a few others who do not understand what is being done and will not spread the matter; they are not to be denied if he asks for them publicly. It is said:

a) They are to be denied if he asks for them secretly (can. 855, § 2; Roman Ritual):² the reason is that from denial there does not follow the inconvenience mentioned above (St. Thomas, loc. cit.; St. Alphonsus, VI, 44). Except if the priest knew the state of the sinner from confession alone; for he cannot use knowledge from confession with the burden of the penitent (St. Alphonsus, VI, 51, 658).

b) They are not to be denied if he asks for them publicly (can. 855, § 2; Roman Ritual).³ The reason is that from the fact that a minister could publicly deny the sacraments from private knowledge, the

greatest inconveniences would follow: namely, not only the loss of the reputation⁴ of the one asking, but especially disputes, disturbances, scandals, and the danger that many would abstain from the sacraments, namely from fear lest they be kept away by an imprudent or malicious minister (St. Thomas, loc. cit.; St. Alphonsus, VI, 49). Except, however, the sacrament of Order, from which even one occultly unworthy must be kept away (Council of Trent;⁵ can. 970). "The reason is certain, because he who thrusts himself into public offices for which he is not suitable must be repelled, even with infamy, on account of the public good to be preferred to the private good" (St. Alphonsus, VI, 52; cf. St. Thomas, Supplement, q. 36, a. 4). Besides, "it must be noted that in that case the Bishop is not bound to manifest the cause why he repels him from ordination; according to the declarations of the Sacred Congregation of the Council issued on 21 March 1643 and on 21 April 1668, which the Supreme Pontiff Benedict XIV brings forward at length"⁶ (St. Alphonsus, loc. cit.).

If the crime is public in another place, but occult in the place where the sacrament is asked, the sacrament should not be denied unless knowledge of the crime will easily reach there (St. Alphonsus, VI, 46; cf. can. 855, § 2).

d) It is forbidden to minister the sacraments of the Church to heretics, even those erring in good faith and asking for them, unless first, having rejected their errors, they have been reconciled to the Church (can. 731, § 2). It is forbidden both because the sacraments generally cannot be ministered to heretics and schismatics without scandal,⁷ and because ministration of the sacraments to non-Catholics fosters indifferentism.

Insofar as these things are also to be applied to the dying, see in the treatise on Penance and on Extreme Unction.

3. It suffices that worthiness be established as follows:

a) With regard to Baptism of adults, Penance, Order, and Matrimony, the worthiness of the recipient must be established more or less positively, and therefore inquiry must be made into it, as will be explained more fully in the treatise on the said sacraments. Meanwhile consult, with regard to Baptism, canon 752, § 1; with regard to Penance, canons 886 and 888; with regard to Order, canon 973, § 3; with regard to Matrimony, canons 1020, 1021, § 1, and 1033.

b) With regard to the other sacraments, worthiness must be presumed, while unworthiness must be proven in some measure, so that in doubt the sacraments ought rather to be granted. The reason is that all the faithful have a right to these other sacraments, and ministers are not judges but dispensers; whence in these cases they do not have the right of inquiring, but only the duty of dispensing to all who ask, provided that they are not positively unworthy (St. Alphonsus, VI, 43). If, however, unworthiness has been established, amendment must be proven, and sometimes, besides, the satisfaction performed must be established. Concerning this the Roman Ritual has these words: "All the faithful are to be admitted to sacred Communion, except those who are prohibited for a just reason. But the publicly unworthy are to be kept away, such as the excommunicated, the interdicted, and the manifestly infamous: as prostitutes, concubinarians, usurers,⁸ magicians,⁹ sorcerers, blasphemers,¹⁰ and other public sinners of that kind, unless their penitence and amendment are established, and they have first satisfied for public scandal."¹¹ Canon 855, § 1, inculcates the same for the same reason. With these things considered, the following can be drawn:

¹ Roman Ritual, title IV, chapter 2, n. 3.

² Title IV, chapter 1, n. 9.

³ Title IV, chapter 1, n. 9.

⁴ This reason is not adequate, because the reverence to be shown of itself to the sacrament prevails over the private good of the reputation of the sinner, who, as is supposed, is not of good will; but it does not prevail over the common good.

⁵ Session 14, on reform, chapter 1; Session 23, chapters 5 and 7.

⁶ *De Synodo*, book 12, chapter 8, n. 2.

⁷ Holy Office, 20 July 1898 (*Collectanea*, n. 2012).

⁸ That is, those judicially convicted as such.

⁹ That is, those who publicly practice true and certain magic.

¹⁰ That is, those who from a spirit of impiety are accustomed by mouth or writing to utter injurious things against God, against the Saints, or against the Church.

¹¹ Title IV, chapter 1, n. 8.

29 Corollary I. If unworthiness arises from sin alone, generally it suffices that the sinner has confessed publicly; indeed, the very approach to the Holy Eucharist seems generally to suffice that he be judged amended. If, however, a public sinner of this kind, notwithstanding confessions and communions, does not cease falling back into the same habit, and the relapse is notorious, then the ministration of the sacraments should be deferred for some time, so that amendment may be sufficiently proven, unless now particular signs of amendment appear, as can occur especially on the occasion of a Mission.

Corollary II. If someone has publicly lived in a proximate occasion; likewise, if some resignation of office, or retraction, or satisfaction must be imposed, for example if someone has performed a wicked office, or has publicly enrolled in a wicked society, or has spread pernicious errors, or has publicly and unjustly stripped another of reputation, generally the occasion must be abandoned or the other obligation fulfilled before the sinner is publicly¹ admitted to the sacraments.

Corollary III. If someone has been publicly excommunicated, or has notoriously adhered to a heretical sect, before he communicates he must be reconciled with the Church in the external forum and absolved from the censure.

Corollary IV. If the crime is doubtful, the sacrament should not be denied, unless nevertheless someone is so suspected that by charity he is bound to remove the suspicion. If the crime is certain, but penitence doubtful, the sacrament should be denied, because penitence is not established; which the Roman Ritual cited above and canon 855 require (cf. St. Alphonsus, VI, 48).

Corollary V. If a doubt remains whether the sacraments must be denied to someone, the Ordinary should be consulted; or, if there is not time, after the sacrament has been granted, recourse should be had to him for the future.

For the rest, if the sacraments are to be denied, one should proceed most prudently. As far as can be done, the sinner should be warned in time, so that the request itself may be forestalled. If the matter does not succeed, the denial should be made without disturbance. The ordinary circumstances are especially regarded by the things said above; concerning the things to be observed in urgent danger of death there will be discussion in its own place.

Finally, here it is customary to ask whether the minister can administer a sacrament to an unworthy person in order to avoid harm threatening himself, for example death. Some affirm, provided that the one asking can here and now validly receive the sacrament and does not ask for it in contempt of God or of religion. They affirm this because there is had only material cooperation, which is licit for a cause of this kind. But with St. Alphonsus (VI, 49) it seems it must be denied; since the conferral of a sacrament on an unworthy person, and this in the supposed circumstances, carries with it so great an injury to the sacrament that it does not seem it can be admitted for averting private harm from the minister, but only for preventing inconveniences that would follow for the community from the denial (St. Alphonsus, VI, 49). As we already noted above, the adequate reason why it is permitted to confer a sacrament on an occult sinner is not the avoidance of infamy for a contumacious sinner, but the inconveniences which would arise for the community from the denial (St. Alphonsus, loc. cit.).

¹ Of themselves, the sacraments can be ministered at least secretly to all who are truly penitent, but according to the Sacred Penitentiary (1856) it is not fitting "to admit to secret participation in the sacraments those who have not made retraction, on account of the scandal of the weak, who can believe that the penitent has persevered in obstinate pertinacity."

30 V. Absolutely or conditionally, according to the circumstances. The sacraments are to be conferred absolutely if there is no serious doubt about validity; otherwise under condition. Yet he who, being certain of validity, places a condition, seems of himself to sin only lightly, because grave irreverence is not evident.

Scholion I. On the Ministration of a Doubtfully Valid Sacrament

31 I. The morality of doubtfully valid ministration. 1. Of itself it is illicit to minister a sacrament with doubt about its validity; in other words, moral certainty about the validity of the sacrament is required of itself. The reason is that of itself it is injurious to Christ, the Author of the sacraments, to place the external rite instituted by Him, wholly or at least partially, and indeed in order to constitute a sacrament, with grave danger of not truly constituting the sacrament. There is added proposition 1 condemned by Innocent XI: "It is not illicit in conferring the sacraments to follow a probable opinion about the validity of the sacrament, the safer one being left aside, unless law, agreement, or danger of incurring grave harm forbids it. Hence one must not use only a probable opinion in the conferral of Baptism, priestly Order, or episcopal Order."¹ Therefore of itself it is illicit: 1. to use doubtful matter or form; 2. to minister a sacrament in doubt whether another requisite for validity is present, for example the presence of the penitent due in the sacrament of Penance. Consequently, of itself it is also not licit to minister a sacrament under a condition which, according to what was said in n. 32, renders the validity of the sacrament doubtful (St. Alphonsus, VI, 28, 46).

Note. The moral certainty about validity which is required must be taken more strictly or more broadly according to the diversity of the sacraments; more broadly, for example, for the sacrament of Penance, as will be explained in its place.

2. Accidentally, a sacrament can sometimes, or even must, be conferred with doubt about its validity, namely if on the one hand it cannot certainly be conferred validly, and on the other hand there is a grave reason for conferring it. For since the sacraments are for men, the salvation of men to be procured prevails over the obligation of taking care lest the sacrament be exposed to

the danger of nullity. A sufficient reason is present the more easily in proportion as the sacrament is more necessary (St. Alphonsus, VI, 28, 29).

Corollary I. A doubtfully valid sacrament can be conferred if the validity is at least probable and, from the sacrament not being conferred, grave spiritual harm threatens someone. Hence, for example, one doubtfully disposed can be absolved if there is fear lest otherwise he be alienated from the sacraments. But scarcely ever is it licit to consecrate doubtful matter (St. Alphonsus, VI, 28, 29, 432).

Corollary II. In danger of death, even with slight probability about validity, the necessary sacraments must be conferred, namely Baptism and Penance; likewise Extreme Unction, at least if Penance certainly cannot be conferred validly (St. Alphonsus, VI, 103).

¹ Denzinger-Bannwart, n. 1151.

32 II. The mode of doubtfully valid ministration. If a sacrament is ministered with doubt about validity, it must be conferred under condition; namely, the reverence due to the sacrament requires that the minister, in a doubt of this kind, protest that he does not will to confer the sacrament if the necessary condition is lacking.¹ Besides, observe:

1. Let the condition be placed on which validity depends, not that on which only the fruit depends. The reason is that a sacrament conferred under a condition on which only the fruit depends, for example, if you are disposed to receive grace, cannot revive; for if the condition is verified, the sacrament is immediately received validly and fruitfully; if it is not verified, it is not even validly received, and therefore cannot revive (n. 11). On the contrary, a sacrament conferred under a condition on which validity depends, for example, if you are capable of receiving the sacrament, is validly conferred if the condition is verified; and if perhaps it is now received without fruit, afterwards, when the due disposition is added, it can revive.
2. It is not required that the condition be expressed by mouth, but it suffices that it be expressed mentally, except in the cases in which, according to the Roman Ritual,² it must be expressed by mouth, namely: 1. in doubt whether the one to be baptized has already been baptized, or whether that which has been born is a human being; 2. in doubt whether the one to be anointed is still living (St. Alphonsus, VI, 29). The reason is that a condition placed mentally suffices for the sacrament truly to be conferred conditionally, in other words, for the intention to be restricted to the case of valid confectio. This is confirmed by these words of the Roman Missal: "If he doubts very probably that he has omitted something essentially in the consecration, let him repeat the form at least under a tacit condition."³ Indeed, it is enough to place the condition, whether by mouth or only mentally, implicitly; for example by ministering the sacrament according to the institution of Christ or the intention of the Church.

¹ If doubt about validity is removed by the Church supplying the defect, if it exists, the sacrament must be conferred absolutely. If someone places the condition: if you are disposed, it can seem doubtful whether there is intended a disposition required for the fruit alone or, at least confusedly or predominately, for validity. Hence it is safer not to express the condition in this way.

² Title 2, chapter 1, nn. 9, 22; title 5, chapter 1, n. 14.

³ *De defectibus*, title 5, n. 2.

Scholion II. On the Repetition of a Sacrament Doubtfully or Doubtfully Validly Conferred

33 We speak of the repetition of a sacrament which is done under this condition, or an equivalent one: If the former sacrament was not conferred, or was not validly conferred; and which therefore effects nothing if the former sacrament was validly conferred. Now:

I. It is illicit to repeat a sacrament under condition if the doubt about the ministration or its valid ministration lacks reasonable foundation. In the case, repetition is gravely illicit, because it is grave irreverence to repeat the sacramental rite without reason. Nevertheless, the scrupulous are excused from sin, at least grave sin; yet they must be seriously admonished to abstain from repeating the form. Likewise, it is venial uselessly to repeat the same word, by which manner of acting Christ is introduced as speaking ridiculously. Stammerers, however, are excused, provided that, as far as can be done, they try to pronounce the words rightly the first time.

II. It is licit to repeat the sacraments under condition if both a prudent doubt about ministration, or about valid ministration, exists, and the usefulness of one's neighbor recommends reception of the sacrament.

III. A sacrament must be repeated under condition if there is prudent doubt about the ministration or its validity, and reception of the sacrament is necessary by necessity of means or of precept; even more if the common good requires that the sacrament be certainly conferred validly. Moreover, the more necessary the sacrament is, the more easily a sufficient doubt is present.

Corollary I. The sacraments of Baptism, Confirmation, and Order are to be repeated under condition if a prudent doubt exists whether they were really conferred or whether they were validly conferred (can. 732, § 1). If it is prudently doubted whether absolution was imparted or rightly pronounced, and the penitent is still sufficiently present, absolution must be repeated if there is question of a penitent constituted in mortal sin; otherwise it can at least be repeated.

Corollary II. Baptism, Order, absolution of one dying, and Extreme Unction conferred on one deprived of the senses must be repeated, even if the reason for doubting the validity of the former sacrament is slight.

Corollary III. It can happen that doubt about the ministration or the valid ministration of a sacrament, even a necessary one, is so slight that it can indeed be repeated, but need not be repeated. Thus, for example, to quiet anxiety Order could be repeated if the words of the form had been uttered immediately after the matter was placed.

Corollary IV. Finally, it can happen that a sacrament can and must be repeated several times under condition, for example that an infant must first be baptized while still existing in the womb; then, when some member has emerged, be rebaptized under condition; finally, once brought into the light, be rebaptized again under condition (n. 93; cf. can. 746, § 3).

Section III. On the Obligation of Ministering

34 **I. Bishops and pastors are bound in this way:**

1. They must, by justice, minister the sacraments to their subjects; and indeed not only in true necessity, but as often as they reasonably ask for this. They are bound by justice because, in accepting their office, they entered into a tacit contract. There is added the reason of salary or

honorable support accruing to them by reason of their office (St. Alphonsus, VI, 58; cf. vol. I, n. 572; canons 464, § 1; 467, § 1; 785; 892, § 1; 939).

2. The aforesaid obligation is grave by its genus, namely so that they would sin gravely: 1. if they did not aid a subject constituted in grave or extreme necessity; 2. if by custom they showed themselves difficult or slow, for example if they heard confessions only on a few days in the month, or assigned notably inconvenient times for the distribution of the Holy Eucharist.
3. If the necessity is grave or extreme, grave inconvenience does not excuse, indeed not even danger on the way (cf. vol. I, n. 572). Nevertheless, concerning the obligation of ministering the sacraments with danger to life, let these things be noted:

a) The obligation regards only the sacraments necessary for salvation according to the circumstances, namely Baptism, Penance, and, if the sick person were deprived of the senses before he could have been absolved, Extreme Unction.

b) In order that the said obligation exist, it is required: 1. that there be no other who will certainly minister the sacraments; 2. that there be hope of fruit; 3. that from the sacrament ministered with danger to life there not threaten a greater harm, for example a common harm or the harm of many for whom the minister is necessary.

Corollary I. Pastors can provide many things through others, unless nevertheless they are requested by name. Bishops, however, can, at least today, fulfill ordinary offices entirely through others.

Corollary II. Benedict XIV concludes from rescripts of the Sacred Congregation of the Council that a pastor cannot withdraw in time of plague, even if he leaves behind a suitable vicar; nevertheless he can reserve to himself the care of the healthy if the vicar is ready to provide for the sick, lest the healthy, from fear of infection, flee both of them.¹ The same Sacred Congregation declared that this prohibition has much more force for Bishops.² Moreover, the things said about time of plague are certainly to be applied generally to a time of common danger, such as war or any contagious disease. Finally, pastors and bishops in a time of common danger cannot resign unless someone else can be substituted into their office.

¹ *De Synodo dioecessana*, book 13, chapter 19, n. 2.

² 18 December 1576.

35 II. Assistants who by reason of office supply the place of the pastor are held by almost the same obligation as pastors (cf. can. 476, § 6).

36 III. Other priests are obliged by charity alone (cf. can. 892, § 2; 939). They are bound under grave obligation if their neighbor is in extreme or grave necessity. If there is question of grave necessity, grave inconvenience excuses. If there is discussion of extreme necessity, or of grave common necessity, not even danger of life excuses. But concerning the obligation of ministering the sacraments with danger to life, let the things noted above concerning it be noted (St. Alphonsus, VI, 624; II, 27; *Homo Apostolicus*, tract 4, n. 14; tract 16, n. 125).

Corollary. If the people, because of a scarcity of ministers, are in grave necessity, a simple priest cannot abstain from hearing confessions and administering the Holy Eucharist; and if he is not suitable for hearing confessions, he is bound, if he can, to render himself suitable (St. Alphonsus, VI, 625).

37 **IV. Superiors of religious, toward their subjects, are held by an equally grave obligation as pastors** (cf. can. 514, § 1); nevertheless practically they are not held by justice, because there is no established tacit contract, nor is a salary assigned. There is added an obligation of religion, because superiors seem to be obliged from this motive.

Dissertation III. On the Reception of the Sacraments

We must speak first of the person receiving, then of the mode of receiving a sacrament.

Part I. On the Person Receiving

38 I. Only man as a wayfarer is capable of receiving the sacraments. Therefore angels and the dead are excluded. Nevertheless not every wayfaring man is capable of receiving all the sacraments; namely:

1. Every man not yet baptized is capable of Baptism (can. 745, § 1).
2. Every baptized person is capable of Confirmation and the Eucharist (canons 786, 853).
3. Every baptized male is capable of Order (can. 968).
4. Every baptized person who has fallen after Baptism is capable of Penance (can. 902).
5. Every baptized person able to enter into a contract is capable of Matrimony (cf. can. 1035).
6. Every baptized person who, after having attained the use of reason, is in danger of death because of illness or old age is capable of Extreme Unction (can. 940, § 1).

Part II. On the Mode of Receiving a Sacrament

In order that the sacraments produce the twofold effect concerning which there was discussion (n. 5), namely character and grace, they must be received validly and licitly. I said "in order that they produce the twofold effect," since valid reception suffices for producing character alone. In order, moreover, that grace be received, valid and licit reception is required.

Section I. On the Requisites for Valid Reception

39 For validly receiving a sacrament neither faith nor uprightness is required, as is clear from the sense and practice of the Church, which has always held as valid a sacrament received according to the rite of the Church in heresy. Penance is excepted, for which the good acts of the penitent are required, as will be explained in its own place.

Baptism, however, is required for the other sacraments. This is established, namely, from tradition, that the other sacraments were instituted only for those who through Baptism have been made members of the Church (St. Alphonsus, VI, 79).

Finally, for the valid reception of all the sacraments there is required, at least in adults, intention, that is, the will of receiving the sacrament; concerning which intention we must speak more fully (St. Alphonsus, VI, 80, 139).

40 **I. Necessity of intention.** 1. In little children and in the perpetually insane, that is, in those who have never enjoyed the use of reason, no intention is required, but the will of the Church supplies. This is of faith with regard to Baptism,¹ certain with regard to Confirmation and the Holy Eucharist, namely from the most ancient practice of the Church; likewise with regard to Order from the Constitution *Eo quamvis tempore* of Benedict XIV² (St. Thomas, III, q. 68, a. 9; a. 12, ad 1; St. Alphonsus, VI, 80, 139). Further, little children and the perpetually insane are capable of the sacraments which we have indicated, but incapable of the others (St. Alphonsus, loc. cit.).

2. In adults intention is required, as follows:

a) He who both internally resists the reception of the sacrament and is forced to the external rite, by the consent of all, does not receive the sacrament.

b) He who internally resists the reception of the sacrament, but voluntarily admits the external rite, does not receive the sacraments which do not imprint character. Thus authors commonly teach, relying on this reason: that it is not fitting that the gifts of God be conferred on one who positively does not will to receive them. There is some dispute about those sacraments which confer character, that is, Baptism, Confirmation, and Order. Those few who judge that the latter sacraments are received in the case rely especially on the fact that Innocent III³ declares that it is not absurd to teach that he who fictitiously approaches Baptism, that is, externally consenting but dissenting in heart, receives the impressed character of Christianity. Nevertheless, the more common opinion teaches that even the sacraments which imprint character are not received by one who internally dissents, although he externally consents. The reason alleged is that it seems especially unfitting that sacraments which carry special burdens with them should be received by a subject who does not will to receive them. For the rest, the words of Innocent III, considering their tenor, are of a kind to move anyone little.

c) He who neither consents nor dissents, but holds himself merely passively, much more probably does not receive the sacraments any more than one who positively resists reception; because it is not fitting that the gifts of God be conferred on one who does not positively will to receive them (St. Thomas, III, q. 68, a. 7; St. Alphonsus, VI, 81).

St. Thomas says thus in the cited place: "I answer that through Baptism someone dies to the old life of sin and begins a certain newness of life ... And therefore, just as in order that a man die to the old life there is required, according to Augustine, in one having the use of free will, the will by which he repents of the old life; so there is required the will by which he intends newness of life, whose beginning is the very reception of the sacrament; and therefore on the part of the one baptized there is required the will or intention of receiving the sacrament." And again: "If in an adult the intention of receiving the sacrament were lacking, he would have to be rebaptized; if however this were not established, it would have to be said: If you are not baptized, I baptize you."

With this doctrine of St. Thomas there cannot be reconciled the opinion of those who teach that the will which is required in the recipient is rather that of one not placing an obstacle than of one positively consenting.⁴

Corollary I. He validly receives a sacrament who, from fear, consents to reception; for fear does not take away freedom. Except Matrimony, which is invalid if consent has been extorted by grave fear, as will be explained in its own place.

Corollary II. The question treated concerning the intention of one receiving a sacrament does not regard the Holy Eucharist; concerning this, namely, it is not asked whether it is valid without the intention of the recipient, but whether without the said intention it is received sacramentally, or only materially, so that it does not produce fruit.⁵

¹ Council of Trent, Session 7, canon 13 on Baptism.

² 4 May 1745, article 1.

³ Chapter 3, *De Baptismo* (III, 42).

⁴ Cf. also, with regard to Baptism, canons 745, § 2, and 752; Roman Ritual, title 2, chapter 3, n. 1; with regard to Penance, Roman Ritual, title 3, chapter 1, n. 24; with regard to Extreme Unction, canon 943; Roman Ritual, title 5, chapter 1, n. 6.

⁵ Cf. the treatise on the Holy Eucharist.

41 II. Nature of the required intention. 1. In itself actual intention is not required, nor virtual intention, but even habitual intention suffices; interpretative intention does not suffice. I said:

a) Habitual intention suffices, in other words, it suffices that someone positively had it and has not retracted it.¹ The reason is that intention is required in the recipient only so that he may not be said to be sanctified against his will. But this cannot be said of one who enjoys habitual intention. Others except Penance and Matrimony. But as regards Penance, habitual intention suffices insofar as there is question of receiving absolution. It is another question, however, whether the acts of the penitent must be placed from an at least virtual intention, that is, by force of the intention of receiving the sacrament, in other words, whether they must be referred by the penitent, actually or virtually, to absolution.² With regard to Matrimony, which the recipients themselves minister, actual or virtual

intention is necessary to this extent: that it is required that consent begin to exist from an actual or virtual intention of contracting Matrimony (St. Alphonsus, VI, 81, 82, 139).

b) Interpretative intention does not suffice, because intention of this kind, at least as it is understood by us (n. 15), in reality has not existed.³

Objection. The Roman Ritual⁴ and canon 943 establish that Extreme Unction is to be conferred absolutely on the sick who, when they were in possession of their mind, at least implicitly asked for it or probably would have asked for it. Therefore with regard to Extreme Unction interpretative intention suffices, or rather a mind inclined toward the said sacrament, which interpretative intention indicates.

Response. I deny the consequence. And indeed the Roman Ritual and canon 943 do not speak of sick persons, faithful, who would probably have willed Extreme Unction, but who would probably have asked for it. But a faithful person who, while master of himself, would probably ask for Extreme Unction also, with sufficient certainty, willed the said sacrament more or less explicitly, just as the request which probably would have place indicates with sufficient certainty a mind inclined toward the sacrament.

2. With regard to the object, the intention of receiving such a sacrament is required, or of receiving what the Church intends through such a rite. But an intention more or less explicit of receiving such a sacrament suffices. A merely implicit intention, as for example the will of using the means of salvation, does not suffice if there is an explicit contrary intention; if no such contrary intention is had, the matter seems doubtful. With these things noted in general, receive the following in particular:

a) With regard to Baptism, the will of embracing the Christian religion suffices for receiving it, at least in danger of death. It is disputed whether the same can be said of the will of using the means of salvation, likewise of attrition or contrition. Many hold this as probable, because there is an implicit intention. But we judge that one must speak thus:

a) It seems it must be denied if there is question of those who reject Baptism at least more or less explicitly; of this kind are Jews, Mohammedans, and many Protestants today. But it seems it must be denied because, besides the fact that it is not proven that implicit intention suffices, explicit rejection seems to prevail over implicit admission.⁵ There is added that the Holy Office on 30 March 1898 declared: "Concerning dying Mohammedans deprived of the senses, one must respond as in the decree of the Holy Office of 18 September 1850 to the Bishop of Perth, that is: If previously they had given signs of wishing to be baptized, or in their present state either by nod or in another way have shown the same disposition, they can be baptized under condition, insofar nevertheless as the Missionary, having inspected all the circumstances of things, has so prudently judged"; which at least proves that it is illicit to confer Baptism on those who reject it, and suggests that such conferral is invalid, because, if validity were posited, at least in extremis it does not seem it should be excluded. There are added canons 752, § 3, and 754, § 3, compared with the Holy Office of 30 March 1898, which seem to require a more or less explicit will. There is added finally that a practice conforming to the contrary doctrine never seems to have existed in the Church (St. Alphonsus, VI, 82; cf. VI, 483). Practically, the contrary opinion can be called licit, but not obligatory.

b) If there is discussion of those who do not explicitly reject Baptism, the probability of the opinion which teaches that the general will of admitting the means of salvation suffices, likewise attrition and contrition, the probability of that opinion, I say, seems rather slight: both because, as we said, canons 752, § 3, and 754, § 3, compared with the Holy Office of 30 March 1898, seem to require that the one to be baptized have signified an intention more or less explicit of receiving Baptism; and because the practice of baptizing those who enjoy only an implicit intention seems truly new in the Church. Practically, however, the contrary opinion seems licit, and, according to circumstances, obligatory.

b) With regard to Extreme Unction, likewise for receiving Viaticum sacramentally, the will of dying Christianly suffices; the same will in danger of death suffices for Confirmation; likewise for receiving sacramental absolution, at least considered by itself alone.

The will of dying Christianly, likewise the will of using the means of salvation, or contrition or attrition, according to the things explained above, do not seem to suffice in those who reject the mentioned sacraments more or less explicitly. With regard to non-Catholics who do not explicitly reject the said sacraments, it is not so proven that the will of dying Christianly, etc., does not suffice for valid reception.

c) With regard to Matrimony and Order, explicit intention is required; since, at least practically, there will not be had an implicit intention which includes the will of entering Matrimony or of receiving Order. There is added that the said sacraments carry special burdens with them, so that for that reason also a general will does not sufficiently contain the will of receiving them (St. Alphonsus, VI, 82).

Question. Whether the conceived intention of receiving a sacrament effects that it is validly received, even if it is ministered to one not master of himself, for example sleeping, drunk, or fallen into insanity.

Response. A few deny it;⁶ but it seems it must entirely be affirmed, both because Innocent III teaches thus with regard to Baptism,⁷ likewise Benedict XIV;⁸ and because intention is not judged restricted unless a restriction is expressly placed, or is drawn from a contrary will once had (St. Thomas, In IV, dist. 6, q. 1, a. 2, sol. 3, ad 2; St. Alphonsus, VI, 81).

¹ Innocent III, chapter *Maiores*, § *Item quaeritur, de baptismo*; Instruction of Benedict XIV, *Postremo mense*, n. 46.

² Cf. the treatise on Penance.

³ St. Alphonsus (VI, 82) and others teach that interpretative intention suffices; but they understand that intention which others call implicit habitual intention. The holy Doctor indeed calls it interpretative intention which was never had; but he intends the one which was never had explicitly, as follows from the context, namely both from the fact that he also calls interpretative intention general, that is, such by which someone implicitly wills the sacrament, and from the fact that he opposes interpretative intention to explicit intention.

⁴ Title V, chapter 1, n. 6.

⁵ It seems to others that in the will of using the means of salvation there is not included the implicit will of receiving the sacrament, but rather a merely conditioned will; in other words, he would will to receive it if he recognized it as a means of salvation; but this condition not being fulfilled, he in no way wills it (cf. Ter Haar, *De occasionariis et recidivis*, n. 503).

⁶ Roncaglia, *De Sacramentis in genere*, chapter 5, question 2, response 2; Billuart, *De Sacramentis in communi*, dissertation VI, article I; Lehmkühl (II, 65 note) doubts.

⁷ Book 3 of the Decretals, title 42, chapter 3, *Maiores*.

⁸ Instruction *Postremo mense*, n. 46.

Section II. On the Requisites for Licit Reception

42 In little children and the perpetually insane no disposition is required. In adults these things are required:

43 **I. They must have the disposition by which they become proximately capable of the effect to which the sacrament is of itself ordered.** Hence:

1. For the sacraments of the dead, that is, for Baptism and Penance, besides acts, at least implicit, of faith and hope, at least attrition is required.¹ That attrition suffices is clear from the fact that those sacraments are of themselves ordered to remitting mortal sins, and therefore cannot demand a disposition which already of itself remits mortal sins (St. Alphonsus, VI, 440). He who receives the sacrament of Penance without attrition sins gravely, because the sacrament is rendered invalid. Likewise, he sins gravely who, guilty of personal mortal sin, receives Baptism without attrition; for he inflicts grave injury on the sacrament who receives it in such a way that it is frustrated of its grave end, that is, the remission of mortal sins. If one guilty only of personal venial sin receives Baptism without attrition, he indeed effects that Baptism does not remit the venial sin; but only venial sin is committed.

2. For the sacraments of the living, the state of grace is required.

a) The existence of the obligation is clear from the fact that those sacraments are ordered to increasing grace; hence grace must already be present. Nevertheless, as was said concerning the minister, a necessity excuses which is so urgent that not even an act of contrition can be elicited; for example, "if a consecrated host were about to be profaned by heretics and someone, because of that sudden incursion, could not be contrite so quickly"; or if "a layman were reclining at the communion rail who remembered a mortal sin and could not elicit contrition because of the narrowness of time" (St. Alphonsus, VI, 86).

b) Gravity of the obligation. He who receives a sacrament of the living in mortal sin sins gravely, because he is guilty of grave injury who receives a sacrament of this kind without the disposition which its nature demands, or without the disposition required for the end or fruit to which it is of itself ordered, which is the increase of grace. There is added that a sacrament of the living received in mortal sin, even with attrition, according to some produces no fruit at all except character (n. 6; St. Alphonsus, VI, 86).

c) The certainty required concerning the state of grace. In order that someone licitly receive a sacrament of the living, at least broad moral certainty concerning the state of grace is required; but this also suffices. It is required because otherwise the one receiving exposes the sacrament to grave danger that it be received without the disposition which its nature demands, or without the disposition required for the fruit to which it is of itself ordered, to pass over the danger that it be received without any fruit at all; and this contains grave irreverence (St. Alphonsus, *Homo Apostolicus*, tract 15, n. 34). There is added that most authors, especially the more distinguished, adhere to this opinion. It suffices because these things must be taken in a human manner.

Objection. In order that someone who has sinned gravely be morally, although broadly, certain of the state of grace, he must either confess or elicit contrition with exquisite diligence. But the reverence due to the sacrament cannot oblige to so great a burden.

Response. I deny the assertion. Namely, in order that someone acquire broad moral certainty concerning the state of grace, it suffices that he either confess or elicit an act of contrition with moral diligence. God Almighty will not deny His help to one applying serious effort. For the rest, granted, though not conceded, the assertion of the adversaries, the burden set forth does not seem so great that, in order to avoid it, it would be licit to expose the sacrament to grave danger that it be received without the disposition required for the fruit to which it is of itself ordered, to say nothing of the danger that it be received without any fruit at all.

d) The mode of recovering lost grace. He who, constituted in mortal sin, wishes to receive a sacrament, can recover grace through an act of perfect contrition or through confession. If, however, there is question of receiving the Holy Eucharist, confession is required of itself; this obligation will be explained more fully in the treatise on the Eucharist. With regard to receiving the other sacraments, it is indeed fitting to confess, but there is no obligation.

Note. Besides the state of grace, the reverence due to the sacraments requires that the sacraments be received according to the rite perhaps prescribed in reception, and with that decency which the nature of the sacrament demands. To this especially belongs due attention, neglect of which nevertheless is only venial.

¹ Council of Trent, On Justification, Session 6, chapter 6; On Penance, Session 14, chapter 4.

44 **II. They must ask for the sacrament from a minister:** 1. enjoying legitimate faculty; 2. not censured, that is, not excommunicated, interdicted, or suspended, not irregular, or not canonically simply impeded; and 3. worthy, that is, living in the state of grace. Observe, however, that every minister is presumed suitable unless the contrary is established. But in order that the contrary be established, rumors do not suffice; indeed, one who has been a sinner is generally presumed amended, unless the contrary is evident, for example from a manifest voluntary proximate occasion not left behind. For the rest, receive these things:

1. It is a grave sin to ask for a sacrament from a minister here and now lacking legitimate faculty.
2. Of itself it is a grave sin to ask for a sacrament from a minister who is censured, irregular, canonically simply impeded, or unworthy because of grave sin, because it is proximate cooperation in the grave sin of the minister. Accidentally it is licit when a cause proportionate to the case and circumstances is present. This is clear from the things said concerning cooperation (n. 556) and from the canons soon to be cited. Hence:

a) From excommunicates to be avoided, and also from other censured persons after a condemnatory or declaratory sentence has intervened, the faithful can ask, in danger of death alone, both sacramental absolution according to the norm of canons 882 and 2252,¹ and also, if other ministers are lacking, the other sacraments and sacramentals (can. 2261, § 3; 2275, 2; 2284).

b) From tolerated excommunicates, and also from other censured persons before a condemnatory or declaratory sentence has intervened, the faithful can ask for the sacraments and sacramentals for any just cause, especially if other ministers are lacking; and then the censured person who is requested

can minister the same and is held by no obligation to inquire of the requester about the cause (can. 2261, § 2; 2275, 2; 2284).

c) Concerning irregular persons and those canonically simply impeded, almost the same seems to have to be said as concerning excommunicates to be avoided (cf. can. 968, § 2).

d) Sacraments can be asked from a minister unworthy because of sin: 1. if the precept of confession or communion urges; 2. "if from delaying reception there threatens danger of a fall; 3. if you must fulfill the precept of hearing Mass; 4. if one is in mortal sin and does not wish to wait even an hour, because it is not a small usefulness to be freed from sin as soon as possible; 5. if you would have to lack, at least for a long time, communion or the fruit of confession, even if you do not have mortal sin; 6. if otherwise you cannot gain a jubilee; 7. if you need a skilled director and do not have another; 8. if you wish to apply Mass for a deceased friend" (St. Alphonsus, VI, 89). Indeed, for any just cause a sacrament can be asked from one whose office it is to administer such a sacrament, for example from one's own pastor (St. Alphonsus, loc. cit.).

¹ The cited canons will be explained in their own place.

45 Note. It is pleasing to explain briefly how far the sacraments can be ministered to little children, the insane, and the partially insane, and received by the aforesaid.

I. Little children and the perpetually insane, as was already said (n. 38), are capable of receiving Baptism, Confirmation, the Holy Eucharist, and Order. Yet not all are conferred on them.

II. To the insane who previously possessed the use of reason, those things must be applied which we said generally concerning adults. Hence, for example, for valid reception it is required that before insanity they had the intention and did not retract it. For the rest, consult what is to be said concerning the individual sacraments.

III. The partially insane are not of themselves to be kept away from the sacraments. Namely:

1. Baptism must be conferred on them even outside danger of death; nor is so much instruction prerequired in them as in others.
2. Confirmation can be conferred, even if they have been instructed less than others.
3. Absolution should be granted, in doubt about sufficient use of reason or disposition under condition: 1. in danger of death; 2. at Easter; 3. as often as they have confessed a doubtfully grave sin; indeed, 4. several times, even if they have declared only light sins (St. Alphonsus, VI, 432; IV, 3).
4. The Holy Eucharist should be conferred: 1. in danger of death; 2. at Easter; 3. several times, if they show devotion (St. Alphonsus, VI, 303).
5. Extreme Unction should be furnished to those lying dangerously ill; under condition if there is doubt about the use of reason had both now and previously.
6. Order is not to be administered to them.
7. They can indeed enter Matrimony if they understand the substance of the contract; nevertheless they are generally to be turned away from it.

Appendix. On Sacramentals

46 **I. Notion.** Sacramentals are things or actions which the Church, in some imitation of the sacraments, is accustomed to use for obtaining from her own impetration effects, especially spiritual effects (can. 1144). This notion handed down by the Code will become clearer from what is to be said. Sacramentals are, for example, consecrations and blessings to be performed in the name of the Church, exorcisms, prayers prescribed by the Church and to be recited in her name, such as the breviary, and blessed things, such as water, Agnus Dei, ashes, palms, etc.

47 **II. Institution.** With regard to the institution of sacramentals, it seems more probable that one must speak thus: most derive their origin from ecclesiastical institution; but certain ones of them, such as exorcisms and blessings, were instituted by Christ at least in a general way and entrusted to the Church, yet in such a way that afterwards they were more determinately circumscribed by the Church both as to mode and as to effect.¹ To add new things to the sacramentals, or to change anything in them, belongs to the Apostolic See alone, as is clear from canon 1145. The reason is that sacramentals draw their force from the impetration of the Church alone. Therefore it belongs to the Head of the Church alone to constitute or change them.

¹ Cf. Schmid, *Die Sacramentalien der Katholischen Kirche*, p. 149.

48 **III. Effects.** 1. The effects of sacramentals are either the special deputation of some person or thing to divine worship, as, for example, the blessing of an abbot or the administration of minor orders, supposing that these do not enjoy the character of a sacrament, and the consecration of a church or chalice; or the attainment of some good, whether spiritual, such as actual grace, the removal of venial guilt and temporal punishment, or bodily, such as health of body or immunity from calamity by which the person himself or his goods can be affected. Special deputation to divine worship is the effect of those sacramentals which consist in consecrations and constitutive blessings; the attainment of a good, whether spiritual or bodily, is obtained by the sacramentals of exorcism, prayer, and blessed objects.

2. As regards the mode by which diverse sacramentals produce their diverse effects, it can generally be established that they produce them by way of impetration, as if *ex opere operato*, that is, from the work of the working or praying Church, and this independently of the disposition either of the minister or of the subject, and indeed with that infallibility by which God promised to hear the prayer of His most beloved spouse, namely the Church. Some effects, however, are received immediately, others mediately through the sacramentals; wherefore concerning the individual effects in species one can speak thus:

- a) The special deputation of some person or thing to divine worship is obtained by way of impetration *ex opere operato*, infallibly and immediately.
- b) Actual graces are obtained in the same way, and through acts placed by means of these graces, the remission of sins and other goods which the just man can acquire for himself supernaturally.
- c) The expulsion and restraint of demons is obtained both by way of impetration and by way of adjuration or command.
- d) Finally, temporal goods, such as health, fertility of the earth, and the removal of threatening evil, are obtained both by way of impetration and by way of adjuration directed against demons.

49 **IV. Ministration or use.** 1. In general, the legitimate minister of sacramentals is a cleric to whom power has been granted for this and who has not been prohibited by competent ecclesiastical authority from exercising the same power (can. 1146). In species, with regard to legitimate ministers, the following are established:

a) No one who lacks the episcopal character can validly perform consecrations unless this is permitted to him either by law or by apostolic indult (can. 1147, § 1).¹

b) Any priest can impart blessings, except those which are reserved to the Roman Pontiff or to Bishops or others.² A reserved blessing which is given by a priest without the necessary permission is illicit but valid, unless in the reservation the Apostolic See has expressed otherwise (can. 1147, §§ 2 and 3). Deacons and lectors can validly and licitly give only those blessings which are expressly permitted to them by law (can. 1147, § 4).

c) With regard to exorcisms, see vol. I, n. 700.

2. In confecting or administering sacramentals, the rites approved by the Church are to be accurately observed (can. 1148, § 1). Consecrations,³ and blessings whether constitutive or invocative,⁴ are invalid if the formula prescribed by the Church has not been used (can. 1148, § 2).

3. Blessings, which are chiefly to be imparted to Catholics, can also be given to catechumens, indeed, unless a prohibition of the Church stands in the way, even to non-Catholics, for obtaining the light of faith or, together with it, health of body (can. 1149).

4. Things consecrated or blessed with a constitutive blessing are to be treated reverently and not applied to profane or improper use, even if they are in the ownership of private persons (can. 1150).

Note. Let the ministers of the Church explain to the faithful the nature and efficacy of sacramentals. Moreover, let the ministers of the Church show themselves ready in ministering sacramentals, and prudently accustom the faithful who neglect sacramentals to the use of them. Yet let them beware lest they apply ecclesiastical blessings, under whatever pretext, to ends other than those for which they were instituted by the Church, and lest by an imprudent use of them they expose this most holy institution to contempt, or stain it with the reputation of superstition or of dishonest gain.

¹ That law permits this to Cardinals (can. 239, § 1, n. 20); Vicars and Prefects Apostolic (can. 294, § 2); Pro-vicars and Pro-prefects (can. 310, § 2); Abbots and Prelates nullius (can. 383, § 2), according to the norm of the cited canons.

² Cf. with regard to blessings reserved to the pastor, can. 462, 6 and 7; with regard to sacred furnishings to be blessed, can. 1304; with regard to exorcisms to be pronounced, vol. I, n. 700.

³ Consecrations are made by anointing with chrism or sacred oil.

⁴ A constitutive blessing is one which orders a person or thing to divine worship, and so constitutes it sacred; an invocative blessing regards things, for example a ship, destined for profane use.

Treatise VIII. On Matrimony

(St. Thomas, *Supplement*, qq. 41-68; St. Alphonsus, *Theologia Moralis*, book VI, nn. 831-1148; *Homo Apostolicus*, tr. 18).¹

We shall speak first of those things which customarily or necessarily precede matrimony; then of matrimony itself.

¹ Cf. Encyclical of Leo XIII, *Arcanum*, February 10, 1880; Encyclical of Pius XI, *Casti connubii*, December 31, 1930; Sanchez, *Disputationum de S. Matrimonio libri decem*; Feye, *De impedimentis et dispensationibus matrim.*; Gasparri, *Tractatus canonicus de matrimonio*; Wernz-Vidal, *Ius canonicum*, t. V, *Ius matrimoniale*; Desmet, *De sponsalibus et matrimonio*; Vlaming, *Praelectiones iuris matrimonii*.

Dissertation I. On Those Things which Customarily or Necessarily Precede Matrimony

The things which customarily or necessarily precede matrimony are: 1° betrothals; 2° the examination concerning free status; 3° publications; 4° prenuptial instruction; 5° the reception of the sacraments.

Part I. On Betrothals

We shall treat first of the notion, division, fittingness, and governance of betrothals, then of their form, then of their effects, and finally of the dissolution of betrothals.

Section I. On the Notion, Division, Fittingness, and Governance of Betrothals

659 I. The notion of betrothals. Betrothals¹ are the mutual promise of matrimony between one man and one woman who are capable. It is said:

1. A promise. Therefore a desire, a mere purpose, or a simple negotiation about entering matrimony does not suffice.
2. Mutual. Therefore it is not sufficient that only one party promise, even if the other accepts the promise; but a counter-promise also is required (canon 1017, § 1). As is clear from what has been said, betrothals constitute a contract, and indeed an onerous one; hence for them, as for every contract of this kind, consent is required:
 - a) Internal. If it is not internal, consent or volition is lacking in reality. Therefore a fictitious promise does not suffice, that is, one made externally but without the mind of promising. One who wishes to enter betrothals, but has the mind of not binding himself, seems not to enter betrothals, because he excludes that without which the contract cannot exist (cf. vol. I, n. 834). But one who wishes to enter betrothals acts validly, even if he has the mind of not fulfilling the obligation (cf. *ibid.*). In addition, one who has promised fictitiously is guilty of fraud, and therefore is bound to prevent or compensate the damage; even, if this cannot be done in another way, by now promising truly (St. Alphonsus VI, 832, 833).
 - b) Fully deliberate; for only an act of this kind can produce an obligation and the acquisition of a right. Hence betrothals entered, for example, in drunkenness, by one half-insane, are invalid; likewise betrothals made from a sudden movement of passion can be invalid (St. Alphonsus VI, 831).
 - c) Sufficiently free from error; wherefore it is enough to note:
 - a) Error concerning the person with whom betrothals are entered renders these betrothals invalid. The reason is that in betrothals the person constitutes the object of the contract. But error concerning the object of a contract invalidates the contract (vol. I, n. 836).
 - β) For the same reason, error concerning a quality or circumstances of the person with whom betrothals are entered renders these betrothals invalid if the error redounds into error concerning the person. Otherwise it does not invalidate them, because consent to the object of the contract is not lacking; nevertheless it renders them rescindable if, had the error not existed, the betrothals would not have been entered; practically, if the error concerns a notable defect. These things indeed do not of themselves hold for all onerous contracts, but with regard to betrothals they are admitted in law, as will be explained later (St. Alphonsus, *Homo Apostolicus*, tr. 18, n. 2).
 - d) Sufficiently free from fear. Fear which so disturbs the use of reason that the act is not fully deliberate invalidates betrothals (vol. I, n. 840). These things set aside:
 - a) Fear, whether arising from within, or from a necessary cause, or inflicted justly or unjustly by a free cause, does not invalidate betrothals. The reason is that fear does not prevent the contracting

party from furnishing perfect consent. But every contract is intrinsically constituted by perfect consent (St. Alphonsus VI, 844; cf. vol. I, n. 840).

Objection. Grave fear, inflicted unjustly and for extorting consent, invalidates betrothals at least by canon law, just as it invalidates matrimony (canon 1087, § 1), according to that rule: connected things ought to have the same reckoning.

Response. The assertion seems to have to be denied; for since the application of the assigned rule is in itself rather difficult, the Code certainly, if it had wished the rule to be applied, would have stated that betrothals are invalidated by the said fear in the same way as matrimony.

β) Fear renders betrothals rescindable if it has been inflicted both unjustly and by the other contracting party, and has given cause to the contract. If one of the assigned conditions is lacking, fear does not render betrothals rescindable (vol. I, n. 840).

e) External, namely insofar as it must be made known to the other party. Of itself, however, it is indifferent whether it is manifested by words, in writing, or by a sign, for example by a nod. But, with positive law considered, it is required that the legitimate form, to be explained later, be observed (St. Alphonsus VI, 838).

f) Made known to the other party, as was explained in vol. I, n. 834.

g) Made known by the promisor or in his name (vol. I, *ibid.*).

h) Simultaneous, the one with the other, because otherwise they do not truly agree into one. Of itself, however, it suffices that one consent while the consent previously given by the other persists (vol. I, n. 834).

3. Of matrimony; others say of future matrimony, so that betrothals may be more expressly distinguished from matrimony not yet consummated, which formerly came under the name of betrothals concerning the present, while betrothals properly so called were called betrothals concerning the future.

4. Between one man and one woman. Hence there would not be betrothals if someone promised matrimony to two at the same time.

5. Capable, that is, it is required that the promisors be both actually capable of promising matrimony and at least later capable of contracting it; these things, however, need explanation, which we shall add in the corollaries.

¹ Betrothals are so called from promising, namely from the practice of the Romans, by which one who wished to take a girl as wife addressed her father or guardian with the solemn formula: "Do you promise?" and he responded: "I promise." She who was promised was the bride, that is, the promised one; he to whom she was promised was the bridegroom; he who promised was the sponsor; the whole contract was betrothals; the day on which it was entered was called sponsal.

660 Corollary I. Betrothals entered by those who are held by a diriment or prohibitive impediment are to be judged thus:

1. If they are entered absolutely, they are invalid; for then matrimony is not reached insofar as it is valid and licit. The same must be said if they are referred to a time at which the impediment has not yet ceased.

2. If they are referred to the time at which the impediment has ceased:

a) They are valid if they are entered under the condition of an impediment removed without dispensation. Hence if someone says: "I shall contract with you if you have been converted to the Catholic faith," he is bound to wait for a reasonable time; and if the other is converted to the faith, the betrothals become absolute. Yet it is especially disputed whether these things also hold for the impediment of bond, namely when a married person promises matrimony to someone under the condition of the matrimonial bond being dissolved by death. Many judge that betrothals of this kind are invalid, because just as a subsequent matrimony extinguishes betrothals entered with a third person, so an antecedent matrimony ought to prevent valid betrothals from being entered with a third person. But the antecedent seems to have to be rejected, as we shall say in n. 677.

b) If they are entered under the condition of an impediment removed by dispensation, for example if someone says: "I shall contract with you if the Church dispenses," it is more disputed whether they are valid and consequently, when the dispensation has been obtained, become absolute by that very fact. Now then:

α) It seems that an affirmative answer is to be given if the dispensation can reasonably be expected, and it is a question of a matrimony which neither under a moral respect is dangerous, nor of itself injurious to the sacrament; for example, if someone should enter betrothals with his niece. The reason is that the promise regards matrimony insofar as it is valid and honorable in the full sense. The positive law, which, with certain declarations considered, formerly seems to have stood in the way, no longer seems to have to be urged, since the Code is silent.

β) It seems that a negative answer is to be given if it is a question of a matrimony which remains full of danger and of itself inflicts injury upon the sacrament; for example, if someone should enter betrothals with a heretic. The reason is that, as it seems, an obligation to enter such a matrimony cannot arise.¹

Corollary II. Betrothals entered by children without the knowledge of their parents are of themselves contracted illicitly; nevertheless they are valid, unless the matrimony itself is illicit for them. Likewise betrothals contracted against the will of parents are valid or invalid according as the matrimony itself which is promised must be held licit or illicit (St. Thomas II-II, q. 104, a. 5; *Supplement*, q. 47, a. 6; St. Alphonsus VI, 849, 851).

Corollary III. Betrothals, just like other contracts, can also be entered through a procurator (n. 666); likewise by letters, if only the law of nature is considered, but not if canon law is considered (n. 666).

¹ The Holy Office, December 12, 1888, responded: "Betrothals between one Catholic party and the other schismatic or heretical party are illicit and therefore invalid, unless they are celebrated after previous legitimate dispensation" (*Collectanea*, n. 1696).

661 II. Division of betrothals. Betrothals are distinguished into:

1. Solemn and non-solemn, according as the legitimate form is or is not observed.
2. Absolute and conditional, according as they are neither suspended by a condition concerning the future nor made less firm by a resolutive condition; or are entered under some one of the aforesaid conditions.

3. Confirmed and bare or simple, according as an oath or earnest money or other stipulations, for example penalties against those withdrawing, are or are not added.

662 III. Fittingness of betrothals. Betrothals indeed are not prescribed; nevertheless the contract of betrothals is "decent and fitting before the celebration of matrimony. For in this way the betrothed obtain the opportunity of examining their morals and character. For since it is a question of entering matrimony, which induces a perpetual and indissoluble bond, the greatest circumspection and mature deliberation are needed, lest, if persons unequal in morals are joined to one another in perpetuity, marriages should obtain unhappy outcomes. Moreover, it is necessary that certain preparations precede the celebration of nuptials; and lest the delay thence arising render uncertain the hope of future matrimony, the betrothal pledge is aptly interposed. Furthermore, when betrothals are arranged, there is an easy occasion for the consent of parents, or of those who have authority over the betrothed, to intervene. Although that consent is not necessary at least for validity, nevertheless it is useful in the highest degree, and clandestine betrothals or inconsiderate negotiations are already wont of themselves to offend parents (cf. the cited c. 1.3. CXXX. q. 5). Finally, when betrothals have been publicly celebrated a just time before matrimony, impediments which perhaps stand in the way of matrimony are more easily detected."¹

¹ Wernz-Vidal, *Ius canonicum*, t. V, n. 81.

663 IV. Governance of betrothals. Since betrothals by their nature are ordered to matrimony, their governance belongs to the same persons to whom the governance of matrimony belongs, that is, if it is a question of baptized persons, to the Church (n. 718). Now only the Supreme Pontiff enjoys legislative power in it, so that Bishops cannot, for example, establish impediments of betrothals. Nevertheless judicial power belongs to them, or the power of judging betrothal cases. What belongs to the pastor is explained in n. 670.¹

¹ Cf. n. 670.

Section II. On the Form of Betrothals

664 The legitimate form of betrothals, likewise of a unilateral promise, is set forth in these words: A promise of matrimony, whether unilateral or bilateral or betrothal, is invalid for both forums unless it has been made by a writing signed by the parties and either by the pastor or the local Ordinary, or by at least two witnesses (canon 1017, § 1). If both parties or either party does not know how or cannot write, for validity this is to be noted in the writing itself and another witness is to be added, who signs the writing with the pastor or local Ordinary, or with the two witnesses of whom in § 1 (canon 1017, § 2).

665 I. Explanation of the legitimate form. For the legitimate form of betrothals it is required: 1° that it be contracted by writing; 2° that the day, month, and year of the contract entered be affixed; 3° that the writing be duly signed.

1. That it be contracted by writing, in other words, either one or both parties must promise matrimony to the other in writing. But if the promise is made under a condition, likewise if a time is added for ending the obligation, these seem necessarily to have to be expressed; for they so alter the promise that, if they are omitted, it is not designated according to its substantial elements. Other stipulations of some moment also are usefully expressed. Moreover, it is not

required that the parties themselves draw up the writing; nor does anything prohibit a determined formula from being printed, or made lithographically or in another way, for the common use of contracting parties. The signature, however, is to be made as will soon be explained.

2. The day, month, and year on which the betrothals are entered are to be affixed. The affixing of a false date stands in the way of the value of the contract; since in that case the date is not in reality affixed. Some, however, relying on the analogy of civil law, judge that betrothals are valid if the inscription of the false date arose from an involuntary error, and the true date can be drawn from the context.

It is doubted whether or not the affixing also of the place in which the promise is made is required for validity. For the affirmative opinion there militates first, that custom interprets the signing of the date in such a way that the place also is affixed. Next, where there is question of betrothals signed by the pastor or by the Ordinary, the affixing of the place is very greatly conducive to a document which can firmly prove the validity of the betrothals, since for the aforesaid persons to sign validly it is required that they perform this within the place of their territory. That the Sacred Congregation of the Council, when it responded that the date had to be added, was silent about the affixing of the place is perhaps explained by the fact that it was not asked about it. Since the matter is doubtful, the affixing of the place should not in practice be omitted.¹

3. That the writing be duly signed. On this point observe:

- a) The writing of itself must be signed either by the parties together with the pastor or local Ordinary, or by the parties together with two witnesses. If both parties or either party does not know how or cannot write, for validity this is to be noted in the writing itself and another witness is to be employed, who is joined either as a second witness to the pastor or Ordinary, or as a third witness to the other witnesses. It is not required and it does not suffice that the party who does not know how or cannot write affix a mark in place of name and surname. It suffices that one witness be added, whether both parties or either party does not know how or cannot write, since the law speaks only of another witness to be added. The party who alone can write seems not to be bound to sign. For the obvious sense of the law sufficiently insinuates that the signature of the pastor, or of two witnesses, and of the added witness suffices. Nevertheless, on account of some doubt, it is expedient to follow the safer course.

One does not know how to write who is ignorant of letters; one cannot write who is physically impeded from writing. One who affixes his name while guided by the hand of another seems to sign validly if he is only helped, so that he himself exists as the principal cause. But if someone is like a mere instrument, for example because he has in no way been taught the method of writing or has a hand suffering from perfect paralysis, he affixes his name invalidly. Likewise one who uses a typewriter signs invalidly; for he must be said to print rather than to write. In addition, that manner of signing is destitute of every sign of authenticity. For the same reasons one signs invalidly who employs an instrument which reproduces the name in the likeness of an engraved character.

Who come under the name of pastor and local Ordinary, see n. 734. Now the pastor seems to sign validly even if he has not yet obtained possession of the benefice, since the law, where it speaks of the promise of matrimony, does not speak of a requirement of this kind, and requires only that one be

pastor. For the same reason, the same seems to have to be said of a pastor excommunicated by sentence, or interdicted, or suspended from office, or declared such. But the pastor and local Ordinary cannot grant to another, for example to a vicar or secretary, the faculty of signing the promise of matrimony as an authorizing witness.²

As witnesses there can be employed any who, with the law of nature considered, are capable of giving testimony.³ Hence infidels, heretics, women, and those under puberty are not excepted, although, where Catholics can be had, it is not fitting that heretics or infidels be employed. It is clear that even the pastor and Ordinary can be taken as common witnesses.

b) The pastor or local Ordinary taken as an authorizing witness is bound to sign the writing within his own territory. But this also suffices. Therefore it is not required that the pastor or Ordinary who is employed be proper to either contracting party, for example by reason of domicile; but it is required and suffices, both for validity and for liceity, that he be the pastor or Ordinary of the place in which he signs the contract.⁴

c) The parties are bound to sign the writing in one context with the pastor or Ordinary, or with the two witnesses;⁵ in other words, it is required that each be present to all the others as they sign.

¹ Sacred Congregation of the Council, July 27, 1908, to II. This and similar responses were mere explanations of law previously existing and inserted into the Code; hence we judge that they persist, with canon 6, 2°, and canon 23 considered.

² Sacred Congregation of the Council, March 30, 1908, to VI.

³ Cf. Sacred Congregation of the Sacraments, March 12, 1910, to IV.

⁴ Sacred Congregation of the Council, March 30, 1908, to VII.

⁵ Sacred Congregation of the Council, July 27, 1908, to I.

666 As custom has it in civil contracts, so also it is expedient that the betrothal contract be read aloud before it is signed. Likewise it is useful that the document which contains the contract be preserved with the pastor or Ordinary of the place who signed it, while a copy is nevertheless handed to each party.

Corollary. Since the parties are bound to sign the writing in one context with the pastor or local Ordinary, or with two witnesses, betrothals cannot be contracted between absent persons except through a procurator. That they can be entered through a procurator follows from the fact that otherwise provision would not have been made for contracting betrothals by those who cannot meet with one another. Next, unless the contrary is established, it must be judged that with regard to contracts the faculty persists of doing through another what one can do through oneself. As to the manner of employing a procurator, however, it is expedient to observe what canon 1089 establishes concerning marriages to be contracted through a procurator.¹

¹ As matrimony, so says the cited canon, is validly entered through a procurator, there is required a special mandate to contract with a certain person, signed by the mandator and either by the pastor or Ordinary of the place in which the mandate is made, or by a priest delegated by either, or by at least two witnesses. If the mandator does not know how to write, this is to be noted in the mandate itself and another witness is to be added who also signs the writing; otherwise the mandate is invalid. If, before the procurator has contracted in the name of the mandator, the latter has revoked the mandate or fallen into insanity, the matrimony is invalid, although either the procurator or the other contracting party may have been ignorant of these things. For matrimony to be valid, the procurator must perform his office personally.

667 II. Necessity of the legitimate form. a) A promise of matrimony, whether bilateral or betrothal, or unilateral, made without the statutory form, is void or invalid for both forums (canon 1017, § 1).

Therefore informal promises made after the statutory form, as being wholly void, of themselves induce no obligation either of justice or of fidelity. I said of themselves; for it cannot be denied that, accidentally, an obligation can arise from an informal promise. Thus, for example, one would be bound to restore damage who deceitfully entered betrothals with a person ignorant of the invalidating law, and by acting thus was the cause why the other party suffered damage. Likewise one would be bound by the obligation of restitution who deceitfully had intercourse with a betrothed woman who judged that the private betrothals entered by her were valid. Finally, one who after informal betrothals had been entered no longer wished to enter matrimony would be bound to warn the other party, who would be foreseen as about to make expenses for the future matrimony, etc.

Question. Whether an informal promise of betrothals is also invalid?

Response. We judge that this must be denied, because the law speaks only of a promise of matrimony; the force of this argument is increased by the fact that an invalidating law is to be interpreted strictly (cf. canon 19).

b) Although an informal promise of matrimony is invalid, nevertheless it does not seem illicit. For the end of the legislator is sufficiently obtained by the mere invalidation of the informal promise, without a prohibition being added. Add that a law which not only invalidated but also prohibited informal promises would provide occasion for innumerable and continual transgressions, and therefore would not be conducive to the common good.

668 III. Subjects of the legitimate form. The following are subject to the form of betrothals:

1. Catholics of the Latin rite, not of the Oriental rite (canon 1), as is clear.
2. Baptized non-Catholics. It is indeed true that heretics and schismatics were immune from the Pian law, even insofar as it regarded betrothals; but the Code repeats that immunity only with respect to marriages. It is also true that heretics and schismatics, according to many, are not held by many ecclesiastical laws;¹ but they extend this immunity only to laws which more nearly regard the sanctification of souls rather than public order. Finally, the special reason which holds for exemption from the form of celebration of matrimony, namely the preventing of concubinage, cannot be urged here.

Corollary. Catholics of the Latin rite are subject to the form whether they enter betrothals among themselves, or with a Catholic of the Oriental rite, or with a non-Catholic, baptized or not baptized. Baptized non-Catholics are subject to the form whether they contract betrothals among themselves, or with a Catholic, or with a non-Catholic, baptized or not baptized. The non-baptized are not subject to the form if they enter betrothals among themselves; but they are subject to it if they do so with a baptized person.

¹ We abstract from the question whether or not this opinion is sufficiently founded (cf. vol. I, n. 129).

Forms of Betrothals

I.

Betrothals signed by the contracting parties and the pastor.

James..... son of..... and..... born on the day..... of the month..... of the year..... and living in..... and Anna..... daughter of..... and..... born on the day..... of the month..... of the year..... and living in..... by these letters contract betrothals.

At Rome, on the day..... of the month..... of the year.....

Signature of the bridegroom

Signature of the bride

Signature of the pastor

II.

Betrothals signed by the contracting parties and two witnesses.

James..... son of..... and..... born on the day..... of the month..... of the year..... and living in..... and Anna..... daughter of..... and..... born on the day..... of the month..... of the year..... and living in..... by these letters contract betrothals.

At Rome, on the day..... of the month..... of the year.....

Signature of the bridegroom

Signature of the bride

Signature of the first witness.

Signature of the other witness.

III.

Betrothals signed by the pastor and a witness.

James..... son of..... and..... born on the day..... of the month..... of the year..... and living in..... and Anna..... daughter of..... and..... born on the day..... of the month..... of the year..... and living in..... by these letters contract betrothals. The contracting parties, or one of the contracting parties, N.N., cannot write. Hence N.N., son of....., has been taken as witness.

At Rome, on the day..... of the month..... of the year.....

(Signature of the party who can write.)

Signature of the pastor

Signature of the witness taken.

IV.

Betrothals signed by three witnesses.

James..... son of..... and..... born on the day..... of the month..... of the year..... and living in..... and Anna..... daughter of..... and..... born on the day..... of the month..... of the year..... and living in..... by these letters contract betrothals. The contracting parties, or one of the contracting parties, N.N., cannot write. Hence N.N., son of....., has been taken as third witness.

At Rome, on the day..... of the month..... of the year.....

(Signature of the party who can write.)

Signature of the first witness

Signature of the second witness

Signature of the third witness.

Section III. On the Effects of Betrothals

Chapter I. On Absolute Betrothals

670 The effects of betrothals are distinguished into natural and canonical. The natural effects are: 1° the obligation of entering matrimony; 2° incapacity validly to contract betrothals with a third person; 3° incapacity licitly to contract matrimony with a third person; 4° the obligation of carrying on betrothal conversation with the bride or bridegroom; 5° the obligation of avoiding betrothal conversation, and still more lustful acts, with another. There is added 6° a canonical effect situated in this, that an action is given, not indeed for seeking the celebration of matrimony, but for the reparation of damages, if any are owed (canon 1017, § 3).

I. The obligation of entering matrimony; and indeed an obligation of commutative justice, and a grave one. The obligation must be fulfilled: if the time for fulfilling has been prefixed, at this time; if it has not been prefixed, at the time when the other party reasonably asks for matrimony. If the other party through shame or fear does not ask, it is not licit to wait beyond a reasonable time (St. Alphonsus VI, 845). Thus the matter stands of itself; for by reason of a just cause it is licit to defer nuptials. Moreover, commonly it is to be advised that the betrothed enter matrimony as soon as it can conveniently be done, lest namely they remain longer in danger of sin.

What if one party refuses to enter matrimony, but the other urges the betrothals?

Response 1. The confessor, if the refusing party truly brings forward a just cause, can pronounce that he or she can withdraw from the betrothals. If the party brings forward a more or less doubtful cause, or, to take the matter practically, if he or she brings forward changed affection as the cause, there will be added a founded fear lest the matrimony have a bad outcome; this fear constitutes a cause for withdrawing from betrothals (n. 680). If a cause for withdrawing is in reality lacking, the confessor should proceed by advising rather than by commanding; at times also a dispensation can be obtained from the Holy See (n. 681).

Response 2. The pastor should furthermore keep before his eyes these words of canon 1017, § 3: "From a promise, although it is valid and no just cause excuses from fulfilling it, no action is given for seeking the celebration of matrimony; nevertheless one is given for the reparation of damages, if any

are owed." This action, however, is of mixed forum and does not suspend the celebration of matrimony with another.¹

II. Incapacity validly to contract betrothals with another person. Therefore betrothals of this kind are not only illicit, but also destitute of every value, unless they are contracted under the condition: "If the prior betrothals are dissolved." The reason is that no one can confer on someone a right in a thing after he has already granted a right in it to another. But if intercourse has followed upon betrothals entered with another, the prior bride does not lose her right. Nevertheless she should be advised to yield her right spontaneously, unless she herself would suffer notable damage from it, or regard the very matrimony not contracted as a grave damage (St. Alphonsus VI, 848).

III. Incapacity licitly to contract matrimony with another; which is clear.

IV. The obligation of carrying on betrothal conversation with the bride or bridegroom, namely according to the circumstances and honest morals of the region; which likewise is clear.

V. The obligation of avoiding betrothal conversation, and still more acts of lust, for example fornication, with another. Here, however, it is disputed whether fornication with a third person of itself takes on the nature of injustice, and of grave injustice. Now with St. Alphonsus (VI, 847) the nature of grave injustice is denied with sufficient probability, because the arguments of the adversaries prove the matter in no way, as will be clear from the objections to be discussed.

Objection 1. Fornication renders the promised thing, that is, the body in order to matrimony, notably worse.

Response. First, what the adversaries suppose is deservedly called into doubt, namely that by betrothals there is induced an obligation of justice of handing over the body such as it was at the time of the promise. If it is a question of another promise, this will sometimes be clear from the circumstances; but in the case at hand the matter seems doubtful. Next, it is by no means clear that the body is rendered notably worse in order to matrimony by fornication.

Objection 2. Fornication is at least implicitly excluded by the betrothal contract, so that fornication is opposed to the contract and therefore to justice.

Response. It is not clear that fornication is excluded by the betrothal contract itself. In addition, if the assertion is admitted, the same seems to have to be said about immodest touches committed with another person, so that these too would be opposed to justice.

Note 1. As was said above, from betrothals, even if they are valid and here and now bind, no action is given for seeking the celebration of matrimony, but one is indeed given for the reparation of damages, if any are owed (canon 1017, § 3; p. 508).

Note 2. Effect of a unilateral promise. A unilateral promise of matrimony is presumed to have induced a grave obligation of justice. For an obligation of this kind is judged to have been undertaken if, as we suppose to have taken place, witnesses or a public writing are added to the promise. As to an action arising from a unilateral promise, however, the things said under the note concerning an action arising from betrothals hold, as is clear from the documents cited there.

¹ Pontifical Commission, June 2-3, 1918 (A.A.S. 1918, p. 345).

Chapter II. On Conditional Betrothals

671 I. Betrothals under a condition concerning the past or the present are valid or not valid according as the condition has been fulfilled or has not been fulfilled. Those who doubt about the fulfillment are bound to inquire into the truth, and meanwhile to abstain from betrothals and matrimony with a third person.

II. Betrothals under a condition concerning the future are to be judged thus:

1. If the condition is resolutive,¹ the betrothals are valid from the beginning, but, when the condition has been fulfilled, they are dissolved by that very fact.

2. If the condition is suspensive and honorable,² the following must be said:

a) While the condition has neither been fulfilled nor definitively failed, the betrothals remain in suspense. Nevertheless the parties are bound to wait and not maliciously to impede, indeed honestly to procure, the event of the condition. Betrothals entered with a third person would be invalid, unless they were made under the condition: "if the prior conditional betrothals definitively fail." The reason is that betrothals of this kind would regard an illicit thing.

b) When the condition has been fulfilled, the betrothals by that very fact become absolute, without prejudice, however, to what was said concerning the condition: "If ecclesiastical authority dispenses" (n. 660). Except the case in which either party legitimately revoked consent before the condition was fulfilled. But what if consent was illegitimately revoked before the condition was fulfilled? In the case, the obligation of entering matrimony certainly remains, not however by force of the betrothals, which cannot be perfected when the will has ceased, but by force of the obligation of repairing the injury (vol. I, n. 848).

c) When the condition has definitively failed, the betrothals fall. Yet one who maliciously impeded the fulfillment of the condition is bound to repair the right of the injured party; and the injured party has a right to true consent.

3. If the condition is suspensive and base,³ these things hold:

a) While the condition has not yet been fulfilled, the betrothals more probably remain in suspense. Nevertheless each party can and must revoke consent; and when consent has been revoked by either party, the contract altogether vanishes.

b) When the condition has been fulfilled, and consent has not been revoked, the betrothals more probably become absolute (vol. I, n. 849, compared with n. 833).

¹ "I promise you matrimony, but if that matter does not succeed, I shall be free."

² "I promise you matrimony if the parents consent."

³ "I promise you matrimony if you admit intercourse."

Scholion. On Accidental Elements of Betrothals

672 I. A penalty is added to betrothals if the parties agree that something is to be paid by the one withdrawing. A stipulation of a penalty to be paid by one withdrawing justly is illicit and invalid, as being injurious to the freedom of matrimony. But a penalty established against one withdrawing unjustly is valid and licit (St. Alphonsus VI, 853, q. 1). Appeal can no longer be made to positive law,

from which many, while others contradicted, were drawing the contrary, since the Code is silent about it.

II. A mode is a burden added by one party to a perfected betrothal contract and accepted by the other.¹ A mode differs from a suspensive condition. For the latter brings it about that the contract is not perfected before the condition has been fulfilled, while an added mode supposes a perfected contract. Nevertheless the added mode can be intended in such a way that, if the other party does not fulfill it, neither is the prior party bound to sustain the betrothals.

III. Earnest money is a thing given to the other party in pledge of future matrimony. When matrimony follows, the earnest money can be reclaimed, unless the mind of the betrothed was contrary. If matrimony does not follow, it must be restored by the one withdrawing unjustly, but can be kept by the other party. If one withdraws justly from the betrothals, custom has it that each party restore the earnest money received (St. Alphonsus VI, 852).

IV. Iocalia are gifts given to the other party, not as a pledge of future matrimony, but as a sign of love and under the hope of nuptials. When matrimony follows, they can be retained. If matrimony does not follow, they must be restored by the one by whose fault the matrimony is not contracted, except if they are small and are not reclaimed by the other party; but they can be retained by the other party. If through the fault of no one matrimony is omitted, custom has it that each party restore the iocalia received, perhaps excepting smaller ones.

V. An oath added to valid betrothals, or to a valid unilateral promise, adds to the obligation of justice an obligation of religion. When the betrothals fall, the obligation of the oath falls (canon 1318, § 1).

An oath added to invalid betrothals, or to an invalid unilateral promise, for example from defect of legitimate form, is invalid, because the accessory follows the principal (canon 1318, § 1).

¹ "I promise you matrimony; you, however, must do this or that."

Section IV. On the Dissolution of Betrothals

Preliminary note. Of the causes for dissolving betrothals, some by their own force dissolve or extinguish them; others furnish to both parties, or to one party, the right of dissolving or rescinding them. In addition, the causes have force even if the betrothals have been confirmed by oath. They are:

673 I. Mutual consent, sufficiently free from error, fraud, and fear (St. Alphonsus VI, 855, 856).

674 II. A notable defect pre-existing the betrothals and afterwards detected; likewise a notable change supervening upon the betrothals, which render matrimony more burdensome, and, if they had been known or foreseen, would have deterred from the betrothals. The reason is drawn from this, that betrothals, as ordered to matrimony, which carries with it a perpetual society of life, are judged to have been contracted under the condition: "provided the matter is as it appears, and is not changed for the worse"; or at least with the right retained of dissolving them if the aforesaid condition is not fulfilled (St. Thomas, *Supplement*, q. 43, a. 3, ad 3; St. Alphonsus VI, 86). Indeed, even a prudent and persistent suspicion of a notable defect or change suffices, because it is a grave inconvenience to contract with such a suspicion.

In the cases set forth, the dissolution of betrothals can be made by one party or by both, according as one or both would suffer inconvenience if, notwithstanding the change, matrimony were contracted.

Commonly, however, the inconvenience will not follow for the party who has suffered the change, but for the other alone.

The defect and change can concern goods: 1° of the body, as if there is detected or supervenes a grave and incurable disease, or stinking breath, notable deformity, loss of sight or hearing, etc.; 2° of the soul, as if the bridegroom is detected to be, or becomes, irreligious, drunken, a gambler, prodigal, harsh in morals, etc.; 3° of fortune, as if the bridegroom or bride is detected to be, or becomes, poor, or is frustrated of a great inheritance or expected lucrative office, etc. And these things indeed are admitted by all, because in the cases set forth the detected defect and the supervening change render matrimony more burdensome. But:

It is disputed whether a notable supervening change furnishes the right of withdrawing when, if it had been foreseen, it indeed would have impeded the betrothals, but nevertheless does not render matrimony more burdensome; for example, if an unexpected and rich inheritance comes to someone. Now a sufficiently probable opinion affirms, because each person is presumed to have contracted betrothals under the condition: "provided no notable change supervenes." Add that, according to common estimation, the neglect of great gain is equated with grave damage; and this being posited, from the acceptance of men the change of which we speak is morally the same as that which renders matrimony more difficult. Finally, in the case in which a rich inheritance comes to someone, there enters a disparity of condition, which, as will be said under III, involves a cause for dissolving betrothals. St. Alphonsus would not indeed praise, but neither would he condemn, the one who, when marriage with an exceedingly better bride has been offered, should choose this bride (VI, 876).

Note. A party laboring under an occult defect is bound to manifest this to the other party before the betrothals or, once the betrothals have been contracted, before the nuptials, as follows: 1° "If the defect would render the nuptials pernicious, as if it were infamy, leprosy, the French disease, or another contagious disease, he is bound to manifest it or to withdraw from the nuptials, unless the other party labors under the same defect. The reason is that, just as one sins against justice who sells harmful merchandise to another who believes it good, so a fortiori one does who wishes to contract matrimony with a pernicious defect. 2° But if the defect would not render the nuptials harmful, but only less desirable, namely if the bride were poor though she is thought rich, ignoble though noble, deformed though beautiful, corrupted though a virgin, then, although she herself cannot deceive the man by pretending that she is immune from such a defect, nevertheless she is not bound to manifest the defect; but even when questioned she can dissemble by answering equivocally" (St. Alphonsus VI, 864-865). Thus custom has it. If, however, there is grave danger that the defect may afterwards be detected and provoke grave discords, it is to be advised that it be manifested (St. Alphonsus, *ibid.*).

Disparity of condition and the dissent of parents are partly referred to the cause set forth.

675 III. Disparity of condition, whether arising from disparity of status, or from nobility, or from disparity of fortune:

a) If it is so great that the matrimony is illicit because of dishonor to the family, the betrothals are null from the beginning.

b) If it is not so great, but nevertheless notable, the betrothals are valid and of themselves irrevocable, if the parties contracted them with knowledge of the disparity. If it is afterwards detected, or supervenes after the betrothals have been contracted, these can commonly be rescinded.

676 IV. The dissent of parents operates thus:

1. Due dissent, namely because the matrimony is illicit, argues that the betrothals were null from the beginning (St. Alphonsus III, 644; VI, 851, 877).

Here it is customary to ask whether a prodigal promise of matrimony as such, that is, one made to a bridegroom or bride of much inferior condition or fortune, but without dishonor to the family, is illicit and invalid, as being about an illicit thing. To this question we respond with St. Alphonsus (VI, 851): If no reason honors a promise of this kind, it regards a venially evil thing, and therefore is null. "Nevertheless, since the fault of prodigality is not more than venial, any middling just cause can remove the vice of prodigality. Hence the bridegroom who marries an unequal woman will be sufficiently excused if he knows in her some special prerogative, namely of providence, devotion, great honesty, or even of some natural endowment, on account of which the bridegroom judges that he will lead a quiet life with her. Hence it is inferred that scarcely can a case occur in which the bridegroom would not be bound to marry her, because very rarely will there be lacking some one of these causes which will excuse the fault of prodigality."

2. Reasonable dissent, although not due, will often be a reason why it is licit to rescind betrothals. Almost the same must be said about less reasonable and continuing dissent, so that hope of removing it is lacking; in which case children often will be able, especially if the dissent was not foreseen, to withdraw from the betrothals, namely on account of the inconveniences joined to their execution and the evils to be feared. Nevertheless, commonly they are not bound to this, the more so because, once matrimony has been contracted, the inconveniences not so rarely vanish.

677 V. Violation of fidelity furnishes to the innocent party the right of withdrawing, while the guilty party remains bound until the innocent party has used his or her right. To this are referred:

1. Courtship with a third person, or frequenting with a view to matrimony. A fortiori:
2. Betrothals attempted with a third person, or even a gratuitous promise of matrimony made to a third person.
3. Matrimony entered with a third person. Here, however, it is disputed whether by matrimony of this kind the betrothal obligation is extinguished on both sides, or whether for the unfaithful betrothed the obligation is only suspended, namely during the matrimony. Now with St. Alphonsus (VI, 875) and others, against many, it seems that one must say that for the unfaithful party the obligation is only suspended. The reason is that an obligation contracted, if an impediment is placed illegitimately, is not extinguished except by an impediment which by its nature is simply indissoluble. But matrimony is not by its nature simply indissoluble. Indeed, by its proper nature it cannot be dissolved by the authority of the spouses, but it can be dissolved in another way, for example by the death of a spouse. This is confirmed from the fact that matrimony does not extinguish, but only suspends, the obligation of a vow of religion, so that the one vowing, when the spouse has died, is bound to fulfill the vow (St. Alphonsus, *ibid.*).

Objection. In the case of a vow, the supervening bond is of a different nature, while the bond of matrimony is of the same nature as the bond of betrothals.

Response. This seems to make no difference; in other words, only this must be considered, whether or not the subsequent bond is by its nature simply indissoluble; because the nature of an obligation

as such carries with it that it must always be fulfilled as long as it can be fulfilled. Hence if the subsequent bond is temporal, the obligation is only suspended.

4. Fornication; concerning which several things must be noted.

a) Antecedent fornication of the bride, afterwards detected, gives to the bridegroom the right of withdrawing; and this holds even if the bride was oppressed by force, because according to common estimation she is of less worth than she was thought to be. Antecedent fornication of the bridegroom, detected after the betrothals, confers on the bride the right of withdrawing: 1° if the bridegroom is detected to have acted thus frequently; 2° if he has received offspring from another; 3° if it is hard for the particular bride to marry a man who has fornicated even once (St. Alphonsus VI, 861). I said "for the particular bride"; namely, it must be considered in what manner the bride is to be judged to have contracted the betrothals. Now a bride to whom it matters little whether or not the bridegroom had previously fornicated is not judged to have entered betrothals under the condition: "provided the bridegroom is not detected to have committed fornication."

b) Subsequent fornication of either party gives to the other party the right of withdrawing. This holds even if the bride was oppressed by force, since according to common estimation she has been made of less worth, so that a notable change has supervened which renders matrimony more burdensome. If both parties have fornicated, the bridegroom, as is now commonly admitted, can withdraw. But it is disputed whether of itself the same is licit for the bride. Most of the older authors deny, relying on this reason: the fornication of the bride is judged both far more shameful and consequently also a graver delict than the fornication of the bridegroom, so that an uncompensated excess favors only the bridegroom. There are, however, those who judge that in many regions, according to common estimation, the bridegroom is rendered almost as contemptible by fornication as the bride, perhaps the lowest common populace excepted; and if this is admitted, the subsequent fornication of both also furnishes to the bride the right of withdrawing.

Corollary. The things said about fornication hold almost also for immodest touches with a third person, especially if they are more frequent or are done with several persons. Indeed, familiarity with a third person can be such that it furnishes to the other party the right of withdrawing, the more so because in this whole matter attention must also be given to a founded fear that fidelity may afterwards be violated. Finally, the aforesaid things are also to be applied to other graver crimes perpetrated by the bridegroom or bride, for example homicide, bestiality, heresy (St. Thomas, *Supplement*, q. 43, a. 3, ad 6; St. Alphonsus VI, 860).

5. The departure of either party into a distant region, from which return cannot be hoped for soon, if it happens while the other party is unaware or unwilling, gives to this party the right of marrying another. The reason is that the long expectation of some good involves a notable diminution of happiness (St. Alphonsus VI, 860).

6. Delay of matrimony produces these effects:

a) If the term is prefixed solely for urging the obligation, the party prepared can withdraw: 1° if the other party delays matrimony without a just cause, because by acting thus he or she violates fidelity; 2° if he or she delays justly, but with grave inconvenience to the prepared party, which can be prevented by withdrawing.

b) If the term is prefixed for ending the obligation: 1° if both parties have been at fault, each party is free, both because of the stipulation added to the contract and because each party seems to have yielded his or her right; 2° if neither party has been at fault, each seems free, namely with the stipulation added to the contract considered; 3° if one party has been at fault, certainly the other party is freed; but it is disputed whether the prior party also is free if the other urges matrimony. Now commonly it seems to have to be denied, because no one is judged to have bound himself in such a way that the obligation ceases even if he himself is the cause why it was not fulfilled (St. Alphonsus VI, 867, 868).

The term is commonly prefixed for urging the obligation; yet sometimes the contrary can be drawn from the tenor or from the circumstances.

678 VI. Election of a more perfect state; concerning which both the liceity of choosing a more perfect state and the effect of the election made must be explained.

1. Liceity of choosing a more perfect state. Notwithstanding betrothals, it is licit to choose a more perfect state, as follows:

a) It is licit to choose the religious state. The reason is drawn from the fact that in betrothals there is a tacit condition: "Unless I shall have chosen the religious state"¹ (St. Alphonsus VI, 870, dub. 1). Likewise it is licit to emit a vow of choosing the religious state; for it is licit to vow what it is licit to perform.

b) It is disputed whether it is licit: 1° to choose the clerical state; 2° to emit a private vow of perpetual chastity. It is affirmed with sufficient probability, because there is probably in betrothals the tacit condition: "Unless I shall have chosen a more perfect state" (St. Alphonsus VI, 873). It is illicit to choose mere celibacy without a vow of perpetual chastity; for one who has promised matrimony is not judged to have retained the right of not marrying.

Furthermore, the election, of itself licit, of a more perfect state is illicit: 1° if someone obtained intercourse under the promise of matrimony; 2° if someone is bound to repair damage which can be repaired by matrimony alone; 3° if someone does not proceed sincerely, namely from desire of a more perfect state, but fraudulently, for example so that he or she may be freed from the betrothals and, after obtaining a dispensation, may marry another (St. Alphonsus VI, 873; III, 649).

2. Effects of the election made. a) The election of any more perfect state, even of mere celibacy, frees the other party; both because the one choosing the more perfect state renounces the betrothals, and because, when one party withdraws voluntarily, the other party by that very fact recovers liberty (St. Alphonsus VI, 873).

b) Religious profession itself and the reception itself of major Order extinguish the betrothals, or free both parties. The reason is that they constitute a state which cannot be composed with the execution of the betrothals and is of itself perpetual. It is disputed whether the same effects are produced, or whether for the receding party they only suspend the obligation, by: 1° the emission of a vow of chastity to be observed perpetually in the world; 2° mere entrance into Religion; 3° mere entrance into a seminary; 4° reception of minor Order; 5° vows alone of entering Religion, or of embracing major Order, or of emitting a private vow of perpetual chastity. Nevertheless it seems one must say that at least entrance into Religion or a seminary, likewise the reception of minor Order and vows

alone of entering Religion, of receiving Sacred Orders, or of emitting a vow of chastity, only suspend the betrothals for the one entering or vowing, because through those things a state of itself perpetual is not yet undertaken (St. Alphonsus VI, 870-873).

¹ Cf. chapters 2 and 7, *De conversione coniugatorum*.

679 VII. A supervening diriment impediment. 1. If an indispensable and perpetual impediment supervenes, that is, one in which a dispensation cannot be given or hoped for, for example impotence, the betrothals fall for both parties. Nevertheless the party who, conscious that the impediment would arise, caused it, must compensate the damage that will follow for the other party.

2. If an impediment supervenes which indeed is indispensable but temporal, namely the impediment of bond, the betrothals are dissolved for the party to whom fidelity has been violated; for the other party they are more probably only suspended, as was said in n. 677. Meanwhile this party is bound to reparation of the damage inflicted on the other party.

3. If a dispensable impediment supervenes, the party who did not induce the impediment is freed. The party who gave cause to the impediment, if indeed he or she acted conscious that the impediment would arise, must procure a dispensation, even with grave inconvenience; but if he or she was ignorant of the impediment, after the manner of an inculpable debtor from contract, more probably he or she is bound to ask for a dispensation if it can conveniently be obtained; indeed even with grave inconvenience, if the damage of defloration must be repaired or infamy prevented (St. Alphonsus VI, 857, 858).

Concerning a supervening prohibitive impediment, for example a vow, etc., enough has been said in n. 678.

680 VIII. Founded fear that the matrimony will be unhappy. For no one is judged to have bound himself to a burden of this kind.¹

¹ Austrian Instruction, February 2, 1856.

681 IX. Dispensation can be granted by the Supreme Pontiff, as is clear both from the fact that he can dissolve the firmer bond of ratified matrimony (canon 1119), and from the practice of the Holy See. Inferior Prelates lack this power; nevertheless, when the cause has been examined and is manifest, they can declare or judge that betrothals are invalid, dissolved, or rescindable. For dispensation a just cause is required; and in general this can be said to be present if from the dispensation greater goods are foreseen than from the execution of the betrothals.

Note. One who without a just cause withdraws, or unjustly has introduced a cause for withdrawing, is bound to compensate damage arising from his or her unjust action; but not the gain to which the other party would have acquired a right only after the nuptials had been contracted.

Part II. The Examination, Especially concerning Free Status

682 "Before matrimony is celebrated, it must be certain that nothing stands in the way of its valid and licit celebration" (canon 1019, § 1). Now "in danger of death, if other proofs cannot be had, unless contrary indications are present, the sworn affirmation of the contracting parties that they have been baptized and are detained by no impediment suffices" (canon 1019, § 2). Outside danger, however, there must be certainty about these things according to the ordinary norm of law, and indeed both of common law and of particular law constituted by statutes or legitimate custom (cf. canon 1020, § 3).

With common law considered, an examination is prescribed, which is customarily called an examination concerning free status, because it especially regards that status.

I. The necessity of the examination is clear from canon 1020, § 1: "The pastor, to whom the right belongs of assisting at matrimony, is diligently to investigate beforehand, at an opportune time, whether anything stands in the way of contracting matrimony."

II. The examiner is the pastor to whom the right belongs of assisting at matrimony (canon 1020, § 1); but since generally the pastor of the bride assists at the matrimony, he in practice acts as examiner.

III. Matter of the examination. The pastor is to investigate:

1. Into the dwelling of the betrothed, if any doubt remains, namely so that he may judge whether in reality it belongs to him to assist at the matrimony, with canon 1097 considered (n. 736); in which parishes the publications are to be made (n. 686); whether either party is a vagrant, in which case license of assisting must be sought from the Ordinary (n. 695).
2. Into impediments which perhaps stand in the way of matrimony. "Then," says canon 1020, § 2, "he is also to question the bridegroom and the bride separately and cautiously, whether they are detained by any impediment."¹ This inquiry seems also to have to be performed if the pastor is morally certain about immunity from impediments. The inquiry especially regards public impediments; the investigation of occult impediments, which cohere with sin, seems able to be left to the confessor.
3. Into consent, namely, "whether they give it freely, especially the woman" (the cited canon).
4. Into baptism; for "unless baptism has been conferred in his own territory, the pastor is to require testimony of baptism from each party, or only from the Catholic party if it is a question of matrimony to be contracted with dispensation from the impediment of disparity of cult" (canon 1021, § 1).

An extract from the baptismal register can serve very greatly for detecting impediments, if there are any, for example of bond, consanguinity, etc.; that this end may be obtained more securely, it is especially to be advised that the testimony of baptism be of a more recent date.

5. Into Confirmation; for betrothed "Catholics who have not yet received the sacrament of Confirmation are to receive it before they are admitted to matrimony, if they can do this without grave inconvenience" (canon 1021, § 2).²

6. Into the requisites from civil law; namely, let him see whether the betrothed have fulfilled or can fulfill the requisites from law.
7. Into the consent of those whose consent is required, even with civil law alone considered. Moreover, "the pastor is gravely to exhort minor children of families not to enter nuptials without the knowledge of their parents or when their parents are reasonably unwilling; but if they refuse, he is not to assist at their matrimony unless he has first consulted the local Ordinary" (canon 1034). Civil law is especially to be attended to with regard to minors and soldiers.
8. Into Christian doctrine, "whether they have been sufficiently instructed in Christian doctrine, unless on account of the quality of the persons this last question appears useless" (canon 1020, § 2).³

Note. "It belongs to the local Ordinary to give special norms for an investigation of this kind by the pastor" (canon 1020, § 3).

¹ Roman Ritual, title VII, chapter 1, n. 1.

² Roman Ritual, title VII, chapter 1, n. 14.

³ Roman Ritual, title VII, chapter 1, n. 1; Constitution of Benedict XIV, *Nimiam licentiam*, May 18, 1743, n. 10; Instruction of the Sacred Congregation for the Discipline of the Sacraments, July 7, 1921 (A.A.S., p. 348).

Part III. Publications

683 Publications are understood as public announcements by which the faithful are informed of nuptials to be contracted by certain persons, made for this end, that one who knows an impediment of matrimony may disclose it to the pastor. Publications are also called announcements, proclamations, banns.¹ The following are to be considered:

¹ *Bannum* is a German word which signifies: 1° a place of jurisdiction, for example the bann of Rome; 2° the exercise of jurisdiction by public edict, for example by proclamation of matrimony.

684 I. Existence of the law. "It is to be publicly announced by the pastor between whom matrimony is to be contracted" (canon 1022).¹ Nevertheless "publications are not to be made for marriages which are contracted with dispensation from the impediment of disparity of cult or mixed religion, unless the local Ordinary, according to his prudence, scandal being removed, has judged it opportune to permit them, provided that apostolic dispensation has preceded and mention of the religion of the non-Catholic party is omitted" (canon 1026).

¹ Roman Ritual, title VII, chapter 1, n. 6.

685 II. The object of the law is set forth in canons 1023-1025 inclusive, especially canon 1024: "Publications are to be made on three continuous Sundays and other feasts of precept in church during the solemnities of Masses, or during other divine offices to which the people frequently come." The following must be explained:

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1. Parish of the publications. The publications must be made in the parish of the betrothed, as is deduced from the fact that they are to be made by the proper pastor (canon 1023, § 1). Now the parish of the betrothed is that in which they have domicile or quasi-domicile (canon 94, § 1), or, if it is a question of vagrants or of those who have only diocesan domicile or quasi-domicile, actual residence (canon 94, §§ 2 and 3). If a party has stayed in another place¹ for six months after having attained puberty,² the pastor is to set forth the matter to the Ordinary, who according to his prudence is either to require publications to be made there, or to prescribe that other proofs or conjectures concerning freedom of status be gathered (canon 1023, § 2).³ If there is some suspicion of a contracted impediment, the pastor is to consult the Ordinary even for a shorter stay; and the Ordinary is not to permit the matrimony unless first the suspicion is removed according to the norm of § 2 (canon 1023, § 3). Finally, particular statutes are to be observed which regard publications and are not opposed to common law; these commonly especially regard marriages of soldiers and vagrants.

a) If the betrothed belong to one and the same parish, the publications are to be made in that parish alone.

b) If the betrothed belong to different parishes, the publications must be made in both.⁴

c) If either party or both belong to several parishes, the publications must be made in each parish.

d) The marriages of minor children are proclaimed both in the quasi-domicile which they perhaps have acquired and in the domicile of those under whose power they are subject; for they necessarily retain this (canon 93, § 1).

e) The marriages of adult children are also to be published in the domicile of the parents, unless they have renounced this. But concerning this renunciation it is often difficult to be certain, so that doubt remains whether or not they are to be announced in the domicile of the parents. In practice, one who follows the current practice is safe.

f) The marriages of vagrants, besides in the parish in which they have actual residence, in some places by force of particular law must also be announced in the parish of origin, or at least in that in which they have stayed longer.⁵

g) The marriages of soldiers, besides in their proper parish, in some places by force of particular law must also be proclaimed in the parish in which they actually stay.

¹ It is not said "elsewhere in a parish," so that the precept does not have force if it is a question of another parish of the same place.

² A minor, if male, is judged pubescent from the completed fourteenth year; if female, from the completed twelfth year (canon 88, § 2).

³ The Pontifical Commission, June 2-3, 1918, to the doubt: If a party, after attaining puberty, has stayed for more than six months in very distant and remote regions, from which, in order that regular attestation of freedom of status may be had, a longer time is required, while nevertheless the celebration of matrimony is urgent, does the oath of the party with the testimony of two, or if two cannot be had, at least of one, who stayed with him or her in those regions, suffice in the case for making freedom of status certain? responded that the matter is remitted to the prudent judgment of the Ordinary, who can prescribe other proofs, not excluding a supplementary oath, according to the norm of canon 1023, § 2 (A.A.S. 1918, p. 345); cf. Instruction of the Sacred Congregation for the Discipline of the Sacraments, June 4, 1921, under 4° (A.A.S. 1921, p. 348).

⁴ Roman Ritual, title VII, chapter 1, n. 7.

⁵ Thus, for example, in the Netherlands (Provincial Council of Utrecht, p. 123).

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2. The person publishing. Publications of matrimony must be made by the proper pastor (canon 1023, § 1). He, however, can also satisfy the law through another, for example through a vicar, through any other priest, through a deacon, etc. Nevertheless it is less fitting to use a layman or even a simple cleric.

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3. Number of publications. Publications must be made three times, as is clear from what is to be said under 4.

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4. Time of the publications. They must be made:

a) On Sundays and other feasts of precept, whether general or particular, and this even if perhaps only the obligation of hearing Mass persists. But it is doubtful whether publications can be made on general feasts in those places where the said feasts do not have force. On suppressed feasts publications cannot of themselves be made; but just as the local Ordinary can dispense from publications for a legitimate cause (canon 1028), so also for a just cause in particular cases he can permit them to be made on abrogated feasts, provided solemn offices must be held as before, and the attendance of the people at church is frequent.¹

b) On continuous Sundays and other feasts of precept, that is, succeeding one another in such a way that no other Sunday or feast is interposed. As to the practice of making publications only on Sundays, while omitting feasts occurring within the week, if it is immemorial, it can be tolerated by the Ordinary if it cannot prudently be removed (canon 5). But if three feast days should immediately succeed one another, the practice seems licit that on those days at most two publications be made. For since otherwise the time for revealing impediments is so brief, the letter of the law is deservedly judged not to have to be urged. If, however, all the announcements are made on three continuous and suitable days, the obligation is satisfied (cf. St. Alphonsus VI, 992).

Note. Publications are not prohibited during the closed time.

c) During the solemnities of Masses, that is, during the parochial or principal Mass, as authors commonly taught, or during other divine offices to which the people frequently come, for example in a private Mass, in Vespers or Lauds, as they are called; but not, as it seems, in offices at which a determined class of the faithful, for example members of some Congregation, rather than "the people," is present. Moreover, it suffices that the publications be made in one of the suitable offices.

¹ Cf. Sacred Congregation of the Council, June 17, 1780; April 19, 1823.

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5. Place of the publications. They must be made in church (canon 1024); under this name here comes primarily the parish church, as follows from the fact that they must be performed by the pastor (canon 1023, § 1). Yet it seems that they can also be made in a filial church which has a territory separated from the territory of the mother church, namely for those who belong to the territory of that church.¹ Finally, accidentally they can be made in a church or chapel which for a time holds the place of the parish church, or in which extraordinary divine offices for the parishioners are celebrated.²

¹ Sacred Congregation of the Council, in the Cologne case, in *Revue Theologique francaise* 1901, p. 117.

² Sacred Congregation of the Council, July 1, 1724; Roman Ritual, title VII, chapter 1, n. 8.

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6. Manner of making the publications. The formula is set forth by the Roman Ritual, and it must be observed at least as to substance. Finally, it is clear that the announcements are to be made in the vernacular language, and with a living and clear voice.

Note. The local Ordinary can, for his territory, substitute for publications the public affixing, at the doors of the parish church or another church, of the names of the contracting parties for a space of at least eight days, yet in such a way that, in this space, two feast days of precept are included (canon 1025).

692 III. Gravity of the law. The precept obliges even if the pastor is certain about the free status of those about to marry. For it is founded on the presumption of common danger, so that it does not cease even if in a particular case the absence of danger is established. The obligation, however, is grave from its genus. Therefore it is a grave sin: 1° to omit all announcements; 2° to omit two, or to neglect the greater part of the precept. It is light to omit one (St. Alphonsus VI, 990), likewise, for example, to make two announcements outside the church, etc., provided nevertheless that there is a sufficiently large concourse of people.

693 IV. Dispensation. 1. The person competent to dispense, besides the Supreme Pontiff, is the proper local Ordinary, who can dispense from publications even to be made in another diocese (canon 1028, § 1). Furthermore, in many dioceses, by delegation of the Bishop, the faculty of dispensing at least from one or even two publications has been granted to Deans. If there are several proper Ordinaries, for example if those about to marry belong to different dioceses, the one in whose diocese the matrimony is celebrated has the right of dispensing; but if the matrimony is entered outside their proper dioceses, any proper Ordinary can dispense (canon 1028, § 2).

2. A cause for dispensing is certainly required, and indeed, if the one dispensing is inferior to the Holy See, it is required for validity (canon 84, § 1). Since the law is grave, a grave and urgent cause also is required; but it is more easily licit to dispense from one or two publications than from all. For dispensation from all, a most grave cause is required.¹

The causes are customarily distinguished into necessary, that is, such as those in which dispensation ought to be granted, and gracious, that is, such as those in which it can be granted but ought not be granted.

a) Necessary causes are enumerated by St. Alphonsus (VI, 1005): 1° "If there is probable fear lest the matrimony be maliciously impeded; ... 2° if the matrimony is necessary for avoiding damage or infamy of the contracting parties or offspring; namely, if defloration has preceded, and there is fear lest the man change his will. Likewise, if one of the betrothed were at the point of death and there were offspring to be legitimated; ... 3° if danger of soul, body, or fortune is imminent; ... 4° if the bridegroom is immediately about to set out far away, and the necessity of contracting is urgent on account of one of the causes described above; 5° if the parents or guardian intend that the virgin marry an unworthy man"; 6° if the closed time is near at hand, and on the one hand nuptials then cannot be entered without scandal, while on the other hand the matrimony cannot conveniently be deferred, etc.

b) A gracious cause is present if the dispensation seems useful or reasonable, as if it is a question of the marriage of great princes; if dispensation is sought by a man of great merit, for whom to deny it would be grave; if those about to marry are old or of very disparate condition; indeed, in the case, embarrassment can be so great that it is a necessary cause for dispensing (St. Alphonsus VI, 1006). Moreover, Bishops are generally warned not to dispense easily.²

3. Things to be observed in the petition for dispensation. It is sought by the pastor who assists at the matrimony; but by the confessor if the matrimony must be contracted or convalidated secretly. The petition is made in the name of those about to marry. In the supplication there are to be expressed: 1° the names, surnames, parish, and commonly also diocese of the petitioners; with regard to widows or widowers, it is expedient that the name and surname of the deceased spouse be added; 2° what is sought, namely whether dispensation from one, two, or all announcements; 3° the cause why dispensation is sought; 4° the Ordinary is to be made certain of the truth of the cause, into which namely the very person who petitions for dispensation is bound to inquire.³

¹ Cf. Constitution of Benedict XIV, *Nimiam licentiam*.

² Constitution of Benedict XIV, *Satis vobis*, November 17, 1741.

³ Let the formula of supplication be: Most Excellent and Most Reverend Lord, Peter N. and Anna N. humbly seek from Your Excellency dispensation from one, or from two, or from all announcements. The cause is... After diligent

examination, I have found and testify that the things set forth are true, Your Excellency's most humble servant, N.N., pastor at N.

694 V. A cause excusing from announcements is had when on the one hand there is a true necessity of entering matrimony, and on the other hand dispensation cannot be obtained in time or cannot be sought without danger of violating the sacramental seal. Now the necessity of entering matrimony is commonly present if one of the necessary causes for dispensing enumerated above is had. Nevertheless, let the matter be treated cautiously and prudently, and if dispensation can be obtained in time, it is to be sought (St. Alphonsus VI, 1003 under 7, 1007 dub. 2).

695 VI. Things to be noted. Once the investigations and publications have been completed, the following things are to be attended to:

1. The pastor is not to assist at matrimony before he has received all necessary documents (canon 1030, § 1), namely testimony of baptism perhaps conferred elsewhere (p. 518), testimony of investigations and publications perhaps instituted elsewhere (n. 686), testimony of the license of the Ordinary or his delegate if it is a question of a vagrant (p. 524), and, according to the circumstances, testimony of the death of the previous consort, etc. A document of Confirmation is not required, although Catholics, before they are admitted to matrimony, must receive that sacrament if they can do this without grave inconvenience (canon 1021, § 2).

If, with the nuptial day pressing and unable conveniently to be deferred, the testimonial letters have not yet been received, the pastor, insofar as can be done, is to take care that they are received. If time is lacking, recourse is to be made, if it can be done, to the Ordinary; otherwise the pastor proceeds by epikeia, provided he is certain about free status.

2. Furthermore, the pastor is not to assist, unless a reasonable cause requires otherwise, before three days have elapsed from the last publication (canon 1030). According to canon 34, § 3, 3°, the day of the last publication is not computed in these three. If matrimony has not been contracted within six months, the publications are to be repeated, unless it seems otherwise to the local Ordinary (canon 1030, § 2).
3. When doubt has arisen about the existence of some impediment: 1° the pastor is to investigate the matter more accurately, by questioning under oath at least two trustworthy witnesses, provided it is not a question of an impediment from knowledge of which infamy would arise for the parties, and, if it is necessary, the parties themselves also; 2° he is to perform or complete the publications, if the doubt arose before the publications had been begun or completed; 3° he is not to assist at matrimony without consulting the Ordinary, if he has prudently judged that the doubt still remains (canon 1031, § 1).

4. When a certain impediment has been detected, one must proceed thus:

a) If the impediment is occult, the pastor is to perform or finish the publications, and is to bring the matter, while suppressing the names, to the local Ordinary or to the Sacred Penitentiary (canon 1031, § 2, 1°). But if everything is already prepared for the nuptials and the matrimony cannot be deferred without probable danger of grave evil until a dispensation is obtained from the Holy See, and not even the local Ordinary can be approached, or cannot be approached except with danger of violation of secrecy, the pastor is to proceed according to the norm of canon 1045, as will be explained later.

b) If the impediment is public and is detected before the publications have been begun, the pastor is not to proceed further until the impediment is removed, even if he knows that dispensation has been obtained only for the forum of conscience; if it is detected after the first or second publication, the pastor is to complete the publications and bring the matter to the Ordinary (canon 1031, § 2, 2°).

5. Finally, 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 matrimony (canon 1031, § 2, 3°).

Question. What if the pastor or the Ordinary alone knows an impediment, and matrimony is publicly sought?

Response 1. The pastor cannot assist at the matrimony, lest he concur in an invalid matrimony and in the grave inconveniences perhaps to follow from it; these are to be prevented even more by the pastor than by others (St. Alphonsus VI, 1002).

Response 2. The Ordinary, for the same reason, cannot give a sentence in favor of the matrimony. Nor does it stand in the way that by preventing the matrimony he acts as judge and witness; "because someone can well be judge and witness when it is a question of impeding sin" (St. Alphonsus VI, 1002).

Question. What if the impediment is detected in sacramental confession?

Response 1. If the impediment is public, the confessor is to warn the penitent about the necessity of dispensation and send him or her to the pastor; or, if the confessor is the pastor, he is to warn the penitent to manifest the impediment to him outside confession.

Response 2. If the impediment is occult, the confessor likewise generally is to warn the penitent about the necessity of dispensation, and he himself can obtain it for the forum of conscience. I said generally, because the penitent can sometimes be left in good faith, according to what was said in n. 396.

6. In order that the validity of matrimony to be contracted by vagrants may be consulted the more, canon 1032 establishes: "Except in a case of necessity, the pastor is never to assist at the marriage of vagrants of whom in canon 91 unless, after the matter has been brought to the local Ordinary or to a priest delegated by him, he has obtained license to assist." Now:

a) Under the name of vagrants there certainly come those who, having uncertain seats, lack domicile, quasi-domicile, and monthly residence.

It is disputed whether those too are comprehended who are destitute of domicile and quasi-domicile, but not of monthly residence. Now they seem to be comprehended, because canon 1032 expressly speaks of "the matrimony of vagrants of whom in canon 91." Now, with canon 91 considered, those of whom we speak are vagrants.

Objection. Canon 1097, § 1, 2° distinguishes those who enjoy monthly residence from vagrants.

Response. With canons 1032 and 1097, § 1, 2° considered, it seems that one must concede and say that the word vagrants in canon 1032 is used in a broader sense, and in canon 1097, § 1, 2° in a more restricted sense.

- b) The Ordinary whose license is required is the Ordinary of the place in which the matrimony is contracted.
- c) The aforesaid license is required even if only one party is a vagrant. This is deduced from the end of the law, namely of preventing invalid marriages; and this end is urgent whether both parties or only one is a vagrant.
- d) License is not required in a case of necessity, for example if there is danger that the parties, if license is awaited, would contract merely civilly; if there is necessity of undertaking a long journey, which is so urgent that time for obtaining license does not remain, etc.

Scholion I. On the Obligation of the Faithful

696 I. All the faithful are bound to reveal impediments, if they know any, to the pastor or Ordinary before the celebration of matrimony (canon 1027); this obligation, as is drawn from the nature of the thing prescribed, is of itself grave. It is said:

- 1. If they know any, that is, if they have certain or probable knowledge of a diriment or prohibitive impediment. Therefore one is not bound who heard the matter from a person not worthy of trust, unless there is hope of further detecting the truth (St. Alphonsus VI, 994).
- 2. They are bound to reveal impediments before the celebration of matrimony to the pastor or local Ordinary. But one who warns those about to marry that a dispensation must be sought or that matrimony must not be entered, foreseeing that the warning will be beneficial, satisfies the obligation. Indeed, if it is a question of an infamous impediment, he must first give the aforesaid warning, unless hope of fruit is lacking, or another cause excusing from the warning is present (St. Alphonsus, *ibid.*).

II. The following are excused from the obligation set forth:

- 1. One who knows that a dispensation has been obtained or sought, or at least will be sought.
- 2. One who cannot reveal the impediment without grave inconvenience to himself or his own, or to the community, is excused from the burden of revelation, although he can be bound to warn those about to marry.
- 3. One who knows an impediment under secrecy is excused thus:
 - a) If the secret is natural or promised, he is not excused, because the reverence due to the sacrament and the avoidance of evils arising from invalid matrimony prevail over the obligation annexed of itself to the said secrets. And this holds even if an oath has been added (St. Alphonsus VI, 994).
 - b) If the secret is committed, and it is a question of one who is not bound by force of office to keep the secret, he is not excused for the reason given above. But one who by force of office is bound to keep the secret is excused, because the common good, to which it is of the highest interest that such a secret be kept, prevails over the reverence of itself due to the sacrament and over the avoidance of the evils which are annexed to invalid matrimony.

Scholion II. On the Obligation of the Confessor

697 I. If the confessor detects an impediment which requires dispensation for the external forum, let him send the penitent to the pastor. If the confessor himself is the pastor of the penitent, let him

exhort the penitent to open the impediment to him outside confession.

II. If the confessor detects an occult impediment, let him generally warn the penitent about the necessity of dispensation, and, if the penitent consents, he can obtain it for the forum of conscience. The faculty of the confessor sometimes to dispense will be spoken of later.

Part IV. Prenuptial Instruction

698 I. The necessity and matter of instruction are set forth in canon 1033: "Let the pastor not omit, according to the diverse condition of the persons, to teach the betrothed:

1. "The sanctity of the sacrament of matrimony," that is, the nature and dignity of matrimony, and the manner of preparing themselves worthily for the reception of the sacrament; wherefore "let him vehemently exhort them, before the celebration of matrimony, to confess their sins diligently and piously receive the Most Holy Eucharist."
2. "The mutual obligations of spouses," especially the licit use of matrimony.
3. "The obligations of parents toward offspring," especially the manner of conferring Baptism in a case of necessity. Likewise:
4. At least the first elements of Christian doctrine, if the bridegroom or bride are found ignorant; "but if they refuse this instruction, there is no place for rejecting them from matrimony, according to the norm of canon 1066," that is, let him assist only if a grave cause is urgent, concerning which, if it can be done, let him consult the Ordinary.¹

II. Instructor and time of instructing. The instruction is to be made by the pastor (canon 1033), for example on the occasion of the examination of the betrothed, and generally before proceeding to the publications. But instruction concerning the use of matrimony and the manner of baptizing in a case of necessity is to be made a little before or immediately after the matrimony has been contracted. For an example of instruction, see our little work whose title is *On the Virtue of Chastity and the Opposed Vices*.

¹ Roman Ritual, title VII, chapter 1, n. 14; Pontifical Commission, June 2-3, 1918 (A.A.S. 1918, p. 345).

Part V. Reception of the Sacraments

699 I. With divine law considered, of itself there is no obligation to confess before matrimony. It suffices to have recovered the state of grace, if perhaps lost, by an act of perfect contrition (n. 43). Likewise, as is clear, of itself there is no obligation of receiving the Holy Eucharist. Accidentally, with regard to each sacrament, there can be an obligation, especially by reason of avoiding scandal.¹

II. With common ecclesiastical law considered, likewise the obligation is lacking. This is deduced from canon 1033, which decrees only: "Let the pastor vehemently exhort the betrothed that before the celebration of matrimony they diligently confess their sins and receive the Most Holy Eucharist." Thus also the Roman Ritual.²

Nevertheless, canon 1066 should be noted: If a public sinner or one notoriously bound by censure has first refused to approach sacramental confession or to be reconciled with the Church, the pastor is not to assist at his or her matrimony unless a grave cause is urgent, concerning which, if it can be done, he is to consult the Ordinary.

III. It is disputed whether or not particular law can impose reception of the sacraments.³ But certainly it cannot convert neglect of reception into an impediment of matrimony itself; for this power belongs only to the supreme ecclesiastical power (canon 1038, § 2).

IV. With regard to Confirmation, canon 1021, § 2 establishes: Catholics who have not yet received the sacrament of Confirmation are to receive it before they are admitted to matrimony, if they can do this without grave inconvenience.

¹ Cf. Sacred Congregation of Propaganda Fide, April 17, 1820; Sacred Congregation of the Council, August 28, 1852.

² Title VII, chapter 1, n. 14.

³ Roman Ritual, title VII, chapter 1, n. 14.

Dissertation II. On Matrimony Itself

Matrimony can be both merely a contract, as the matrimony of non-baptized persons, and a contract which at the same time is a sacrament, as matrimony entered by baptized persons. Namely, Christ elevated to the dignity of a sacrament the very contract which existed from the beginning of the human race. Now many of the things to be said hold both for matrimony which is merely a contract and for that which is also a sacrament. Hence before we speak specifically about matrimony insofar as it is a sacrament, we shall first discuss matrimony in general. Therefore let there be:

Part I. On Matrimony in General

We shall speak first of its nature, then of its division, then of its institution, ends, goods, honesty, and governance, finally of its properties, and last of all of the effects of matrimony.

Section I. On the Nature of Matrimony

Chapter I. Summary Exposition

700 Matrimony can be considered in becoming and in completed fact.

I. Matrimony in becoming is an onerous contract, by which a capable man and woman hand over and accept the right over the body, exclusive and perpetual, in order to acts of themselves apt for generation (cf. canon 1081). It is said:

1. An onerous contract; by these words the constitutive act of matrimony is indicated, according to these words of canon 1081, § 1: "Matrimony is made by the consent of the parties, legitimately manifested between persons capable by law; and this consent cannot be supplied by any human power."
2. A capable man and woman; by these words the subject of matrimony is assigned, namely a man and a woman who actually enjoy the use of reason and are not bound by a diriment impediment (cf. canon 1081, § 1).
3. Hand over and accept the right over the body, exclusive and perpetual, in order to acts of themselves apt for generation; these things will be more fully developed in their own place. Behold the essential object of the matrimonial contract, into which therefore the will must necessarily be borne. But once consent has been given to this object, matrimony is constituted by that very fact, without intercourse being added, as many formerly judged. Thus Nicholas I in the *Responses to the Consultations of the Bulgarians*,¹ Innocent III in c. 22 *De Sponsalibus*,² Eugene IV in the Decree for the Armenians,³ etc. Thus also canon 1081, § 1, just cited. And it is confirmed from the fact that certainly a true matrimony was contracted between the Blessed Virgin Mary and St. Joseph, without intercourse nevertheless having been added (St. Alphonsus VI, 879).

Corollary. The reciprocal right over the body of the consort, and that exclusive and perpetual, is the true and sole essential object of the matrimonial contract. Hence marriages which are called for a time, or by way of experiment, or friendly marriages, are not true marriages.⁴

The communion of table, bed, and dwelling belongs only to integrity; union of minds and goods not even to integrity, but only to a good outcome or to the better being.

¹ Denzinger-Bannwart, n. 334.

² Denzinger-Bannwart, n. 404.

³ Denzinger-Bannwart, n. 703.

⁴ Encyclical *Casti connubii* (A.A.S. 1930, p. 558).

701 II. Matrimony in completed fact is the very conjunction itself, or the permanent bond, which arises from the contract.

This definition of matrimony is customarily handed down, almost taken from Roman law: the marital conjunction of a capable man and woman, retaining or carrying with it an undivided society of life. In this definition the word conjunction, taken actively, denotes matrimony in becoming; taken passively, matrimony in completed fact. By undivided society of life, however, the unity and indissolubility of matrimony are designated.

Corollary. Matrimony, even when abstraction has been made from the character of sacrament, belongs not only to the order of justice and temperance, but also to the order of religion. Thus Leo XIII teaches in the Encyclical *Arcanum*,³ where matrimony is said to be "by its nature, by its force, of its own accord sacred." Thus also Pius XI teaches.⁴ The same is drawn from the fact that the end of matrimony is not only the procreation and education of children as such, but as servants of God. Indeed, from the beginning God, by a primitive supernatural ordination, put into every matrimony the character of an adumbration of the supernatural union both of the Divine Word with human nature and of Christ with the Church; which Innocent III,⁵ Honorius III,⁶ Leo XIII,⁷ and Pius XI⁸ teach.

¹ Cf. De Smet, op. cit., n. 193; *Nederlandsche Katholieke Stemmen*, 1905, p. 12 sq.; *Revue du clerge francais*, t. 1, p. 745 sq.

² Matrimony is derived, according to some, from the words mother and office, because it is especially the office of the mother to generate and educate offspring; according to others, from the word mother alone, "for *monium* is a mere extension of the word, as from father comes patrimony, from holy comes sanctimony" (Forcellini, *Totius latinitatis lexicon*, under Matrimony). It is denominated from the mother rather than the father because the burdens of matrimony, namely conception and birth of offspring, belong to the mother, likewise especially, at least, education. Matrimony is also called *coniugium* from joining together, consortium from with and lot, nuptials and connubium from veiling, because girls formerly covered or veiled the head before they were handed over to a man.

³ February 10, 1880.

⁴ Encyclical *Casti connubii* (A.A.S. 1930, p. 570).

⁵ Chapter *Gaudemus, De divortiis* (Decretals, book 4, title 19, c. 8).

⁶ Chapter *Ex parte tua, De transactionibus* (Decretals, book 1, title 36, c. 11).

⁷ Encyclical *Arcanum*.

⁸ Encyclical *Casti connubii* (A.A.S. 1930, p. 552).

Chapter II. Fuller Exposition

The fuller exposition is contained chiefly in the development of the properties of matrimonial consent itself. Now on each side there is required consent that is true, fully deliberate, sufficiently free from ignorance, error, force, and fear, external, made known to the other party, and simultaneous. It is said:

702 I. True or internal, in other words, there is required an act of the will of contracting matrimony (cf. canons 1081 and 1086).

In the internal forum, one asserting that he or she consented only fictitiously must be believed according to the truthfulness of the person. In the external forum, fiction is not admitted unless it is proved (canon 1086, § 1); and this commonly will be very difficult.

One who consents fictitiously sins against justice unless he is unjustly forced to matrimony; but with sufficient probability he does not commit sacrilege unless there is abuse of the sacred rite. The reason is that, because of defect of consent, the sacrament which could be violated is lacking (St. Alphonsus VI, 62). But he is bound: 1° to abstain from those things which are licit only for spouses; 2° not to contract matrimony with another before an ecclesiastical judge has declared according to the norm prescribed by law that the prior nuptials were null; 3° to repair the damage caused by the fiction, unless someone has been unjustly forced to matrimony. Now commonly he cannot repair the damage except by now consenting truly. The reason is that the deceived party commonly will not be able to enter another matrimony, because the fiction, and therefore the nullity of the prior nuptials, commonly will not be able to be proved. And from this very fact another reason for now consenting truly is added, namely the danger of incontinence which otherwise would arise from a cohabitation to be prolonged. Finally, if perhaps offspring has been received, the good of this offspring also requires matrimony. Nevertheless, one who consented fictitiously is excused from furnishing true consent: 1° if he was unjustly forced to matrimony, in which case he is not even bound to repair the damage; 2° if the other party also consented fictitiously, or if that party renounced his or her right; 3° if much greater damages are foreseen as about to arise from a true matrimony, in which case the damage must be repaired in another way (St. Alphonsus VI, 887, 1113).

703 II. Fully deliberate; as was said about contracts generally (vol. I, n. 834). Hence a matrimony contracted by one insane, sleeping, or plainly drunk would be invalid. With regard to those half-drunk and those more or less foolish, the validity will easily be doubtful. The insane who have lucid intervals are sometimes, at that time, sufficiently in possession of reason; nevertheless, as St. Thomas teaches (*Supplement*, q. 58, a. 2), "it is not safe that he contract matrimony, because he would not know how to educate offspring." Sometimes, however, matrimony of this kind is rightly commended, for example for legitimating offspring. Meanwhile this kind of matrimony will more easily be advised where the man is insane in this way than where the woman is, on account of the greater danger to offspring on the part of an insane woman. If each is insane in this way, matrimony between them can scarcely, or hardly at all, be licit. If some just cause for admitting such an insane person to matrimony seems to be present, the matter will prudently be brought to the Ordinary.¹

¹ Thus approximately Dens, *De matrimonio*, n. 97.

704 III. Sufficiently free from ignorance; concerning which observe that ignorance differs from error. Ignorance is the mere defect of knowledge, and does not import an opinion or judgment; error, however, imports an opinion or judgment, and a false one. Now ignorance of the matrimonial object invalidates consent, because the will is not borne toward the unknown. Hence:

Corollary I. Those who are ignorant that matrimony is a permanent society between man and woman for procreating children contract invalidly (canon 1082, § 1). This ignorance is not presumed after puberty (canon 1082, § 2). It is said permanent; by this word indissolubility properly so called, or the essential property of matrimony, is not understood; otherwise the Code would also make mention of other equally essential properties, for example unity. But there is understood some permanence which must last more or less, and is supposed in every society.

Corollary II. Those who are ignorant that the procreation of offspring is obtained by means of bodily union seem to contract invalidly, because there is ignorance of the object, that is, of the right over the body in order to procreating children.

Corollary III. Those who are ignorant only of the mode of union or intercourse have sufficient knowledge of the object, because the said ignorance does not prevent them, by explicitly handing over the right over the body in order to procreation, from at least implicitly handing over the right to acts of themselves apt for generation. Thus also the Sacred Congregation of the Council.¹ The aforesaid things hold even if someone, once the truth was known, would not have entered matrimony, since the question is not what someone would have done, but what he did.

¹ March 15, 1856; December 18, 1869.

705 IV. Sufficiently free from error. Error can regard the object of matrimony or its properties, the person or that person's qualities, and finally the value of the matrimony. Now:

1. Error concerning the object of matrimony invalidates the matrimonial contract, because then the will is borne toward an object diverse from the object of the matrimonial contract, so that consent to the object of matrimony is lacking.

Corollary I. The following contract invalidly: 1° those who judge that matrimony is not ordered to procreating children; 2° those who judge that children are procreated in a way other than by bodily union, for example by union of minds.

Corollary II. Those who err only concerning the mode of bodily union contract validly.

2. Simple error concerning the unity or dissolubility of matrimony, or its sacramental dignity, even if it gives cause to the contract, does not vitiate consent (canon 1084). The reason is that in the case there is not error concerning the object of the matrimonial contract taken simply, but only concerning that which in the object is quasi-secondary or consequent; in other words, one does not err concerning the right over the body of the consort, but either concerning the exclusive or perpetual right, or concerning the dignity intrinsic to matrimonial consent. But such error does not prevent the one consenting to the right over the body from consenting at least implicitly to the exclusive and perpetual right, and to the dignity intrinsic to the consent (cf. St. Thomas, *Supplement*, q. 51, a. 2, ad 2). It was said:

a) Simple error; for one contracts invalidly if either or both parties by a positive act of the will exclude some essential property of matrimony (canon 1086, § 2), or, if it is a question of baptized persons, the sacramentality of matrimony. Hence the Holy See has several times declared invalid the marriages of those heretics who, with the rite by which they enter nuptials considered, explicitly or implicitly stipulate that matrimony will be dissolved in the case of adultery.¹

b) Even if it gives cause to the contract; for the question is only what someone did, not what he would have done if the error had been absent.

3. Error concerning the person renders matrimony invalid (canon 1083, § 1); and this holds whether the error is invincible or vincible, antecedent or giving cause to the contract, or merely concomitant. The reason is that in the case consent is borne toward an object diverse from the object of the present contract: for consent regards the right over the body, for example, of Peter, while the object of the present contract is the right over the body, for example, of Paul. Therefore consent to the object of this contract is lacking.

4. Error concerning a quality² of a person commonly does not invalidate matrimony; and this holds even if the error gave cause to the contract and was induced by fraud. The reason is that such

error does not prevent consent to the substance of the object. Canon 1083, § 2 is consonant.

I said commonly does not invalidate matrimony; for it invalidates it:

a) If error of quality redounds into error of person (canon 1083, § 2, 1°). But this has place when the quality about which there is error distinguishes the person from every other, and the contracting party determines for himself the person with whom he intends to contract precisely through that quality; as if someone intends to contract with the first-born daughter of a prince, and externally contracts with another whom he erroneously thinks to be the first-born (St. Alphonsus VI, 1010, 1013, 1015).

b) If a free person contracts matrimony with a person whom he thinks free, while on the contrary that person is a slave, with slavery properly so called. Thus by force of positive ecclesiastical law (canon 1083, § 2, 2°). But slavery properly so called is required, that is, one which extends so far that a human being can be bought and sold like an irrational animal, according to works (St. Alphonsus VI, 1017, 1018; vol. I, p. 537).

Question. Whether the matrimony is valid if a free unbelieving person, from error, married a faithful person who is a slave?

Response. Many deny, because the law does not distinguish. Others affirm, because the impediment in the case seems to affect no party: not the unbelieving party, because he or she is not subject to the Church; nor the faithful party, since the impediment seems to have been constituted in favor only of the free party who errs.

5. Finally, knowledge or opinion of the nullity of the matrimony does not necessarily exclude matrimonial consent (canon 1085). The reason is that such knowledge or opinion does not necessarily prevent someone, as far as is from himself, from having the will to contract. If the case occurs, one must see whether the contracting party in fact, as far as was from himself, intended matrimony. But if that had place, the matrimony was valid at once if the opinion was false; if it was true, the matrimony can afterwards be convalidated. But if the contracting party, with knowledge or opinion of nullity, intends concubinage or a simple civil ceremony, consent is lacking. I said intends, because it does not stand in the way of validity that someone merely judges³ it to be concubinage or a mere ceremony. In practice one more easily doubts about the intention of contracting true matrimony if it is a question of well-instructed Catholics who for some reason contract merely civilly, see a mere ceremony in a matrimony of this kind, and therefore more easily do not seek matrimony properly so called but only legal convenience. Indifferent and not well-instructed Catholics are more easily presumed to contract validly; a fortiori non-Catholics.⁴

¹ Holy Office, April 6, 1843 (*Collectanea*, n. 965).

² If the one erring binds his consent to the quality as to a condition without which not, the matrimony is certainly invalid; not, however, by reason of error, but on account of the lacking condition.

³ Sacred Congregation of Propaganda Fide, October 1, 1785 (*Collectanea*, n. 580).

⁴ Holy Office, July 2, 1897, to the Archbishop of Cologne.

706 V. Sufficiently free from force and fear. Concerning this canon 1087 says: "Matrimony entered by reason of force or grave fear inflicted from without and unjustly, from which, in order that one may

free himself, he is compelled to choose matrimony, is also invalid. No other fear, even if it gives cause to the contract, carries with it the nullity of matrimony." Therefore:

1. Absolute force renders matrimony invalid; since in the case the external act is posited under physical coercion, with the mind resisting completely, consent of the will is lacking. With regard to force or violence in a qualified sense (vol. I, n. 28), the things said about the full deliberation required, and the things to be said about fear, suffice.

2. With regard to fear,¹ these things hold:

a) Grave fear, inflicted from without and unjustly, from which, in order that one may free himself, he is compelled to choose matrimony, dirimently impedes this matrimony (canon 1087, § 1), at least by canon law. It is said:

a) Grave fear; either absolutely or relatively to the person on whom the fear has been inflicted. It makes no difference whether someone fears a grave evil for himself or for those intimately joined to him.

β) Inflicted from without; that is, by a free cause. Hence, for example, a matrimony entered from fear lest life otherwise be hard would be valid.

γ) Inflicted unjustly. Now fear is certainly inflicted unjustly if someone uses an unjust means, or by an unjust means extorts matrimony whether owed or not owed, or, as others state the same thing, if the one inflicting fear does not have the right of executing what he threatens; as if a father, who catches a young man acting basely with his daughter, threatens him with death unless he marries her.

It is disputed whether fear is inflicted unjustly if someone by a means not unjust in itself extorts matrimony not owed, or if the one inflicting fear indeed has the right of executing what he threatens, but does not have a right to matrimony; as if a girl should threaten a young homicidal man that she will denounce him to the judge unless he marries her, or if a physician, who is bound only from charity to undertake the care of a sick girl, denies his help unless the girl marries him.

Response. Some affirm, because one acts unjustly who through grave fear tries to obtain that to which he has no right, for example matrimony. Others deny, because one does not act unjustly who offers to another a means, for example the choice of matrimony, by which he may avoid a damage which can be inflicted on him without injustice. But it seems one must distinguish thus: If the avoidance of the imminent evil, for example denunciation to the judge or denial of medical care, is esteemed to be of as much value as the choice of matrimony, the answer seems to have to be denied, because an unjust pact is not had. Otherwise, if the avoidance of the imminent evil is not worth so much, then the pact is unjust (cf. St. Alphonsus VI, 1051, 1053).

δ) From which, in order that one may free himself, he is compelled to choose matrimony. These things are certainly verified, and therefore the matrimony is certainly invalidated, if fear is inflicted for extorting matrimony with the one inflicting the fear. Likewise it seems invalid if fear is inflicted for extorting matrimony with someone other than the one inflicting the fear, because there is in reality coercion to matrimony itself.

But it is controverted whether it is necessary that fear be inflicted for extorting matrimony, or whether the intention of matrimony on the part of the one fearing the evil suffices, who in matrimony sees a necessary remedy against a greater evil to be avoided. Some deny that fear inflicted

for extorting matrimony is required, and draw the reason from the tenor of the Code, "from which in order that one, etc." But the affirmative answer seems to have to be given, because before the Code it was taught with sufficient commonness that fear inflicted for extorting matrimony was required. Now the Code is not presumed to have departed from the old disposition unless the tenor of the law sufficiently signifies this; and the latter does not have place, since the canon can well be harmonized with the old disposition and be understood thus: "from which, in order that one may free himself, he is compelled to choose matrimony," namely because the fear is inflicted precisely for extorting matrimony. If fear is inflicted for another end, one is not so properly compelled to the choice of matrimony (St. Alphonsus VI, 1049).

ε) At least by canon law. It is disputed whether also by natural law, so that the described fear would also invalidate the marriages of unbelievers. Some deny, because fear does not impede consent simply voluntary into the contract. Others affirm, because a contract caused by gravely injurious fear and irrevocable, and therefore such that the grave injury which was the cause of the contract cannot be repaired, seems to have to be excluded. But if the prior opinion is admitted, such a contract would be had, namely matrimony, since it cannot be rescinded. St. Thomas admits the latter opinion (*Supplement*, q. 47, a. 3; cf. St. Alphonsus VI, 1054; *Homo Apostolicus*, tr. 18, n. 64).

Objection. If the latter opinion is admitted, even fear not inflicted for extorting matrimony would invalidate it, because such fear would also involve an injury which could no longer be repaired.

Response. Fear not inflicted for extorting matrimony indeed involves an injury, but one independent of matrimony, of which it was only the occasion, not the cause; but an injury independent of matrimony can be repaired even if the matrimony is valid and can no longer be rescinded.

Question. Whether, with canon law alone considered, matrimony is valid if the party who suffered fear is an unbeliever?

Response. Many deny, because the law does not distinguish. Others affirm, because the impediment in the case seems to affect no party: not the unbelieving party, because he or she is not subject to the Church; nor the faithful party, since the impediment seems to have been constituted in favor only of the party who suffered fear.

With natural law considered, the said matrimony is held by many to be invalid, according to the things set forth.

b) No other fear, for example light fear, or grave fear but justly inflicted, carries with it the nullity of matrimony, even if it gives cause to the contract (canon 1087, § 2). This is clear if the speech is about fear justly inflicted; if it is a question of fear lightly unjust, it is deduced from the fact that, on the one hand, fear does not impede simply voluntary consent, and on the other hand the reparation of a light injury is not to be valued so highly that on account of it, if excluded, the contract must be called invalid (St. Alphonsus VI, 1055). Furthermore note:

a) One who through grave and unjust fear forces another to matrimony sins gravely both against justice and, on account of the nullity of the sacrament, against religion. Therefore he is bound to repair the injury, even, if it cannot be repaired in another way, by convalidating the matrimony, at the will of the one who suffered fear (St. Alphonsus VI, 1057).

β) The Church never dispenses in the impediment of fear, because the dispensation would confirm the injury inflicted on the party who suffered fear, and would bring it about that the one inflicting fear would receive advantage from his crime.

How matrimony contracted from fear can be convalidated will be explained later.

¹ What fear is and in how many ways it is distinguished, see vol. I, nn. 838 and 839.

707 VI. External or manifest (canon 1081, § 1); this quality is required both because matrimony is a contract (vol. I, n. 834), and so that it may be a sacrament, for a sacrament does not subsist without a sensible sign. If someone consented externally but not internally, to revalidate the matrimony it suffices afterwards to supply internal consent. Moreover, for validity it does not matter whether consent is expressed by words or by another sign, for example by a nod. Indeed, of itself even silence, for example on the part of the bride, with the circumstances considered, can be a manifestation of consent.

As to liceity, however, from the precept of the Church it is required that "the spouses express matrimonial consent by words; nor is it licit for them to use equivalent signs if they can speak" (canon 1088, § 2). This obligation seems grave.

708 VII. Made known to the other party; and indeed by the contracting party or in his name, as was explained in vol. I, n. 834.

709 VIII. Simultaneous, because otherwise they do not truly consent into one. Nevertheless it suffices that one consent while the consent of the other persists (vol. I, n. 834).

Corollary I. Matrimony, like other contracts, can also be contracted between absent persons, for example through a mere messenger, by letters, by means of telephone or telegraph. But this now cannot be done by those who are bound by the ecclesiastical form, for "to contract matrimony validly it is necessary that the contracting parties be present either personally or through a procurator" (canon 1088, § 1).

Corollary II. Matrimony, just like other contracts, can also be entered through a procurator (the cited canon). But from canon 1089, without prejudice to diocesan statutes added on this matter,¹ for matrimony to be validly entered through a procurator, it is required:

1° That the procurator have a special mandate to contract with a certain person (§ 1).

2° That the mandate be signed by the mandator and either by the pastor or Ordinary of the place in which the mandate is made, or by a priest delegated by either, or by at least two witnesses. If the mandator does not know how to write, this is to be noted in the mandate itself and another witness is to be added, who also signs the writing; otherwise the mandate is invalid (§ 2).

3° That, before the procurator has contracted in the name of the mandator, the latter has not revoked the mandate nor fallen into insanity; because then the matrimony is invalid, although either the procurator or the other contracting party may have been ignorant of these things (§ 3).

4° That the procurator perform his office personally (§ 4). Hence the procurator cannot delegate another, nor, as it seems, can this faculty be granted to him by the mandator.

Note. When matrimony is to be contracted through a procurator or through an interpreter, the pastor is not to assist unless there is a just cause and it is in no way licit to doubt about the authenticity of

the mandate or the trustworthiness of the interpreter, after having obtained, if time permits, the license of the Ordinary (canon 1091).

¹ Statutes added on this matter do not regard validity.

Scholion. On Conditional Matrimony

Of the conditions which can be added to the matrimonial contract, some are not repugnant to the substance of matrimony,¹ others are repugnant to it as restricting the rights essentially annexed to matrimony.² We shall speak of each separately; and after these have been treated, we shall add certain things about matrimony under mode, cause, or demonstration.

¹ I contract with you if you are a virgin.

² I contract with you if you abstain from intercourse.

710 I. Conditions not repugnant to the substance of matrimony. 1. Matrimony under a condition concerning the past¹ or the present² is valid or not valid according as the condition has been fulfilled or not fulfilled (canon 1092, 4°). But the licit use of matrimony is suspended until there is certainty about the fulfillment (St. Alphonsus VI, 890).

2. Matrimony under a condition concerning the future is to be judged thus:

a) If the condition is concerning the future necessary³, when it is known as such, the matrimony is valid at once, unless the contracting parties intend to suspend the matrimony until the event of the condition. In the external forum this condition is held as not added (canon 1092, 1°), that is, the matrimony is judged valid at once unless the suspensive intention is proved (St. Alphonsus VI, 891).

b) If the condition is concerning the future impossible,⁴ when it is known as such, the matrimony is null if it is seriously placed. In the external forum this condition likewise is held as not added (canon 1092, 1°), or the contracting party is presumed to have willed matrimony until the contrary is proved (St. Alphonsus VI, 891).

c) If the condition is concerning the future contingent, the following must be said:

a) If the condition is licit,⁵ the validity of the matrimony is suspended (canon 1092, 3°; St. Alphonsus VI, 892).

β) If the condition is base⁶ and is seriously placed, according to many the matrimony is simply null, but more probably only the validity is suspended (vol. I, n. 849). In the external forum this condition too is held as not added (canon 1092, 1°; St. Alphonsus VI, 891).

¹ I contract with you if you have done this or that.

² I contract with you if you are noble.

³ I contract with you if the sun will rise tomorrow.

⁴ I contract with you if you extinguish the sun.

⁵ I contract with you if the parents have died.

⁶ I contract with you if you have admitted intercourse.

711 II. Conditions repugnant to the substance of matrimony. Concerning these canon 1092, 2° says: "A condition once placed and not revoked, if it concerns the future against the substance of

matrimony, renders it invalid." Gregory IX hands down the same doctrine more fully: "If conditions against the substance of marriage are inserted, for example if one says to the other: I contract with you, if you avoid generation of offspring; or: until I find another richer in honor or means; or: if for gain you hand yourself over to be adulterated, the matrimonial contract, however favorable it may be, lacks effect."¹ Therefore:

1. Conditions against the substance of matrimony are those which are repugnant to the object of the matrimonial contract, that is:

- a) Either to the right over the body of the consort, in other words, to the right to acts of themselves apt for generation, as if you say: I contract with you if you abstain from intercourse; if you perform it onanistically.
- b) Or to the exclusive right over the body of the consort, or to the unity of matrimony, as if you say: I contract with you if you hand yourself over to be adulterated for gain.
- c) Or to the perpetual right over the body of the consort, or to the indissolubility of matrimony, as if you say: I contract with you if, after one or another offspring has been procreated, you abstain from intercourse, or from intercourse rightly performed; or: We contract until domestic life is disturbed or until we marry others, and similar things (St. Alphonsus VI, 881, 882).

Corollary I. Conditions which are opposed to the moral or religious good of offspring are not against the substance of matrimony, and therefore do not invalidate it; as if you say: I contract with you if you educate the offspring in unbelief, in heresy. The reason for the assertion is that the said condition is not repugnant to the object of the matrimonial contract. Add that the Church has indeed reprobated marriages of this kind, but has never declared them invalid. Finally, if the contrary opinion were admitted, even marriages contracted under the condition of educating offspring in other delicts would be invalid; and so far as I know no one has admitted this.

Corollary II. Nor are conditions which are opposed to the physical good of offspring against the substance of matrimony, as if you say: I contract with you if you procure an abortion, if you cast away or kill the child once born. The reason again is that not even a condition of this kind is repugnant to the object of the contract.

2. The conditions set forth under 1 are repugnant to the substance of matrimony if they truly remove or diminish the right itself to arise from the matrimonial contract, or if they are placed as to be fulfilled from justice, or if they are brought into a pact, or at least are so intended that the contracting party positively intends to contract in such a way and not otherwise. The reason is that the said conditions understood thus prevent consent to the object of the matrimonial contract (n. 700).

If the aforesaid conditions are not brought into a pact, and neither party in another way restricts consent to the object of the matrimonial contract, the matrimony is valid. Therefore the following do not stand in the way of validity:

- a) A mere will or purpose, or even some agreement without a pact, whether of abstaining from intercourse, or of performing it onanistically, or of procreating one or another offspring and abusing matrimony otherwise, or of abstaining from intercourse rightly performed until they have arrived at better fortune, etc.

b) The mere purpose of preserving perpetual continence in matrimony.

c) A simple promise, by which the contracting parties bind themselves from fidelity alone to preserve continence.

d) A vow of preserving chastity, by which either or both parties bind themselves, or attempt to bind themselves, to God alone.

Question 1. Whether a condition made by pact of preserving perpetual continence is repugnant to the substance of matrimony and therefore invalidates it?

Response. Some affirm, because matrimony essentially hands over the right to the use of the body of the consort. But this right is excluded by the aforesaid pact. Therefore such a pact destroys the object of the matrimonial contract.²

Others judge that matrimony of this kind can be valid, because that pact can be so intended that it leaves the radical or bound right, excluding only the expedit right to the use of the body. But, they say, the former alone, not the latter, belongs to the substance of matrimony; and they think this must be drawn from the fact that, while the conjugal bond remains, the expedit right is lost through adultery, or even through a pact of preserving chastity entered after matrimony has been contracted (cf. St. Alphonsus VI, 881, 1°, 882, 1°).

Question 2. Whether a condition made by pact of abstaining from intercourse for a time, for example until they have arrived at better fortune, or of having intercourse only when conception is less probable, is repugnant to the substance of matrimony and therefore invalidates it?

Response. Speaking theoretically, one can respond what was responded to the preceding question. But in practice it is to be observed: 1° in the case in which there is a true pact, and it, as commonly happens, is not added from a motive of virtue, the matrimony is invalid, since in practice both the expedit and the radical right are limited.

Note. "Pastors should never admit these conditional marriages without a most urgent cause, on account of the many inconveniences and difficulties which can afterwards occur against their validity" (St. Alphonsus VI, 892).

¹ C. ult. *De conditionibus apposis in desponsatione vel in aliis contractibus*; cf. *Collectanea de Propaganda Fide*, n. 222, n. 100, 1327 to doubt 3, 1465.

² Some undeservedly try to prove this opinion from the fact that the Blessed Virgin Mary, who had vowed perpetual virginity, in order licitly to contract with St. Joseph, had to enter a pact of preserving chastity. For to contract licitly it sufficed that she knew certainly, whether naturally or by revelation, for example concerning virginity never to be lost, that her spouse would not use matrimony.

712 III. Matrimony entered under a mode is valid. For a mode supposes a contract complete in its being, to which it is added. Nevertheless matrimony is invalid: 1° if the mode, or rather quasi-mode, added is repugnant to the substance of matrimony and is brought into a pact, as: "I contract with you, but you must abstain from right intercourse"; 2° if both parties or either party positively intends that he or she be bound only in that way, and not otherwise. The reason is that then something substantial of the object is excluded, so that consent to it is lacking. But in these cases it is not a question of a mode properly so called, since, as was said, it supposes a completed contract.

Note. Matrimonial consent once furnished perseveres until it is revoked; and it is presumed to persevere until its revocation is established. This holds even if the matrimony was entered invalidly by reason of an impediment (canon 1093).

Section II. On the Division of Matrimony

713 Matrimony is chiefly divided:

I. Into valid or true, and invalid. Invalid matrimony is called putative if it has been celebrated in good faith by at least one party, until each party becomes certain of its nullity (canon 1015, § 4).¹

II. Into legitimate, ratified, and ratified and consummated.

1. Legitimate is called: valid matrimony between non-baptized persons (canon 1015, § 3).

2. Ratified is: valid matrimony between baptized persons, not yet completed by consummation (canon 1015, § 1).² Under the name of ratified matrimony also seems to come matrimony validly contracted between non-baptized persons and persisting after the baptism of both spouses. But in canon law there does not seem to come under the name of ratified matrimony a matrimony validly contracted either between a baptized party and a non-baptized party, or between non-baptized parties of whom only one is baptized. Whether the said marriages are or are not a sacrament does not seem to matter, because it is a question of a canonical notion rather than of a theological fact.

3. Ratified and consummated is called valid matrimony between baptized persons if between the spouses there has taken place the conjugal act to which the matrimonial contract by its nature is ordered, and by which spouses become one flesh (canon 1015, § 1). But that the notion of consummation may be more fully developed, I note these things:

- a) Only valid matrimony can be consummated, or consummation presupposes valid matrimony.
- b) Matrimony is certainly consummated by intercourse, that is, by penetration, whether perfect or partial, of the female vessel together with effusion of seed in it.
- c) It is disputed whether matrimony is consummated if male seed is deposited at the vulva and is received within the female vessel. Some affirm, especially if offspring arises, because in this way the spouses are made one flesh. But it seems that it must be denied altogether, because consummation is made by the conjugal act to which the conjugal contract is by its nature ordered; but an act of this kind is lacking in the posited hypothesis, since an act from which generation does not follow except accidentally, of which sort is the depositing of seed at the vulva, cannot be called the conjugal act to which the conjugal contract is by its nature ordered; in a word, there is lacking an act of itself apt for generation (St. Thomas, In IV, dist. 41, q. un., a. 1, sol. 4, ad 2).
- d) A fortiori matrimony is not consummated if seed is introduced into the vagina merely by chance, for example on the occasion of pollution, or by means of artificial fecundation, as it is called.
- e) Once matrimony has been celebrated, if the spouses have cohabited together, consummation is presumed until the contrary is proved (canon 1015, § 2).

III. Into public and secret, or of conscience. Public is that which is celebrated "in the face of the Church," as it is said, or with the usual publicity. Secret or of conscience is that which is celebrated

with announcements omitted and secretly, according to the norm of canons 1105-1107 (canon 1104), about which it will be said later. Note also clandestine matrimony, as it was formerly called, that is, matrimony which was contracted without the legitimate form being employed, or without pastor and witnesses. Nowadays matrimony of this kind cannot be contracted validly except among non-Catholics (canon 1099, § 2).

IV. Into ecclesiastical and civil. Ecclesiastical is that which is entered according to ecclesiastical laws; civil, that which is contracted according to civil laws. The latter is called merely civil if ecclesiastical matrimony is entirely neglected.

Finally, and this it helps to note for completeness, morganatic matrimony is called that which a noble man contracts with a person of inferior condition, by this pact: that the wife and offspring to be received from her receive only a certain part from the goods of the man, and are excluded from the other goods and from the titles and dignities of the man. Matrimony of this kind especially had place among the Germans; it was called, as it seems, *ad morganaticam*, on account of the portion of goods which was granted to the wife on the second day of the marriage, and which in German is called *Morgengabe*.³

¹ The Code does not speak of matrimony which was formerly called presumed; hence it is judged already to have vanished.

² Ratified is said, that is, ratified or confirmed by the sacrament (chapter 7 *De divortiis*; St. Thomas, *Supplement*, q. 59, a. 5, ad 1).

³ Cf. *Staatslexikon*, s.v. *Ehenburtigkeit*.

Section III. On the Institution, Ends, Goods, Honesty, and Governance of Matrimony

714 I. Institution of matrimony. God Almighty instituted matrimony, insofar as it is merely a contract, in the very creation of male and female. For he willed, as is clear even from the very capacity and inclination of male and female for generating, that the human race be preserved and propagated, and this fittingly, that is, in such a way that provision is of itself made for the preservation and education of offspring. But this does not happen fittingly except through those who are joined by the matrimonial bond. In addition, God also promulgated by positive law matrimony, instituted in creation itself and promulgated through the light of reason, namely through the mouth of Adam, who, led by divine instinct, declared: "This now is bone of my bones and flesh of my flesh; she shall be called Woman, because she was taken from man. Wherefore a man shall leave his father and mother, and shall cling to his wife; and they shall be two in one flesh."¹ Finally, God himself, after he had already instituted matrimony, solemnly signified that it is ordered to propagating the human race: "Increase and multiply."²

Concerning the institution of matrimony insofar as it is a sacrament, see n. 729.

Note. Insofar as God wills that the human race be propagated through matrimony, and to that end communicated to human nature the capacity and inclination for generating, matrimony is customarily called an office of nature.

¹ Gen. 2:23-24.

² Gen. 1:28.

715 II. Ends of matrimony. The primary end of matrimony is the procreation and education of offspring; the secondary end is mutual aid and the remedy of concupiscence (canon 1013, § 1). The assigned ends are the intrinsic ends of matrimony, to which several extrinsic ends can be added, which can be intended by the contracting parties. Therefore:

1. The intrinsic ends are:

a) Procreation and education of offspring; these constitute the principal end. Education, however, is understood as education both according to the body and according to the soul, and in the worship of God (St. Thomas, *Supplement*, q. 59, a. 2; n. 701).¹

b) Mutual aid, which is a secondary end together with the end to be assigned under c).

c) The remedy of concupiscence, or its mastery. The Apostle assigns this end in these words: "But because of fornication, let each man have his own wife";² and: "For it is better to marry than to burn."³ Matrimony attains this end both by quieting concupiscence through conjugal acts, and, insofar as it is a sacrament, by the power of sacramental grace, by which spouses use matrimony rightly and guard against illicit things both in and outside matrimony.⁴

2. Multiple extrinsic ends are licitly intended by contracting parties, for example heirs to be left, splendor of family,⁵ peace to be established, health of body, etc. (St. Alphonsus VI, 881-883).

¹ Encyclical *Casti connubii*, December 31, 1930 (A.A.S. 1930, p. 144).

² 1 Cor. 7:2.

³ 1 Cor. 7:9.

⁴ Buys, *Nederlandsche Katholieke Stemmen*, 1930, pp. 326 and 333.

⁵ Cf. Roman Catechism, q. 13.

716 III. Goods of matrimony. A threefold good of matrimony is customarily assigned, and is also assigned by Pius XI,¹ namely:

1. The good of offspring, which consists in the conception, birth, and education of offspring both as to the body and as to the soul, and, as to the soul, both spiritual and religious (St. Thomas, *Supplement*, q. 59, a. 2).

2. The good of faith or fidelity, which is situated in this: that the debt is neither denied to the consort nor permitted to anyone else, and that not even to the consort is granted what, as contrary to divine laws and most alien from conjugal fidelity, can never be granted.

3. The good of the sacrament, by which are denoted both the indissolubility of the bond and the elevation of the matrimonial contract into an efficacious sign of grace.

¹ Encyclical *Casti connubii* (A.A.S. 1930, p. 543).

717 IV. Honesty of matrimony; concerning which note:

1. Matrimony is objectively honorable. This is clear first from the fact that God instituted it, Christ raised it to the dignity of a sacrament, and Sacred Scripture commends it.¹ It is clear next from the fact that it is the single means of fittingly obtaining the propagation of the human race willed by God (n. 714); likewise from the fact that matrimony is ordered "not only to propagating the human race, but to begetting offspring for the Church, citizens of the saints and members of the

household of God; namely, that a people might be procreated and educated for the worship and religion of the true God and of Christ our Savior."²

Corollary. All who are capable of matrimony can contract matrimony, unless they are prohibited by law (canon 1035). This also holds concerning those who can procreate only miserable offspring. "It is certainly not lawful," says Pius XI, "to burden with grave fault those men, otherwise capable of matrimony, who, even after all care and diligence have been employed, are conjectured to beget only defective offspring, if they contract marriage, although often matrimony must be dissuaded for them."³

Nor can the aforesaid persons of themselves, at least practically, be accused of light fault; for with regard to offspring, it is always better for the offspring to be thus than not to be;⁴ and with regard to the inconveniences that will arise for society and family, it is not established that the most valid right of contracting matrimony does not prevail over the avoidance of those inconveniences. Add that even those of whom we speak, by procreating offspring, however miserable, conduce to the good of the species (vol. I, n. 740). This is confirmed by the practice of the Church, which in no way keeps the said persons from matrimony (St. Thomas, *Supplement*, q. 64, a. 1, ad 4; St. Alphonsus VI, 951).

Whether the State can forbid matrimony to some will be explained under V.

2. Matrimony, although it is objectively honorable, does not oblige individual persons, because only that precept obliges individual persons which of itself and first regards the good of individuals. But the precept of matrimony of itself and first does not regard the good of individuals, but the good of the multitude or species (St. Thomas, *Contra Gentiles*, book 3, ch. 137; II-II, q. 152, a. 2). Accidentally there can be an obligation, for example if someone has procreated offspring from some woman.

There are those who judge that the law of matrimony was imposed on the human race; this does not please others, because one cannot grasp a precept which does not oblige determinate persons and cannot be fulfilled by the community as such. Moreover, God can reach, and does reach, the willed end without a precept, that is, the propagation of the human race, namely by implanting in human nature the capacity and vehement inclination for generating.

Objection. From the fact that some power is conferred on man, an obligation of using it is rightly deduced. But the generative power is conferred on individual persons.

Response. The major, besides the fact that it must be distinguished in multiple ways, certainly is to be denied if it is a question of a power conferred for the good of the species, because it suffices that many use it. "Namely, from divine providence," says St. Thomas, "those things are given to man which are necessary for the whole species, and yet it is not necessary that every man use each one of them. For the industry of building and the power for fighting have been given to man, and yet it is not necessary that all be builders or soldiers. Similarly, although the power of generating and those things which are ordered to its act have been provided for man by God, nevertheless it is not necessary that every man intend the act of generation" (*Contra Gentiles*, book 3, ch. 136).

3. Matrimony, however honorable it is, nevertheless must be placed after virginity and chaste celibacy; likewise chaste widowhood after second nuptials.

The former has been proved and vindicated against objections in the treatise on the offices of clerics (vol. I, n. 1168); the latter is clear from canon 1142, and rests on the same principles.⁵

¹ 1 Cor. 7:9, 28, 36, 39; 1 Tim. 4:1-3; 5:14; Eph. 5:22-23; Heb. 13:4.

² Encyclical of Leo XIII, *Arcanum*, February 10, 1880; Encyclical of Pius XI, *Casti connubii*, December 31, 1930 (A.A.S. 1930, p. 544).

³ Encyclical *Casti connubii* (A.A.S. 1930, p. 565).

⁴ Cf. our little work *On the Virtue of Chastity and the Opposed Vices*, n. 98.

⁵ Cf. our little work *On the Virtue of Chastity and the Opposed Vices*, nn. 18-19.

718 V. That the governance of matrimony may be distinctly explained, two things must be distinguished: 1° the marriages of baptized persons and of non-baptized persons; 2° the bond itself, namely its validity and liceity, and its effects, set forth in n. 724.

1. Marriages of baptized persons. The marriage of baptized persons is governed not only by divine law, but also by canon law (canon 1016), and not by civil law. This is clear both from innumerable ecclesiastical documents,¹ and from the fact that the marriage of baptized persons is a sacrament. But the governance of the sacraments belongs to the Church alone.

Corollary I. The Church can establish diriment and impedient impediments (canons 1016, 1038), and by her own right treat cases which regard the bond, that is, its validity and liceity, its inseparable effects, likewise its separable ecclesiastical effects (canon 1960), and, if they are treated incidentally and accessorially, even merely civil effects (canon 1961).

Corollary II. The civil State is bound to recognize the rights of the Church and the things established by her. But it cannot, with regard to the marriages of baptized persons, establish diriment or prohibitive impediments; nor treat cases which regard the bond of those marriages, their inseparable effects, and their separable ecclesiastical effects. It is competent, however, concerning the merely civil effects of matrimony (canon 1016), and concerning cases about those same effects, if they are treated principally (canon 1961). Likewise it can, not by reason of matrimony considered in itself, but for the sake of protecting social order, prescribe certain formalities, for example the registration of marriage in the registers of civil status, and punish by civil penalties, for example monetary fines or the withdrawal of certain merely civil effects, spouses who have neglected those formalities; nevertheless it cannot establish conditions without whose fulfillment matrimony by baptized persons cannot be entered.

Corollary III. The civil legislator cannot simply forbid matrimony to any baptized person. This follows from the things said above. Yet he can require that, for example, those bound to military service abstain from matrimony for a time; nor by this is there conceded to the civil State a faculty of establishing impediments properly so called, or impediments directly impeding matrimony. For such a disposition cannot be made by reason of matrimony itself, but so that social order may be provided for; hence one who transgresses these things does not sin against religion, as does one who does not observe ecclesiastical statutes. Besides this, the civil State can sometimes indirectly keep someone from matrimony, for example by casting a guilty person into prison.

Corollary IV. Of itself there is no obligation of observing civil laws which exceed the power of the civil legislator. Accidentally, however, there is commonly such an obligation, namely so that

disturbance and damages otherwise going to follow for the spouses and offspring may be forestalled.

2. Marriages of non-baptized persons. The marriage of non-baptized persons is governed not only by divine law, but also by civil law, and not by ecclesiastical law. This is clear both from the documents to be assigned in Corollary I, and from the fact that the common good requires that the matrimonial contract be governed by positive human law. But the governance of the matrimonial contract entered by non-baptized persons does not belong to the Church, because she lacks power over non-baptized persons. Therefore it remains that it belongs to the civil legislator, and not to the Church. Let him beware, however, lest he exceed the limits of his power, for example by simply forbidding matrimony to some, etc., matters which we shall set forth more fully in the corollaries.

Corollary I. The civil legislator can, much more probably, establish impediments, both prohibitive ones properly so called and diriment ones, between non-baptized persons; likewise he can treat cases regarding those marriages.² For, first, the public good seems to require that laws looking to this be able to be enacted. But besides civil rulers no competent legislator can be assigned who would be able to frame such laws.

The major is clear: a) from the fact that the Church herself judged such laws necessary with regard to the marriages of her subjects; b) from the common practice of peoples somewhat cultivated;³ c) from the fact that it is especially fitting that some marriages be illicit and invalid which, considered under natural law alone, would be valid, for example marriages entered before marriageable age or without any public form.

The minor follows first from the fact that the competent legislator is not the Church, to whom infidels are not subject; nor another religious authority, since such an authority does not exist, or at least is not legitimate. Therefore it remains that we say that the said power belongs to the civil legislator. A second argument is drawn from the solutions of the Holy Office⁴ and of the Sacred Congregation of Propaganda Fide.⁵ The power set forth is usually called devolutive, because power over matrimony, as being a sacred thing, belongs of itself to the religious power alone.

Corollary II. The civil legislator cannot absolutely forbid matrimony to a non-baptized person who is capable of matrimony, for example for reasons called eugenic.⁶ So Leo XIII⁷ and Pius XI.⁸ The reason is that the right of contracting matrimony is older than the State itself, and therefore must rather be protected by the State, as being destined for the good of citizens, but cannot be extinguished by it. Add that human authority cannot directly impede the good of the species, that is, enact a law with the end that procreation be impeded. But if the prohibition has place, practically it is made for that end. The major is drawn from the fact that the good of the species is not subordinated to the end of the civil State.

Corollary III. The civil legislator cannot render anyone, even a non-baptized person, incapable of matrimony, for example by the means assigned in note 6. So Pius XI⁹ and the Holy Office.¹⁰ Add the reasons just brought forward in Corollary II. Add that neither can public authority directly mutilate an innocent person (vol. I, n. 740).¹¹

But insofar as the civil legislator can deprive a criminal, as punishment, of the generative faculty, this has been set forth in vol. I, n. 742.

Corollary IV. The civil legislator cannot, as we think, prescribe a medical inspection to be carried out before nuptials, unless a grave abuse would counsel it. For a matter which is an impediment to liberty in this matter, and so intimately affects an individual affair, ought not to be imposed except for a most grave cause, practically for a true abuse. But a true abuse - I am not speaking of particular cases - will not easily have place, nor will it easily be established. Hence these things should be left to parents, or even to those about to marry, who, if they please, can request the testimony of an approved physician.

¹ Cf. Council of Trent, session 24, canons 3, 4, 9, 12; constitution of Pius VI *Auctorem fidei*; *Syllabus* of Pius IX, propositions 68-70, 74; constitution of Leo XIII *Arcanum*.

² Cf. Resemans, *De competentia civili*.

³ Cf. Esmein, *Le Mariage*, I, p. 343.

⁴ October 29, 1739; September 20, 1854.

⁵ October 8, 1631; June 26, 1820.

⁶ The eugenic system intends the improvement of the race, and, to obtain that end, promotes laws which forbid matrimony to some or render them incapable of generating, for example through vasectomy in men, tubectomy or salpingectomy in women, etc.

⁷ Encyclical *Rerum novarum*, May 15, 1891.

⁸ Encyclical *Casti connubii* (A.A.S. 1930, p. 564).

⁹ Encyclical *Casti connubii* (A.A.S. 1930, pp. 564 and 565).

¹⁰ March 31, 1931.

¹¹ Encyclical *Casti connubii*, loc. cit.

Section IV. On the Properties of Matrimony

Two properties of matrimony especially are assigned, namely unity and indissolubility; and these indeed are essential, and in Christian matrimony obtain a peculiar firmness (canon 1013, § 2).

Chapter I. On the Unity of Matrimony

719 The unity of matrimony consists in the conjunction of only one man with only one woman, that is, monogamy. Opposed to unity are simultaneous polyandry, which is the simultaneous conjunction of one woman with several men, and simultaneous polygamy, which is the simultaneous conjunction of one man with several women. Now:

I. Simultaneous polyandry is prohibited by natural law; both because natural law is opposed to several heads in the same society, and because the education of offspring, which belongs to the primary ends of matrimony, is ruined. For the care both of father and of mother is required for the education of offspring. But from the fact that several men use the same wife, uncertainty arises as to who is the father of the offspring to be born; and this uncertainty will bring it about that no one has care of the offspring (St. Thomas, *Supplement*, q. 65, a. 1, ad 8).

II. Polygamy is prohibited by natural law. That it is prohibited to Christians is of faith from the Council of Trent;¹ that it is prohibited to all is clear from Sacred Scripture.² But that it is prohibited to all by natural law is gathered from the fact that it is opposed to the secondary ends of matrimony;

namely, to mutual help, which will suffer detriment from the lack of peaceful cohabitation; and to the quieting of concupiscence on the part of the wives, to each of whom the debt will not be rendered sufficiently. There are added the Instruction of the Holy Office,³ and canon 1013, § 2, which counts unity among the essential properties of matrimony.

In the Old Law polygamy, besides for the reason alleged by Christ, that is, because of hardness of heart, was also conceded by God, so that the human race, and especially the Jewish race, might be multiplied more quickly (cf. St. Thomas, *Supplement*, q. 65, a. 2). The said concession also seems to have been extended to the nations. But Christ the Lord removed the aforesaid concession,⁴ so that in the evangelical law simultaneous polygamy is wholly and everywhere prohibited.

¹ Session 24, canon 2.

² Matthew 19:4 sq.

³ June 20, 1866 (*Collectanea*, 1354).

⁴ Matthew 19:4 sq.

Chapter II. On the Indissolubility of Matrimony

720 Indissolubility is the property by force of which the bond of matrimony, while the spouses are living, cannot be dissolved.

Indissolubility is distinguished as twofold, intrinsic and extrinsic. Intrinsic indissolubility consists in this, that matrimony cannot be dissolved by the cause through which it arose, that is, by the consent of the contracting parties. Matrimony is said to be extrinsically indissoluble insofar as it is not dissolved by God and cannot be dissolved by another external cause. Therefore matrimony is extrinsically soluble insofar as God has either established that in some case it will be dissolved by the fact itself, or has bestowed on some power the faculty of dissolving it. Now:

I. Every marriage is entirely intrinsically indissoluble, that is, it can never be dissolved by the consent of the contracting parties. This is clear from Sacred Scripture,¹ from the Council of Trent,² from proposition 67 proscribed by Pius IX in the *Syllabus of Errors*,³ and from the encyclical of Pius XI *Casti connubii*;⁴ likewise from reason. Matrimony, as a natural society, must of itself be apt for the ends of matrimony, to which education belongs. But soluble matrimony is not of itself apt for education; for such a marriage would greatly harm education, which requires a prolonged union of the parents and demands that parents leave goods to their children. Add that solubility is opposed to the very close friendship proper to matrimony, and exposes the morals of married persons to dangers (St. Thomas, *Contra Gentiles*, book 3, ch. 123; *Supplement*, q. 67, a. 1; St. Alphonsus VI, 956). Add besides that the matrimony of Christians, by the fact that it has been raised to the dignity of a sacrament, has received a new firmness.

II. With regard to extrinsic indissolubility, first note that the faculty of dissolving any marriage whatever by its own authority belongs to no human power; for no human power can by its own authority dissolve a right established by a higher power, such as is the natural law, by force of which matrimony cannot be dissolved. Hence if some human power can dissolve certain marriages, it cannot do this except in the name of God, or by vicarious power, as it is called. With these preliminary points established, concerning the extrinsic indissolubility of matrimony the following are laid down:

1. Matrimony between baptized persons:

a) If it is consummated, it is entirely indissoluble. This is clear 1° from ecclesiastical documents, that is, from canons of Councils and Synods, from decrees of the Holy See,⁵ and from canon 1118, which declares: "A valid ratified and consummated marriage cannot be dissolved by any human power and by no cause, except death." It is deduced 2° from the fact that the Church has never used such a power. The reason is that ratified and consummated matrimony, by God's ordinance, perfectly represents the indissoluble union of Christ with the Church (p. 553).

Objection. Christ the Lord, when promulgating in the Gospel the indissolubility of Christian matrimony, nevertheless made an exception for the case of adultery: "But I say to you, that whoever shall put away his wife, except for fornication, and shall marry another, commits adultery" (Matthew 19:9). Therefore, in the case of adultery by one spouse, marriages even of baptized persons can be dissolved. So the Greek schismatics and most Protestants.

Response. As is clear from the context and from the parallel passages (Mark 10:11; Luke 16:18; 1 Corinthians 7:10, 11), Christ proclaimed the absolute indissolubility of the matrimonial bond, even for the case of adultery. Therefore he added absolutely: "And he who shall marry her that has been put away commits adultery."

Therefore it must be said that the exceptive clause "except for fornication" affects only the prior part of the sentence, "Whoever shall put away his wife, commits adultery" (or: "causes her to commit adultery," Matthew 5:32), but not the other part of the sentence: "Whoever shall marry another commits adultery."

Christ, therefore, when the Pharisees ask, "Is it lawful for a man to put away his wife for any cause whatever?" answers that it is indeed lawful to put away a wife for the cause of fornication; nevertheless it is never lawful to put away a wife in such a way that one marries another wife while the former is living. In other words, Christ teaches that in the case of adultery by one spouse separation, as they say, with regard to bed and cohabitation, is lawful, but that the matrimonial bond itself is not dissolved.

b) If it is not consummated, it is dissolved both by law itself through solemn religious profession, and by dispensation from the Apostolic See granted for a just cause, with both parties asking, or with one of the two asking even if the other is unwilling (canon 1119). It is said:

alpha) Through solemn religious profession; this is recognized in the law of the Decretals both by Alexander III⁶ and by Innocent III,⁷ and is of faith from the Council of Trent.⁸ Moreover note well that the said force does not belong to simple profession, even one emitted in the Society of Jesus or by nuns, nor to the reception of Order itself, nor to the vow of chastity solemnized in the reception of Order.⁹ Finally, since the marriage is not dissolved except at the very moment of solemn profession, the other party cannot pass to new nuptials before it is emitted.

It is disputed whether solemn religious profession dissolves marriage by ecclesiastical law¹⁰ or by divine positive law.¹¹ Now it seems to dissolve it by ecclesiastical law, and not by divine positive law. For, first, the opinion which asserts divine positive law is not proved, although such an assertion would seem to have to be proved. Next, *a priori* it seems little probable that a thing which belongs solely to an ecclesiastical institution, namely the solemnity of vows,¹² would by divine law have the

force of dissolving matrimony. Then, solemn and simple vow seem not to differ in nature or substance;¹³ and, this being supposed, it is difficult to admit that an irritant force concerning matrimony belongs by divine law to the former, when the same cannot be affirmed of the latter. Finally solemn profession, considering only divine positive law, does not dirimently impede matrimony to be contracted, so that the later marriage, considering that law alone, can be reconciled with solemn profession; and, this being supposed, it can scarcely be admitted that a marriage already contracted, attending to divine positive law alone, is dissolved by solemn profession.

Objection. The Council of Trent declares: "If anyone says that a ratified but not consummated marriage is not dissolved through solemn religious profession by one of the spouses, let him be anathema."¹⁴ Hence the dissolution of the said marriage through solemn profession is a dogmatic, immutable truth. But if you admit ecclesiastical law, solemn profession can be deprived of the privilege.

Response. The opposed canon of the Council of Trent proves divine law no more than canon 9, session 13 and canon 2, session 23 prove the Easter precept and minor Orders to be of divine law. The cited canons condemn the errors of heretics with regard to the statutes of the Church; namely, those who deny force to the said statutes deny the power of the Church, which is heretical.¹⁵

Note. Solemn religious profession does not seem to dissolve a marriage entered between non-baptized persons and consummated in infidelity, even if after conversion it has not been consummated; since it is clear from no ecclesiastical document that such force belongs to the said profession, although those who judge that marriage is dissolved by natural law or by divine positive law through solemn profession ascribe the aforesaid force to it with greater right than others do.¹⁶

beta) Through dispensation granted by the Apostolic See for a just cause. This is clear from the constant practice of the Church.¹⁷ A just cause is required, however, because the Church proceeds by vicarious power; and just causes are, for example, notable error of quality in contracting marriage; voluntary and too-protracted delay by one spouse in consummating the marriage; extraordinary and implacable enmities of the spouses; supervening disease, especially that which impedes the use of marriage; supervening crime, especially if a lengthy punishment of imprisonment is inflicted on the delinquent; probable impotence of one spouse, which nevertheless cannot be proved either to have been antecedent or to be perpetual; asserted but not sufficiently proved nullity of the marriage, for example under the head of force and fear, joined with certainty of non-consummation.¹⁸ If the case and cause seem to occur, the matter should be referred to the Ordinary and through him recourse should be had to the Holy See, namely so that useless wanderings about may be avoided.

Note. A dispensation granted by the Holy See concerning a ratified and non-consummated marriage, or a permission made for passage to other nuptials on account of the presumed death of a spouse, always carries with it a dispensation from the impediment arising from adultery with a promise or attempted celebration of marriage, if there should be need of one (canon 1053).

2. Matrimony between a baptized party and a non-baptized party:

a) If it is not consummated, it is dissolved - as has been said concerning marriage entered between baptized persons - both by law itself through solemn religious profession, and by dispensation from the Apostolic See granted for a just cause (canon 1119).

b) If it is consummated, it likewise very probably can be dissolved by the Holy See, according to the doctrine soon to be handed down, by which any marriage can be dissolved by the Supreme Pontiff which has not been consummated after the baptism of both parties, except only the marriage of which neither party is baptized.

3. Matrimony between non-baptized persons:

a) If neither party is converted to the faith, that is, baptized, it is also extrinsically indissoluble. For a marriage of this kind cannot be dissolved: not by civil power, since it cannot dissolve the natural law (p. 548); not by the Supreme Pontiff, since he lacks power, even vicarious power, over infidels; nor by force of any law by which God has established that in some case marriage will be dissolved. In the Old Law, indeed, there had been conceded to the Jews the faculty of giving a bill of repudiation for dismissing wives, and this faculty also seems to have been extended to the nations.¹⁹ But Christ the Lord revoked the bill of repudiation and restored to matrimony its primitive indissolubility, as is clear from Matthew.²⁰

b) If one party is converted to the faith:

alpha) It is dissolved, the requisite conditions being fulfilled, in favor of the faith from the Pauline privilege (canon 1120, § 1), or in the case of the Apostle, as it is called; the Pauline privilege will be discussed particularly in the scholion.

Likewise it can be dissolved by the Holy See: certainly, if the marriage has not been consummated after conversion; very probably, even if it has been consummated after conversion. This follows from the things to be said under c).

c) If both parties are converted to the faith, it can be dissolved by the Holy See: certainly, if the marriage has not been consummated after the conversion or baptism of one of the converts; very probably, even if it has been consummated after the conversion of one of the converts; but not if it has been consummated after the conversion of both. It is said:

alpha) Certainly, if it has not been consummated after the baptism of one of the converts. For from ecclesiastical documents, especially from the constitution of Gregory XIII *Populis ac nationibus*,²¹ it is deduced that marriages of this kind can be dissolved. But they are not dissolved by force of the Pauline privilege, which does not regard the marriage of two converted infidels (n. 721).

The major is proved: the constitution of Gregory XIII decrees: "Considering that marriages of this kind contracted among infidels are indeed true, yet are not to be judged so ratified that, when necessity counsels, they cannot be dissolved... we grant the faculty of dispensing,... so that they may be able to contract marriage with any one of the faithful... provided that it is established... that the absent spouse cannot be lawfully admonished.... And these marriages indeed, even if afterwards it should become known that the former infidel spouses could not declare their will because they were justly impeded, and that they had even been converted to the faith at the time of the second marriage already contracted, nevertheless must never be rescinded, but are valid and firm." But these things must at least hold if the marriage was not consummated after the baptism of one of the converts.

beta) Very probably, even if it has been consummated after the conversion of one of the converts. So authors now rather commonly. The reason seems to be that in this case matrimony - as not yet both elevated to a sacrament on the part of each party and consummated after the sacrament received by

each party - does not perfectly represent the union of Christ with the Church, and therefore lacks full firmness.²²

gamma) But not if it has been consummated after the conversion or baptism of both parties. This is deduced first from the fact that in this case there seems to be a ratified marriage (n. 713) and, as is supposed, a consummated one; next from the fact that the Church has never dissolved marriages of this kind. There is added the consensus of theologians and canonists.

Conclusion. The Supreme Pontiff, provided that at least one of the spouses is baptized, can by vicarious power and from a proportionate cause dissolve every marriage which was not consummated after the baptism of both parties.

In proving the things on which the aforesaid conclusion rests, we have relied only on divine documents, that is, Sacred Scripture, and ecclesiastical documents. But it is helpful to illustrate the intrinsic reason in these terms: the indissolubility of marriage arises from a twofold source, from natural law and from divine positive law: from natural law, insofar as both the good of offspring and the good of the contracting parties require indissolubility; from divine positive law, insofar as matrimony established by God was a foreshadowing of that divine and indissoluble union between Christ and the Church; and this foreshadowing or mystical signification is implanted not only in the sacrament of matrimony, but, as the Supreme Pontiffs²³ and theologians bear witness, in every marriage. Yet it is implanted more perfectly in the sacrament of matrimony than in a marriage which is not a sacrament, because the sacred element which is more present in the sacrament of matrimony is more apt to receive the character of representing that sacred union.²⁴ Furthermore, it is implanted more perfectly in a marriage which is not a sacrament when it has been consummated than when it has not been consummated; likewise more perfectly in sacramental matrimony when consummated than when not consummated,²⁵ because the bond which has been ratified by the real handing over of the flesh is more apt to receive the character of foreshadowing that perfect union of Christ with the Church; indeed sacramental matrimony, not yet consummated, according to authors represents the more dissoluble union of Christ with the soul. And these things seem sufficiently to exhibit the reason for the different degree of indissolubility.

¹ Mark 10:11; Luke 16:18; 1 Corinthians 7:10, 11.

² Session 24.

³ Denzinger-Bannwart, n. 1767.

⁴ A.A.S. 1930, pp. 550-556, 558, 572-576.

⁵ Cf. De Smet, *De sponsalibus et matrimonio*, n. 358, 359.

⁶ C. 2 (4) and 7, X, III, 32.

⁷ C. 14, X, III, 32.

⁸ Session 24, canon 6.

⁹ Cf. De Smet, op. cit., nn. 336, 337.

¹⁰ Understand, however, a vicarious ecclesiastical law, so to speak, because the Church cannot dissolve marriage except by vicarious power; see p. 548.

¹¹ St. Bellarmine (*De monachis*, book 2, ch. 38) and others judge that marriage is dissolved by solemn profession by force of natural law, that is, from the very nature of solemn profession.

¹² *De officiis religiosorum*, t. I, n. 1218.

¹³ Session 24, canon 6.

¹⁴ Session 24, canon 6.

¹⁵ Aertnys-Damen, op. cit. II, n. 924; Gasparri, op. cit., n. 1082.

¹⁶ Cf. De Smet, op. cit., n. 339.

¹⁷ Cf. De Smet, op. cit., nn. 328, 332.

¹⁸ Vlaming, op. cit., n. 606.

¹⁹ In the Old Law there was divorce with regard to the bond. For: 1° a repudiated wife could marry another man; 2° when the other man had died, the former husband could not receive her as wife, but she was not prohibited from marrying another (Deuteronomy 24:1-4).

²⁰ Chapter 19:3 sq.

²¹ January 25, 1585.

²² Cf. encyclical of Pius XI *Casti connubii* (A.A.S. 1930, p. 552).

²³ Leo XIII, encyclical *Arcanum*; Pius XI, encyclical *Casti connubii* (A.A.S. 1930, p. 570).

²⁴ Ephesians 5:32.

²⁵ Encyclical of Pius XI *Casti connubii* (A.A.S. 1930, pp. 552, 570).

Scholion I. On the Pauline Privilege

721 A lawful marriage between non-baptized persons, even if consummated, is dissolved in favor of the faith from the Pauline privilege (canon 1120, § 1), or in the case of the Apostle, as it is called; about this one must deal more fully.

I. Summary notion of the privilege. The privilege consists in this, that a spouse who in infidelity entered marriage with another infidel can, after receiving Baptism, if the other party persists in infidelity and departs, pass to new nuptials. By the new nuptials the prior marriage, even if it was consummated, is dissolved.

II. The existence of the privilege is clear from these words of St. Paul: "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 her husband. For the unbelieving husband is sanctified by the faithful woman, and the unbelieving woman is sanctified by the faithful husband; otherwise your children would be unclean, but now they are holy. But if the unbeliever departs, let him depart; for the brother or sister is not subject to servitude in such things; but God has called us in peace."¹

It is disputed whether the Apostle merely promulgated a privilege established by God, or instituted it by force of a special faculty granted by Christ to the Apostles.

To the former opinion, which St. Alphonsus (VI, 955) and very many authors embrace, there are favorable the Sacred Congregation of Propaganda Fide² and the Holy Office, which several times taught the origin of the privilege "granted by Christ the Lord and promulgated through the Apostle Paul."³

III. Conditions of the privilege. In order that, by force of the Pauline privilege, it may be lawful to pass to new nuptials, it is required: 1° that the marriage have been contracted between two infidels; 2° that one of the spouses be converted to the Christian religion; 3° that the other spouse persist in infidelity up to the new nuptials; 4° that the other spouse, after the Baptism of the faithful party, depart from that party physically or morally; 5° that through an interpellation the departure be established, unless the Apostolic See has declared otherwise. It is said:

1. That the marriage have been contracted between two infidels (canon 1120, § 1).⁴ Hence there is no place for the privilege: 1° if a baptized person in the Catholic Church, after obtaining a dispensation from the impediment of disparity of cult, has contracted with an infidel (canon 1120, § 2); 2° if a baptized non-Catholic has contracted nuptials with an infidel; and this holds even if the said non-Catholic is converted to the Catholic Church (cf. canon 1120, § 1). Some indeed judge that a baptized non-Catholic who embraces the Catholic religion can enjoy the privilege, because he is truly converted.⁵ But this seems to have to be denied, because conversion has always been understood of Baptism.⁶

Objection 1. Canon 1120, § 2 declares: "This privilege does not obtain in marriage entered between a baptized party and a non-baptized party with a dispensation from the impediment of disparity of cult." Therefore it obtains in a marriage entered between a baptized party and a non-baptized party without a dispensation from the impediment of disparity of cult, as if a schismatic or heretical party contracts with a non-baptized party.

Response. From the fact that the former does not obtain, it is not necessarily deduced that the latter obtains; that this in fact cannot be deduced follows from those things by which it is proved that it is required that the marriage have been contracted between two infidels, that is, from Sacred Scripture,⁷ from the responses of the Holy Office,⁸ and from the obvious sense of canon 1120, § 1.

Objection 2. The Church has in fact dispensed in a marriage between a non-baptized party and a party baptized in schism or in heresy.

Response. Let that pass; for the question is not about a dispensation granted by the Church, but about the Pauline privilege.

2. That one of the spouses be converted to the Christian religion, that is, be baptized, and this either in the Catholic Church or in some Christian sect. It is said:

a) Be baptized; hence even catechumens before Baptism cannot enjoy the privilege.⁹

b) Either in the Catholic Church or in some Christian sect. A few deny this and judge that it is required that the infidel spouse be converted to the Catholic faith; and they rely both on the words of Paul "brother," "sister," "faithful," and on chapter 6 *De divortiis*, where it is said: If the other "is converted to the Catholic faith." But Tradition teaches that the foundation of the privilege is the sacrament of faith, or Baptism.¹⁰ If the Baptism of the converted party is doubtful, for the most part the difficulty is removed by repeating Baptism conditionally; for in the case of doubtful Baptism there can be no place for the Pauline privilege.¹¹ If a doubt about Baptism or its validity arises after the new marriage has been contracted, recourse should be had to the Holy Office.

3. That the other spouse persist in infidelity up to the new nuptials, that is, not be baptized. As soon as the other spouse also is baptized, the new marriage can no longer be entered.¹²

4. That the other spouse, after the Baptism of the faithful party, depart from that party physically or morally. Therefore it does not suffice that the infidel party not be baptized, but departure is also required; and indeed departure after the Baptism of the faithful party; departure before Baptism does not suffice. Moreover, both physical and moral departure suffices.

a) One departs physically: 1° who for any cause whatever is unwilling to cohabit. This departure, however, does not suffice if the faithful party, after receiving Baptism, has furnished to the infidel party a just cause of departing (canon 1123).¹³ I said after Baptism, because Baptism washes away all past things. One departs physically: 2° who indeed wishes to cohabit, but is physically impeded from it, provided he is not impeded because of a cause placed by the faithful party after Baptism. The case is present, for example, if the infidel party is detained in prison and there is no hope that he will soon be freed. This is denied by some, who require a malicious departure; but the response of the Holy Office is opposed to this opinion.¹⁴

b) One departs morally: 1° who is unwilling to cohabit without insult to the Creator, for example if the infidel party inflicts a formal injury on religion, or importunately excites the faithful party to sins of irreligion, lust, etc., or prevents the faithful party from fulfilling the precepts of religion, or refuses that the offspring be educated religiously. One departs morally: 2° who is unwilling to cohabit peacefully, for example if the infidel party treats the other spouse cruelly without just cause, or does not renounce concubinage, or - as it seems should be added - more often commits adultery, or by other continued vices reduces conjugal life to servitude (St. Alphonsus VI, 956).

The fact that the infidel spouse previously cohabited without insult to the Creator and peacefully does not prevent there being place for the privilege, if the infidel afterwards departs physically or morally; and this holds even if the faithful spouse after Baptism again consummated the marriage with the infidel party (canon 1124).

5. That the departure be established by interpellation, unless the Apostolic See has declared otherwise (canon 1121).

a) It is doubtful by what law interpellation is required;¹⁵ likewise whether it is necessary for the validity of the new marriage. Favoring the affirmative opinion are these words of canon 1121, § 1: "Before the converted spouse validly contracts..., he must... interpellate the non-baptized party."¹⁶ Furthermore, the interpellations must regularly be made after Baptism.¹⁷ But the infidel party must be asked: 1° whether he or she also wishes to be converted and receive Baptism; 2° whether at least he or she wishes to cohabit with the converted party peacefully, without insult to the Creator (canon 1121, § 1, 1° and 2°).

b) Interpellations should regularly be made, in at least summary and extrajudicial form, by authority of the Ordinary of the converted spouse. By that Ordinary there are also to be granted to the infidel spouse, if indeed he has requested them, delays for deliberating, yet with the warning that if the delays pass uselessly, the response will be presumed negative. Interpellations also made privately by the converted party himself are valid, indeed they are also licit, if the form prescribed above cannot be observed; nevertheless, in this case, for the external forum, these interpellations must be established by at least two witnesses or by another legitimate mode of proof (canon 1122). A single interpellation suffices, so that repetition is a matter of mere charity.¹⁸ Indeed interpellation need not

even then be repeated when the infidel spouse previously lived peacefully with the faithful spouse, but afterwards departs.

c) Interpellation must be made unless the Apostolic See has declared otherwise. Besides this, Bishops, Vicars, and Prefects Apostolic are commonly granted the faculty of dispensing in certain circumstances.

Note. Those things which regard matrimony in the constitutions of Paul III *Altitudo*, June 1, 1537; of St. Pius V *Romani Pontificis*, August 2, 1571; and of Gregory XIII *Populis*, January 25, 1585, and which were written for particular places, are extended also to other regions in the same circumstances (canon 1125). It is said to other regions, that is, everywhere on earth, in the same circumstances. Now:

1° Paul III decrees "that polygamists who before conversion had several wives according to their customs, and do not remember which one they first took, once converted to the faith, may take one of them whom they wish, so that they may contract matrimony with her by words concerning the present, as is the custom; but those who do remember which one they first took, having dismissed the others, are to retain her. And we grant to them that those joined even in the third degree both of consanguinity and of affinity are not excluded from contracting marriages." The same holds concerning a woman who lived in polyandry.

2° Pius V declares that the same persons, even if they remember which was the first wife, may remain, the others having been dismissed, with the wife who was baptized with them. Nevertheless the first wife, if she is known to some, seems first to have to be interpellated as to whether she wishes to be converted. The text of Pius V does not indeed expressly declare this, but it is counseled by formula n. 23 of the Sacred Congregation of Propaganda Fide, where in the same case the faculty of dispensing is granted to Ordinaries under this condition, that the lawful wife of the convert has expressly refused conversion. It suffices, however, to interpellate the former wife, if she is known, as to whether she wishes to be converted; the other interpellation concerning peaceful cohabitation can be omitted.

3° Gregory XIII grants to local Ordinaries, pastors, and confessors of the Society of Jesus¹⁹ the faculty of dispensing with converted infidels, so that, the infidel spouse having been left, they may marry any one of the faithful, with the consent of the infidel in no way required or the response not waited for, "provided it is established, even summarily and extrajudicially, that the absent spouse, as was stated, cannot lawfully be admonished, or that, once admonished, he has not signified his will within the time fixed in that admonition." Many conclude from various responses of the Holy Office that these faculties can be extended to the case where it is established that interpellation will be useless.²⁰ The Supreme Pontiff adds: "and these marriages indeed, even if afterwards it should become known that the former infidel spouses could not declare their will because they were justly impeded, and had also been converted to the faith at the time of the second marriage contracted, nevertheless we decree that they must never be rescinded, but are valid and firm, and that the offspring to be received from them will be legitimate."

IV. Use of the privilege. 1. If the infidel who has been interpellated denies either conversion and due cohabitation, or due cohabitation alone and not conversion; likewise if he responds that he indeed wishes to cohabit peacefully, but is impeded from carrying out his will, the faithful spouse can pass to

new nuptials (canon 1123), provided nevertheless that, if the infidel spouse admits conversion, the faithful spouse enters the nuptials before the Baptism of that spouse. Besides, for liceity it is required that the Ordinary or his delegate have declared that one can proceed to the use of the privilege.

2. If the infidel responds nothing, it must be seen whether the interpellation reached him and whether he could easily respond, so that departure can be gathered from the denied response. If the matter remains doubtful, and no fruit is hoped from a repeated interpellation, a dispensation from interpellation should be obtained.
3. The faithful spouse can enter new nuptials with a Catholic person only (cf. canons 1123, 1124). Unless a dispensation is obtained, marriage with a heretical person will be illicit; with an infidel, because of disparity of cult, it will be invalid. Moreover note:

a) If the infidel admits both conversion and due cohabitation, the faithful spouse, as is clear, is bound to cohabit with him.

b) If the infidel admits due cohabitation, but not conversion, the faithful spouse indeed cannot contract a new marriage; nevertheless, equally as the faithful spouse whose other party has fallen into heresy, he can institute divorce from bed and cohabitation, after a warning has first been given and after he has awaited conversion for a reasonable time. This is the doctrine and practice of the Church.²¹

4. By the new nuptials the prior marriage is dissolved, so that the infidel party after those nuptials have been contracted, not before, can validly contract a new marriage (canon 1126; St. Alphonsus VI, 957).²² That the prior marriage is dissolved through solemn profession which the faithful spouse may perhaps emit is denied rather commonly. Finally, the new nuptials are held by the Church as first nuptials, so that the faithful spouse is not judged a bigamist.

¹ 1 Corinthians 7:12-15.

² *Collectanea*, n. 1305 sq.

³ For example, in the Instruction to the Vicar Apostolic of Natal, July 11, 1866 (*Collectanea*, n. 1295).

⁴ Holy Office to the Bishop of Cochin, August 5, 1759, ad 4 (*Collectanea*, n. 421); in Nanking, March 5, 1852 (*Collectanea*, n. 1070).

⁵ *Ami du Clerge*, 1921, p. 69 sq. and p. 234 sq.

⁶ Cf. *Gregorianum*, 1923, p. 241 sq. and p. 329 sq.

⁷ 1 Corinthians 7:12-15.

⁸ August 5, 1759, ad 4 (*Collectanea*, n. 421); March 5, 1852 (*Collectanea*, n. 1070).

⁹ Sacred Congregation of Propaganda Fide, January 16, 1803 (*Collectanea*, n. 665).

¹⁰ C. *Gaudemus*, 8, *De Divortiis*.

¹¹ Holy Office, March 13, 1901; cf. *Gregorianum*, loc. cit.; Holy Office, March 8, 1911. Nevertheless the Supreme Pontiff can, the requisite conditions being fulfilled, by vicarious power dissolve the marriage previously entered (n. 722).

¹² Holy Office, August 5, 1759, ad 2 (*Collectanea*, n. 421); Sacred Congregation of Propaganda Fide, January 30, 1807 (*Collectanea*, n. 690).

¹³ July 8, 1891 (*Collectanea*, n. 1760).

¹⁴ Holy Office, December 14, 1848, ad 2 (*Collectanea*, n. 1036).

¹⁵ Holy Office, August 5, 1759 (*Collectanea*, n. 924); July 4, 1855 (*Collectanea*, n. 950).

¹⁶ Cf. Holy Office, September 16, 1824 (*Collectanea*, n. 784); June 12, 1850 (*Collectanea*, n. 1044).

¹⁷ Cf. Sacred Congregation of Propaganda Fide, January 17, 1836, ad 1 (*Collectanea*, n. 845).

¹⁸ Holy Office, April 13, 1859 (*Collectanea*, n. 1175); June 3, 1874 (*Collectanea*, n. 1415); Holy Office, June 12, 1850, ad 1 (*Collectanea*, n. 1044).

¹⁹ "With canon 1125 considered, the faculty now seems to be extended to all confessors" (Aertnys-Damen, II, 922, question 1°).

²⁰ Cf. Vermeersch, *De casu Apostoli*, n. 77.

²¹ Cf. Wernz-Vidal, n. 702.

²² Constitution of Benedict XIV *Postremo mense*, February 28, 1747.

Scholion II. On the Privilege of Faith

722 The privilege of faith in a doubtful matter enjoys the favor of law (canon 1127). It is said:

I. The privilege of faith. Now the privilege of faith is the privilege which, by force of the Church's power of dissolving certain marriages, is granted to one converted to the faith, in relation to marriage.

II. In a doubtful matter, that is, in a matter doubtful after diligent examination has been undertaken; once this has been undertaken, the case is present:

1. If there is doubt about the fact or about the validity of a marriage entered before Baptism.
2. If there is doubt which was the first wife among several taken before Baptism.
3. If there is doubt whether the requisites are present so that the convert, by force of the Pauline privilege, can contract a new marriage with a Catholic person. If, however, the doubt regards the interpellations, and no fruit is hoped from their repetition, a dispensation from the interpellations must be obtained.
4. If there is doubt about the fact or about the validity of Baptism received by one party; but not if each party was baptized with doubtful validity. For the legislator, in declaring the principle established by canon 1127, does not distinguish between consummated and non-consummated marriages, so that, if in the latter hypothesis he does not regard consummated marriages, neither is he to be judged to regard the other species, in other words, no marriages. But in the latter hypothesis he does not regard consummated marriages, because these in that hypothesis are probably ratified and consummated, that is, entirely indissoluble. Therefore in the latter hypothesis he regards no marriages, or the principle cannot be applied.

III. It enjoys the favor of law, that is, in the cases set forth the converted party has the right of choosing what favors him in relation to marriage. Hence:

1. In doubt about the validity of a marriage contracted before Baptism, he can enter a new marriage.
2. In doubt which was the first wife, he can take whichever he prefers from the wives whom he assumed before Baptism.

3. In doubt about the requisites so that the convert can enter a new marriage with a Catholic party, he has the right of doing this.
4. In doubt about the fact or about the validity of Baptism received in the Catholic Church, he can contract a new marriage.

Note. Nevertheless, in each of the doubts set forth, recourse must be had to the Holy Office, so that it may examine the case (canon 247, § 3), or to another to whom that faculty may perhaps have been granted.

Scholion III. On the Favor of Law which Belongs to Matrimony

723 Matrimony enjoys the favor of law; therefore in doubt one must stand for the validity of matrimony until the contrary is proved, with due regard for the prescription of canon 1127 (canon 1014). It is said:

I. It enjoys the favor of law, that is, the favor which matrimony enjoys is a favor of law, not a favor of law and by law, so that demonstration of the contrary is admitted; but what a favor of law involves will now be explained.

II. Therefore in doubt one must stand for the validity of matrimony until the contrary is proved. Understand a doubt persisting after diligent examination. This being supposed:

1. In a doubt of law, that is, in doubt whether the marriage celebrated is valid, it is to be held as valid until nullity is proved.
2. In a doubt of fact, one must stand for the marriage entered when the bond between the parties enjoys the name and possession of marriage, in other words, is publicly held as a marriage.

The reason is that the good of offspring and the common good demand that marriages persist as long as they are not certainly null (St. Alphonsus VI, 903 sq.).

3. With due regard for the prescription of canon 1127; and, with that canon considered, if either of the infidel spouses is converted, and there is doubt about the validity of the marriage entered before Baptism, a new marriage can be permitted by the competent authority (n. 722).

Section V. On the Effects of Matrimony

724 I. Division of effects. The effects of matrimony are divided:

1. By reason of connection, into inseparable and separable effects. Inseparable effects are those which spontaneously and necessarily flow from valid matrimony. Such are, for example, that true spouses must be held as such; that there arises between the spouses a bond by its nature perpetual and exclusive (canon 1110); that each spouse from the very beginning of matrimony has an equal right and duty with regard to the acts proper to conjugal life (canon 1111), etc. Separable effects are those which accrue to matrimony accidentally or extrinsically; and they are called ecclesiastical or civil, according as they draw their origin from canon law or from civil law. Ecclesiastical effects are, for example, that, unless something else has been provided by special law, the wife becomes a participant in the status of the husband with regard to canonical effects (canon 1112), the right of ecclesiastical patronage granted to the father of a family, etc. Civil

effects are, for example, nobility coming to the other spouse or to offspring, the right of political suffrage belonging to the father of a family.

2. By reason of the participants, into effects common to each spouse, and effects proper to the husband, to the wife, or to the children.

II. The different effects of matrimony. 1. Effects common to each spouse are:

- a) A bond by its nature perpetual and exclusive (canon 1110).
 - b) An equal right and duty with regard to the acts proper to conjugal life (canon 1111).
 - c) The obligation of caring according to one's powers for the education of offspring, both religious and moral and physical and civil, and also of providing for their temporal good (canon 1113).
2. Effects proper to the husband are: marital power over the wife, and the power of the father over the children.
 3. Effects proper to the wife are: subjection to the husband; likewise participation in the status of the husband with regard to canonical effects, unless by special law something else has been provided (canon 1112), for example that she enjoys the domicile of her husband (canon 93, § 1), etc.
 4. The effect especially proper to children is legitimacy; but concerning this and concerning matters akin to it, because they recur so often, we shall speak particularly in the scholion.

Scholion. On Legitimacy and Matters Akin to It

We shall speak of legitimacy, of legitimate children, of illegitimate children, and of legitimation.

725 I. Legitimacy is the quality of legitimate or legitimated offspring, which produces certain determinate effects to be set forth later.

726 II. Legitimate children. With natural law considered, legitimate children are those conceived from a valid marriage. But with canon law considered, legitimate children are, with the things to be excepted excepted:

1. Those conceived from a valid or putative marriage.¹ It is said from a marriage, that is, from a mother joined in marriage and from the man to whom she is joined in marriage (canon 1114).
2. Those born from a valid or putative marriage, even if the parents at the time of conception had not yet entered marriage.
3. Those carried in the womb while there is a marriage between the pregnant woman and the father of the offspring, even if conception had place before the marriage, and the father or mother dies before the birth of the offspring, so that the offspring was neither conceived nor born from marriage. The aforesaid are to be called legitimate because of parity of reason, or, if you prefer, because of the formal equality of this case with the case of offspring merely born from marriage; hence canon 1114 is judged to comprehend them also.

I said with the things to be excepted excepted, because those are illegitimate who were conceived or born from a valid or putative marriage of parents for whom, because of solemn profession or a sacred Order received, the use of a previously contracted marriage was prohibited at the time of conception

(canon 1114). Note: previously contracted; hence offspring born from a marriage entered between one bound by solemn vow and another, but with a dispensation, even if perhaps conceived before the marriage, is not illegitimate, because it is not a question of a marriage contracted before the vow. Moreover note:

a) Those conceived or born in marriage, that is, from a mother joined in marriage, are held to have been conceived or born from marriage, that is, from the mother and from the man to whom she is joined in marriage, and therefore are held as legitimate, unless the contrary is proved by evident arguments (canon 1115, § 1). This is proved, for example, by showing that intercourse did not have place during the time useful for conception, that is, from the 300th day to the 180th day before birth,² for example because of illness or because of absence. The declaration of the man or of the woman, even if confirmed by oath, does not suffice. I said: they are held as legitimate, but not of themselves from an ordinary presumption of law, since this is restricted only to some. Namely:

b) Those conceived or born in marriage are presumed to have been conceived or born from marriage, and consequently are presumed legitimate, if they were born at least after six months from the day the marriage was celebrated, or within ten months from the day conjugal life was dissolved (canon 1115, § 2). If a child is born within six months from the day conjugal life was dissolved, and the man at once denied that the offspring born was his, and other things also support the truth of the assertion, the presumption favors the man, and the burden of proving that he, that is, the man, is the father, rests on the other party.

c) In doubt whether offspring was conceived or born in marriage, for example exposed children, it seems that the offspring must be held legitimate; since it seems it must be held as conceived and born in marriage, and likewise from marriage, because a delict is not presumed; this being supposed, it must also be held legitimate unless the contrary is proved.

¹ An invalid marriage is called putative if it was celebrated in good faith by at least one party, until each party becomes certain of its nullity (canon 1015, § 4). It is disputed whether a marriage invalid because of defect of form can ever be held as putative.

² The useful time is computed in this way because birth commonly has place between 180 and 300 days after conception.

727 III. Illegitimate children. 1. Notion. Illegitimate children are: 1° those who were neither conceived nor born from a valid or putative marriage, nor carried in the womb while there was a marriage between the pregnant woman and the father of the offspring; 2° those conceived or born from a valid or putative marriage of parents for whom, because of solemn profession or because an Order had been received, the use of the previously contracted marriage was prohibited at the time of conception.

2. Division. Illegitimate children are distinguished into natural and spurious. Natural children are those who were procreated by parents who at the time either of conception or of birth or in the interval between the two could have been joined by valid marriage; moreover it suffices that they could have been so joined through a dispensation obtained.

Spurious children are those who were procreated by parents who, because of a diriment impediment not removed during the whole time from conception up to birth, could not have contracted valid marriage with each other.

Spurious children are subdivided into adulterine, sacrilegious, incestuous, nefarious, and simply spurious. Adulterine children are those born from adultery; sacrilegious, those born from a solemnly professed man or woman, or from a cleric constituted in sacred orders; incestuous, those born from consanguineous or affinal relatives in the prohibited degrees; nefarious, those procreated from consanguineous persons in the direct line. The rest are called simply spurious.

3. The effects of illegitimacy are:

- a) Illegitimate persons are irregular by defect (canon 984, 1°), and therefore can licitly receive neither orders, whether major or minor, nor tonsure, and they are prohibited from exercising orders received (canon 968); hence they also cannot be admitted by the Ordinary into the seminary (canon 1363, § 1).
- b) Illegitimate persons are kept from the Cardinalate (canon 232, § 2, 1°), from the Episcopate (canon 331, § 1, 1°), from the office of Abbot or Prelate nullius (canon 320, § 2), or from the office of major Superior in religious institutes (canon 504; cf. canon 488, 8°).
- c) Illegitimate persons destined for the priesthood, as being irregular, cannot be admitted to the novitiate (canon 542, 2°).

¹ Cf. Schmitz, *Die Stellung der unehelichen Kinder im geltenden kanonischen Recht*; Mulders in *Ned. Kath. Stemmen*, 1931, p. 15 sq. and p. 33 sq.

728 IV. Legitimation. 1. Modes of legitimating. Legitimation is made, or can be made, as follows:

a) Through the subsequent marriage of the parents, whether true or putative, whether newly contracted or convalidated, even if not consummated, offspring is made legitimate, provided the parents were able to contract marriage with each other at the time of conception, or of pregnancy, or of birth (canon 1116), in other words, natural offspring is made legitimate. Therefore observe that offspring is also legitimated if a parent, after another marriage, contracts nuptials with the other parent of the offspring. Nevertheless, it is required that each be a parent of the offspring; but the consent of the offspring is not demanded; indeed legitimation would have place even if the offspring itself opposed its legitimation.

b) Through a dispensation granted over a diriment impediment, whether from ordinary power or from delegated power through a general indult, simply spurious and incestuous offspring is legitimated by that very fact, if any has already been born or conceived; it is not legitimated through a dispensation granted from delegated power through a rescript in particular cases (canon 1051). It is said:

alpha) Through a dispensation granted either from ordinary power or from delegated power through a general indult. The case obtains if the Holy See dispenses in gracious form, that is, without an executor; likewise if the Ordinary dispenses by force of canon 1043 or canon 1045, or of quinquennial faculties; likewise if the pastor dispenses by force of canon 1044 or canon 1045, § 3; likewise if the Holy See indeed dispenses in commissorial form, but with a necessary executor required, because then the Holy See itself also dispenses (vol. I, n. 209). In the case, however, with the formulas which the Sacred Congregation of the Sacraments uses being considered, it is imposed on the executor that he "decree and declare the offspring legitimate."

beta) Simply spurious and incestuous offspring is legitimated. Adulterine and sacrilegious offspring are excepted; nefarious offspring is not legitimated, because in such a marriage a dispensation is not granted.

gamma) If any has already been born or conceived: understand, as is clear, offspring which is truly illegitimate. Hence by offspring already conceived is to be understood offspring already conceived, but neither born nor carried in the womb after the marriage with dispensation was contracted or convalidated; for if it is born, or at least carried in the womb, after the marriage so contracted or convalidated, the offspring is legitimate, and therefore is not legitimated. But by dispensation there is legitimated offspring born before the dispensation; likewise offspring born after the dispensation but before marriage, whether this marriage is afterwards contracted, or is not contracted because of death, or, so others say, because of a cause independent of the will of the petitioners, or, so others say, for any cause whatever. The obvious sense of the law, which declares that offspring is legitimated by dispensation from the impediment, favors the last opinion.

delta) It is not legitimated through a dispensation granted from delegated power through a rescript in particular cases; this obtains, for example, if the Holy See dispenses in commissorial form with a voluntary executor required. For then the executor is delegated to dispense through a particular rescript.

Corollary I. If a diriment impediment to marriage is removed without dispensation, for example by the passage of time if the impediment of age was standing in the way, offspring is not legitimated by the very fact that the marriage is convalidated; rather there is need of a special rescript.¹

Corollary II. Where marriage is sanated in the root, illegitimate offspring is legitimated by force of the sanated marriage, if it is a question of natural offspring; by force of the dispensation which sanation in the root carries with it, if there is question of simply spurious or incestuous offspring.

c) Through a special rescript of the Holy See any illegitimate offspring can be legitimated. A rescript of this kind is granted for the external forum by the Sacred Congregation of the Sacraments or, if one party is non-Catholic, by the Holy Office; for the internal forum, by the Sacred Penitentiary.

2. Effects of legitimation. a) Children legitimated through subsequent marriage, as regards canonical effects, are in all things equated with legitimate children, unless something else has been expressly provided (canon 1117). Now it has been expressly provided that children, even if they have been legitimated through subsequent marriage, are kept from the Cardinalate (canon 232, § 2, 1°), from the Episcopate, and from the dignity of Abbot or Prelate nullius (canons 331, § 1, 1°; 320, § 2).

b) Children legitimated through dispensation or through a special rescript of the Holy See seem to be equated in all things with legitimate children, unless something else has been provided by common law or in the grant of the dispensation or in the special rescript. Now by common law it has been provided that children legitimated through dispensation or through a special rescript are kept from the Cardinalate, from the Episcopate, and from the dignity of Abbot or Prelate nullius (canon 331, § 1, 1°; canon 320, § 2). This must be deduced from the fact that canon 331, § 1, 1° declares: "legitimated even through subsequent marriage"; hence *a fortiori* if a son has been legitimated in another way.

c) If an illegitimate person is legitimated through sanation in the root, all effects of illegitimacy are removed, unless something else has been provided in the written grant. For sanation in the root carries with it, by a fiction of law, that the marriage is judged to have been valid from the beginning, as regards canonical effects (canon 1138), one of which certainly is the legitimacy of offspring. Hence those legitimated in this way are not of themselves kept even from the Cardinalate, the Episcopate, and the dignity of Abbot or Prelate nullius.

Note 1. Particular effects of illegitimacy, for example irregularity in relation to receiving Orders, can also be removed through dispensation. Besides, some particular effects are also removed in another way: thus, for example, irregularity for receiving Orders is also removed through solemn religious profession, but not inability, for example, for the office of major Superior (canon 504).

Note 2. It is very expedient that the legitimation of offspring and the mode by which this has been granted be noted by the pastor in the baptismal book, and therefore be signified to the respective pastor by the one who has obtained the legitimation.

¹ Pontifical Commission, December 6 (A.A.S. 1931, p. 25).

Part II. On Matrimony, Insofar as It Is a Sacrament, Particularly

We shall speak first of the sacrament of matrimony considered in itself, then of the ministration and form of celebration, finally of the reception of the sacrament of matrimony.

Section I. On the Sacrament of Matrimony Considered in Itself

One must treat of the existence, essence, and effects of the sacrament of matrimony.

Chapter I. On the Existence of the Sacrament of Matrimony

729 Matrimony is a true sacrament. This proposition is of faith, for example from the Council of Trent: "If anyone says that matrimony is not truly and properly one of the seven sacraments of the evangelical law, instituted by Christ the Lord, but invented by men in the Church, and that it does not confer grace, let him be anathema."¹

Note 1. The time of the institution of this sacrament by Christ is uncertain. Some judge that it was instituted at the wedding at Cana;² others, when Christ established the indissolubility of Matrimony;³ finally others, after the Resurrection, at the time when the Lord conversed with his disciples, speaking of the kingdom of God.⁴

Note 2. Matrimony in the Old Law not only was not an efficacious sign of grace, but does not seem to be counted among the sacraments of the Old Law, that is, among the signs of grace then existing. "But matrimony," says St. Thomas, "was indeed in the Old Law insofar as it was for the office of nature, but not insofar as it is the sacrament of the conjunction of Christ and the Church, which had not yet been made; hence also in the Old Law a bill of repudiation was given, which is contrary to the nature of a sacrament" (I-II, q. 102, a. 5, ad 3).

¹ Session 24, canon 1.

² John 2.

³ Matthew 19:4.

⁴ Acts 1:3.

Chapter II. On the Essence of the Sacrament of Matrimony

730 I. Contract and sacrament in Christian marriage cannot be separated, so that a matrimonial contract between Christians cannot exist without being a sacrament. So teach Pius VI in the letter to the Bishop of Motula;¹ Pius IX in the Apostolic letter to the king of Sardinia;² Leo XIII in the encyclical *Arcanum*;³ and the same is gathered from the Council of Trent⁴ and from canon 1012, § 2.

II. The matrimonial contract constitutes the whole nature of the sacrament, so that neither the blessing of the priest, nor indeed even his presence, belongs to its essence. This follows from canon 1012, § 1; likewise from the Council of Trent, which declared that clandestine marriages, that is, marriages not contracted before the pastor and witnesses, were ratified and true marriages as long as the Church had not made them invalid⁵ (St. Thomas, In IV, dist. 26, q. 2, a. 1, ad 1; St. Alphonsus VI, 897, 898).

III. The matter and form of the sacrament of matrimony are:

1. The remote matter is the bodies of the contracting parties, or rather the mutual right over the body of the other. This right is called remote matter in the sense that it is the matter about which the matrimonial contract is concerned (St. Alphonsus VI, 880).
2. The proximate matter and form is the consent itself expressed by words or by another sign. Namely, here the proximate matter is consent insofar as it signifies mutual handing over, and the form is consent insofar as it expresses mutual acceptance. So Benedict XIV in the letter *Paucis abhinc* to the Archbishop of Goa.⁶ And indeed, since the matrimonial contract itself, as has been proved, constitutes marriage, the matter, that is, the determinable part, and the form, that is, the determining part, must necessarily be found in the contract itself or in the expressed consent. Now in every contract the handing over of the thing, as being the beginning of the contract, is the determinable part or matter; but acceptance, as being the completion of the contract, is the determining part or form (St. Alphonsus VI, 880, 897).

Corollary. The nature of the sacrament is in matrimony *in fieri*, that is, in the contract which is now placed or obtains its effect. This follows from the things said. It is disputed whether the nature of the sacrament is also in matrimony *in facto esse*, that is, in the bond; in other words, whether matrimony, after the contract has been entered, persists in its being as a sacrament, after the likeness of the Holy Eucharist. Concerning this opinion Pius XI in the encyclical *Casti connubii*⁷ says thus: "Therefore let them [the spouses] meditate on these words of St. Cardinal Robert Bellarmine, full indeed of solid consolation, who, with other theologians of great name, thus piously thinks and writes: 'The Sacrament of Marriage can be considered in two ways: in one way, while it is being made; in another way, while it remains after it has been made. For it is a sacrament similar to the Eucharist, which is a sacrament not only while it is being made, but also while it remains; for while the spouses live, their society is always the sacrament of Christ and the Church.'"

Question 1. Whether a marriage between two infidels, after Baptism has been received by each spouse, becomes a sacrament.

Response. Some simply deny it; others affirm it, but among these some require that the spouses elicit new consent, or approve the prior consent by words, nods, or marital intercourse; others think it suffices that the consent not be retracted; others abstract from the influence of consent, and judge that the marriage by the very fact that Baptism is received becomes a sacrament. Now it seems that it must be said that the said marriage truly becomes a sacrament; both because on the one hand it must be admitted that the married Ephesians to whom Paul directed his epistle truly received the sacrament of matrimony,⁸ and on the other hand it cannot be admitted that they entered marriage only after receiving Baptism; and because marriages of infidels, consummated after Baptism has been received by each party, seem to be entirely indissoluble (p. 552), which also seems to have to be ascribed to their sacramentality (pp. 552 and 553). Moreover, the opinion is preferable which teaches that the reception of Baptism itself suffices for the marriage to become a sacrament, or for the sacrament, which was already present in potency, to pass into act (cf. St. Thomas, *Supplement*, q. 59, a. 2, ad 1; St. Alphonsus VI, 897).

Question 2. Whether the marriage of an infidel party who is baptized becomes a sacrament if the other party is not baptized; likewise whether a marriage which a faithful person validly contracts with an infidel is a sacrament.

Response. Concerning each case there is dispute. Some deny it, because just as the contract, so also the sacrament will be either in each party or in neither party. But it is not in the infidel party; therefore neither is it in the faithful party. Others probably affirm it, because their opinion is not repugnant: one and the same contract can be a sign conferring grace for the one who is capable of the sacrament, but only potentially for the one who because of a defect extrinsic to the contract is not yet capable of the sacrament.

¹ September 16, 1788.

² September 19, 1852.

³ February 10, 1880.

⁴ Decree on the reform of Matrimony, chapter 1.

⁵ Session 24, Decree on the reform of Matrimony, chapter 1.

⁶ March 19, 1758.

⁷ A.A.S. 1930, p. 583.

⁸ Ephesians 5.

Chapter III. On the Effects of the Sacrament of Matrimony

731 The effects of the sacrament of matrimony are:

I. Sanctifying grace, of itself second grace or an increase of grace, accidentally more probably first grace (n. 6). There is attached an increase of the virtues and of the gifts of the Holy Spirit.

II. Sacramental grace; namely, the grace which the sacrament of matrimony confers is unitive of souls and restraining of concupiscence, having annexed to it a claim to actual graces for the duties of matrimony to be duly fulfilled, notably for raising and educating offspring in honor of God.

Section II. On the Ministration of the Sacrament of Matrimony and the Form of its Celebration

732 I. Ministration of the sacrament. Concerning this, it suffices to have noted: the ministers of the sacrament are the contracting parties themselves. This is established from the Council of Florence, which says thus: "The efficient cause of matrimony regularly is mutual consent expressed by words concerning the present."¹ The reason is that contract and sacrament are identified. Hence those who effect the contract also effect the sacrament (St. Thomas, *Supplement*, q. 45, a. 1; St. Alphonsus VI, 897).

¹ Session 24, Decree on the reform of Matrimony, chapter 1.

733 II. Form of the celebration of the sacrament. The priest, although he is not the minister of the sacrament, is nevertheless called the minister of the celebration, insofar as he assists the marriage to be contracted as a qualified witness and performs other things necessary for validity.

The Holy Tridentine Synod had established the solemn form necessary for validity in the chapter *Tametsi* in these words: "Those who shall attempt to contract marriage otherwise than in the presence of the pastor, or another priest with the permission of that pastor or of the Ordinary, and of two or three witnesses, the Holy Synod renders entirely incapable of contracting in this way, and decrees

that contracts of this kind are invalid and null."¹ This legislation remained until April 19, 1908,² on which day the decree *Ne temere*, "On Betrothals and Matrimony," began to be in force, issued by the Sacred Congregation of the Council on August 2, 1907, by special mandate of Pius X. Then from May 19, 1918, the new Code of Canon Law has force, which left the *Pian* law untouched in most things, but changed it in certain things. But it is clear that marriages and betrothals contracted under the earlier legislation must be judged according to that legislation. Now, about to set forth the manner of celebrating marriage, we shall speak first of the juridic form, then of the liturgical form of celebrating marriage, with a scholion added on the form to be observed in celebrating marriage by a Catholic party with a non-Catholic party; then of the time and place of the celebration of marriage; and finally of the things to be observed after the celebration of marriage, that is, of the registration of the marriage celebrated.

¹ Session 24, Decree on the reform of Matrimony, chapter 1.

² For Chinese regions, until April 11, 1909 (Sacred Congregation of the Council, February 29, 1908).

Chapter I. On the Juridic Form

The juridic form is distinguished as twofold, ordinary and extraordinary. Hence we shall treat first of the ordinary juridic form, then of the extraordinary juridic form, and then of those who are subject to the aforesaid forms.

Article I. On the Ordinary Juridic Form

We shall hand down first a summary exposition, then a fuller exposition of the juridic form.

§ I. Summary Exposition

734 The ordinary juridic form, required for the validity of marriage, is that it be contracted before the pastor or local Ordinary or a priest delegated by either of them, and at least two witnesses (canon 1094). But the presence of those assisting must be simultaneous, physical, and moral. It is said:

I. That it be contracted before the pastor or local Ordinary or a priest delegated by either of them. Now:

1. Under the name of pastor here come:

- a) The priest to whom a parish has been conferred as a title, with the care of souls to be exercised under the authority of the local Ordinary (canon 451, § 1).
- b) The actual parochial vicar, who supplies the place of the moral person to whom habitual care belongs (cf. canon 471).
- c) Quasi-pastors, who govern quasi-parishes.¹
- d) Chaplains of soldiers, whether major or minor, insofar as they are equated with pastors; this is gathered from the particular prescriptions of the Holy See (canon 451, § 3).
- e) Chaplains or rectors of pious places of any kind exempt from parochial care, provided that full parochial power has been committed to them, are counted as pastors, but only for the persons entrusted to them and in the place over which they preside.² The power belongs exclusively to the

rector if the place is entirely exempt; otherwise it is cumulative with the pastor of the place (cf. canon 464, § 2).

f) Parochial vicars who are furnished with full parochial power, namely:

alpha) A substituted vicar holding the place in all things of a pastor absent for more than a week, approved by the Ordinary (canon 465, §§ 4 and 5; canon 474). The substitute, if he is the vicar of a religious pastor, must also be approved by the religious Superior, but this is not required for the validity of assistance.³

beta) A supplying priest who takes the place in all things of a pastor departing for a sudden and grave cause for more than a week (canon 465, § 5; canon 474),⁴ but not a supplying priest of a pastor departing for a shorter time.

gamma) A supplying priest designated by the Ordinary and exercising in all things the place of a pastor who, by sentence, is to be deprived of the benefice, but who has recourse to the Holy See (canon 474; canon 1923, § 2).

delta) A vicar administrator, namely one constituted when a parish is vacant, formerly called *deservitor* (canon 472, 1°).

epsilon) A vicar cooperator, the first or the older in office, or the nearer pastor; likewise the superior of the house who, before the appointment of an administrator, meanwhile assumes the governance of the parish, unless provision has been made otherwise (canon 472, § 2).

eta) An assistant vicar constituted by the local Ordinary who supplies in all things the place of a pastor unequal to duly carrying out his duties (canon 475).

Note 1. A vicar cooperator, of whom canon 476 speaks, of himself does not come under the name of pastor, although he enjoys general delegation. For, as is clear from the terms themselves, he is without the power proper to a pastor, that is, ordinary power, and has only delegated power.

Note 2. In mission regions where there are not quasi-parishes, all missionaries are cooperators of the Vicar or Prefect, and therefore with his delegation, whether general or particular, they can validly and licitly assist at marriage.⁵

Note 3. In mission regions where several missionaries divide some part of the territory among themselves into distinct stations, which they administer under one Superior of the central station, that superior is not held as quasi-pastor of the whole territory unless the care of souls of the whole district is truly and immediately committed to him.

2. Under the name of local Ordinary in law come, unless someone is expressly excepted, 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 likewise those who, when the aforesaid are lacking, succeed meanwhile in governance by prescription of law or by approved constitutions (canon 198).

3. A priest delegated by either of them; concerning these, particular mention is made in n. 737 sq.

4. And at least two witnesses. Now:

a) As regards validity, persons of any kind can be taken as witnesses, provided they actually enjoy the use of reason and are capable of testifying. Nor does canon 1757, § 1 stand in the way, since it indeed excludes the impubescent, but speaks only of witnesses in judgment. Heretics, excommunicated persons, and infamous persons are not licitly employed. Particularly with regard to heretics, the Holy Office⁶ declared "that they are not to be employed; nevertheless they can be tolerated by the Ordinary for a grave cause, provided scandal is absent."

b) Neither for validity nor of itself for liceity is it required that the witnesses designated have been warned beforehand or asked about the marriage to be contracted. Practically, however, they should be determined and asked before the marriage, because after the nuptials have been entered their names must be recorded by the pastor. The fact that the witnesses are forced does not impair validity.

c) It does not seem to be required that witnesses be formally assumed, in other words, that the contracting parties employ them as such, or at least contract conscious of their presence; rather it suffices that the witnesses can testify to the marriage contracted. For this opinion is favored both by the text of the law, which requires only that the marriage be contracted before witnesses, and by its end, which is that witnesses can testify to the contract of marriage. This end is indeed obtained even through witnesses who have not been formally employed. There is added the response of the Sacred Congregation of Propaganda Fide.⁷

II. The presence of those assisting must be simultaneous, physical, and moral. It is said:

1. Simultaneous. For it is required that all be able to testify to one and the same act of marrying. Moreover, that a presence of this kind is required is sufficiently signified by the words: "Before the pastor... and at least two witnesses."
2. Physical or bodily. For it is established that the marriage must be contracted "before the pastor and at least two witnesses." But physical presence is not constituted by communication set up by means of telephone or telescope.
3. Moral, or such that at least from the circumstances they perceive that marriage is being contracted between these persons. This can be done even if someone lacks hearing or sight, but not if he is deprived of both sight and hearing.

¹ Parts of an apostolic vicariate and apostolic prefecture, if a particular rector has been assigned to them, are called quasi-parishes (canon 216, § 3). But the erection of a quasi-parish is made by decree of the Ordinary, in which the limits of the territory are clearly described; and once it has been constituted, the rights and obligations of the quasi-pastor immediately arise.

² Sacred Congregation of the Council, February 1, 1908, ad X.

³ Cf. Pontifical Commission, July 14, 1922, V, ad 1-3 (A.A.S. 1922, p. 527).

⁴ Cf. Pontifical Commission, July 14, 1922, V, ad 4 (A.A.S. 1922, p. 527).

⁵ Sacred Congregation of Propaganda Fide, July 25, 1920.

⁶ August 19, 1891.

⁷ July 2, 1827, ad II (*Collectanea*, n. 794).

§ II. Fuller Exposition

We shall present the fuller exposition by speaking first of the requisites for a pastor or local Ordinary to assist validly at marriage, then of the requisites for them to assist licitly, and finally of the delegation of another priest to assist.

POINT I.

¹ Cf. encyclical *Casti connubii* (A.A.S. 1930, p. 554); cf. our little work *On the Form of the Promise and Celebration of Matrimony*, 5th ed.

Point I. On the Requisites for a Pastor or Local Ordinary to Assist Validly at Marriage

735 In order that a pastor or local Ordinary assist validly at marriage, it is required: 1° that they have obtained canonical possession of the benefice or have entered the office; 2° that they not be excommunicated, interdicted, or suspended from office by sentence, or declared such; 3° that they assist within the boundaries of their territory, in which nevertheless they validly take part in the marriages both of subjects and of non-subjects; 4° that, constrained neither by force nor by grave fear, they request and receive the consent of the contracting parties (canon 1095, § 1). It is said:

I. That they have obtained canonical possession of the benefice or have entered the office. Now:

1. Residential Bishops take canonical possession of the diocese as soon as, in the diocese itself, either personally or through a procurator, they have shown the apostolic letters to the Chapter of the cathedral church, in the presence of the secretary of the Chapter or the Chancellor of the Curia, who will record the matter in the acts (canon 334, § 3).
2. With regard to pastors, canon 1444, § 1 is to be attended to: "Induction into possession of a benefice is to be made according to the manner prescribed by particular law, or received by legitimate custom, unless for a just cause the Ordinary has expressly dispensed in writing from that manner or rite; in which case this dispensation takes the place of possession taken."

Note. Possession of a benefice can also be taken through a procurator having a special mandate (canon 1445).

3. One who does not have a benefice but only an office, as a Vicar General, enters his office by the very fact that he begins to exercise it.

II. That they not be excommunicated, interdicted, or suspended from office by sentence, or declared such. Therefore it does not suffice that someone has incurred one of the enumerated penalties, but it is required that either he has been condemned to it by a judge, or that he has been declared to have incurred it. With regard to suspension, note that the faculty is removed only by suspension from office, not by another suspension. Yet a suspension laid down generally also includes suspension from office, unless something else is established (canon 2278, § 2).

III. That they assist within the boundaries of their territory, in which nevertheless they validly take part in the marriages both of subjects and of non-subjects. Therefore the competence of the pastor and Ordinary, as regards valid assistance, is so annexed to territory that within the boundaries of their territory they validly take part in the marriage of all, even of non-subjects; outside those boundaries, in the marriage of no one, not even of subjects. Besides, observe:

1. The local Ordinary and pastor validly assist in houses and churches, even exempt ones, of religious which are situated in their territory, because the aforesaid houses and churches are exempt only by reason of persons.¹ For licit assistance the permission of the regular Prelate is required.
2. Pastors who have territory common with another pastor or with other pastors validly assist at the marriage of all within the territory which is common to them with others.²
3. Those who, in territory assigned to other pastors, have some persons or families, or persons of a determined rite, or a group of persons, for example soldiers, subject to themselves, can take part in the marriages of subjects throughout the whole alien territory, but not in the marriages of others;³ indeed they seem able to assist everywhere at the marriage of subjects. Whether other pastors also can do this within their territory is to be gathered from the statutes of the Holy See.
4. Chaplains or rectors of pious places of any kind exempt from parochial care, provided that full parochial power has been committed to them, are counted as pastors, but only for the persons entrusted to them and in the place over which they preside.⁴ Whether the said faculty belongs to the rector exclusively or cumulatively with the pastor is to be deduced from the prescription of authority (cf. canon 464, § 2).

IV. That, constrained neither by force nor by grave fear, they request and receive the consent of the contracting parties; concerning which note:

1. Grave fear is understood as fear of grave harm, and one inflicted from without, that is, by a free cause. It does not matter whether it is inflicted by the parties themselves or by another. But there seems to be required fear inflicted for extorting assistance; yet it does not seem to matter whether it is inflicted justly or unjustly, because the law does not distinguish between just and unjust fear. Except, however, fear justly inflicted which is within the sphere or line of the law itself, and which is ordered to protecting the law itself. Hence assistance given is valid, whether because the Bishop compels an unwilling pastor by penalties to due assistance, or because those about to marry threaten that they will denounce to the Ordinary a pastor who unjustly denies assistance. For it cannot be admitted that fear of this kind is comprehended by the law according to the mind of the legislator.
2. That they request the consent of the contracting parties. Therefore it does not suffice that those about to marry emit matrimonial consent before the minister, but it is required that he previously and formally have requested the consent. Yet for validity it does not matter whether he does this personally or through an interpreter, by words or by writing, by nod or by another sign. Moreover, with regard to marriages here and now illicit, observe that the request for consent of itself does not involve an invitation to enter marriage, but a mere investigation whether those about to marry wish to contract marriage, so that only material cooperation is furnished.
3. And receive the consent of the contracting parties. This happens by the very fact that those about to marry, after the request has been made, emit consent, with the minister knowing that it is being emitted.

If marriage is celebrated by proxy, the pastor should request and receive consent from the proxy.

POINT II.

¹ Sacred Congregation of the Sacraments, March 12, 1910, ad VIII.

² Sacred Congregation of the Council, February 1, 1908, ad VIII.

³ Sacred Congregation of the Council, February 1, 1908, ad IX.

⁴ Sacred Congregation of the Council, February 1, 1908, ad X.

Point II. On the Requisites for a Pastor or Local Ordinary to Assist Licitly at Marriage

736 In order that a pastor or local Ordinary assist licitly, it is required: 1° that the free status of the contracting parties be established, and indeed according to the norm of law; 2° that there be established the domicile or quasi-domicile, or monthly residence, or, if it is a question of a vagrant, the actual residence of either contracting party in the place of marriage.

If neither party has in the place of marriage, but each or either party about to contract has elsewhere, a domicile or quasi-domicile or monthly residence, the permission of the pastor or Ordinary of the domicile or quasi-domicile or monthly residence is needed. If neither has elsewhere a domicile or quasi-domicile or monthly residence, no one's permission is required; and this holds even if each or either has actual residence elsewhere.

In any case it is to be held as the rule that marriage be celebrated before the pastor of the bride, unless a just cause excuses; but the marriages of Catholics of mixed rite, unless something else has been provided by particular law, are to be celebrated in the rite of the man and before his pastor.

Finally, a pastor who assists at marriage without the permission required by law does not make the stole fees his own, and he is to remit them to the proper pastor of the contracting parties (canon 1097). It is said:

I. In order that a pastor or local Ordinary assist licitly, it is required: 1° that the free status of the contracting parties be established, and indeed according to the norm of law; concerning these things compare what was said in n. 682; it is required 2° that there be established the domicile or quasi-domicile, or monthly residence, or, if it is a question of a vagrant, the actual residence of either contracting party in the place of marriage. It is said:

1. Domicile or quasi-domicile. The notion, division, acquisition, and loss both of domicile and of quasi-domicile have been set forth in vol. I, n. 123. It is helpful here to add the following:

a) Someone can have two, indeed several, proper domiciles, namely by living equally in different places with the intention of acting thus perpetually. But whether someone lives equally in several places or not is to be judged more from the manner in which he has established himself here or there than from equality of time during which he stays in different parishes. It is certain that mathematically equal residence is not required.

b) Someone can have a proper domicile and a proper quasi-domicile, for example if, for a cause requiring at least six months, he goes elsewhere with the intention, once the business is finished, of returning to the place of perpetual habitation.

c) Someone can more probably have two proper quasi-domiciles; for example if a person goes to Rome in order to pursue studies there for four years, and meanwhile betakes himself to another place with the intention of remaining there for seven months and then returning to Rome. In the case he

has a quasi-domicile in that other place, as is clear; likewise he retains the quasi-domicile at Rome, because it is not lost except by departure from the place with the intention of not returning.

d) A wife and a minor who has passed infancy can have legal domicile in one place and proper quasi-domicile in another.

e) A wife after the death of her husband and a minor who has become of age retain: the former, the domicile of the husband; the latter, the domicile of the one to whom he was subject. They retain, I say, that domicile, formerly legal, as voluntary, as long as they preserve the intention of remaining there.

2. Monthly residence; concerning which note:

a) The fact of monthly residence is required, but also suffices. The intention of extending residence through a month neither suffices nor is required; only the fact, and in no way the mind, is attended to, as is deduced both from the character of this legislation and from the words employed. Nor is habitation required, but residence suffices, whether in the manner of an inhabitant or in the manner of a guest, worker, etc. Besides this, residence must be taken according to common estimation. Now: 1° one who inhabits some place, for example in the paternal home, according to common estimation resides there, even if daily, either by day or by night, he spends time elsewhere, as if by day or by night he works in the factory of another municipality; 2° one who inhabits nowhere, but is accustomed to spend the day in one place and the night elsewhere, is rather said to reside where he is accustomed to spend the night. Finally, it is all the same whether someone resides in a place as a Catholic or as a non-Catholic.¹

b) The time of monthly residence is to be computed thus. Since a starting term is assigned, a month is taken as it is in the calendar, for example from February 1 up to February 28 or 29. And because the starting term does not coincide, or at least is not judged by law to coincide, with the beginning of the day, the first day is not computed, and the time is ended when the last day of the same number has been completed, for example from March 25 up to April 25 completed. But if the month lacks a day of the same number, the time is ended when the last day of the month has been completed, for example from January 30 up to February 28 or 29 completed (canon 34, § 3, 1°, 3°, 4°).

c) Residence must be continuous, at least morally. Now absence of one or another day and night does not seem to stand in the way of continuity. And this holds rather probably even if someone has gone away with the intention of not returning; for intention, as was said above, seems in no way to have to be attended to. Besides this, if absence of one or another day does not stand in the way of continuation, neither must it be compensated by other days added.

d) Finally, it is clear that residence must be continued up to the contracting of marriage. Otherwise there is not monthly residence, but there was monthly residence.

3. Actual residence. By this is understood, as is clear from canon 1097, § 1, 3°, residence for a time of some moment, so that someone can be said to have somewhere a seat of residence. Now residence of this kind by either of the contracting parties suffices if it is a question of a vagrant, that is, of one who nowhere has domicile or quasi-domicile. But if it is a question of a vagrant, it suffices whether both parties or only one party is vagrant. Note, however, that in this case there is

required for assisting the permission of the Bishop or his delegate, of which canon 1032 speaks (n. 695).

4. The place of marriage with respect to the pastor is the parish committed to him; with respect to the Bishop, Vicar, and Prefect Apostolic, it is both any parish of the diocese, or respectively quasi-parish of the vicariate or prefecture, and the diocese, vicariate, or prefecture as such.

II. If neither party has in the place of marriage, but each or either party about to contract has elsewhere, a domicile or quasi-domicile or monthly residence, the permission of the pastor or Ordinary of the domicile or quasi-domicile or monthly residence is needed. If neither has elsewhere a domicile or quasi-domicile or monthly residence, no one's permission is required, and this holds even if each or either has actual residence elsewhere. I said:

1. No one's permission is required; except, however, that permission of which canon 1032 speaks (n. 695).
2. And this holds even if each or either has actual residence elsewhere. For in the case there is not required the permission of the pastor or Ordinary of domicile, quasi-domicile, or monthly residence, because these are not had; nor the permission of the pastor or Ordinary of actual residence, because it is prescribed nowhere. Therefore the pastor of the place in which the vagrant is licitly assists, always with due regard for the permission of which canon 1032 speaks (n. 695). Moreover note:

a) The required permission can be granted as much orally as in writing, as much expressly as tacitly. Permission reasonably presumed also suffices, if it cannot conveniently be sought; in which case, however, it is fitting after the fact to warn the proper pastor. Finally, in a case of grave necessity no permission is required, for example if without grave inconvenience permission cannot be obtained in time. The reason is that the permission of which we speak is not delegation, which is necessary for validity.

b) Nothing prevents pastors of some city from conferring on one another, for the sake of convenience, a general permission of assisting.

III. In any case it is to be held as the rule that marriage be celebrated before the pastor of the bride, unless a just cause excuses; but the marriages of Catholics of mixed rite, unless something else has been provided by particular law, are to be celebrated in the rite of the man and before his pastor. Now the law of celebrating marriage before the pastor of the bride does not oblige under grave sin; indeed there are those who, unless particular law presses the matter more urgently, recognize no obligation strictly so called. But any just cause excuses; and if it is present, there is no obligation of seeking permission from the pastor of the bride, although it is fitting to warn him.

IV. Finally, a pastor who assists at marriage without the permission required by law does not make the stole fees his own, and he is to remit them to the proper pastor of the contracting parties.

Stole fees are understood as those things which are owed to the pastor as such from the celebration of marriage in that parish; to these do not belong the Mass stipend, gifts given by the contracting parties from friendship, etc.

This penalty of *latae sententiae*, which is incurred even before a declaratory sentence, regards only pastors, not delegated priests; nor is this penalty incurred by a pastor who took part in the marriage

of vagrants without recourse to the Bishop; nor by a pastor who took part in marriage while the pastor of the bride was passed over without just cause.

If several proper pastors are had, the pastor of the bride seems to be preferred to the pastor of the bridegroom. If the bride has several pastors, the stole rights are to be divided among the different pastors (cf. canon 1236, § 2).

Finally, one who without just cause remitted the stole fees in part or whole is not bound to restitution. He is not bound by force of ecclesiastical law, which is not understood of fruits not received. Nor is he bound by force of natural law, since he did not impede another either from a good to which he already had a right, or by an unjust means from a good to which he did not yet have a right. Yet he must restore who "has defrauded to such a point that the stole fees which would be given by the contracting parties he has arranged to be presented to himself under another title, for example, of a Mass stipend, because thus he is deservedly judged virtually to have received the stole fees; and therefore he is bound to remit them to the proper pastor of the contracting parties."²

POINT III.

¹ Cf. response of the Sacred Congregation of the Sacraments, January 28, 1906, by which assistance given by a certain pastor is declared illicit, not because one party before conversion had resided in his parish, but because the residence was interrupted.

² Van de Burct-Schaepman, n. 241.

Point III. On the Delegation of Another Priest to Assist at Marriage

737 I. Notion of delegation. Delegation, or the granting of permission validly to assist at marriage, is the act by which an authorizable witness of marriage, that is, a witness who can furnish legal authority to the act at which he is present, substitutes another for himself. But just as assistance furnished by the substituting person himself is not truly an act of jurisdiction, so also the granting of permission to assist does not involve the communication or delegation of true jurisdiction. Yet it is commonly called delegation, because it is done according to the norm of delegation, and almost the same principles as those of true delegation are applied to it.

II. Who can delegate? The pastor and the local Ordinary who can themselves validly assist at marriage are able to delegate (canon 1095, § 2). It is said:

1. The pastor and the local Ordinary; who come under the name of pastor and local Ordinary, see n. 734. All those assigned there can delegate another.¹
2. Who can themselves validly assist at marriage. Hence they cannot delegate another before they have obtained canonical possession of the benefice or have entered the office; nor can they do this if by sentence they have been excommunicated, interdicted, or suspended from office, or declared such. Besides, the pastor and local Ordinary are able only to grant to another the faculty to assist within the boundaries of their territory, since outside the aforesaid boundaries they themselves do not validly assist.

III. To what extent can a delegate subdelegate? It is doubtful whether the rules of delegation assigned in canon 199 can be applied here, because the cited canon treats of delegation of jurisdiction properly so called, whereas here the discussion is about a bare ministry. But these things are certain:

1. A vicar cooperator who has been delegated generally by the pastor or local Ordinary to assist at marriages can subdelegate another determined priest to assist at a determined marriage.²
2. A priest delegated to assist at a determined marriage can receive from the pastor or local Ordinary delegating him permission to subdelegate another determined priest to assist at the same marriage.³

IV. The person to be delegated or subdelegated. Delegation or subdelegation must be made to a determined priest for a determined marriage. A vicar cooperator, however, can be delegated generally for the parish to which he is attached (canon 1096, § 1). It is said:

1. To a priest, whether he is approved or is not approved for the care of souls, for preaching, or for hearing confessions.
2. Determined. Hence permission granted to an entirely indeterminate priest would be invalid, for example if the pastor were to establish: "I make the faculty of assisting at marriage to one of my vicars," with no vicar determined individually. Nor would permission given to the spouses of choosing whichever priest they prefer be valid. Likewise a pastor would act invalidly who delegated, for example, one of the members of a community to be designated by the Superior,⁴ or made the faculty for the spouses to contract before Peter and Paul, according as they would choose one or the other. Designation can be made either by designation of office, for example: "I make the faculty of assisting at this or that marriage to the Rector of the succursal church in N."; or by designation of name. Moreover:

a) It is not required that the one to be delegated be known to the delegating person, provided he is determined in himself.

b) Nothing prevents several priests from being designated; the legislator only intends to exclude delegation of an indeterminate person. Thus a pastor can delegate, for example, all his vicars or even all priests now having care in the deanery. Yet it is difficult to determine how far these can be extended; therefore one must beware lest the marriage be exposed to danger of nullity.

3. For a determined marriage. Hence permission given, for example, to assist at all marriages or at a certain category of marriages, or at those which perhaps will be contracted in this or that month, would be invalid. But delegation made for several determined marriages would be valid.
4. A vicar cooperator, however, can be delegated generally for the parish to which he is attached, for example to assist at all marriages or at a certain category of marriages. Note, however, that he is not delegated by common law itself.⁵

V. Things to be observed in delegation or subdelegation. 1. In order that delegation or subdelegation be valid, there is required an act truly placed, free, expressed, and known and accepted by the one to be delegated or subdelegated, as we shall explain. It is said:

a) Truly placed. Therefore a presumed or interpretative granting does not suffice, nor mere tolerance, since tolerance as such does not involve an act of granting.

b) Free, that is, deliberately placed. Note, however, that fear does not stand in the way of freedom, nor under the new law is delegation extorted by grave fear invalid. It is indeed true that assistance furnished by a pastor or delegate from grave fear is deprived of value; but from that it does not follow

that delegation made from grave fear is invalid. Error then only impairs the value of delegation when it is substantial, that is, when it concerns the person to be delegated or the persons about to marry; and even then it does not impede validity if the delegating person has the will of granting the permission in some way. Moreover, error is not substantial if it regards only the name and not the person himself. Besides, it is commonly noted that error concerning the quality of the person to be delegated or of one about to marry, likewise concerning the cause of the granting, stands in the way of validity in the case in which the quality or cause was intended as a condition without which there would be no delegation; but in that hypothesis it is rather the defect of the condition than error which impairs validity.

c) Expressed (canon 1096, § 1), whether orally or in writing or by other equivalent positive signs. Therefore tacitly given permission no longer suffices.

d) Known and accepted by the one to be delegated, as follows: knowledge and acceptance are not required if delegation or subdelegation is granted by statute or law; nor, more probably, if the delegate or subdelegate is subject to the delegating or subdelegating person. Otherwise the matter is more doubtful. Some deny that knowledge and acceptance are required, because, with canon 37 considered, a rescript is valid before its acceptance, unless something else is established; but a grant made by one who is not the Ordinary is not a rescript. Others affirm it, because delegation is like a donation, which must be accepted.

2. In order that delegation or subdelegation be licit, the pastor or local Ordinary should not grant permission unless all things which the law establishes for proving freedom of status have been fulfilled (canon 1096, § 2). Yet do not apply this to the general delegation which is made to a vicar cooperator.⁶

VI. Things to be observed by the delegate and subdelegate. 1. In order that the delegate or subdelegate validly take part in the nuptials, he should proceed in the same manner as the pastor. Therefore he must not be excommunicated, interdicted, or suspended from office by sentence, or declared such; he must assist at the marriage within the boundaries of the territory of the delegating person; and constrained neither by force nor by grave fear he must request and receive the consent of the contracting parties. It is sufficiently clear that these things must be observed, although the law does not expressly apply them to the delegate.

2. In order that he assist licitly, let him observe the things which the pastor or local Ordinary is bound to observe, insofar as they are committed to him.

Corollary. Although the faculty of assisting is not jurisdiction properly so called, nevertheless it is so akin to it that it is admitted in law that the things which have been said about supplied jurisdiction (vol. I, n. 103) are also to be applied to the aforesaid faculty.

¹ Pontifical Commission, May 20, 1923, ad V (A.A.S. 1924, p. 114).

² Pontifical Commission, December 28, 1927, ad IV (A.A.S. 1928, p. 61).

³ Pontifical Commission, December 28, 1927, ad IV (A.A.S. 1928, p. 61).

⁴ Cf. Sacred Congregation of the Discipline of the Sacraments, March 12, 1910, ad VI, b.

⁵ Cf. Sacred Congregation of the Sacraments, March 12, 1910, ad VI, b and c.

⁶ Cf. Sacred Congregation of the Sacraments, March 12, 1910, ad VI, c.

Article II. On the Extraordinary Juridic Form

With canon 1098 considered, marriage can be contracted before witnesses alone in a twofold case, namely: 1° if danger of death is present and a competent priest cannot be had or approached without grave inconvenience; 2° if a competent priest cannot be had or approached without grave inconvenience, and it is prudently foreseen that this condition of affairs will last for a month.

738 I. The former case is had if danger of death is present and a competent priest cannot be had or approached without grave inconvenience. Therefore there is required:

1. That danger of death be present. Grave danger suffices, or such danger as suffices for Viaticum to be administered. It is all the same whether the danger arises from illness or threatens from another cause, for example from shipwreck or from a dangerous operation to be undergone. Finally, it suffices that the danger threatens either party.

2. That a competent priest cannot be had or approached without grave inconvenience. It is said:

- a) A competent priest, that is, the Ordinary or pastor of that territory, or a priest delegated by either of them.

- b) Cannot be had or approached, that is, so that the competent priest can neither come nor be approached, or even if he comes or is approached, nevertheless cannot assist at the marriage without grave inconvenience.¹

- c) Without grave inconvenience, that is, it is required that the things said under b) be physically or morally impossible. Now:

- alpha) Impossibility can arise from lack of a priest, from their scarcity, from distance, from persecution, from a law which threatens punishment to the assisting minister, from an epidemic, from negligence of the minister who refuses to make the customary visitations, or even refuses to come or to assist, from the reputation of a penitent to be preserved.²

- beta) Personal impossibility suffices and is required. It suffices, so that common or local impossibility is not required; it is required, so that common or local impossibility does not suffice if personal impossibility is excluded.³

- gamma) Besides this, the case would be present if, with the Ordinary, pastor, and delegated priest lacking, another priest could obtain the faculty of assisting only by a less customary means; and to means of this kind belong telegraph, telephone, and automobile. I said concerning the faculty of assisting to be obtained: for if a priest furnished with the faculty in such a place can easily be summoned,⁴ this must be done, even if, for example, he could be summoned in time only by telephone.

- delta) Finally note that the case has place even if the opportunity of having a competent priest has been culpably neglected, provided that here and now the opportunity has ceased.

Corollary. The case is present if danger of death is present and the competent priest, by assisting at the nuptials, would expose himself to punishment with civil law considered.

¹ Pontifical Commission, July 25, 1931 (A.A.S. 1931, p. 388); by this declaration the question is settled which, with the declarations of the Sacred Congregation of the Discipline of the Sacraments, January 31, 1916, and of the Pontifical Commission, March 10, 1928, considered, had not yet been decided.

² For example, a confessor in the confession of a penitent discovers that he is fostering perverse relations with a person from whom he cannot or does not wish to be separated, so that it is expedient for them to be joined in marriage. In the case the penitent is not bound to grant, nor is the confessor bound to seek from the penitent, permission for obtaining delegation, if the condition of the penitent is unknown and from the delegation obtained suspicion against the penitent could fall on the delegating person.

³ Cf. Sacred Congregation of the Council, July 21, 1908, ad V; Sacred Congregation of the Sacraments, March 13, 1910, ad I and II.

⁴ Sacred Congregation of the Council, July 27, 1908, ad V.

739 II. The latter case is had if a competent priest cannot be had or approached without grave inconvenience, and it is prudently foreseen that this condition of affairs will last for a month. It is said:

1. That a competent minister cannot be had or approached without grave inconvenience; these things have been set forth under I, 2.
2. That it is prudently foreseen, etc.; that is, moral certainty, at least broad, is had about the continuance of the same condition of affairs. The fact of the minister's absence does not suffice.¹
3. That this condition of affairs will last for a month. Now, since in this case a starting term is assigned, a month is taken as it is in the calendar. And because the starting term does not coincide, or at least is not judged by law to coincide, with the beginning of the day, the first day is not computed, and the time is ended when the last day of the same number has been completed. But if the month lacks a day of the same number, the time is ended when the last day of the month has been completed. Hence if, for example, those about to marry began from March 25 to be in the required circumstances and foresaw that a missionary would arrive on April 25, they could not validly contract before witnesses alone (canon 34, § 3, 1°, 3°, 4°).

Corollary I. The case is again present if the competent minister, by assisting at the nuptials, would expose himself to punishment with civil law considered.

Corollary II. Even one who in fraud of the law betakes himself to a region where he cannot have or approach a competent minister can contract marriage before witnesses alone, provided that this condition of affairs is prudently foreseen to last for a month. Indeed, of itself he does not even seem to act illicitly, because it is permitted to place the cause by which one is exempted from the law.

¹ Pontifical Commission, November 10, 1925 (A.A.S. 1925, p. 582).

740 III. Things to be observed in each case. 1. For validity it is required that the presence of the witnesses be simultaneous, physical, and moral (n. 734).

2. In each case, if another priest is at hand who can be present, he must be called and assist at the marriage together with the witnesses, with due regard for the validity of the marriage before witnesses alone (canon 1098, 2°).
3. The spouses should emit matrimonial consent; but it is not necessary that the witnesses or priest request the consent.¹

What if on the one hand necessity is urgent, but on the other hand not even the extraordinary form can be used?

Response 1. If danger of death is present, dispensation can be made in the form, as will be explained later.

Response 2. Outside danger of death, and also in danger of death if one who can dispense in the form is lacking, the circumstances can be such that marriage, by *epikeia*, can be celebrated even without witnesses; for example, if otherwise someone would have to abstain from entering marriage always or for a very long time, or would be exposed to danger of grave infamy, or, as many wish, would be in most grave danger of eternal damnation (St. Alphonsus VI, 613).

¹ Cf. Sacred Penitentiary, June 23, 1830 (*Collectanea*, n. 816).

Article III. On Those who Are Subject to the Juridic Forms

741 I. Subjects of the juridic forms. The following are subject to the juridic forms:

1. Those baptized in the Catholic Church, even if afterwards they have defected from her (canon 1099, § 1, 1°). Except those baptized in the Catholic Church but born of non-Catholics, who from infancy¹ grew up in heresy or schism or infidelity or without any religion (canon 1099, § 2). It is said:

a) Baptized in the Catholic Church. Now those are judged such who were baptized with the intention that they be ascribed to the Catholic Church. This is done if they are baptized in order to the Catholic Church, whether 1° from their own intention, or 2° from the intention, even merely interpretative, of both parents or of either parent or of another to whom the infant to be baptized is subject, even if perhaps the intention of the one baptizing is different; as if the infant of Catholic parents in a case of necessity were baptized by a heretical midwife. The same 3° seems to have to be said if the infant is baptized in order to the Catholic Church from the intention alone of one baptizing legitimately or licitly, even if those who have charge of the infant dissent; as if a Catholic maidservant baptized an infant of infidels placed in danger of death.

b) Born of non-Catholics. Now:

alpha) Under the name of non-Catholics here also come apostates.²

beta) It suffices that either parent be non-Catholic; and this holds even if the cautions according to the norm of canons 1061 and 1071 have been furnished. So from the declaration of the Pontifical Commission; and the same Pontifical Commission responded that this declaration is declarative, not extensive.³

2. Those baptized in a heretical or schismatic sect, but converted to the Catholic Church, even if afterwards they have defected from her (canon 1099, § 1, 1°). Those who were baptized in a heretical or schismatic sect but were educated in the Catholic faith from infancy by parents meanwhile converted, are bound by the law as soon as, having obtained the use of reason, they showed themselves Catholics. According to others, they are converted to the Catholic Church together with the parents.

Corollary. Those who are subject to the juridic forms are bound by them whether they contract with one another or contract with someone who of himself is immune from the aforesaid form. And this holds even if they enter nuptials with a non-Catholic after obtaining a dispensation from the impediment of mixed religion or disparity of cult (canon 1099).⁴ Therefore the principle which

commonly obtained before the Pian law no longer holds: the immune party communicates his immunity to the other party. But this principle holds: the bound party communicates his bond to the other party.

¹ That is, already before the completion of the seventh year (canon 88, § 3).

² Pontifical Commission, February 17, 1930 (A.A.S. 1930, p. 195).

³ July 20, 1929 (A.A.S. 1929, p. 513); July 25, 1931 (A.A.S. 1931, p. 388).

⁴ Cf. Sacred Congregation of the Council, March 28, 1908, ad I.

742 II. Those immune from the juridic forms. Immune from the juridic forms of themselves are:

1. Non-baptized persons.
2. Those baptized in a heretical or schismatic sect, even of Oriental rite, and not converted to the Catholic Church.
3. Those baptized in the Catholic Church, but born of non-Catholics, and from infancy educated in heresy or schism or infidelity or without any religion.
4. Catholics of Oriental rite.¹

Corollary. Those who are immune from the juridic forms are not bound to the same forms only when they contract with someone who is likewise immune;² otherwise, if they contract with a person who is bound to the juridic forms, they are bound (canon 1099).

Here some ask whether a marriage is valid which, after a dispensation in disparity of cult has been obtained, is contracted with the form of civil law neglected, that law by that very fact invalidating a marriage entered without the form.

Most deny it, because the non-baptized party, as being subject to civil law, cannot contract validly without the form having been used. But in order that marriage be valid, it is required that each party be able validly to enter it. Yet the contrary opinion, although in no way certain, is not without probability. For since the marriage of a faithful person is entirely subject to the Church and can be fully governed by her, it is not improbably said that the impediment of civil law, insofar as it regards a marriage to be contracted by an infidel with a faithful person, does not have force, or at least can be removed by the Church. In a word: the power of the Church over the faithful person redounds to the infidel, insofar as the latter is about to contract with the faithful person.³

Note. The exemption from the law formerly in force for Germany and Hungary by force of the constitution *Provida* was abrogated from May 19, 1918, as a particular law contrary to canon 1099. So, with canon 6 considered.⁴ There are added the responses of the President of the Pontifical Commission⁵ and a similar one of the Pontifical Commission itself.⁶

¹ Canon 1; Sacred Congregation of the Council, February 1, 1908, ad I. The Ruthenians are excepted who belong to the dioceses of the Galician province, namely Lviv, Przemysl, and Stanislaviv; to them the Sacred Congregation of Propaganda Fide extended the decree *Ne temere* on May 5, 1911. Likewise, by decree of the Sacred Congregation of Propaganda Fide, August 18, 1913, Canadian Ruthenians are excepted, namely from the indicated day for ten years. Besides this, note that not all Catholics who live in the East are Catholics of Oriental rite.

² If, however, they contract with a person of this kind, they are always immune from the juridic forms. The law indeed declares that the following are not bound to the form of marriage: 1° non-Catholics, if they contract with one another;

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. But these things are not to be taken so literally that a marriage entered by the aforesaid, for example with a Catholic of Oriental rite, without the Catholic form, would be held invalid.

³ This opinion is defended by Resemans, *De competentia civili in vinculo coniugali infidelium*, p. 2; Gasparri, n. 306.

⁴ March 30, 1918.

⁵ In Vlaming, op. cit., n. 226, note.

⁶ The source gives only the abbreviated reference here.

Chapter II. On the Liturgical Form

The liturgical form is constituted both by the rite of celebration and by the rite of blessing, or the solemn blessing of nuptials, as it is called. Hence:

Article I. On the Rite of Celebration

743 Outside a case of necessity, in the celebration of marriage the rites prescribed in the ritual books approved by the Church, or received by laudable customs, are to be observed (canon 1100).¹ It is said:

I. Are to be observed; by these words a true obligation is understood, in conformity with the Council of Trent.² Moreover, the obligation is grave from its kind; concerning which St. Alphonsus notes that the omission of the words "I join you," etc., is rather probably light (VI, 899, 1094).

II. Rites... received. Now the rite from the Roman Ritual³ to be observed here is this:

The pastor, vested in surplice and white stole,⁴ should ask the man and woman about consent, each one individually in this way, in the vernacular speech: "N., do you wish to take N. here present as your lawful wife, according to the rite of Holy Mother Church?"⁵ Let the bridegroom respond: "I do." Then let the priest ask the bride: "N., do you wish to take N. here present as your lawful husband, according to the rite of Holy Mother Church?" Let the bride respond: "I do."

Once the mutual consent has been understood, let the priest bid them join right hands with one another, saying: "I join you in matrimony. In the name of the Father, and of the Son, and of the Holy Spirit. Amen."⁶ Afterwards let him sprinkle them with holy water.

Then let him bless the ring.⁷ Next let the priest sprinkle the ring with holy water in the form of a cross; and the bridegroom, having received the ring from the hand of the priest, places it on the ring finger of the bride's left hand, with the priest saying: "In the name of the Father, and of the Son, and of the Holy Spirit. Amen." Then let him add the versicles and the prayer *Respice*.

When these things have been completed, if the nuptials are to be blessed, the pastor should celebrate the Mass for the Bridegroom and Bride, as in the Roman Missal, with all things prescribed there being observed.⁸ The rite of the said blessing must now be discussed.

¹ Roman Ritual, title VII, chapter 2, n. 6.

² Session 7, canon 13, on the Sacraments in general.

³ Title VII, chapter 2, nn. 1-3.

⁴ If Mass immediately follows after the rite of celebration has been completed, the priest should put on the chasuble in addition to the alb and stole (Sacred Congregation of Rites, August 31, 1867, ad III, n. 3158).

⁵ "Or he may use other words according to the received rite of each place" (Roman Ritual, loc. cit., n. 2). "When several are joined at the same time, after first receiving the consent of each and duly celebrating each Marriage, and after the pastor has said for each, 'I join you in matrimony,' etc., the blessings are made once in the plural number" (Roman Ritual, loc. cit., n. 5).

⁶ See note 5.

⁷ The blessing of the ring is not to be omitted in second nuptials (cf. Sacred Congregation of Rites, August 27, 1836, ad II, n. 2743), even if the same ring had already been used and blessed in order to another marriage. "When several are joined at the same time... nothing prevents the blessings of the rings and the remaining blessings from being made in common by general words" (Holy Office, September 1, 1841, 7, *Collectanea*, n. 938). If the nuptial ring is lost or broken, a new one can be blessed with the same form of the Roman Ritual. In not a few other dioceses, for example in Germany and in the East, a ring is blessed for each spouse.

⁸ Roman Ritual, loc. cit., n. 4.

Article II. On the Rite of Blessing, or on the Solemn Blessing of Nuptials

744 I. Notion of the solemn blessing. The solemn blessing of nuptials, which is found in the Mass inscribed "Mass for Bridegroom and Bride," consists of three prayers, namely *Propitiare, Deus qui potestate*, and *Deus Abraham*. The first two are said immediately after the *Pater noster*, the third before the prayer *Placeat tibi, Sancta Trinitas*.

II. Nuptials which can be blessed. All nuptials can be blessed, except: 1° marriages between a Catholic party and a non-Catholic party (canon 1102, § 2); 2° if it is a question of a woman to whom the solemn blessing has once been given (canon 1143); 3° if there is question of a man who has once received the solemn blessing, unless a contrary custom is in force, for this must be observed;² 4° if it is a question of marriage with one notoriously excommunicated.³

III. Obligation of the solemn blessing. For the faithful there seems to be an obligation of requesting the solemn blessing on the occasion of marriage or afterwards. But the obligation lies upon the pastor of taking care that the faithful receive it at the time of the nuptials or shortly after. Yet the obligation of each is only light; indeed, if the spouses have already lived for a long time in marriage, a true obligation seems to be absent.

1. The obligation of the faithful seems to be deduced from the response of the Holy Office which speaks of "the precept of the Church."⁴
2. The obligation of the pastor follows from canon 1101, § 1, from the Roman Ritual,⁵ from several responses of the Sacred Congregations,⁶ and from the obligation of the faithful.
3. That the obligation is only light is admitted rather commonly (St. Alphonsus VI, 984, 988). That the obligation is absent if the spouses have already lived for a long time in marriage seems to have to be deduced from these words of canon 1101, § 1: "which can be given to them even after they have lived for a long time in marriage." If, however, it is requested, the pastor is bound to grant it.⁷

IV. At what time can the solemn blessing be imparted? 1. The solemn blessing cannot be given except within Mass (canon 1101, § 1).⁸

2. It can be imparted on all days, except:

a) During the closed time (canon 1101, § 1), that is, 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 Sunday (canon 1108, § 2). Yet local Ordinaries can, with due regard for liturgical laws, permit it even in the aforesaid times for a just cause, with the spouses warned that they abstain from excessive pomp (canon 1108, § 3).⁹ If the nuptials are celebrated during the closed time, with the nuptial blessing not granted by the Ordinary, the Mass with its proper blessing is deferred to the day on which, outside the closed time, the Mass for Bridegroom and Bride or its commemoration is permitted.¹⁰

b) On the day of the Commemoration of All the Faithful Departed.¹¹

c) If only one Mass is celebrated on a day on which a funeral Mass must be said which cannot be deferred.

d) During a general local interdict (canon 2271, 2°); likewise in a parish church, during a particular local interdict laid upon that church (canon 2272, § 3, 2°).¹²

V. Who can impart the solemn blessing? Only that priest, either himself or through another, can give the solemn blessing who can validly and licitly assist at the marriage (canon 1101, § 2). Moreover, it is not prohibited that one person take part in the marriage, and another celebrate the Mass and also impart the solemn blessing - not another, for example a deacon.

VI. Things to be noted. 1. On days on which the Mass "for Bridegroom and Bride" is permitted, this Mass must be said,¹³ and it is illicit to add the nuptial blessing to the Mass of the office of the day; but when the said Mass is prohibited, the nuptial blessing is added to the Mass of the office of the day.

2. Within the same Mass several persons can receive the nuptial blessing, with the formulas of the blessing changed and pronounced only once.¹⁴

3. Although there is no obligation of communicating within the nuptial Mass, nevertheless the spouses are to be exhorted to communicate in the said Mass, or at least on that day.¹⁵

¹ We follow our little work *On the Form of the Promise and Celebration of Matrimony*.

² Roman Ritual, title VII, chapter 1, n. 18. The Holy See, however, sometimes permits that special prayers be recited over a widow already blessed; see the formula in the Roman Ritual, Appendix on Matrimony II.

³ Roman Ritual, loc. cit.; rescript of Pius VI to Cardinal de Franckenberg, July 13, 1782; Sacred Penitentiary, December 10, 1860.

⁴ July 6, 1817 (*Collectanea*, n. 725).

⁵ Roman Ritual, loc. cit., n. 16.

⁶ Sacred Congregation of Propaganda Fide, September 21, 1843, ad II (*Collectanea*, n. 971); Holy Office, August 31, 1881 (*Collectanea*, n. 1457).

⁷ Holy Office, August 31, 1881 (*Collectanea*, n. 1457).

⁸ Roman Ritual, title VII, chapter 1, n. 16; Sacred Congregation of Rites, June 23, 1853 (n. 1557); August 14, 1858 (n. 3079); Holy Office, August 31, 1881. The Holy See sometimes permits that, when Mass is not said, the nuptial blessing be granted outside Mass, according to the formula of the Roman Ritual, On Matrimony I.

⁹ Sacred Congregation of Rites, September 25, 1875, ad I (n. 3380).

¹⁰ Roman Missal, Additions and Variations II, n. 2.

¹¹ Roman Missal, Rubrics in the votive Mass for Bridegroom and Bride.

¹² Holy Office, September 3, 1817 (*Collectanea*, n. 726).

¹³ Holy Office, September 1, 1841, 5° (*Collectanea*, n. 938).

¹⁴ Sacred Congregation of Rites, June 23, 1853, ad I (n. 3016); June 30, 1896, ad VI (n. 3922).

¹⁵ Sacred Congregation of Rites, March 21, 1874 (n. 3329); June 30, 1896, ad VI (n. 3922).

Scholion. On the Form to Be Observed in Marriage Between a Catholic Party and a Non-Catholic Party

745 I. Juridic form. Marriages between a Catholic party and a non-Catholic party are subject to the same juridic form as marriages between Catholics, not excluding the interrogation concerning consent (n. 735).

The disposition introduced by the Decree issued by the Holy Office on January 21, 1912, approved by Pius X on June 23, 1912, and promulgated in the *Acta Apostolicae Sedis* on July 1 of the same year - that disposition, I say, by force of which the request and reception of consent could sometimes be omitted by the assisting minister in some places - has been removed; and indeed by canon 1102 compared with canon 1095, § 1. So also a private response of the Holy Office¹ and the Pontifical Commission.²

¹ November 26, 1919 (in *Linzer Quartalschrift*, p. 249).

² March 10, 1928 (A.A.S. 1928, p. 120).

746 II. Liturgical form, or sacred rites, must be entirely omitted. Yet the Ordinary can, for forestalling graver evils, permit some one of the customary ecclesiastical ceremonies, always excluding the celebration of Mass (canon 1102, § 2). Therefore:

1. Among other things there are prohibited: 1° the use of sacred vesture, for example, surplice and stole, but not the cassock, silk cincture, and vestments customary for prelates; 2° a sermon, but not certain hortatory words in the manner of a mere address; 3° the blessing of the ring; 4° the blessing of the nuptials.
2. The Ordinary can permit some ceremony for avoiding graver evils, for example if otherwise it were to be feared that the spouses would go to a heretical minister, neglect the cautions, or that the Catholic party would pass over to a heretical sect.¹ But the celebration of Mass must always be excluded. Under the name of celebration of Mass comes not only the Mass "for Bridegroom and Bride" with its prayers and blessings, but also a private Mass which, after the marriage, is so celebrated before the spouses and their companions, even if no distinct seat is given to the spouses, that it must be held as a complement of the marriage ceremony.²

¹ Sacred Congregation of Propaganda Fide, December 4, 1862.

² Holy Office, January 17, 1872 (*Collectanea*, n. 1379); Pontifical Commission, November 10, 1925, ad VIII (A.A.S. 1925, p. 583).

Chapter III. On the Time and Place of the Celebration of Marriage

747 I. Time. Marriage can be contracted at any time of the year (canon 1108, § 1). But when the solemn blessing of nuptials is forbidden, see n. 744.

748 II. Place. 1. Marriage between Catholics should be celebrated in the parish church; but in another church or oratory, whether public or semi-public, it can be celebrated only with the permission of the local Ordinary or the pastor (canon 1109, § 1).

2. Local Ordinaries can permit marriage to be celebrated in private homes only in some extraordinary case and with a just and reasonable cause always present; but in churches or oratories either of a Seminary or of religious women, Ordinaries should not permit this unless necessity is urgent and suitable precautions have been employed (canon 1109, § 2).

3. But marriages between a Catholic party and a non-Catholic party are to be celebrated outside the church; but if the Ordinary prudently judges that this cannot be observed without graver evils arising, it is committed to his prudent judgment to dispense in this matter, with the prescription of canon 1102, § 2 nevertheless remaining firm¹ (canon 1109, § 3).

¹ The cited canon excludes the celebration of Mass.

Chapter IV. On the Things to Be Observed After the Celebration of Marriage, or on the Registration of a Celebrated Marriage

Registration must be made in both the book of marriages and the book of the baptized.

749 I. Registration in the book of marriages (canon 1103, § 1). The cited canon indicates who must register, when, and what must be registered.

1. The pastor or the one holding his place must register, and indeed the pastor of the place or parish in which the marriage was contracted. Therefore the obligation does not lie upon the Ordinary who assisted at the marriage, nor upon the proper pastor who took part in the nuptials of his subject in another's parish, nor upon another who was delegated to assist. But from the fact that the words "with his own hand"¹ are no longer found in the law, it seems to have to be deduced that these are to be held as a directive rather than a preceptive rule. Nevertheless, the rule is most strongly commended.²

2. Registration must be made as soon as possible,³ that is, as that expression is usually understood, at least within three days. Yet it is preferable that it be made on the same day, indeed immediately after the celebration of marriage or the Mass which followed.

3. There must be registered the names and surnames of the spouses and witnesses, the place, parish, year, month, and day of the marriage, the name of the pastor or other one who assisted, and other things according to the formula assigned by the Roman Ritual⁴ or by the proper Ordinary. It is also useful afterwards to note the convalidation or dissolution of the marriage, if perhaps they have had place. Finally, it is expedient to write the year and day not by arithmetical signs, but in complete words, as several civil codes establish. The registration must be made in the book of marriages, not on entirely separate sheets.

4. Finally, as regards the gravity of the obligation, the obligation of registering marriages, and indeed in the book, is grave, so that only physical or moral impossibility excuses from it; as if the pastor in a particular case cannot know the true name of the married person.⁵ Hence a pastor also would sin gravely who exposed himself to grave danger of omitting the registration. The obligation of completing it as soon as possible is of itself light, so that, with the danger of omitting it excluded, even a longer delay would not seem to involve grave fault.

¹ Title VII, chapter 2, n. 7 has these words: "When the marriage has been celebrated, the pastor or the one who holds his place should record in the book of marriages the names of the spouses and of the witnesses, and other things according to the prescribed formula; and this even if another priest, delegated either by himself or by the Ordinary, celebrated the Marriage."

² Sacred Congregation of the Sacraments, March 12, 1910, ad IX, responded to the Bishop of Mangalore, who was asking the faculty of permitting a marriage to be recorded by the delegate: "For the favor, to the prudence and conscience of the Bishop"; these words certainly signify the importance of the directive rule.

³ This word was substituted for the word *statim*, which occurred in the decree *Ne temere*.

⁴ Title XII, chapter 4.

⁵ Sacred Congregation of the Sacraments to the Bishop of Roseau, March 12, 1910, ad 9.

750 II. Registration in the book of the baptized (canon 1103, § 2). The end of this law is that marriages perhaps previously contracted by those about to marry, and the impediment of bond and affinity following from them, may more easily be detected. For with marriages noted in the books of the baptized, a person formerly married will not be able to bring a testimony of Baptism without at the same time bringing a testimony of his marriage formerly contracted, at least if an extract from the book of the baptized is brought which is of recent date (n. 682). But the registration in the book of the baptized is to be made thus:

1. If each or either spouse was baptized in the same parish in which the nuptials are entered, in the margin of the place where Baptism is noted let it be inserted that he or she contracted marriage in this parish in such year, month, and day, with the names, surnames, and age of the other party with whom he or she entered the nuptials added - as others add - and likewise the names and surnames both of the parents of the other party and of the witnesses of the marriage. It would also suffice to add in the margin of the place where Baptism is noted: "He entered nuptials with N. N. Cf. the book of marriages." Those who judge that all the aforesaid things are to be added rely on the Instruction of the Sacred Congregation of the Sacraments of March 6, 1911,¹ which imposes on the pastor of the marriage the obligation of reporting all these things to the pastor of Baptism, for the purpose indeed that "the marriage be entered in the book of the baptized"; from this they deduce that all the things are to be inserted in the book of the baptized. Others think that all the enumerated things must be reported to the pastor of Baptism for the purpose that the marriage can be duly assigned in the book of the baptized; but that it be duly assigned does not require that all things reported be added.

2. If each or either spouse was baptized elsewhere:²

a) The pastor of the marriage, either personally or through the episcopal curia, his own or that of the pastor who baptized, will report the contracted marriage to the pastor or pastors both of the Baptism of the bridegroom and of the Baptism of the bride. But that report "should bring with it the written

names and surnames of the spouses and of their parents, the age of the contracting parties, the place and day of the nuptials, the names and surnames of the witnesses who were present, and should have the subscribed name of the pastor with the parish seal added."³ Besides this, the reporting pastor will laudably ask that he be made certain that the report was received. Finally, the report is to be transmitted through the chancery of the local Ordinary.⁴

b) The pastor of Baptism to whom the report has been transmitted should insert all things accurately in the book of the baptized, or at least duly note the marriage; and "if it should perhaps happen that... the pastor of Baptism, on receiving the report of the marriage, discovers that either contracting party is already bound by other nuptials, he will signify the matter as quickly as possible to the pastor of the attempted marriage."⁵

"Observe, if the marriage was mixed, that care must be taken only concerning the Catholic party that the marriage be registered in the book of the baptized.

"If the place of Baptism is unknown, let at least the diocese in which Baptism was conferred be investigated, whether it is learned or reasonably presumed from the birth or other circumstances. The Ordinary of that diocese, once made certain of the marriage, will then be able to complete the inquiry and to take care that the marriage be entered in the baptismal registers."

Moreover, the registration of marriages in the book of the baptized, likewise the law of taking care that the registration can be made by the pastor of Baptism, is not merely of counsel, but of precept and of grave precept, as is gathered both from the grave end of the law and from the cited Instruction.⁶

¹ March 6, 1911 (A.A.S. 1911, p. 102). That Instruction, which was issued "so that the things prescribed in n. IX, § 2 of the mentioned Decree (*Ne temere*) may be duly observed," is probably to be held as determinative of an existing law rather than as a new law. Hence we judge that it persists, with canons 6, 4° and 23 considered.

² "Or if the book of the baptized is kept by another pastor, for example by the pastor of the mother church on account of the dismemberment of the parish" (Van de Burct-Schaepmann, 237).

³ Cited Instruction of the Sacred Congregation of the Sacraments.

⁴ Instruction of the Sacred Congregation of the Sacraments, July 27, 1921 (A.A.S. 1921, p. 348).

⁵ Instruction of the Sacred Congregation of the Sacraments, March 6, 1911.

⁶ Vermeersch, op. cit., n. 8; the Instruction has these words: "Ordinaries should diligently watch that these prescriptions are religiously observed, and if they find any transgressors, they should take care to recall them to duty, canonical penalties also being employed where there is need."

751 III. Registration of marriage contracted in extraordinary form (canon 1103, § 3). Marriages contracted according to the norm of canon 1098 (n. 738 sq.) must likewise be noted in both the book of marriages and the book of the baptized. Now:

1. The priest, if he assisted at the marriage, is bound *in solidum* with the contracting parties to take care that the due registrations be made. In the same way the witnesses are bound with the contracting parties, if witnesses alone took part in the marriage.
2. In order that the obligation be satisfied, the marriage must be reported in the manner set forth above: 1° to the pastor of the place in which the marriage was contracted; according to others, to the pastor who regularly ought to have assisted in the ordinary case, that is, to the pastor of the

domicile of each spouse or of the domicile of the bride;¹ 2° to the pastor of the Baptism of the spouses.

If the marriage is contracted in a place where there is no parish or quasi-parish, the report is to be made to the local Ordinary.²

Note. If the law of the sacramental seal prohibits the marriage from being noted in the public books of marriages and of the baptized, and the good of the legitimated offspring requires that the marriage be able to be proved in the external forum, with the consent of those whose interest it is, let it be registered as marriages of conscience, about which one must now speak.

¹ Choupin, n. 73, note 2.

² Vermeersch, n. 83.

Scholion. On Marriage of Conscience

752 Canons 1104-1107 pertain here, which present the law constituted in the Constitution of Benedict XIV *Satis vobis*,¹ and therefore are to be interpreted according to the norm of this Constitution. But since the matter concerns liceity, the conditions reported in the said Constitution are left rather as directive norms for the prudence of Ordinaries.

I. Notion. A marriage of conscience is one which is contracted with the announcements omitted and secretly (canon 1104). But it is contracted according to the ordinary or extraordinary juridic form, as the circumstances bear.

II. Liceity. A marriage of conscience cannot be permitted except by license of the local Ordinary and only from a most grave and most urgent cause. The Vicar General cannot give this license unless he has a special mandate (canon 1104). The reason is that from nuptials of this kind very grave inconveniences can follow, such as danger of polygamy or adultery, danger of scandal from public cohabitation, danger that the offspring may be held and treated as illegitimate.

A most grave and most urgent cause will be present if a man and woman living in concubinage are reputed true spouses; if a nobleman wishes to contract with a woman of non-noble condition, and from a known marriage very grave inconveniences are imminent; if a man and woman cannot contract civilly and, if marriage is passed over, they are in grave danger of salvation, etc. If there is danger in delay, for instance if the case concerns a hidden concubinary who is dying, one can proceed without the license of the Ordinary.

III. Things to be observed. 1. The pastor of either contracting party ought to assist at the marriage; or, if for a grave cause another priest is to be deputed in his place, let one be chosen by the Bishop who is commended by probity, doctrine, and skill in fulfilling the office. Besides this, two or three faithful witnesses are to be chosen, lest any knowledge or rumor of the celebration arise.

2. The pastor or deputed priest, before he takes part in the marriage, is bound to admonish those about to marry concerning their obligations toward the offspring to be begotten, both as regards Baptism and the reporting of it, and as regards religious education and the enjoyment of temporal goods.

3. Once the marriage has been celebrated, he must without delay exhibit to the Bishop a written document of the marriage celebrated before himself, with the names of the contracting parties,

the witnesses, the place, and the time.²

4. Permission for the celebration of a marriage of conscience carries with it the promise and grave obligation of keeping 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 (canon 1105). The obligation of this promise on the part of the Ordinary does not extend to the case in which either some scandal or grave injury against the sanctity of marriage is imminent from the observance of secrecy, or the parents do not take care that the children received from such a marriage be baptized, or take care that they be baptized with false names expressed, while meanwhile they do not furnish the Ordinary within thirty days with notice of the offspring received and baptized, with a sincere indication of the parents, or neglect the Christian education of the children (canon 1106).
5. The spouses are bound within thirty days from the birth, either personally or through another, for example through the pastor, to make the Ordinary certain concerning the offspring born and baptized. But the Ordinary must take care that in a secret book, distinct from the book of marriages, it be noted that such offspring, baptized on such a day and in such a place, is legitimate (Benedict XIV, *Satis vobis*; cited canon).

IV. Registration. A marriage of conscience is not to be noted in the customary book of marriages and of the baptized, but in a special book to be kept in the secret archive of the Curia (canon 1107).

¹ November 17, 1741.

² Constitution of Benedict XIV *Satis vobis*, November 17, 1741.

Section III. On the Reception of the Sacrament of Marriage

753 In order that the sacrament of marriage be validly and licitly received, besides the use of reason and sufficient knowledge of the matrimonial contract (p. 531 sq.), it is required that the one receiving it be in the state of grace and immune from impediments. Therefore "the pastor should not omit prudently to instruct the people concerning the sacrament of marriage and its impediments" (canon 1018).

I. State of grace. 1. That the state of grace is required is clear from the fact that marriage is a sacrament of the living, or is ordered to increasing grace, and therefore supposes grace (n. 43).¹

2. The state of grace perhaps lost can be recovered either through confession or through an act of contrition (n. 43).

II. Immunity from impediments. Therefore it is useful first to note these things beforehand:

1. The validity of marriages is to be judged according to the law in force at the time when they were contracted.
2. Marriages invalid because of an impediment in force before the Code and abrogated by the Code were not convalidated by the promulgation of the Code itself, but according to the circumstances must be convalidated either by simple convalidation or by sanation in the root,² which will be explained later. Nevertheless, as is drawn from the nature of the matter, dispensation is not required if the question concerns an abrogated impediment.³

With these things noted, we shall speak first of impediments in general, then of impeding impediments in particular, then of diriment impediments in particular, and finally of the dispensation of impediments.

¹ In a proxy or interpreter the state of grace is not required, as is clear, because they do not receive the sacrament.

² Pontifical Commission, June 2-3, 1918 (A.A.S. 1918, p. 346).

³ Thus the response of the President of the Pontifical Commission (cf. *Periodica* IX, p. 154).

Chapter I. On Impediments in General

754 I. Notion. An impediment, taken in the broader sense, is a circumstance which prevents marriage from being able to be contracted licitly or even validly. In the strict sense, it is a circumstance which prevents this by law, not by mere precept. A particular precept or prohibition can indeed render someone's marriage illicit, but it is not called an impediment in Canon Law (cf. canon 1039, § 1 and 2).

755 II. Division. Impediments are divided:

1. By reason of cause, into impediments of divine law and of human law, and of the latter either ecclesiastical or civil.
2. By reason of extent, into absolute and relative, according as they prevent marriage with any person whatever or only with certain persons. Of the former kind are, for example, bond, age, etc.; of the latter kind are, for example, consanguinity, affinity, etc.
3. By reason of effect, into impeding and diriment. An impeding impediment contains a grave prohibition of contracting marriage; nevertheless the marriage is not rendered invalid if, notwithstanding the impediment, it is contracted (canon 1036, § 1). A diriment impediment both gravely prohibits a marriage to be contracted and prevents it from being contracted validly (canon 1036, § 2). Although the impediment is present only on one side, nevertheless it renders the marriage either illicit or invalid (canon 1036, § 3).
4. By reason of duration, into temporary and perpetual. The former are those which cease by the passage of time, such as age; or at least can cease without dispensation, such as mixed religion. The latter are those which either cannot cease at all or cannot cease without dispensation, such as consanguinity.
5. By reason of demonstrability, into public and occult. An impediment is judged public if it can be proved in the external forum;¹ otherwise it is occult (canon 1037).

An impediment is called public by its nature insofar as it rests upon a fact which is public of itself; of this kind are, for example, the impediment of age, of legitimate consanguinity, etc. It is called public by fact insofar as the fact from which the impediment arises can be legitimately proved, or by prescription of law does not need proof. The word "fact" is used; but to the fact, if the discussion concerns a delict carrying an impediment with it, culpability also pertains; however, it is not required that it be known that an impediment arises from some fact.²

An impediment occult by its nature is an impediment which rests upon a fact occult of itself, of which kind are, for example, impotence, illegitimate consanguinity, etc. An impediment of this sort

ought to be held as truly occult only when the fact cannot be legitimately proved.

6. By reason of the degree of knowledge, into certain and doubtful, according as prudent doubt is excluded or not excluded. A doubt can be a doubt of law only, or a doubt of fact only, or a doubt of law and fact. Besides this, a doubt of law can turn upon divine law, or human law, whether ecclesiastical or civil.
7. By reason of gravity, into impediments of the lesser degree and of the greater degree (canon 1042); of these we shall speak in their own place.
8. By reason of dispensation, into dispensable and indispensable, according as they are often or at least sometimes removed by the Church, or cannot be removed by her, or at least are scarcely ever taken away.
9. By reason of the forum in which dispensation is granted, at least of itself, into impediments of the external forum and of the internal forum. I said at least of itself, because in some circumstances impediments which pertain to the external forum can also be taken away in the internal forum, as will be explained in its own place.

¹ As regards proof, canon 1791 should be attended to: the deposition of one witness does not make full proof, unless he is a qualified witness who deposes concerning matters done by reason of office. If under the faith of an oath two or three persons, above every exception, firmly agreeing with one another, testify in court concerning some matter or fact from their own knowledge, sufficient proof is had; unless in some cause the judge, because of the very great gravity of the matter or because of indications which introduce some doubt concerning the truth of the matter asserted, judges fuller proof necessary (canon 1791).

² Pontifical Commission, June 25, 1932 (A.A.S. 1932, p. 284).

756 III. The subject to whom power concerning impediments belongs. 1. It belongs to the supreme ecclesiastical authority alone to declare authentically when divine law impedes or dirimently invalidates marriage (canon 1038, § 1).

2. The same supreme authority exclusively has the right to establish other impediments, impeding or diriment, for the baptized, by way of law, whether universal or particular (canon 1038, § 2).

Note. Local Ordinaries can forbid marriages in a particular case to all actually staying in their territory and to their subjects even outside the boundaries of their territory, but only for a time, from a just cause, and while that cause endures. Only the Apostolic See can add an invalidating clause to a prohibition (canon 1039). It says "from a just cause"; but just causes are: a founded suspicion of a diriment or impeding impediment; a founded fear that the marriage will give occasion to enmities, scandal, or other inconveniences, etc. (St. Alphonsus VI, 982). A pastor cannot forbid a marriage even in a particular case; but if the marriage is illicit, he can and must abstain from assistance and meanwhile refer the matter to the Ordinary.

3. Except the Roman Pontiff, no one can abrogate impediments of ecclesiastical law, whether impeding or diriment, or derogate from them; likewise no one can dispense in them unless this power has been granted by common law or by a special indult from the Apostolic See (canon 1040).¹ To what extent the power of dispensing has been granted to Ordinaries and priests by common law will be stated later (cf. canons 15, 1313, 1043-1045, 81).

Note. A custom introducing a new impediment or contrary to existing impediments is reprobated (canon 1041). Therefore: 1° if at present a custom contrary to existing impediments is in force, it is to be corrected as a corruption of law, and must not be permitted to revive in the future (canon 5); 2° if in the future a custom arises introducing a new impediment or contrary to existing impediments, it is not reasonable (canon 27, § 2), and therefore cannot obtain the force of law or abrogate impediments or derogate from them.

¹ Constitution of Pius VI *Auctorem fidei*, August 28, 1794 (props. 59, 60); Pius IX, *Syllabus of Errors* (prop. 58).

757 IV. The passive subject of impediments. 1. All human beings are bound by impediments of divine law, whether natural or positive.

2. As regards impediments of ecclesiastical law, these things hold:

a) In general, all baptized persons are bound by impediments of ecclesiastical law, even non-Catholics, as is clear from the Constitution of Benedict XIV *Matrimonia* and *Singulari nobis*; likewise from the practice of the Church in revalidating marriages entered by heretics in heresy with an impediment; finally from the fact that exemption is clear from no source, nor is it suggested by the Code of Canon Law; and this presses all the more because the Code expressly exempts non-Catholics from the form of marriage.

b) Infidels after Baptism are bound not only by impediments whose cause was placed after Baptism, which is clear, but also by those impediments whose cause was placed before Baptism, if the foundation of the impediment is a natural bond, such as consanguinity. Otherwise one must speak if the foundation is to be placed in the mind of the Church, as in the impediment of spiritual relationship. If the foundation of the impediment is a certain civil bond, as in legal relationship, the matter seems doubtful.

c) Those certainly but doubtfully validly baptized seem to be held by ecclesiastical impediments; this is deduced from the argument proposed in vol. I, n. 130. There is added a response of the Holy Office¹ which in its obvious sense favors this opinion, although others understand it of the presumption by which a baptism doubtfully valid is presumed to have been conferred duly.² If the fact of Baptism is doubtful, the question is solved with more difficulty (vol. I, n. 130).

Corollary I. A marriage between a faithful person bound by an ecclesiastical impediment and an infidel is illicit or invalid according as the impediment is impedient or diriment, because it is sufficient for the effect of the impediment that it be present on one side only (canon 1036, § 3).

Corollary II. A marriage between an infidel bound by a civil diriment impediment and a faithful person, according to several authors, is invalid even after dispensation in disparity of cult; for since one party is incapable, the reason given above holds. Nevertheless, the contrary opinion is not without foundation, according to what was said in n. 742.

¹ February 4, 1891 (*Collectanea*, n. 1746).

² Cf. Holy Office, July 14, 1880 (*Collectanea*, n. 1536).

758 V. Causes excusing from a diriment impediment. 1. Ignorance, even invincible, does not exempt from a diriment impediment. For canon 16, § 1 declares: "No ignorance of invalidating or incapacitating laws excuses from them, unless something else is expressly stated."¹ There had been

dispute about an impediment of crime unknown to the person; but since nothing else is stated, every doubt has been removed.

2. Nor does grave inconvenience or necessity excuse from a diriment impediment. The reason is that the common good requires that invalidating laws retain their force, even if the invalidation is unknown or the act cannot be avoided without grave inconvenience (St. Alphonsus VI, 1079). Nevertheless, it is not clear that in an altogether extraordinary case there is no place for epikeia, for instance if, while the impediment of disparity of cult presses, the faithful in some region could not enter marriage.²

Question. To what extent is it licit to enter marriage with a doubtful diriment impediment?

Response 1. It is not licit if the matter concerns an impediment of divine law, whether natural or positive, whether the doubt is of law or of fact.³ The reason is that the matrimonial contract, since it is a sacred contract and, if it is entered by the faithful, is a sacrament, cannot be exposed to danger of nullity (St. Alphonsus VI, 902, q. 3). Therefore, for example, an infidel brother and sister, although they are not held by the impediment of consanguinity insofar as it is ecclesiastical, cannot enter marriage, because there is a doubt of law concerning the natural impediment; likewise even infidels are not permitted to enter nuptials in a doubt of fact, for example whether the parties are consanguineous in some degree of the direct line or in the first degree of the collateral line. There is added, as regards the faithful, that the said marriages are certainly opposed by a diriment impediment to marriage, from which dispensation is never given (canon 1076, § 3).⁴

The case of doubtful impotence is excepted, however, whether by doubt of law or by doubt of fact (canon 1068, § 2): by doubt of law, for example where organs are lacking which probably are required for a valid marriage; by doubt of fact, namely if it is not known whether copula between such persons is possible or not. The reason for the exception is that the theoretically probable right of marrying prevails over the reverence owed of itself to the matrimonial contract, or because the inconvenience of not marrying is so great that, in order to avoid it, it is licit to neglect the reverence owed of itself to the said contract (St. Alphonsus VI, 1102).

Response 2. If the matter concerns an impediment of ecclesiastical law, a distinction must be made.

1° In a doubt of law it is licit to contract: for "laws, even invalidating and incapacitating laws, do not oblige in a doubt of law" (canon 15). This certainly holds if there is common or fairly common doubt concerning the existence of the impediment. Whether the rule holds, "Whenever non-existence is probable, the impediment does not oblige," even though many deny the probability - whether that rule holds, I say, can seem doubtful to someone. The reason for doubting is taken from the fact that a rule of this kind would give occasion to invalid marriages; for there is danger lest many regard as probable what is not truly probable, and thus, being disposed in mind, permit marriage to be contracted without dispensation.⁵

2° In a doubt of fact it is not licit to contract, but dispensation must be sought, at least for caution. Otherwise the marriage is exposed to danger of nullity. But the Church grants to Ordinaries the faculty of dispensing in doubts of this kind, if the matter concerns impediments in which the Roman Pontiff is accustomed to dispense (canon 15); these things also hold, as is clear, if the matter concerns convalidating a marriage already contracted. If, however, the doubt turns upon Baptism, what will be said concerning disparity of cult should be attended to.

¹ Holy Office, July 4, 1855 (*Collectanea*, n. 1114); December 9, 1874 (*Collectanea*, n. 1427); February 4, 1891 (*Collectanea*, n. 1746).

² Cf. Holy Office, June 4, 1851 (*Collectanea*, n. 1062).

³ A doubt of law is one which regards the law itself of the impediment, for example whether this or that condition is required for inducing the impediment. A doubt of fact is one which regards the fact on which the rise of the impediment or its continuance depends.

⁴ Cf. Holy Office, April 6, 1906. If infidels have entered such a marriage, the fact stands; nor after conversion can an obligation of separation of itself be imposed. The Holy See, however, can permit new nuptials, either, if only one has been converted, by declaring liberty from the prior bond in favor of the faith, or by dispensing for caution from the bond contracted in infidelity, provided the marriage has not been consummated after the Baptism of both.

⁵ Thus, for example, some hold it as probable that the impediment of spiritual relationship between sponsor and baptized person does not arise from private Baptism. Thus many authors held as probable that the Constitution *Provida* persisted even after the Code of Canon Law; but it seems certain that marriages entered since the Code came into force according to the norm of the said Constitution are invalid.

Chapter II. On Impedient Impediments in Particular (canons 1058-1066)

Three impedient impediments are enumerated in Canon Law, namely simple vow, legal relationship, and mixed religion.

Article I. Simple Vow

759 A simple vow of virginity, of perfect chastity, of not marrying, of receiving sacred Orders, and of embracing the religious state impedes marriage. No simple vow invalidates marriage, unless invalidation has been established for some persons by a special prescription of the Apostolic See (canon 1058); as Gregory XIII¹ established, as regards contracting marriage, for simple vows emitted in the Society of Jesus. Therefore:

I. Five vows impede marriage, that is, render it gravely illicit, namely:

1. A vow of virginity strictly taken. One bound by a vow of this kind cannot enter marriage, because he exposes himself to the proximate danger of injuring the vow, indeed he renders its fulfillment practically impossible to himself.
2. A simple vow² of perfect chastity, whether emitted privately or in a Congregation or Order. This vow effects that every act, external as well as internal, contrary to chastity is opposed to religion. One who has emitted such a vow cannot contract nuptials, because equally with one bound by a vow of virginity he exposes himself to the proximate danger of violating the vow, indeed renders its execution impossible.
3. A vow of not marrying or of celibacy, as is clear.
4. A vow of receiving sacred Orders; because marriage renders the execution of such a vow impossible, for married persons are kept from sacred Orders (canon 987, 2°).
5. A vow of embracing the religious state, whether in an Order or in a Congregation; for nuptials render the execution of the vow impossible, because married persons are invalidly admitted to the novitiate (canon 542, 1°).

Note. Vows of not marrying, of virginity, and of chastity are often confused by those vowing; so much so that those who have emitted one of these vows have for the most part understood a vow of chastity. In doubt, the one vowing should be asked what he intended. If the doubt persists, inquiry into the motive which moved him to vow can shed light. One who was impelled by the will to decline the burdens of marriage is presumed to have vowed celibacy; one by the desire of obtaining the aureole of virgins, virginity; one by love of purity, chastity.

II. If someone has contracted marriage without dispensation from an impedient vow:

1. Practically, it is preferable to obtain dispensation as soon as possible.

2. Theoretically, these things hold:

a) One who has vowed virginity cannot ask for the debt as long as virginity has been preserved; nevertheless he is bound at once to render it to the other party legitimately asking. Once the debt has been rendered, he can also ask; similarly, after the marriage has been dissolved after virginity has been lost, he can contract new nuptials. For in each case virginity is lost and the vow collapses.

b) One who has vowed perfect chastity cannot ask for the debt unless the other party is in danger of incontinence. He is bound to render the debt as long as the other party retains an unimpeded right over the spouse and licitly asks; he cannot render it if the other party has lost the unimpeded right over the spouse, whether by voluntary cessation or by adultery. If the other party asks illicitly, because that party itself is bound by a vow of chastity, he can, but is not bound to, render the debt (St. Alphonsus VI, 944). After the marriage is dissolved, he cannot enter new nuptials if the vow was perpetual and has not been totally taken away by dispensation.

c) One who has emitted a vow of not marrying can ask and render the debt, because fulfillment of the vow has become impossible. After the marriage is dissolved, the vow seems to revive.

d) One who has vowed reception of sacred Orders or entrance into the religious state is bound to execute the vow if the other party consents, or has been deprived in perpetuity of the right of asking, and execution of the vow is morally possible. Otherwise he can ask and render the debt.

¹ Constitution *Ascendente Domino*, May 25, 1584.

² A solemn vow of chastity - likewise a simple vow of chastity emitted in the Society of Jesus - constitutes a diriment impediment of marriage.

Article II. Legal Relationship

760 I. Notion. Legal relationship is a relationship of persons which comes from legitimate adoption, that is, adoption made according to the norm of civil law.

II. Existence of the impediment. In those regions where by civil law legal relationship arising from adoption renders nuptials illicit, by canon law also the marriage is illicit (canon 1059). But to know whether and between whom this impediment exists, one must have recourse to the civil laws of the country and decide according to their norm.

Where civil law either does not admit adoption or states nothing about the impediment, there is no impediment.

Corollary. No impediment exists in Holland, Austria, Lusitania, Denmark, Sweden, Norway, England, and in general in its colonies (including the Canadian dominion, Australia, India, Transvaal, etc.), in the Republic of Ecuador, Argentina, Costa Rica, Chile (as it seems), Mexico, Nicaragua, San Salvador, and Uruguay. A merely impeding impediment is had in Germany, Hungary, Switzerland, Venezuela; likewise, at least practically, in France, Belgium, Luxembourg, and Romania; if the matter is doubtful, practically the impediment is absent.¹

¹ Cf. Aertnys-Damen, *Theologia Moralis* II, n. 703; De Smet, op. cit., n. 499; Wernz-Vidal, op. cit., n. 191; Gury-Ferreres, II, n. 1051.

Article III. Mixed Religion

761 I. Notion of the impediment. The impediment of mixed religion is understood as the impediment which exists between two baptized persons, of whom one is Catholic, while the other is enrolled in a heretical or schismatic sect (canon 1060). Marriages contracted between such persons are called mixed. It is said:

1. Between two baptized persons. If one was baptized in the Catholic Church and the other party is not baptized, there is the impediment of disparity of cult; if one party was baptized, but not in the Catholic Church, while the other is not baptized, no canonical impediment is had.
2. Of whom one party is Catholic, whether he or she was baptized in relation to the Catholic Church or was converted to it. Moreover, the person is still judged Catholic who has cast off the Catholic faith even externally, but has not been enrolled in a non-Catholic sect.
3. While the other is enrolled in a heretical or schismatic sect. It is not enough that the person be enrolled in a sect, for example, an atheistic one.

Corollary. One who has cast off the Catholic faith even externally, but has not been enrolled in a non-Catholic sect, is not held by the canonical impediment of mixed religion if he wishes to enter marriage with a Catholic; he is held by it if he wishes to contract with a party enrolled in a heretical or schismatic sect.¹

¹ Ter Haar, op. cit., pp. 1-2.

762 II. Existence of the impediment. Mixed marriages are most severely prohibited by ecclesiastical law, and very often they are forbidden also by divine law itself (St. Alphonsus VI, 56, 1044; *Homo Apostolicus*, tract 14, n. 6).

1. They are most severely prohibited by ecclesiastical law; this is clear from innumerable ecclesiastical documents,¹ and is expressly declared by canon 1060.
2. Very often they are forbidden also by divine law itself, namely because: 1° they involve communion in sacred things with heretics; 2° everywhere they create danger to the religion of the Catholic party;² 3° everywhere they are an impediment to the good education of the children.³ There is added that they favor indifferentism and obstruct the desired union of the spouses.⁴

¹ Cf. Apostolic Letter of Clement XIII, November 16, 1763 (*Collectanea*, n. 1421); Apostolic Letter of Pius VIII, March 25, 1830 (*Collectanea*, n. 1426); Apostolic Letter of Gregory XVI, April 30, 1841 (*Collectanea*, n. 1428); Constitution of Leo XIII *Arcanum* (§ 26), February 10, 1880; Encyclical of Pius XI *Casti connubii*, December 31, 1930 (A.A.S. 1930, p. 570), and others cited by Ter Haar, op. cit.

² Cited encyclical.

³ Cited encyclical.

⁴ Cited encyclical.

763 III. Cessation of the impediment. 1. The divine prohibition ceases when the proximate danger ceases which threatens, from the mixed marriage, the religion of the Catholic party and the education of the offspring, and when a cause occurs which renders honorable: 1° communion in sacred things with a heretic, which mixed marriage involves, insofar, namely, as both together confect and receive the sacrament;¹ 2° the petition of a sacrament from an unworthy person; and 3° the administration of it to an unworthy person.² The proximate danger of which we have spoken can be absent or can cease when, for example, the character of those about to marry is considered, or the particular circumstances which especially favor the religious condition of the Catholic party and the Catholic education of the offspring, or a cause for seeking such a marriage which effects that the danger is not approached rashly.

2. The ecclesiastical prohibition ceases through dispensation. But the power of dispensing of itself belongs to the Supreme Pontiff alone, not to Bishops, unless it has been specially granted to them (canon 1040).

¹ Many do not admit communion in sacred things. But Gregory XVI in his letter to the Bishops of Hungary, April 30, 1841, wrote: "It is sufficiently and more than sufficiently established what the Church has perpetually thought concerning marriages between Catholics and non-Catholics. Namely, she has always held nuptials of this kind to be entirely illicit and wholly pernicious, both on account of shameful communion in divine things, and..." etc. The reason is that the heretical party, even though he or she has furnished the cautions, is to be presumed to contract with an intention that is itself heretical.

² On the ministration of this sacrament to an unworthy person, see n. 769 sq.

764 IV. The requisites without which dispensation is not granted are set forth in canon 1061: the Church does not dispense from the impediment of mixed religion unless: 1° just and grave causes urge; 2° the non-Catholic spouse has furnished a caution concerning removing from the Catholic spouse the danger of perversion, and each spouse concerning all the offspring being baptized and educated only as Catholic; 3° moral certainty is had concerning the fulfillment of the cautions; 4° the cautions are regularly required in writing. Therefore three things are required absolutely, the fourth regularly. Therefore:

1. Just and grave causes must urge. Thus the cited canon and other ecclesiastical documents.² The reason is that, in order that the faithful be permitted to expose themselves to grave dangers of faith and morals, even under opportune cautions, some grave inconvenience otherwise not avoidable must be imminent.³

The cause must be proportioned to this very grave law, with attention also to the common good, which from an entered mixed marriage will easily suffer detriment from the fact that occasion is thus furnished for other mixed marriages. Indeed Benedict XIV teaches that dispensation is not to be granted except "some grave and usually public cause intervening";⁴ though this, as regards a public cause, has nowadays been mitigated. Practically one can speak thus:

a) "Causes which regard private advantages more, for example mature age, narrowness of place, insufficiency of dowry, the good of peace, betrothals contracted in good faith on account of which it

would be feared that the bride would remain unmarried and defamed - according to the mind of the Holy See, these do not easily suffice of themselves";⁵ nor, one can add, does a great affection toward the other party, or a higher social condition to be obtained through mixed marriage. Nevertheless, "from our practice account is taken of those same causes, provided other circumstances of things concur, by which weight is added to them."⁶

b) Among sufficient causes these are usually numbered: 1° if a non-Catholic prince, with the cautions used, wishes to marry a Catholic woman, and great advantages for the Catholic religion would be hoped for from this; 2° if there is probable hope that some non-Catholic family, inclining to the true faith, may through the mixed marriage return to the Church; 3° if the mixed marriage is the only remedy so that children already begotten from another mixed marriage may be educated in the Catholic religion; 4° if great scandals arising from the defamation of a girl already made pregnant by a heretic or in some other way cannot be avoided except through a mixed marriage; 5° if in some region Catholics are few, and at the same time safe and free to profess the faith, while the heterodox are very many; 6° if the heretical party is prepared to promise in writing or before witnesses, with the promise confirmed by oath, that after the nuptials have been entered he or she will embrace the Catholic faith; likewise if the heretical party is already accustomed to go to a teacher, male or female, who teaches him or her the Catholic faith, and seems to do this with a sincere desire of knowing the truth; 7° if the mixed marriage will put an end to the base concubinage of those wishing to marry; 8° if through the mixed marriage it can be obtained that offspring, whether already born or to be born from the fornication of the parties, be baptized and educated as Catholic; 9° if there is a prudent fear that the Catholic party may go over to the heretics, or contract a merely civil marriage or a marriage before a non-Catholic minister.⁷ Nevertheless, in the last case moral certainty concerning the fulfillment of the cautions will not easily be had.

c) That one of the cited causes is present does not prevent the Ordinary from being able, or even being bound, to deny the dispensation if, from its concession, the common good will suffer detriment.⁸ Nevertheless, the practice of never dispensing, whatever cause may be present, seems to be opposed to the mind of the Church.

Corollary I. A dispensation given by an Ordinary without grave cause is invalid according to canon 84, § 1: "From an ecclesiastical law one is not to dispense without a just and reasonable cause, with consideration had of the gravity of the law from which dispensation is made; otherwise a dispensation given by an inferior is illicit and invalid."

Corollary II. One who without grave cause wishes to enter a mixed marriage, even though he says that he does not wish to contract otherwise than with dispensation, at least objectively sins gravely. For "the Church does not dispense from the impediment of mixed religion unless just and grave causes urge" (canon 1061, § 1, 1°). Hence the one of whom we speak wills a thing prohibited by the Church under grave obligation. There is added that in the case the grave danger which everywhere threatens the Catholic party and the offspring from a mixed marriage will scarcely cease, and therefore the divine prohibition also persists. The same must be said of one who wishes to enter a mixed marriage while the only grave cause on which the Church relies is the fear of a marriage being contracted without dispensation. The reason is that he illegitimately morally compels the Church to dispense in a matter so grave. Add that, especially in this hypothesis, proximate danger of spiritual harm both for the Catholic party and for the offspring will scarcely be lacking.

2. The prescribed cautions must be furnished. But the cautions to be furnished are: 1° that the non-Catholic party emit a promise of removing from the Catholic spouse the danger of perversion; 2° that each spouse promise that all the offspring will be baptized and educated only as Catholic. But the cautions are regularly to be required in writing. It is said:

a) The prescribed cautions must be furnished, and indeed in such a way that they are never omitted,⁹ not even in the article of death (canon 1043).¹⁰

b) Each spouse must promise that all the offspring will be baptized and educated only as Catholic; this you should understand both of offspring to be born and of offspring previously born from these same persons. If the offspring already born was begotten either from a preceding marriage or from illegitimate intercourse with a third person, let action be taken according to the rescript of the Sacred Congregation of Propaganda Fide¹¹ to the Bishop of Haarlem: "Although care is to be taken according to one's powers that the children, if there are any born from a preceding marriage of the non-Catholic party, be instructed in the Catholic religion, nevertheless this is not to be absolutely required for granting the dispensation, unless the same children were born from another mixed marriage and the parent did not observe the prior conditions."

c) The cautions are regularly to be required in writing, as canon 1061, § 2 has it. Always "the presentation of the cautions should be notorious, or at least such that it can be notorious, in order to remove every scandal."¹²

The Holy Office,¹³ to the question: "Whether the assertion of the Catholic party, given under oath, that the non-Catholic party had pledged faith to him or her concerning the conditions to be fulfilled, suffices" - responded: "Of itself and generally, in the negative, and according to the mind. The mind is: that if in some extraordinary case such circumstances concur that the Bishop can obtain moral certainty for himself both concerning the sincerity of cautions of this kind for the present and concerning their fulfillment for the future, and wholly special reasons are present which prevent the cautions from being furnished in the customary way, it is left to his conscience and prudence. Otherwise, notwithstanding the royal decree, the opportune cautions are to be furnished in writing, just as has been done up to now; nor is dispensation to be given unless the Bishop is morally certain that they will be fulfilled." Besides this, observe:

alpha) In those regions in which the cautions have force also in the civil forum, provided they are furnished in civil form, dispensation is not to be granted unless the cautions have been furnished in that form; otherwise a dispensation granted by those who dispense by indult is invalid.¹⁴

beta) The cautions are to be required before dispensation is sought.

gamma) A dispensation granted by an Ordinary without cautions is invalid. For canon 1061 declares: "The Church does not dispense unless..." etc.; once this is posited, it cannot be admitted that she has granted to an inferior the faculty of dispensing without cautions. Then the Holy Office¹⁵ declares invalid a dispensation in disparity of cult granted without cautions; this you will rightly apply to a dispensation in mixed religion, all the more because canon 1071, as regards the requisites for dispensation in disparity of cult, refers to canon 1061, which speaks of the requisites for dispensing in mixed religion. There is added the decree of the Holy Office¹⁶ just cited.

3. Moral certainty must be had concerning the fulfillment of the cautions. Thus the cited canon and other ecclesiastical documents.¹⁷ But the required moral certainty is understood as broad moral certainty, or the state of one opining, so that doubt strictly so called does not suffice. The Church requires the certainty set forth because she does not remove her prohibition unless she judges that the divine prohibition has ceased. But she cannot so judge unless she is morally certain concerning the fulfillment of the cautions. Besides this, note:

a) The required certainty is obtained by considering, along with the promise, either the special character of those promising, or the circumstances which favor the fulfillment of the cautions, or both. But since the question concerns both a promise which, as one regarding almost the whole of life, will be fulfilled with great difficulty, and since, as sad experience teaches, a very great part of those promising do not stand by their promises, the promise taken nakedly, that is, abstraction being made from the character of those about to marry and from the circumstances, whether of the persons in question or of places, etc., cannot found moral certainty.

b) It can be disputed whether a dispensation granted by an Ordinary who is not morally certain concerning the fulfillment of the cautions is valid. For on the one hand, it is admitted with difficulty that the validity of a dispensation depends upon the state of mind of the one dispensing. On the other hand, to the grant of the faculty of dispensing to Ordinaries is added the clause: "provided that first, regularly, according to the prescription of the Code of Canon Law, canon 1061, § 2, provision has been wholly made for the conditions required by the Church, and the Right Reverend Ordinary himself is morally certain that they will be fulfilled." But the word "provided that" denotes that validity is regarded. Moreover, the fact that the dispensation would be invalid would not prevent the marriage from being contracted validly.

c) A pastor who himself is not morally certain concerning the fulfillment of the cautions cannot simply recommend the dispensation; but if he proceeds further, he is bound to propose his doubt to the Ordinary.

¹ Ter Haar, *De matrimoniis mixtis eorumque remediis*.

² Pius VII in letters to the Archbishop of Mainz, October 8, 1803; Pius VIII in letters to the Bishops of Rhenania and Westphalia, March 25, 1830; Sacred Congregation of Propaganda Fide, March 11, 1868 (*Collectanea*, n. 1324).

³ Cf. Instruction of the Secretariat of State, March 27, 1830 (*Collectanea*, n. 811, note).

⁴ *De Synodo Dioecessana*, book 9, chapter 3, n. 5.

⁵ Bangen, *Praelectiones iuris matrimonialis* I, 217.

⁶ Bangen, *Praelectiones iuris matrimonialis* I, loc. cit.

⁷ Vlaming, *Praelectiones iuris matrimonialis*, I, n. 217.

⁸ Cf. Instruction of the Secretariat of State, March 27, 1830 (*Collectanea*, n. 811, note).

⁹ Secretariat of State, November 15, 1858 (*Collectanea*, n. 1169).

¹⁰ Holy Office, March 18, 1891 (*Collectanea*, n. 1750; cf. June 21, 1912).

¹¹ March 20, 1899.

¹² Holy Office, July 29, 1880.

¹³ December 10, 1902 (*Collectanea*, n. 2155).

¹⁴ Holy Office, January 20, 1932 (A.A.S. 1932, p. 25). Regions of this kind are Bavaria and Hungary (Wernz-Vidal, op. cit., n. 170, note 33).

¹⁵ June 21, 1912.

¹⁶ January 20, 1932 (A.A.S. 1932, p. 25).

¹⁷ Holy Office, February 17, 1875; June 6, 1879 (*Collectanea*, n. 1433); July 29, 1880; December 10, 1902.

765 V. Obligations of the parties. 1. The Catholic spouse is held by the obligation of prudently taking care of the conversion of the non-Catholic spouse (canon 1062), for instance by prayer and by the example of a truly religious life.

2. Even if dispensation has been obtained from the Church concerning the impediment of mixed religion, the spouses cannot, either before or after the marriage entered before the Church, also approach, whether personally or through a proxy, a non-Catholic minister as one assigned to sacred things, in order to give or renew matrimonial consent (canon 1063, § 1). Otherwise they commit not only the grave sin of sacrilege, namely on account of communion in sacred things with heretics, but the Catholic party also falls into excommunication reserved to the Ordinary.¹ Nevertheless, it is not disapproved that, when civil law commands it, the spouses present themselves also before a non-Catholic minister functioning only in the office of a civil official, and this only for completing the civil act, for the sake of civil effects (canon 1063, § 3).

Note. One who has been absolved in the internal forum from the excommunication of which we have spoken can use himself as such also in acts of the external forum; but unless the grant of absolution is proved, or at least legitimately presumed, in the external forum, the censure can be urged by the Superiors of the external forum, whom the guilty person must obey, until absolution has been had in the same forum (canon 2251). Therefore, if the delict has remained occult, absolution in the forum of conscience is certainly safe.

¹ It is not beside the point to add here the whole of canon 2319: "Catholics are subject to excommunication *latae sententiae* reserved to the Ordinary: 1° those who enter marriage before a non-Catholic minister against the prescription of canon 1063; 2° those who are united in marriage with an explicit or implicit pact that all or some offspring be educated outside the Catholic Church; 3° those who knowingly presume to offer their children to be baptized by non-Catholic ministers; 4° parents, or those holding the place of parents, who knowingly hand over their children to be educated or instructed in a non-Catholic religion. Those of whom § 1, nn. 2-4 speaks are besides suspected of heresy."

766 VI. Obligation of pastors of souls to forestall mixed marriages.

1. "Ordinaries and other pastors of souls should deter the faithful from mixed nuptials as much as they can" (canon 1064, 1°). But the means of deterring the faithful are:

- a) Opportune instructions, both public and private: public, for example, instructions established on a determined Sunday or Sundays at each fixed Mass; admonitions added in the explanation of the Catechism, likewise in meetings of sodalities; sermons on mixed marriages in Missions and other spiritual exercises; private, for example, in the sacrament of Penance, in the visitation of the parish; finally, if they know that someone is thinking of contracting nuptials of this kind, by warning him and diligently exhorting him not to carry it out.¹

- b) To turn Catholics away from too much familiarity with heretics; "otherwise it will more easily happen that heterodox friends, visiting Catholic friends at home, first touch even their sisters with

some relationship, then pursue them with love, and finally desire to marry them. A similar thing must be said concerning heterodox female friends of daughters of families."²

c) The erection of purely Catholic social associations.

d) A series of instructions on the Catholic religion given to the non-Catholic bridegroom; this practice was begun in the United States of North America and is continued with great success.³

2. "If they are unable to prevent them," that is, mixed nuptials, "they should take care with every effort that they are not contracted against the laws of God and the Church" (canon 1064, 2°). Indeed, if the circumstances of the diocese or parish are such that, by denying dispensation or concurrence for obtaining it, mixed marriages can for the most part be prevented, this means also should be used, all the more because in such a case, with attention to the common good - which must be attended to, as natural law dictates - a sufficiently just and grave cause for dispensing is lacking.

Thus also Cardinals Gasparri and van Rossum;³ namely, according to the aforesaid men, the sense of canon 1064, 2° is this: if pastors of souls are unable to prevent mixed nuptials either by particular means or by a severe practice, let them take care with every effort that they are not contracted against the laws of God and the Church. "At least it must be said," Ter Haar adds,⁴ "that a stricter practice from epikeia and according to the mind of the legislator does not stand in the way of this canon. For the Church wills that superiors use the faculty of dispensing only prudently and for the common good."

¹ Provincial Council of Utrecht, p. 127.

² Vlaming, *Praelectiones iuris matrimonialis* I, 230.

³ Cf. the booklet *Efficax antidotum ad matrimonia mixta praecavenda*, by M. V. Kelly and J. B. Geniesse; but especially Ter Haar, op. cit., nn. 91-117. The Vicar General of the Bishop of 's-Hertogenbosch asked His Eminence Cardinal van Rossum: "Whether the practice hitherto observed in our diocese should be abandoned, namely of never seeking dispensation in the impediment of mixed religion except in quite extraordinary cases?" To these things His Eminence responded: "That practice hitherto observed, by which mixed marriages are so strongly and with such happy success restrained, can also in the future be observed in Holland with a safe conscience. To abandon it would be the same as promoting those unhappy marriages. This is foreign to the sense of the said canon. In order to procure greater certainty for Your Reverence in this very grave point, I myself approached the President of the Commission appointed to interpret the Code, with whom I communicated your letter on this matter. His Eminence Cardinal Gasparri fully agreed with me, using this brief argument: Does that practice prevent mixed marriages? (I answered: Without doubt.) If it is so, the matter fits perfectly with the prescription of canon 1064, 2°: If they are unable to prevent them" (*Ned. Kath. Stemmen*, 1919, p. 13).

⁴ Op. cit., n. 139.

767 VII. Obligation of the confessor. A confessor who knows that a penitent is seeking a mixed marriage should, everywhere and with every effort, dissuade that marriage. If the penitent refuses to comply with the counsel, one must proceed thus:

1. If some cause exists on the part of the penitent, and it is such as is acknowledged by the local Ordinary, the penitent, the things to be posited having been posited, is to be absolved and referred to the pastor. The same must be said if the confessor does not know whether the cause alleged by the penitent is acknowledged by the Ordinary or not.

2. If the cause which exists on the part of the penitent is not acknowledged by the local Ordinary, a distinction must be made:

a) If, once dispensation is denied, there is no fear of a civil marriage, the penitent is to be warned; and if he does not desist from the marriage, he is not to be absolved.

b) If, once dispensation is denied, there is fear of a civil marriage, one must speak thus:

alpha) If that cause is acknowledged by the Ordinary, the penitent is indeed of himself to be warned concerning the grave sin which he is about to commit (p. 605); but if no hope of fruit is hoped for, he should be left in good faith, the things to be posited having been posited, absolved, and referred to the pastor.

beta) If that cause is not acknowledged by the Ordinary, on account of the common good, the penitent is to be warned; and if he is willing to renounce the mixed marriage, the things to be posited having been posited, he is to be absolved. If he refuses, absolution cannot be granted.

We have repeatedly spoken of a cause acknowledged by the local Ordinary; for it belongs to him to judge what norm of acting, as regards causes, should seem to be followed in his diocese.

We have likewise repeatedly said that the penitent, the things to be posited having been posited, is of himself to be absolved and referred to the pastor. By these words we intend that absolution is not to be denied; for we freely admit that often absolution is better deferred until the penitent has arranged the matter with the pastor.

VIII. Assistance to be given at a mixed marriage. 1. If the pastor knows certainly that the parties have already contracted before a heretical minister as such, or as one assigned to sacred things, or that they are about to contract in that way, he should not assist at their marriage except for most grave causes, scandal having been removed, and the Ordinary having first been consulted (canon 1063, § 2). But if those about to marry neither manifest a depraved intention, nor are otherwise certainly foreseen to be about to contract before a heretical minister as such, nor question the pastor, he, if there is no hope of fruit, can be silent.¹

2. Announcements must be omitted unless the local Ordinary, in his prudence and with scandal removed, has judged it opportune to permit them, provided Apostolic dispensation has preceded and mention of the religion of the non-Catholic party is omitted (canon 1026; p. 605).

¹ Instruction of the Holy Office, February 17, 1864 (*Collectanea*, n. 1247); December 12, 1888 (*Collectanea*, n. 1696).

768 IX. Obligations to be fulfilled after a mixed marriage has been contracted. "When mixed nuptials have been celebrated, whether in their own territory or in another, they should diligently watch that the spouses faithfully fulfill the promises made" (canon 1064, 3°). But if the Catholic party should perhaps object that he or she is prevented by a pact from taking care that all the offspring be baptized and educated as Catholic, let that person be taught that a pact of this kind is invalid. Besides this, these things are to be observed:

1. If the mixed marriage was contracted illicitly but validly - which could especially have had place before the decree *Ne temere* concerning the form of marriage:

a) The Catholic party is not to be admitted to the sacraments unless first he or she is sorry for the sin committed, and has been absolved from penalties perhaps contracted; there will be discussion of

penalties later.

The Holy Office says thus: "As regards valid marriages, they can be admitted to receiving the sacraments without prior renewal of consent, but are to be kept from receiving them until they have given true signs of repentance, and have promised that they will take care with all their strength both of the conversion of the heretical party and of the education in the Catholic religion of all offspring born and perhaps to be born, and finally until they have obtained absolution from incurred censures together with salutary penances, in the case in which they contracted before a heretical minister."¹

b) The pastor should take care that at least the Catholic party furnish the cautions in the external forum, and that these be sent to the Bishop.²

c) The Catholic father should use the paternal power which civil law grants to him over minor sons and daughters.³

d) The Catholic mother should likewise use paternal power if, with the circumstances considered, for instance because the father has been deprived of the said power, that power belongs to her.³

e) The Catholic spouse should use: 1° the right which perhaps a special agreement entered into gives to him or her; 2° the right, perhaps granted by law³ or agreement, of appointing a Catholic person who, after the spouse's death, will carry out the guardianship of the children.

2. If the marriage was contracted invalidly - for example, because the juridic form was not observed - then, the things to be posited having been posited, it must be convalidated; but there will be discussion of convalidation later.

Corollary. The Catholic party who does not do what is necessary and morally possible so that all the offspring be educated as Catholic is unworthy of absolution, both because he or she gravely fails in duty and because he or she gives grave scandal.

¹ August 23, 1877 (*Collectanea*, n. 1478).

² Holy Office, March 12, 1881.

³ Thus, for example, Dutch law.

Scholion. On Marriage with an Unworthy Person

It remains for us to treat the prohibitions which are not reckoned among impediments properly so called, but are committed to the judgment of the Ordinary and pastors.

769 I. Notion. By the name of unworthy persons here are understood those of whom canons 1065 and 1066 speak, that is: 1° those who have notoriously cast off the Catholic faith, even if they have not gone over to a non-Catholic sect; 2° those who have been enrolled in societies condemned by the Church; 3° public sinners; 4° those notoriously bound by a censure.

1. One casts off the Catholic faith who has wished his name to be erased from the registers of Catholics; who by repeated attacks professes that he rejects the dogmas of faith, etc.¹
2. Societies condemned by the Church are Masonic sects or other associations of the same kind which plot against the Church or legitimate civil powers (canon 2335), but not societies which are merely prohibited or dangerous.

3. Who are included under the name of public sinners, see n. 28.

4. Those notoriously bound by a censure are the personally interdicted, and those notoriously excommunicated or suspended.

II. Marriage with an unworthy person. The faithful are also to be deterred from contracting marriage with those who notoriously have either cast off the Catholic faith, even if they have not gone over to a non-Catholic sect, or have been enrolled in societies condemned by the Church (canon 1065, § 1). These things are also to be applied to public sinners and to those notoriously bound by a censure, unless they are converted.

III. Assistance at the marriage of an unworthy person. 1. A pastor should not assist at the nuptials of those who have cast off the Catholic faith or have been enrolled in a condemned society unless the Ordinary has been consulted; and the Ordinary, after inspecting all the circumstances of the matter, will be able to permit him to take part in the marriage, provided a grave cause urges and, according to his prudent judgment, the Ordinary judges that sufficient provision has been made for the Catholic education of all the offspring and for the removal of the danger of perversion of the other spouse (canon 1065, § 2).

2. If a public sinner or one notoriously bound by a censure has first refused to approach sacramental confession or to be reconciled with the Church, the pastor should not assist at that person's marriage unless a grave cause urges, concerning which, if it can be done, he should consult the Ordinary (canon 1066). As regards public sinners, the Ordinary should everywhere grant license if only one or the other remains publicly in sin. If each is a public sinner and denies confession, the Ordinary should permit assistance when graver evils are to be feared from denial, such as concubinage to be begun or continued, merely civil marriage, etc.

¹ Vermeersch, *Epitome Iuris Canonici* II, n. 335.

Chapter III. On Diriment Impediments in Particular

Thirteen diriment impediments are established in Canon Law, namely: age, impotence, bond, disparity of cult, sacred Order, solemn vows and sometimes simple vows, abduction, crime, consanguinity, affinity, public propriety, spiritual relationship, legal relationship.

Article I. Age

770 I. By natural law a determinate age is not required for the validity of marriage, but it suffices that someone has arrived at the use of reason, knows the nature of marriage sufficiently, and will have the power of coeundi in due time (St. Alphonsus VI).

II. By canon law, "a man before the completion of the sixteenth year of age, and a woman likewise before the completion of the fourteenth, cannot enter a valid marriage" (canon 1067, § 1). Years are to be taken as they are in the calendar; and since the terminus *a quo* is judged by law not to coincide with the beginning of the day, the first day is not to be counted, and the time is ended when the last day of the same number has been completed (canon 34, § 3).

But the impediment was established by the Church because she presumes that before the indicated years of age there is lacking at least the more mature discretion with which it is fitting to enter

nuptials.

Corollary I. One who has attained the assigned age contracts validly, even if he or she does not yet have actual power for copula; by natural law the power which will be present in due time suffices. But the use of marriage is prohibited until each party has obtained actual power of coeundi, or at least there is hope of coeundi duly (St. Alphonsus, loc. cit.).

Corollary II. In doubt concerning age - which easily occurs in Mission regions - recourse should be had to the Ordinary, who can dispense in a doubt of fact. Sometimes the missionaries themselves receive the faculty of dispensing.

Corollary III. Although a marriage contracted after the aforesaid age is valid, nevertheless pastors of souls should take care to turn youths away from it before the age at which, according to the received customs of the region, marriage is usually entered (canon 1067, § 2). Therefore in colder regions it is rarely expedient that a young man contract nuptials before the twentieth year of age, or a girl before the eighteenth; indeed it is preferable to wait for the age of mature nubility, everywhere between the twentieth and twenty-fourth year, because otherwise spouses can harm themselves and their offspring. Once mature nubility has been obtained, one must of itself abstain from excessive delay of nuptials.

Article II. Impotence

771 I. Notion. Impotence is the incapacity of completing copula, or copula of itself apt for generation. But copula of itself apt for generation consists in this: that the man, having entered the female vagina by natural force, that is, by an erect member and not artificially, there pours forth true semen. And so a man is impotent when he cannot naturally enter the female vagina and emit true semen into it; but a woman is impotent when she cannot receive semen in her vagina (St. Alphonsus VI, 1095).

Impotence differs from sterility, which is the incapacity of generating, or which leaves possible copula of itself apt for generation, but in fact necessarily infertile because of a physical defect. Sterile persons are: 1° men who can indeed produce and emit semen, but semen deprived of spermatozooids and therefore not procreative, as occurs among youths up to about the seventeenth or eighteenth year, among old men, and among men laboring under certain diseases; 2° women who can indeed receive male semen, but cannot retain any of the semen; likewise, commonly, women who have passed the critical age, as it is called, 45-50 years. But concerning others there is dispute whether they are impotent or sterile, as will be explained presently.

772 II. Division. Impotence is distinguished:

1. Into natural and accidental, according as it proceeds from a natural defect, as from a defect of the genitals, or from an extrinsic cause, as from malefice.
2. Into antecedent and supervening, according as it precedes marriage contracted, or supervenes upon it.
3. Into perpetual and temporary. Perpetual impotence is that which cannot be removed either without a miracle, or without sin, or without grave danger of death. Temporary impotence is that which will cease either by the passage of time, or can be removed by an honorable means and without grave danger of death.

4. Into absolute and relative, according as it excludes the capacity of coeundi with any woman whatever, or only with a determinate person or determinate persons (St. Alphonsus VI, 1095).
5. Into certain and doubtful; and doubtful impotence can be doubtful by a doubt of law or of fact (n. 758, note 1).¹

¹ Cf. Eschbach, *Disputationes physiologico-theologicae*, disp. 1, cap. 7; Antonelli, *De conceptu impotentiae*.

773 III. Existence of the impediment. 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, diriments marriage by the very law of nature (canon 1068, § 1); and indeed absolutely, or with all persons, if it is absolute; if it is relative, with the determinate person or determinate persons. The reason is that such an impotent person cannot hand over to the other party the right essential to marriage, that is, the right to copula of itself apt for generation (St. Alphonsus VI, 1095).

2. Temporary impotence does not diriment marriage, because such an impotent person can hand over the right to copula with the obligation of admitting it when the impotence has ceased (St. Alphonsus, loc. cit.). Hence the marriages of the non-pubescent are not diriment by the law of nature, but only by ecclesiastical law. Hence a marriage entered, for example, by a woman who because of narrowness cannot have copula is valid if the woman can be rendered apt by incision or a non-dangerous operation, or by frequent use; otherwise, if this cannot be done without danger to life (St. Alphonsus VI, 1096).¹
3. Sterility neither diriments nor impedes marriage (canon 1068, § 3). The reason is that it does not take away the object of the matrimonial contract, that is, the right to copula of itself apt for generation (St. Alphonsus VI, 1095).

¹ Suppose that the woman underwent a medical operation and became apt: does the marriage hold? Response 1. If that operation was truly dangerous, the marriage did not convalidate, but renewal of consent is necessary (St. Alphonsus VI, 1096). Response 2. If the operation was certainly light, the marriage was and remains valid. Response 3. If - something which can occur not rarely - it is doubtful whether danger was present or not, at least for caution let a private renewal of consent be made (Lehmkuhl, *Theol. Mor.*, II, n. 976).

774 IV. Cases of impotence. The following are impotent:

1. A man who lacks the male member.¹
2. One who is deprived of both testicles.² For men of this sort, although at least sometimes they can penetrate the vagina and ejaculate some liquid, nevertheless cannot produce true semen. The same must be said of one who has testicles broken, bruised, or wholly atrophied or dried up, because he cannot elaborate semen.
3. One who is so frigid that he cannot erect the male member, or so ardent that he always pours forth the whole semen before he can penetrate the female vessel. But the aforementioned impotences are rarely perpetual, so that commonly they do not diriment marriage.
4. One who pours forth semen not at the extremity of the member but near its root, so that he can indeed enter into the female vessel, but cannot inject semen into it.
5. One who has undergone vasectomy.³ For he is impotent who cannot posit an act of itself apt for generation, in other words, who cannot penetrate the vagina together with effusion of semen into

it. But one who has undergone vasectomy cannot posit an act of this sort, as follows from its nature, described in the note.

6. A woman who lacks a vagina or has it closed at the very entrance. There is dispute concerning a woman who has a vagina closed in this way near the uterus. But she seems to be called impotent, because the vagina is like a flaccid canal open on both sides, so that a vagina closed near the uterus is substantially vitiated, and therefore in the stated case a properly so-called vagina seems to be lacking. The responses of the Sacred Congregation of the Council favor this in the Salernitana,⁴ in the Verulana,⁵ and in the Monasteriensis.⁶ Namely, those responses declare null the marriage of a woman who lacked a uterus but had a short vagina closed near the uterus. But lack of a uterus does not seem to obstruct potency, as will be said under 9; therefore it remains that the closing of the vagina is the obstacle. For the rest, the stated impotences, if they can be cured without grave danger, are only temporary.
7. A woman who indeed has an open vagina but one so narrow that the male member cannot enter it. Some few, indeed, judge that in this case impotence is absent, or in other words, that it suffices that the man can deposit male semen at the exterior part of the vulva, or at least, the vulva having been penetrated, at the orifice or entrance of the vagina. But these opinions seem wholly to be rejected. For first, chapter 6, title 15, *de frigidis et maleficiatis*, declares that the impediment of impotence is had if a man cannot penetrate the woman's vagina. Next, for potency there is required aptitude for consummating marriage in that mode by which generation can follow of itself and not only by accident (cf. canon 1081, § 2). But from the deposition of semen either at the exterior part of the vulva or at the orifice of the vagina, generation does not seem to follow except by accident. Finally, this opinion is recommended by the fact that in the stated case there is lacking the faculty of consummating marriage according to the mode instituted by nature, that is, by penetrating the vagina. St. Thomas so thinks (In IV, dist. 41, q. un., a. 1, sol. 4, ad 2), and St. Alphonsus teaches the same at least implicitly (VI, 1075-1097). But the fact that the vagina can be penetrated only partially does not constitute impotence, or does not prevent there from being an act or copula of itself apt for generation. This is first deduced from the fact that copula which, as to substance, follows the mode indicated by nature, must be judged of itself apt for generation. But the copula of which we have spoken follows, as to substance, the mode indicated by nature; for it involves some penetration of the vagina, and more perfect and less perfect penetration differ only according to more and less, or are judged substantially similar to each other. Add that no theologian up to this point has taught that those who cannot coire more perfectly are impotent; indeed, the practice of the Roman Curia supposes that they are potent.
8. A woman who suffers from vaginismus, that is, hyperesthesia of the vaginal nerves, by which she cannot endure the contact of the man.
9. There is dispute whether a woman is impotent who lacks a uterus or ovaries, or who has the aforesaid organs wholly atrophied⁷ or dried up. Now a woman of this sort seems to be potent, because for potency it suffices that one be capable of copula of itself apt for generation. But the copula of which the stated woman is capable is of itself apt for generation, or in other words, from itself or by its nature it is ordered to generation, although generation in fact cannot follow because of the defect of another organ required for it. Therefore all things are present which are required for generation insofar as generation depends on human action; once that action has been

posited, the act of nature begins. This opinion is confirmed by the fact that, if the contrary opinion is admitted, or if capacity for generating is required for potency, it would also have to be admitted - something admitted with difficulty - that many men and many women, as being totally impotent for generating, are incapable of marriage: for example, men who have semen irremediably vitiated, and women who have ovaries irremediably inert. That there are many such persons in advanced age cannot be denied, although which persons are such cannot be determined with certainty.⁸

This controversy cannot be decided by authority. "Since authors dispute," says the Sacred Congregation of the Council,⁹ "whether a marriage entered with a woman lacking ovaries is valid or not, and since ecclesiastical authority has not yet defined this question, and indeed the Congregation of the Holy Office has several times declared in particular cases, when the matter concerned a marriage to be contracted, that this is not an impediment,¹⁰ but when the matter concerned a marriage already contracted, that the spouses are not to be disturbed, now in practical reality it does not seem opportune to institute a process for declaring the nullity of marriage from defect of ovaries in a woman." The Sacred Congregation of the Sacraments¹¹ indeed permitted marriage to a woman for whom, after the matters set forth and the express attestation of a surgeon were considered, the ovaries had certainly and completely been excised; but it can be said that, while the theoretical doubt stands, the marriage was declared licit for practice, without the theoretical question thereby being settled.

What has been said concerning a woman deprived of ovaries, you should also apply to a woman who has undergone oophorectomy, that is, resection or division of the canal by which male semen is carried to the ovaries, and ova to the womb.

10. Finally it is evident that a woman is impotent who cannot be fertilized except artificially, supposing artificial fertilization properly so called.¹²

11. It belongs to physicians to decide whether hermaphrodites¹³ or androgynes can contract, and according to which sex (St. Alphonsus VI, 1095).

¹ He is called an ectomus if his male member has been cut off.

² Constitution of Sixtus V, *Cum frequenter*, June 22, 1587. From those deprived of both testicles must be distinguished those apparently such, or cryptorchids, who carry their testicles in the groins and can produce true semen, although infertile.

³ Vasectomy consists in this: after an incision has been made through the scrotum, the organ carrying the semen elaborated by the testicles is resected, so that the path to ejaculation is broken off for the semen. One who has undergone vasectomy can indeed produce semen, but cannot pour it into the vagina, nor secrete it internally, since it is absorbed by the body (cf. De Smet, *De spons. et Matrim.*, n. 550). Moreover he can preserve the erectibility of the male member and penetrate the vagina, indeed even ejaculate a certain liquid; but this liquid is not, as follows from what has been said, true semen, but some watery humor secreted by the prostate gland (cf. De Smet, op. cit., n. 550).

⁴ March 21, 1863.

⁵ January 24 and June 22, 1871.

⁶ December 16, 1899.

⁷ Note that complete atrophy can scarcely be established; hence, even in the opinion of those who hold perfect atrophy of the ovaries to be a cause of impotence, scarcely anyone can be barred from nuptials.

⁸ Cf. *Collectanea Brugenses*, 1910, p. 701.

⁹ December 16, 1905.

¹⁰ Holy Office, February 3, 1887; July 23, 1890 (*Collectanea*, n. 1733); July 31, 1895 (*Collectanea*, n. 1007).

¹¹ April 2, 1907.

¹² It consists in this: that the physician receives in a little vessel male semen poured forth by the man solitarily or onanistically, and by means of a syringe pours it into the woman's genitals. In this case copula is lacking, so that a woman who cannot be fertilized except in such a way is incapable of copula and therefore impotent.

¹³ That is, those who, besides the perfect organs of one sex, display some essential thing of the other, or who are endowed incompletely and monstrously with the organs of both sexes. But more commonly it happens that persons are born apparently hermaphrodites: namely boys who, since they still have testicles hidden in the abdomen, imitate in part the female sex; or girls who, having obtained a more extended clitoris, seem to be endowed with a male member (cf. Eschbach, op. cit., p. 53).

775 V. Effects of impotence. The discussion concerns perpetual impotence, since it alone diriments marriage. But a distinction must be made between certain impotence and doubtful impotence.

1. The effects of certain perpetual impotence are:

a) Before marriage has been entered. If impotence is certain, marriage must be abstained from, since it is certainly null.

b) After marriage has been entered. If perpetual and certain impotence certainly preexisted the marriage, the marriage is certainly null. In the case, of itself, separation from bed must be instituted at once; but it can be preferable that the parties be left in good faith. Separation from cohabitation cannot be instituted by private authority, and therefore the case must be submitted to the ecclesiastical judge, unless it can be permitted - which, when danger of sin is absent, can be permitted - that they cohabit as brother and sister (St. Alphonsus VI, 1101). Once the case has been brought to the judge, one proceeds according to the norm of canons 1975-1981; if the impotence is certainly established, the nullity of the marriage is pronounced; if it is not wholly established, but the non-consummation of the marriage is established, the Holy See is accustomed, with the requisite things having been placed, to dissolve for caution a ratified and non-consummated marriage.

2. The effects of doubtful perpetual impotence are:

a) Before marriage has been entered. In a doubt either of law or of fact, marriage is permitted (canon 1068, § 2). In a doubt of fact, that is, in a doubt concerning the fact which, if established, would certainly mean that impotence was present, the truth, if it can conveniently be done, must be investigated, for example by consulting experts. If the doubt persists, it is lawful to enter nuptials, after warning the other party, however, concerning the probable impotence (cited canon), but only under condition (St. Alphonsus VI, 1102; n. 758).

b) After marriage has been entered. In a doubt of law the use of marriage can be continued. In a doubt of fact not yet investigated, the truth must of itself be investigated, namely if there is hope of finding it; although commonly it is preferable to keep silence about the obligation. Practically, with respect to a spouse who complains of the impossibility of performing copula duly, these things hold: it is lawful for him to make trial as long as there is hope of coeundi duly, with emission of semen outside the vessel permitted if it is going to take place.¹ Meanwhile let him be advised to consult a physician. When hope of coeundi duly is wholly lacking, the case, with the things to be observed

being observed, should be referred to the Ordinary, if it is known that the spouses wish for separation and for a declaration of the nullity of the marriage. If the spouses do not wish separation and are in good faith, it will often be preferable to leave them in good faith; if they are not in good faith, and danger of sin is absent or can be removed, it can be permitted that they live as brother and sister² (St. Alphonsus VI, 1101).

Corollary. The confessor should not inquire into impotence unless a founded doubt has arisen; but questions should be put very moderately and prudently, lest he disturb prematurely the good faith of the penitent regarding the validity and use of marriage.

¹ Cf. chapter 5, *de frigidis et maleficiatis*.

² Cf. chapter 5, *de frigidis et maleficiatis*; Sacred Congregation of the Council, December 15, 1877.

Article III. Bond

776 I. Notion. By the impediment of bond is understood the bond of a valid marriage; while that bond endures, another marriage cannot validly be contracted.

II. Existence of the impediment. The bond diriments marriage by divine law, both natural and positive; this follows from what was said concerning the unity and indissolubility of marriage (St. Thomas, *Supplement*, q. 65, a. 1; St. Alphonsus VI, 1060). The impediment is confirmed by ecclesiastical law (canon 1069).

III. Cessation of the impediment. The impediment ceases through the dissolution of the matrimonial bond. In what ways this can happen, apart from the death of the other party, see n. 720 and following.

777 IV. Requisites in order that it be lawful to pass to new nuptials. Although the prior marriage is invalid or dissolved for any cause whatever, it is not therefore lawful to contract another before the nullity or dissolution of the prior marriage is legitimately and certainly established (canon 1069, § 2). Therefore it is required that concerning the nullity or dissolution of the prior marriage: 1° it be certainly established; 2° it be legitimately established. It must be certainly established, because it is not lawful to expose oneself either to the danger of inflicting injury upon the prior or possessing marriage, or to the danger of contracting the new marriage invalidly (St. Alphonsus VI, 981, 1060). It must be legitimately established because, since the matter concerns the external forum, private certainty does not suffice. Now:

1. In the case of nullity of marriage there is required a sentence of the competent ecclesiastical judge, rendered and announced with the order of law being observed. But spouses have the right of contracting new nuptials after ten days have elapsed from the announcement of the second sentence (canon 1987).

"When from a certain and authentic document, which is subject to no contradiction or exception, the existence of an impediment of disparity of cult, order, solemn vow of chastity, ligamen, consanguinity, affinity, or spiritual relationship has been established, and at the same time it has appeared with like certainty that a dispensation upon these impediments has not been given, in these cases, with the solemnities so far enumerated being omitted, the Ordinary, the parties having been cited, can declare the nullity of the marriage, but with the intervention of the defender of the bond" (canon 1990; cf.

also canons 1991 and 1992). Indeed, if the union does not even have the appearance of marriage, as a merely civil marriage entered by persons subject to the ecclesiastical juridic form, the Ordinary, or even the pastor after consulting the Ordinary, can permit new nuptials, with every juridic formality being omitted and without intervention of the defender of the bond.¹ Finally, if in the judgment of the Ordinary the first marriage is certainly null, and in the place is unknown to all, we judge that for the internal forum the spouses are not to be disturbed in a second marriage contracted in good faith.²

Note. The Holy Office responded to the Bishops of Tonkin:³ "But if, after suitable investigations have been made, it is established that infidels entered marriage without observing those things which by the law or custom of the kingdom are required for validity, and one or the other of them comes to baptism and wishes to enter nuptials with a faithful person, those nuptials are not to be permitted unless license has been obtained from the Sacred Congregation of the Holy Office, or unless an interpellation made of the prior spouse has fallen to no effect."

2. In the case of dissolution of marriage by Pontifical dispensation or by religious profession, there is required an authentic document of the dispensation granted or of the profession made; if there is question of religious profession, the non-consummation of the marriage must also legitimately be evident.

3. In the case of dissolution of marriage by the death of the other party, the required certainty is first obtained through evidence of a public fact. But how it is to be acquired in a case in which the said evidence is lacking is set forth by the Instruction of the Holy Office.⁴ In view of it, first note that merely negative proofs, such as absence alone, however long continued, do not suffice,⁵ unlike what holds in civil law for several nations. Therefore positive proofs are required. Now:

a) Before others, "an authentic document must by all means be sought with diligent care: namely, one drawn from the registers of the parish or hospital or military service, or even, if it cannot be had from ecclesiastical authority, from the civil government of the place in which, as is supposed, the person died" (cited Instruction, n. 2; cf. canon 1813, § 1, 4°).

b) If the document is lacking, it must be seen whether two witnesses can be had who are trustworthy, sworn, and who depose concerning their own fact, knew the deceased, and agree with each other concerning the place and cause of death and the other substantial circumstances (cited Instruction, n. 3; cf. canons 1791 and 1828).

c) In default of two witnesses, even one witness is admitted, "provided that that witness is endowed with the conditions enumerated in n. 3, is subject to no exception, and moreover his deposition is supported by other grave aids, and at least nothing is found in his testimony which is not congruous and wholly probable" (cited Instruction, n. 4).

d) In default of any witness, "proof of death from conjectures, indications, and circumstances of any kind must certainly be procured by a careful and very cautious investigation, namely so that, with several things collected from here and there and their nature weighed..., the judgment of a prudent man can be moved to affirm death by the greatest probability, or moral certainty" (cited Instruction, n. 6).

e) Report also, aided by other supports, constitutes an argument concerning death, under these conditions, namely: that it be proved by at least two trustworthy and sworn witnesses, who depose

concerning the reasonable cause of the report itself, whether they received it from the greater and sounder part of the people, and whether they themselves think rightly concerning the same report; nor must there be doubt that it was stirred up by those for whose benefit inquiry is being made (cited Instruction, n. 8).

If the matter remains doubtful, and if there is hope of success, let the Ordinary have recourse to the Holy See.

Corollary I. If someone, after waiting in vain for the return of the other party for several years, in bad faith marries another, the spouses must be separated.⁶

Corollary II. If persons, after waiting in vain for the return of the other party, judged that party to be dead, and in good faith entered new nuptials, the spouses should be left in good faith until news is had of the life of the other party.⁷

Corollary III. If the death of the prior spouse is legitimately and certainly established, the pastor can assist at the new nuptials without recourse to the Ordinary, unless there is question of vagi. If some doubt remains, the Ordinary should be consulted; and this must regularly be done if death cannot be proved except in the way set forth under d or e.

¹ Pontifical Commission, October 16, 1919, ad XVII (A.A.S. 1919, p. 476).

² Gasparri, I, n. 633.

³ September 24, 1915.

⁴ May 13, 1868.

⁵ Rescript of Pius VI to the Archbishop of Prague, July 11, 1788; cf. Sacred Congregation of Propaganda Fide, March 22, 1865, ad 1 (*Collectanea*, n. 1272).

⁶ Holy Office, March 22, 1865 (*Collectanea*, n. 1272, ad 1).

⁷ Holy Office, March 22, 1865 (*Collectanea*, n. 1272, ad 1).

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4. Permission, made by the Holy See, to pass to other nuptials because of the presumed death of the spouse always carries with it dispensation from the impediment arising from adultery with promise or attempted marriage, if any such dispensation is needed, but by no means dispensation from the impediment of which canon 1075, nn. 2, 3 treats (canon 1053).¹

¹ Canon 1075, nn. 2, 3 treats of adultery with murder of a spouse and of murder of a spouse alone.

779 V. Penalty against bigamists. Bigamists, that is, those who, notwithstanding the conjugal bond, have attempted another marriage, even one merely civil, as they say, are infamous by the fact itself; and if, after the Ordinary's warning has been spurned, they persist in the illicit concubinage, they are to be excommunicated or punished with personal interdict according to the different gravity of guilt (canon 2356). Moreover, from infamy there arises irregularity (canon 984, 5°); if copula has followed, there arises the impediment of crime (canon 1075); the children are adulterine or, after the legitimate other party has died, illegitimate. The bigamists themselves - if the crime is public - are public sinners, and therefore, unless they repent, are to be barred from the sacraments (canon 855), from the office of sponsor (canon 765), and from ecclesiastical burial (canon 1240); besides this, the woman delivered of a child is to lack the blessing after childbirth.

Article IV. Disparity of Cult

780 I. Notion. By disparity of cult is understood the diversity of religion which exists between a party baptized in the Catholic Church, or converted to it from heresy or schism, and a non-baptized party. It does not matter whether the non-baptized party is pagan, Jewish, Mohammedan, or even a catechumen (cf. canon 1070, § 1). What is understood by the words "baptized in the Catholic Church," see n. 741.

II. Existence of the impediment. 1. By divine law, marriages between a baptized and a non-baptized party are prohibited for the same reasons as mixed marriages (n. 762; St. Thomas, *Supplement*, q. 59, a. 1).

2. By ecclesiastical law, a marriage contracted by a non-baptized person with a person baptized in the Catholic Church or converted to it from heresy or schism is null (canon 1070, § 1). Therefore, from the new Code in force, that is, from the day May 19, 1918, the impediment does not exist between a party who has been baptized, but not in the Catholic Church and not converted to it from heresy or schism, and a non-baptized party;¹ and this holds even if the non-baptized party is Catholic, or rather is regarded as Catholic.

Corollary I. Those baptized in the Catholic Church are subject to the impediment even if they were born of non-Catholics and educated non-Catholically. For the Code indeed exempts such persons from the juridic form of marriage (n. 742), but from this it does not follow that they are also exempt from the impediment of disparity of cult. There is added a response of the Holy Office - published in the letters of the Sacred Congregation of Propaganda Fide dated April 1, 1922² - which favors the opinion defended.

Corollary II. The divine natural prohibition extends itself further than the ecclesiastical diriment impediment; the former regards all baptized persons, the latter only those baptized in the Catholic Church or converted to it from heresy or schism. I said "divine-natural prohibition," since it is disputed whether divine positive law prohibits marriages of the faithful with infidels (cf. St. Thomas, *Supplement*, q. 59, a. 1, ad 1).

Corollary III. The diriment impediment of disparity of cult is in force everywhere, even in regions recently converted to the Catholic faith.³

III. Cessation of the impediment. The divine prohibition ceases almost as was said concerning mixed religion (n. 763). The ecclesiastical diriment impediment ceases through dispensation. But the power of dispensing outside mission places is rarely granted to Bishops.

IV. The requisites in order that a dispensation be granted are the same as those which are required for dispensation in mixed religion (canon 1071; n. 764). When marriage is to be contracted with a Hebrew party, the Holy Office adds to the dispensation the clause: "And provided that neither before nor after the marriage entered before the Catholic pastor do the parties go to a rabbi to celebrate marriage by the Jewish rite."

Note 1. The Holy Office, June 21, 1912, declared: 1° that dispensation upon the impediment of disparity of cult is never granted unless all the conditions "or cautions" have been expressed; 2° that a dispensation upon the impediment of disparity of cult imparted by one having power from the Holy See, without the prescribed cautions having been required, or with them repudiated, is invalid; 3°

that the nullity of the marriage can be declared by the Ordinary himself when it is evident that the dispensation was thus invalidly granted.

Note 2. The Church, in dispensing upon the impediment of disparity of cult, is no longer understood, as before,⁴ to dispense from the impediments from which the non-Catholic party is exempt;⁵ indeed, it seems that already from the new Code these things held.⁶

Note 3. With regard to the declaration of nullity of marriage because of disparity of cult, what was said concerning the impediment of ligamen holds (p. 619; canon 1990).⁷

V. Obligations of those about to marry, etc. With regard to the obligations of those about to marry, of pastors of souls in forestalling marriages of this sort, of the confessor with respect to a penitent seeking such a marriage, likewise with regard to assistance to be given to marriages of this sort, and with regard to the obligation respecting a marriage contracted, the same things are to be observed as if there is question of a mixed marriage (canon 1071; n. 765 and following).

¹ From this it is also clear how this rather frequent case is to be resolved: Caius and Titia, non-Catholic spouses, are separated from each other by civil divorce. Titia, so that she may marry Sempronius, a Catholic, again, herself also desires to be joined to the Catholic Church. To set aside the impediment of bond by which she still seems bound to Caius, she proves in the forum of the Church that she certainly was not baptized in her sect, or certainly was baptized invalidly, while Caius was baptized. In such a case can the ecclesiastical judge decide that the prior marriage was invalid because of disparity of cult between Caius and Titia? I respond: if their marriage was celebrated before the day May 19, 1918, affirmatively; but if afterward, negatively (Vlaming, op. cit., I, n. 289).

² Cf. *Archiv für katholisches Kirchenrecht*, 1927, p. 180.

³ Constitution of Benedict XIV, *Singulari nobis*, February 9, 1749.

⁴ Holy Office, September 16, 1824 (*Collectanea*, n. 1235).

⁵ Sacred Congregation of Propaganda Fide, May 20, 1931 (in *Periodica de re morali*, etc., 1932, p. 16).

⁶ Cf. the cited response of the Sacred Congregation of Propaganda Fide.

⁷ Cf. Pontifical Commission, October 16, 1919, ad 17 (A.A.S. 1919, p. 476 sq.).

781 VI. Cases of doubtful baptism. There is question either of a marriage to be contracted, or not yet contracted, or of a marriage already contracted.

1. When marriage has not yet been contracted, one must proceed in this way:

a) If there is question of a marriage to be contracted by a Catholic doubtfully validly baptized with a non-baptized person, the Catholic, with the things to be observed being observed, should be rebaptized under condition, and a dispensation in the impediment of disparity of cult should be requested. If because of the circumstances one cannot proceed to the repetition, under condition, of baptism, there is had a doubtful impediment by a doubt of fact, in which the Ordinary can dispense (canon 15).

b) If there is question of a marriage to be contracted by a Catholic with a non-Catholic person doubtfully baptized or doubtfully validly baptized, one must act thus:

If the non-Catholic wishes to be converted, with the things to be observed being observed, let him be rebaptized under condition; once this has been done, the impediment no longer subsists.

If the non-Catholic does not wish to be converted, it is not lawful to rebaptize him under condition,¹ and so to remove the impediment which perhaps exists. What therefore must be done? In the case there are present two impediments doubtful by a doubt of fact - namely of mixed religion and of disparity of cult - in which the Ordinary can dispense (canon 15). But, with approved practice considered, it is not lawful to put an end to the case in this way. In circumstances of this sort the truth must first be inquired into, so that it may be known whether there is need of a dispensation from mixed religion or from disparity of cult. If the doubt is not sufficiently solved, let a dispensation from mixed religion and, for caution, from disparity of cult be requested; indeed, it suffices to request a dispensation from mixed religion, because the Holy See joins to a dispensation from that impediment a dispensation for caution from the impediment of disparity of cult.

In inquiring into the truth, first let it be seen whether the matter can be proved directly, namely by documents or by witnesses.² If direct arguments are lacking or do not make full faith, recourse should be had to indirect proof taken from presumptions; in carrying out this business, the norms which follow hold:

a) In doubt concerning the fact of baptism, from a response of the Holy Office:³

1° Baptism should not be presumed if the non-Catholic party had parents belonging to a sect which rejects Baptism, or in which Baptism is conferred only on adults; likewise if he had parents who professed that they wished to belong to no sect, and that they honored the Supreme Being rather by upright morals, as they say, than by any special cult.

2° Baptism should be presumed if the parents belonged to a sect which holds Baptism necessary, or in which at least ordinarily it is conferred on children, and the same parents were zealous in their sect; likewise, if only one of the parents, who had the chief role in education, was zealous in his sect, which holds Baptism as necessary, provided that the other spouse is not then known to have been positively opposed to the conferral of Baptism.

3° But if each parent was negligent in the sect, or belonged to a sect which indeed retains Baptism but does not hold it as necessary; likewise if, after inquiry has been made, it is unknown or not sufficiently established whether that one parent had the chief role in education who, in his sect holding Baptism necessary, was zealous, in these cases recourse must be had to the Holy See.

b) In doubt concerning the validity of baptism, from a response of the Holy Office:⁴

1° With regard to heretics whose Rituals prescribe the conferral of Baptism without the necessary use of essential matter and form, the particular case must be examined.

2° With regard to others, who baptize validly according to their Rituals, Baptism must be judged valid. But if the doubt persists even in the first case, Baptism must be judged valid in order to the validity of marriage.

3° But if it is certainly known that there is no Baptism according to the actual custom of that sect, the marriage is null.

2. When marriage has been contracted, because of the favor of law one must stand for the value of the marriage until it is certainly proved that one party was baptized and the other was not baptized (canon 1070, § 2, compared also with canon 1014); understand: that one party was

baptized in the Catholic Church, or was converted to it from heresy or schism. Hence a marriage is to be presumed valid:

- a) Between a party certainly baptized Catholicly and a party doubtfully baptized.
- b) Between two parties doubtfully baptized Catholicly.
- c) Between a party doubtfully baptized Catholicly and a party certainly not baptized.

Objection. If one party was doubtfully baptized Catholicly, and the other certainly was not baptized, one cannot stand for the value of the marriage. For doubtful baptism in order to marriage is presumed valid.⁵

Response. The assertion concerning doubtful baptism, insofar as there is question of a contracted marriage, seems unable to be reconciled with the clear text of canon 1070, § 2 and canon 1014, and therefore no longer holds.

¹ Holy Office, April 3, 1878.

² To prove that baptism was conferred, if prejudice is done to no one, one witness above every exception is sufficient, or the oath of the baptized person himself, if he received baptism at adult age (canon 779).

³ August 1, 1883 (*Collectanea*, n. 662).

⁴ November 17, 1830 (*Collectanea*, n. 649).

⁵ Holy Office, September 9, 1868; July 7, 1880; August 1, 1883, etc.

Article V. Sacred Order

782 I. Major or sacred Orders, that is, the Episcopate, Presbyterate, Diaconate, and Subdiaconate, diriment marriage (canon 1072, compared with canons 949 and 950).¹ There is dispute concerning those who received sacred Order without sufficient knowledge of the obligation of celibacy, or compelled by grave fear. For the rest, canon 214, § 1 states: "A cleric who, compelled by grave fear, received a sacred Order and afterwards, once the fear was removed, did not ratify the same ordination at least tacitly through exercise of the Order, while nevertheless wishing by such an act to subject himself to clerical obligations, is to be reduced to the lay state by sentence of a judge, once the coercion and defect of ratification have been legitimately proved, without any obligations of celibacy and of the canonical hours."

Minor clerics can indeed enter nuptials, but, unless the marriage was null by reason of force or fear inflicted upon them, they fall by the law itself from the clerical state (canon 132, § 2).

II. Sacred Order as such does not diriment marriage by divine law, whether natural² or positive, but merely by ecclesiastical law. Not by divine natural law, that is, by force of the nature of sacred Order. For this is not absolutely incompatible with obligations essential to sacred Order, as is evident from approved practice in the Eastern Church and from dispensations granted by the Church; and those dispensations furnish a new argument, because the Church cannot dispense in divine natural law. Nor by divine positive law, that is, law founded in a special disposition of Christ. This is likewise deduced from approved practice and dispensations, of which there has just been discussion. It remains therefore, as we shall say, that sacred Order as such diriments marriage by ecclesiastical law alone. I said as such; for there is dispute whether the solemn vow of chastity, which according to

many is attached to sacred Order, diriments marriage by divine law. Concerning this, see below (n. 784), where we adhere to the opinion which derives the invalidating force of a solemn vow from ecclesiastical law alone.

III. The Church established the diriment impediment by reason of the Order itself; in other words, she annexed the impediment to the Order itself. Whether she also annexed it to the vow is disputed. By reason of the Order itself, as is evident from the fact that canon 1072 constitutes those placed in sacred Order absolutely incapable, so that even those who excluded the vow would be held by the impediment. It is disputed whether the Church also annexed the impediment to the vow, if it is emitted. Now it seems that this must be affirmed, if one considers both the things which Boniface VIII established in the single chapter *de voto et voti redemptione*, III, 15, in the Sext; and the authority of other Pontiffs in the single chapter, title 6, *de voto*, in the Extravagants of John XXII; and the Constitution *Inter praeteritos* of Benedict XIV, § 41, December 5, 1749, with proposition 72³ proscribed in the Syllabus of Pius IX also being compared. I said "if it is emitted" (St. Alphonsus VI, 808, 809). For:

It is disputed, first, whether there has existed a law of emitting a vow in the reception of sacred Order. Now Wernz-Vidal, in order to prove its existence, speaks thus: "Certainly from the ancient tradition of the Western Church, from Gregory the Great onward, men were not admitted to major Orders unless they previously professed chastity. This profession according to the obvious meaning contains a true vow of perfect chastity. But by no solid argument can that fact, already in itself rather unbelievable, be demonstrated: that the Latin Church, having abandoned her ancient and more perfect practice of exacting celibacy also from a vow of perfect chastity, adopted the less perfect discipline of the Greeks, who impose upon a celibate cleric approaching major Orders the obligation of chastity by ecclesiastical law alone. Nor can adversaries assign by some probable reason the time when at last that wondrous change of ancient discipline was made. Therefore the singular prerogative and dignity of the secular clergy of the Latin Church, by which it follows the evangelical counsel of chastity in the more perfect form and mode of a vow, is to be retained with all force and constancy."⁴

It is disputed, secondly, whether the law of emitting a vow in the reception of sacred Order continued to be in force after the new Code. This may seem doubtful to someone, because the stated law is with difficulty drawn out of the Code, and therefore, with canon 6, 6° considered, seems to have been abolished.

Nevertheless the law seems to persist: both because canon 6, 6° does not seem applicable to the stated law, as introduced by custom;⁵ and because the word sacrilege occurring in canon 132, § 1 can regard also the vow annexed and to be annexed to the Order; and once this is admitted, the law is contained at least implicitly in the Code; and because at least because of doubt one must not depart from the old law (canon 6, 4°).

IV. The penalties established against major clerics attempting marriage are:

1. Excommunication *latae sententiae*, simply reserved to the Apostolic See; clerics moreover, if after having been warned during the time determined beforehand by the Ordinary according to the diversity of circumstances, they have not repented, are to be degraded (canon 2388, § 1).
2. Irregularity (canon 985, 3°).

3. Loss of office (canon 188, 5°).

Note. The penalties set forth have been established also against those who contract merely civilly, although an act of this sort lacks even the appearance of marriage (cited canon).

V. The Church never dispenses in the impediment of Order with Bishops, scarcely ever with presbyters, and not easily with deacons and subdeacons.

But whenever a dispensation is granted, it is enjoined upon the cleric that, reduced to the lay state, he in no way exercise the Orders received. By this injunction the fundamental principle of the Latin Church is preserved, namely, that clerics "cannot attend at the same time to pleasures and carnal desires and to ecclesiastical services." So chapter 3, *de conversione coniugatorum* (III, 32). But the obligation of reciting the Divine Office is commuted into other works of piety.⁶

¹ Council of Trent, session 24, canon 9.

² That is, by reason of the character of the Order itself.

³ "Boniface VIII was the first to assert that a vow of chastity emitted in ordination renders nuptials null."

⁴ Op. cit., n. 284.

⁵ Cf. Sacred Congregation of the Council, January 10, 1920.

⁶ Vlaming, I, n. 301.

Scholion. On Sacred Order in the Eastern Churches

783 I. Sacred or major Order also in the Eastern Churches constitutes an impediment of marriage; in other words, major clerics after ordination cannot enter marriage, neither a first marriage nor, after the death of the first wife, a second.¹ Except, with regard to Maronites and Syrians, the Subdiaconate, since they do not reckon it among the major Orders.

II. Sacred Order constitutes a diriment impediment: 1° for Italo-Greeks;² 2° for Ruthenians, at least with regard to presbyters;³ 3° for Maronites and Syrians with regard to deacons and presbyters;⁴ 4° for Romanians;⁵ 5° most probably, not to say certainly, for the other churches. For first, Benedict XIV adheres to this opinion in the Constitution *Eo quamvis*.⁶ Next, the style of the Roman Curia embraces this opinion; namely, as Benedict XIV admits in the Constitution *Anno vertente* of June 19, 1750,⁷ this opinion was already received in his time among the Roman tribunals and is in force now. Then, in the Instruction of the Sacred Congregation of Propaganda Fide to the Bishop of the province of Alba Iulia,⁸ marriage after Subdiaconate is said to be attempted, that is, contracted invalidly. Finally, there is added the consensus of the Orientals themselves, both Catholic and schismatic. But the fact that Benedict XIV in the Constitution *Anno vertente* pronounces that this controversy has not yet been defined by any apostolic decree does not prevent the opinion defended from being called almost certain.⁹

¹ Nevertheless married men can receive the sacred Orders of Subdiaconate, Diaconate, and Presbyterate, and, once these have been received, use the marriage entered before ordination. But married men cannot be admitted to the Episcopate without dispensation, nor can they, once made Bishops, use a marriage perhaps contracted previously (canon 13 of the Trullan Council; Benedict XIV, Constitution *Etsi pastoralis*).

² Canon 6 of the Trullan Council (692).

³ Synod of the Ruthenians, 1720.

⁴ Synod of Lebanon (1736); Synod of Sciarf (1888).

⁵ Provincial Synod of the Romanians, 1883.

⁶ May 4, 1745.

⁷ June 19, 1750.

⁸ March 24, 1858.

⁹ Wernz-Vidal, op. cit., n. 286.

Article VI. Religion

784 I. Religious who have professed solemn vows,¹ or simple vows to which, by special prescription of the Apostolic See, the force of invalidating nuptials has been added, invalidly attempt marriage (canon 1073). Force of this sort has been added to simple vows emitted by scholastics in the Society of Jesus, as is evident from the Constitutions of Gregory XIII *Quanto fructuosius*² and *Ascendente Domino*.³ Insofar as in the reception of the Subdiaconate a solemn vow of chastity is emitted which diriments marriage, see n. 782.

It is disputed whether a solemn vow diriments marriage by divine law, whether natural, that is, by its own force, or positive, or by ecclesiastical law. Now it seems to diriment marriage by ecclesiastical law alone: both because the former opinion is proved by no argument, although such force of a solemn vow is not to be asserted without an argument; and because Leo XIII,⁴ by reckoning the impediment of religion among ecclesiastical impediments, in the obvious sense excludes divine law; and because a solemn and a simple vow do not seem to differ in nature or substance (vol. I, n. 1218). Once this is posited, it is admitted with difficulty that invalidating force regarding marriage belongs to the former, since the same cannot be affirmed of the latter.

II. The penalties established against religious attempting marriage are:

1. Excommunication. "Regulars or nuns after a solemn vow of chastity, and likewise all presuming to contract marriage, even only civilly, with one of the aforesaid persons, incur excommunication *latae sententiae* simply reserved to the Apostolic See... But if they are professed of perpetual simple vows, whether in Orders or in religious Congregations, all, as above, are held by excommunication *latae sententiae* reserved to the Ordinary" (canon 2388).
2. Irregularity for those who are bound by religious vows, even simple and temporary vows (canon 985, 3°).
3. Dismissal from religion. Religious are to be held by that very fact as legitimately dismissed if they attempt or contract marriage or even a civil bond, as they say (canon 646, § 1, 3°).
4. If religious have been constituted in sacred Orders, they are moreover held by loss of office (canon 188, 5°), and if, after they have been warned during the time determined beforehand by the Ordinary according to the diversity of circumstances, they have not repented, they are to be degraded (canon 2388, § 1).

Note. The penalties set forth have been established also against those who contract merely civilly (cited canon).

III. Today the Church dispenses in solemn religious profession not only for a cause which concerns the public good, but also for a very grave cause regarding private good. Nevertheless a solemn vow of chastity is commonly not totally removed by the Holy See, but in such a way that the dispensed person, outside the licit use of marriage, also sins against the vow, and the faculty of marrying is restricted to one marriage.

IV. Things to be noted. 1. One who, having obtained an indult of secularization, leaves religion remains freed from vows, while the burdens annexed to major Order stand firm if he was in sacred Orders (canon 640, § 1, 2°); therefore the aforesaid indult does not remove the diriment impediment of sacred Order.

2. The solemnity of vows is extinguished by that very fact in one who legitimately pronounces simple vows in another religious Congregation, unless something else is expressly provided in the apostolic indult (canon 636); and by the fact that the solemnity of vows is extinguished, the force of invalidating marriage also ceases.

¹ A vow is solemn if it has been recognized as such by the Church; otherwise it is simple (canon 1308, § 2). But the Church recognizes as solemn the perpetual vows emitted in some religious Order, whether by regulars or by nuns. Nevertheless, although the vows of nuns are solemn by institute, for some places by prescription of the Apostolic See they are simple (canon 488, 2° and 7°).

² February 1, 1583.

³ May 25, 1584.

⁴ Letters of the Holy Office, February 20, 1888 (*Collectanea*, n. 1685).

Article VII. Raptus

785 With canon 1074 considered, a twofold raptus can be distinguished, properly so called and less properly so called; each diriments marriage.

I. Notion of raptus properly so called. Raptus properly so called as an impediment is: the violent abduction of a woman, with marriage in view, and her retention under the power of the abductor.

II. Existence of the impediment. Between a male abductor and a woman abducted with marriage in view, as long as she has remained in the power of the abductor, no marriage can stand (canon 1074, § 1).

III. The required conditions are evident from the notion handed down. Namely, there is required:

1. Abduction, that is, from place to place; for example, from city to city, from street into house, from one house into another (St. Alphonsus VI, 1107), or even from one room into another, if the house is very large and is the domicile of several families.

2. Violent abduction. Unjust moral force, or unjust fear inflicted upon the woman, suffices. Therefore there is required the abduction of a woman unwilling or resisting. Nevertheless the impediment seems also to be present if a woman, deceived by fraud or circumvented by deceitful solicitations, indeed follows the man, but does not know and does not will that she is being abducted for the purpose of entering marriage.¹ The impediment is not present if the woman consents to the abduction so that she may freely enter nuptials with the abductor; and this holds even if she is still subject to parents or tutors and they are unwilling (St. Alphonsus VI, 1107).

Here, however, it can be asked whether fear inflicted for the purpose that the woman be abducted for marriage is always unjust, namely even if there is question of a betrothed woman who without just cause refuses to enter marriage. Several affirm this, because the aforesaid manner of acting is unjust at least as to mode, namely insofar as no one by private authority can coerce a betrothed woman to nuptials in such a way. But this cannot be said universally; or it can happen that this is done without injustice, for example, if a betrothed man by fear of an evil which it is lawful to inflict abducts a betrothed woman unjustly refusing, so that at last he may arrive at the marriage owed to him.

3. Of a woman, whether honorable or corrupted, whether virgin or widow. But the impediment is not had if a woman abducts a man (St. Alphonsus VI, 1107).
4. For the sake of contracting marriage. Therefore the impediment of raptus is not had if a woman is abducted, for example, for the sake of acquiring money or solely for satisfying lust (canon 1074, § 1).
5. And her detention under the power of the abductor; namely, the impediment lasts as long as the woman remains in the power of the abductor, even if now she freely consents to the nuptials themselves.

IV. Cessation of the impediment. But if the abducted woman, separated from the abductor and established in a safe and free place, has consented to have him as husband, the impediment ceases (canon 1074, § 2).²

V. Notion of raptus less properly so called. Raptus less properly so called as an impediment is: the violent retention of a woman in the place where she stays or to which she has freely gone, with marriage in view.

VI. Existence of the impediment. "With regard to the nullity of marriage, violent retention of the woman is held equivalent to raptus, namely when a man violently detains a woman with marriage in view in the place where she stays or to which she has freely gone" (canon 1074, § 3).

VII. The required conditions, after what has been said, scarcely need any exposition. Namely, there is required: 1° violent retention, that is, either by physical force or by moral force, namely unjust fear; 2° of a woman, as was said concerning raptus properly so called; 3° in the place where she stays or to which she has freely gone. If she is retained in a place to which she has been led violently, the impediment of raptus properly so called subsists; 4° with marriage in view.

VIII. Cessation of the impediment takes place in the same way as cessation of the impediment of raptus properly so called.

Note 1. It makes no difference whether one violently abducts or detains the woman by himself or through another.

Note 2. The impediment of raptus, both properly and less properly so called, although directly it touches only the faithful party, nevertheless indirectly also affects the infidel party. And so it exists even between an infidel and a faithful person, and this whether the abducted woman is faithful or infidel.

IX. The penalties established are: One who, with marriage in view or for the sake of satisfying lust, has abducted by force or deceit an unwilling woman, or a consenting woman of minor age but with

the parents or tutors unaware or contradicting, is by the law itself to be held excluded from legitimate ecclesiastical acts, and moreover is to be punished with other penalties according to the gravity of the fault (canon 2353). Note especially that the penalty does not touch raptus less properly so called, but it does touch several who have not contracted the impediment of raptus properly so called.

X. Dispensation. Although the impediment of raptus and quasi-raptus is of ecclesiastical law, nevertheless the Church dispenses in it only very rarely, namely by permitting the abductor or quasi-abductor to enter nuptials with the abducted or quasi-abducted woman not yet established in a safe place. Furthermore, if the impediment has ceased, according to the common opinion it is not lawful for the pastor to assist at the marriage except by license of the Ordinary, to whom it belongs to judge concerning the cessation of the impediment.

¹ Cf. Sacred Congregation of the Council, June 25 and August 27, 1864.

² Sacred Congregation of the Council, August 20, 1769; March 14, 1772; Council of Trent, session 24, *de reformatione matrimonii*, chapter 6.

Article VIII. Crime

786 The impediment of crime arises from two crimes, namely adultery and spouse-murder, and indeed, with certain conditions fulfilled, in four cases. But the cases according to canon 1075 are: 1° adultery with a mutual promise of marriage; 2° adultery with attempted marriage; 3° adultery with spouse-murder; 4° spouse-murder alone.

§ I. Adultery with a Promise of Marriage

787 Canon 1075, 1° states: "They cannot validly contract marriage who, while the same legitimate marriage endures, have consummated adultery between themselves and have mutually given faith to each other concerning marriage to be entered." Therefore two things must concur: adultery and the promise of marriage, and indeed they must concur or be joined while the same legitimate marriage endures.

I. The adultery must be:

1. True. Hence it is required that at least one or the other spouse be joined in a valid marriage. For the rest, it does not matter whether the marriage is consummated or only ratified.
2. Consummated, namely by copula of itself apt for generation.
3. Formal on each side, and this in such a way that by both, at least one and the same marriage has had injury inflicted upon it. Hence it is required that each party know at least the matrimonial state of one and the same person; but it is not required that each know the marriage of the other; nor is it sufficient that each know himself or herself to be joined in marriage.

Let there be cases: Peter, unmarried, has relations with Anna, a married woman, while ignorant of her marriage. There is not adultery formal on both sides. Paul, married, has copula with Rose, married; but neither knew the other's marriage. Injury is not inflicted upon one and the same marriage. Henry, married, and Bertha, married, commit adultery. Henry knows Bertha's marriage, but Bertha is ignorant of Henry's marriage. Each party inflicts injury upon the same marriage (St.

Alphonsus VI, 1036). But the reason why injury must be inflicted upon the same marriage by both spouses is this: that the impediment was established lest hope of marriage lead to plotting the death of a spouse by the common design of each.

II. The promise must be:

1. True. Therefore desire does not suffice, nor, as is more commonly taught, a fictitious promise. For "faith given" is required; moreover, since we are dealing with odious things, the law must be interpreted strictly, and therefore concerning a promise properly so called (St. Alphonsus VI, 1039).
2. Duly intimated and accepted. For thus a promise is perfected or completed. Hence the silence of the other party does not suffice of itself (St. Alphonsus VI, 1037).
3. Absolute, or, if it is not absolute, conditional, as follows: If the promise was made under a condition concerning the present or concerning the past, it is required that the condition exist. If it was made under a suspensive condition concerning the future, the condition must be fulfilled, and indeed, as is more commonly taught, before the death of the innocent spouse. The reason why the condition must exist or be fulfilled is this: because otherwise there is not simply a promise; yet such a promise is judged to be required, since we are dealing with odious things (St. Alphonsus VI, 1040). But the suspensive condition must be fulfilled before the death of the innocent spouse, because otherwise there is not simply a promise which gives occasion for plotting the death of the spouse.
4. Mutual; for canon 1075, 1° declares: "and they have mutually given faith to each other."
5. It is required, with sufficient probability, that it be a promise concerning marriage to be entered after the death of the spouse. For the cited canon speaks of marriage to be entered. But a promise about marrying while the prior spouse is living is rather a promise about attempting marriage. Hence we judge that the impediment does not subsist if, for example, Peter promises Anna, a married woman, that he will enter marriage after she has obtained a civil divorce.
6. Finally, it is required with sufficient probability either that each, while promising, knew that one or the other was married, or that the promise, after that knowledge was received, was expressly or tacitly¹ confirmed. The reason is that both the promise and the adultery must give occasion for seeking the death of the innocent spouse.

III. Joining of adultery and promise. Adultery and promise must have place while the same legitimate marriage endures; therefore they must have existed together, and this while the same legitimate marriage persisted. But it does not matter whether the promise precedes the adultery or the reverse.

1. They must have existed together. Hence if the promise preceded the adultery, it is required that it was not revoked before the adultery. But that it is revoked after the adultery has been committed effects nothing, because they already existed together.
2. They must have existed together while the same spouse was living. Hence the impediment does not arise if, for example, Peter, while his prior marriage stands, had copula with Anna, unmarried, and promises marriage to her during the time of his second marriage.

¹ For example, Peter promises marriage to Anna while ignorant of her marriage. Afterwards, once Anna's marriage has become known, moved by the promise made, he commits adultery with her.

§ II. Adultery with Attempted Marriage

788 Canon 1075, 1° states: "They cannot validly contract marriage who, while the same legitimate marriage endures, have consummated adultery between themselves and... have attempted that marriage itself, even by a merely civil act." Therefore there are required:

I. Adultery, and of the sort set forth in n. 787.

II. Attempted marriage. By this is understood here an act by which two persons, knowing that because of the impediment of ligamen they cannot enter another valid marriage, truly offer conjugal consent to each other. It is required that each be conscious of the impediment, because each must attempt marriage. For the rest, with regard to the consent to be offered, it is the same whether it is offered in the form required by law or without it, even if it is done merely civilly. Mere concubinage as such does not involve matrimonial consent, although it can give occasion for offering it, or even, with the custom of the place considered, carry it with itself.¹

III. The joining between adultery and attempted marriage must be the same as between adultery and the promise of marriage (n. 787).

Corollary. All those who, after a validly contracted marriage, seek and obtain a civil divorce, and then contract and consummate another civil marriage, incur this impediment; and therefore, although the prior marriage has been dissolved, they cannot enter marriage without a dispensation.²

¹ Sacred Congregation of Propaganda Fide, January 14, 1844.

² Vlaming, I, n. 318.

§ III. Adultery with Spouse-Murder

789 Canon 1075, 2° states: "They cannot validly contract who, likewise while the same legitimate marriage endures, have consummated adultery between themselves and one of them has perpetrated spouse-murder." Therefore there are required:

I. Adultery. But this must not only be, as was set forth in n. 787, true, consummated, formal on both sides, and formally injurious to the same spouse; it must also be such with respect to precisely that spouse who is killed. In other words, here it does not suffice that the matrimonial state of one or the other be known to each, but moreover it is required that the matrimonial state of that one whose spouse is killed be known to each. For, with the end of the law considered,¹ it seems to be required that adultery, and indeed the adultery of each party, influence the killing of the spouse. But this does not have place if one or the other party is ignorant of the matrimonial state of the spouse killed. There is added that the ancient law speaks of adultery injurious with respect to the spouse killed (St. Alphonsus, *Homo Apostolicus*, tract 18, n. 63, where he requires "that each adulterer be conscious of the prior marriage," that is, of the marriage which was dissolved by the killing of one spouse).

II. Spouse-murder; concerning which it must be observed:

1. Plotting of death perpetrated by one or the other accomplice in adultery suffices, whether physically or morally.
2. Death must truly have followed, and from that plotting.

3. The plotting must have proceeded from the intention of marrying the accomplice in adultery. "Hence it is inferred that if a man kills his wife so that he may enjoy the adulteress more freely, or for another cause, even if that woman consented to the homicide but without intention of marriage, the impediment is not contracted" (St. Alphonsus VI, 1036). For the rest, here it is certainly not necessary that that intention be present in both adulterers, since the plotting of both is not required. But it is disputed whether the stated intention must be manifested to the accomplice in adultery. Now this seems to be denied, because in this case the law does not require mutual conspiracy. Nevertheless the intention seems to have to be externalized, as they say, because the Church cannot, or at least is not accustomed to, make laws concerning merely internal acts (St. Alphonsus VI, 1034).

III. Joining between adultery and spouse-murder. 1. Adultery and spouse-murder must be committed while the same legitimate marriage stands.

2. It is disputed whether adultery must have preceded not only the death of the spouse, but also the physical plotting of death, for example the administering of poison or the infliction of a wound. Now this is affirmed with sufficient probability, because, with the end of the law considered, the impediment seems to have been established lest the adultery of each should influence the killing of the innocent spouse (p. 634). Once this is posited, it is necessary that the adultery precede the physical plotting of death itself (St. Alphonsus VI, 1036, 2°). I said, however, "physical plotting," because the impediment arises even if the adultery follows the moral plotting, provided that it precedes the physical.

¹ The end of the law is lest adultery give occasion for preparing the death of the innocent spouse.

§ IV. Spouse-Murder Alone

790 Canon 1075, 3° states: "They cannot validly contract marriage who by mutual physical or moral cooperation, even without adultery, have brought death upon a spouse." Therefore there are required:

I. Cooperation or plotting of the spouse's death, and that mutual. It is the same whether each party has influenced the death physically or morally, or one physically and the other morally. Therefore command, persuasion, and approval also suffice, but not approval of spouse-murder already perpetrated. There are also those who judge that simple consent to spouse-murder to be perpetrated does not suffice, because the word moral cooperation is not sufficiently verified;¹ others, however, think otherwise for the contrary reason.

II. Cooperation or plotting done from the intention of marrying, and indeed marrying the accomplice. For although the aforesaid condition is not expressed in the law, nevertheless it is gathered from the end of the law, namely lest one come to spouse-murder through hope of marriage with the accomplice (St. Alphonsus VI, 1033). But:

It is disputed, first, whether the aforesaid intention must be in each of those plotting. Most deny this, because the end of the law consists in this: that the occasion of plotting against the life of the legitimate spouse be removed. That occasion is sufficiently taken if even one of those plotting had, in the plotting, the intention of marrying the accomplice. The Austrian Instruction, § 37, openly favors this opinion. A few affirm it, because just as each must cooperate in the spouse-murder, so almost

consequently it seems required that each come to the crime through hope of marriage. The pastoral Instruction of Eichstatt seems to favor this opinion.

It is disputed, secondly, whether the intention of marrying must be manifested to the other party before the spouse-murder. Now this is affirmed with sufficient probability, because otherwise that intention would not influence the fact that the mutual plotting was done through hope of marriage. But the manifestation can be made both by words and by gifts, familiarities, and similar things (St. Alphonsus VI, 1034).

III. Death must have followed, and indeed from the plotting set forth. It does not suffice that death, although attempted, followed, for example, from the negligence of the wounded person, or from the inexperience or lack of care of the surgeon.

Question 1. How is the impediment of crime multiplied?

Response. It is multiplied: 1° if one of the species of the impediment is verified with regard to several marriages;² 2° if several species of the impediment are verified with regard to one marriage,³ although some judge that in the case in which promise and attempted marriage concur with adultery, there is added only a circumstance to be expressed, but the impediment is not multiplied; 3° if several species of the impediment are verified with regard to several marriages;⁴ 4° if, with adultery concurring to constitute the impediment, each party is married,⁵ although some again judge that in this case there is added only a circumstance to be expressed, but the impediment is not multiplied.

Question 2. To what extent are infidels bound by the impediment of crime?

Response 1. If each accomplice is an infidel, the impediment does not arise, even if they are afterwards converted.⁶

Response 2. If one accomplice is a faithful person and the other an infidel, the impediment arises if the faithful person also posited those things which are required for the impediment. Therefore the first species of the impediment arises if the faithful person, marriage having been promised, commits adultery with the infidel; the second species, if the faithful person commits adultery and attempts marriage with the infidel; the third species, if the faithful person perpetrates the killing; the fourth species, if the faithful person was a participant in the plotting (St. Alphonsus VI, 1037).

Response 3. If one of the requisites for the impediment had place in infidelity, and the other after Baptism, the impediment does not arise. Except if the promise or attempted marriage happened in infidelity, but the parties after Baptism persevere in it and commit adultery.

Question 3. To what extent can a dispensation be obtained in the impediment of crime?

Response. A dispensation, when a proportionate cause is present, is granted. Nevertheless, if the impediment arises from public spouse-murder, whether one or both plotted, outside danger of death dispensation can scarcely be hoped for.⁷

Note. A dispensation given by the Holy See upon a ratified and non-consummated marriage, or permission made for passage to other nuptials because of the presumed death of a spouse, always carries with it dispensation from the impediment arising from adultery with promise or attempted marriage, if any such is needed, but by no means dispensation from the impediment of which canon

1075, nn. 2, 3 treats, that is, from the impediment of crime of the third and fourth species (canon 1053).

Warning. "Suspicion of an impediment contracted can sometimes be moved by those who during the prior marriage committed adulteries; who a little after the death of the prior spouse fly to second nuptials, especially if the prior spouse was sick for a long time before death; a male servant who is about to enter marriage with his recently widowed mistress; or a recently widowed man who is about to contract marriage with his female servant or with his wife's sister, etc.

With regard to the manner of inquiring, one must proceed cautiously. Concerning occult adultery, it can be asked, for example, whether he already had familiarity with that person while the prior spouse was living; whether he ever indulged too much familiarity with her. If adultery had place with her, let him be asked further whether already then there was speech between them about a future marriage, etc. Concerning occult spouse-murder, it can be asked whether he at any time desired the death of the prior spouse; whether he gave any cause for that person's death. From the responses a prudent confessor will easily detect guilt or innocence."⁸

¹ So, for example, d'Annibale, III, § 447.

² For example, Peter first, while his marriage with Anna stands, promises marriage to Titia and commits adultery with her; then, while his marriage with Bertha stands, he again promises marriage to Titia and commits adultery with her.

³ For example, Peter, while his marriage with Anna stands, promises marriage to Titia and commits adultery with her; then he kills Anna.

⁴ For example, Peter, while his marriage with Anna stands, promises marriage to Titia and commits adultery with her; then he kills Anna. The same Peter, while his marriage with Bertha stands, again promises marriage to Titia and commits adultery with her; then he kills Bertha.

⁵ For example, Peter and Titia, being married, mutually promise marriage to each other and commit adultery.

⁶ Sacred Congregation of Propaganda Fide, August 23, 1852, ad 5 (*Collectanea*, n. 1079).

⁷ Benedict XIV, Constitution *Pastor Bonus*, April 13, 1744.

⁸ Aertnys-Damen, II, n. 745.

Article IX. Consanguinity

We shall speak first about consanguinity according to itself, then about consanguinity insofar as it is an impediment of marriage.

§ I. On Consanguinity according to Itself

791 I. Notion. Consanguinity is nearness between persons arising from this: that by carnal generation they descend either one from the other or jointly from the same proximate stock. It is called "proximate"; for remotely all human beings descend from one Adam or Noah, and yet for that reason they are not called consanguineous. Consanguinity is computed by lines and degrees (canon 96, § 1). Therefore, so that the definition handed down may be more fully developed, three things must be attended to in consanguinity: namely stock, line, and degree.

1. Stock is that person from whom others proceed as from a common proximate root. Commonly the stock consists of two persons, namely parents; sometimes of one person alone, namely if someone begot offspring from several persons.

2. Line is a series of persons descending from the same proximate stock. A twofold line is distinguished: direct and oblique.

The direct line is a series of persons of whom one proceeds from another, either immediately or mediately. It is called descending or ascending according as the series is numbered by descending from those begetting to those begotten, or by ascending from those begotten to those begetting.

The oblique line, transverse or collateral, is a series of persons who proceed from a common proximate stock, but not one from another, as brother and sister, maternal uncle and niece. It is distinguished into equal and unequal, according as two persons are distant from the common proximate stock by an equal degree or distance, as brother and sister, or by an unequal one, as maternal uncle and niece.

3. Degree is the measure of distance of one person from another. But degrees are computed thus:

a) In the direct line there are as many degrees as generations, or as many persons with the stock removed (canon 96, § 2). Thus, for example, a son is distant from his father by one degree, from his grandfather by two degrees. And both civil law and ecclesiastical law follow this mode of computing degrees in the direct line. Otherwise one must speak in the collateral line.

b) In the equal collateral line there are as many degrees as generations in one tract of the line, or there are as many degrees as persons in one tract, with the stock removed. Hence, for example, two brothers are consanguineous in the first degree, two first cousins in the second degree of the equal collateral line.

c) In the unequal collateral line there are as many degrees as generations in the longer tract, or as many degrees as persons in the longer tract, with the stock removed. Thus, for example, a maternal uncle and niece are consanguineous in the second degree of the unequal collateral line.¹ Degrees are computed according to the longer series because the reason of nearness and distance of collateral blood-relatives is taken from the fact that they are united in the common proximate stock. Hence they cannot be more united among themselves than they are united with the stock. But this would occur if the computation had to be made according to the shorter series.

But so that consanguinity may be perfectly exhibited, both the nearer and the more remote degree must be indicated. This is done, for example, if there is question of a maternal uncle and niece, by saying: they are consanguineous in the second degree mixed with the first, or touching the first.

Note. Civil laws which for the direct line follow the same mode of computing as ecclesiastical law, in the collateral line compute the generations of each tract, or the persons of each tract, with the stock removed. Hence, for example, two brothers are consanguineous in the second degree, two first cousins in the fourth, a maternal uncle and niece in the third degree. This mode of computing must be attended to when there is question of civil matter, for example, of the civil effects of marriage, as of hereditary succession.

II. Division. Consanguinity is divided:

1. Into legitimate and illegitimate, according as it arises from conjugal copula or from illicit intercourse. But since in each case there is a natural communion of blood, this division is not attended to in order to contracting marriage.

2. Into full and less full. The former exists among those who have father and mother as common stock; the latter among those who have only father or mother as common stock. The former are called full siblings; the latter consanguineous or uterine, according as father alone or mother alone is their common stock. But neither is this distinction attended to with regard to the impediment.
3. Into agnation and cognation, according as the communion of blood is transmitted through the masculine or feminine line. Those joined in the former way are called agnates; those joined in the latter way cognates.
4. Into simple and multiple. The former is had when two persons have only one common stock and ascend to the stock by only one way. The latter exists when each party has a double or multiple common stock, or each or one of the parties ascends to the same stock by a double or multiple way.
5. Into consanguinity of the direct line and of the oblique line, as was set forth on p. 637.

III. Mode of finding the degrees. The degree of consanguinity is found by making a genealogical tree. This is done thus: if the common stock is known, write that person's name on paper, then below him here and there the names of those descending from him through each line, until you arrive at the persons whose degree of consanguinity is being sought.

If the stock is unknown, first write the names of those whose consanguinity must be detected, then above the name of each put the names of the ascendants, until you arrive at the common stock. Let the schema be:

Benedict

1 Henry Mary 1 2 Robert Rose 2 3 Peter Jacoba 3

Peter and Jacoba are consanguineous in the third degree of the equal collateral line. Peter and Rose are in the third degree of the unequal collateral line, or - so that the consanguinity may be determined in every respect - in the third degree mixed with the second, or in the third degree touching the second.

¹ An unequal degree in the collateral line is called a mixed degree.

792 IV. Multiplication of consanguinity can occur in two ways: 1° by reason of the double or multiple way by which one or the other, or each, of the blood-relatives descends from one common stock; 2° by reason of a double or multiple common stock.

Three causes of multiplication are assigned:

1. The first cause of multiple consanguinity between two persons is that someone among their ascendants has offspring from a person consanguineous to himself. From this cause, indeed, multiple consanguinity can follow both in the first and in the second way: in the second, namely, insofar as besides the nearer common stock there is also another, more remote, common stock, to which one ascends without each line passing through the nearer common stock.¹

Let the schema for double consanguinity with one common stock be:

Peter

1
2 Luke

1 Rose 1 1 (1) Mark 1 1 (2) Andrew X Clara 2

3 Mary

(3) Lucius 3

1, 1 Nilus

It is asked in what degree, by how manifold a consanguinity, and by what mode of multiplication Lucius and Mary are joined. From this schema it is evident that Andrew and Clara, that is, the father and mother of Lucius, were joined to each other in the second equal degree from the common stock Peter. But hence it happens that their son Lucius is bound with Mary in the third equal degree, not by a single consanguinity, but by a double one, yet not by a consanguinity of double stock but only of one common stock.

For double consanguinity with a double common stock from the same cause, let the schema be:

Mark

1 Luke

2 Mary

Jacob 1

..... X | 3 Peter (2)

2 Paul (1)

(1) Vincent 2 | (2) Flavia 3

It is asked in what degree, by how manifold a consanguinity, and by what mode of multiplication Peter and Flavia are joined. From this schema it is evident that Paul and Mary, namely the father and mother of Peter, were joined to each other in the second equal degree from the common stock Mark. Hence it happens that their son Peter is bound with Flavia in the third equal degree, insofar as Peter descends from the common stock Mark through Mary and Luke, while Flavia descends from him through Vincent and Jacob. Yet the same persons are at the same time joined in the second equal degree from the common stock Jacob, insofar as Peter descends from the common stock Jacob through his father Paul, while Flavia descends from him through Vincent. But since Peter ascends to the more remote stock Mark not only through the nearer common stock Jacob, but also by another way, through Mary and Luke, which does not pass through that nearer stock Jacob, therefore between Peter and Flavia there is a consanguinity of double stock.

The following causes always carry with them multiplication of consanguinity by reason of double or multiple stock.

2. The second cause is that persons consanguineous among themselves have begotten offspring from persons consanguineous among themselves. For example:

Anthony Charles

1 Lucretia ... X ... Paul 1 1 Peter ... X ... Mary 1

2 Jacob (2) (2) Flavia 2

3 Robert (3) (3) Magdalene 3

In this schema there are two brothers, Peter and Paul, who respectively contracted marriage with Mary and Lucretia, two sisters. Hence it happens that the descendants of each of those marriages are mutually doubly consanguineous, by reason of a double common stock: namely, by reason both of Anthony, who is their grandfather or great-grandfather on the father's or grandfather's side, and of Charles, who is their grandfather or great-grandfather on the mother's or grandmother's side. And thus Jacob and Flavia are consanguineous in a double second equal degree; Robert and Magdalene in a double third equal degree.

3. The third cause is that someone successively had offspring from several persons consanguineous among themselves. For example:

John

1 Mary ... X ... Peter ... X ... Anna 1 | | 2 Andrew (1) (1) Robert 2 | | 3 Rosalia (2) (2) Aloysius 3

In this schema John is the father of the sisters Mary and Anna, whom Peter successively knows, and from there the others descend. Therefore Rosalia and Aloysius are doubly consanguineous: first indeed in the second equal degree of the collateral line from the common stock Peter, and then also in the third equal degree of the collateral line from the common stock John.

V. The mode of detecting every consanguinity which exists between two persons is this: let a genealogy of each be made through all ascendants, both fathers and mothers, up to the third degree inclusive. Then apply these things:

1. Persons who occur in each genealogy constitute, individually, the common stock of those whose consanguinity is being sought. Note, however, that a common father and mother constitute one stock.
2. As often as the same person recurs in the same genealogy, so often is consanguinity multiplied, because by so many ways one ascends to that stock.

¹ Cf. Holy Office, March 11, 1896, and February 24, 1899 (*Collectanea Brugenses*, I, p. 376, and IV, p. 422 sq.).

Scholion. Names of Blood-Relatives

793 There are:

I. In the direct ascending line.

1. Father (*vader, padre, pere, father, Vater*) and Mother (*moeder, madre, mere, mother, Mutter*).
2. Grandfather (*grootvader, nonno or avolo, aieul or grand-pere, grandfather, Grossvater*) and Grandmother (*grootmoeder, nonna or avola, aieule or grand-mere, grandmother, Grossmutter*).
3. Great-grandfather (*overgrootvader, bisnonno or bisavolo, bisaieul, great-grandfather, Urgrossvater*) and Great-grandmother (*overgrootmoeder, bisnonna or bisavola, bisaieule, great-grandmother, Urgrossmutter*).
4. Great-great-grandfather (*bet-overgrootvader, trisnonno or trisavolo, trisaieul, grand great-grandfather, Ururgrossvater*) and Great-great-grandmother (*bet-overgrootmoeder, trisnonna or trisavola, trisaieule, grand great-grandmother, Ururgrossmutter*).

II. In the direct descending line.

1. Son (*zoon, figlio, fils, son, Sohn*) and Daughter (*dochter, figlia, fille, daughter, Tochter*).
2. Grandson (*kleinzoon, nepote, petit-fils, grandson, Enkel*) and Granddaughter (*kleindochter, nepote, petite-fille, granddaughter, Enkelin*).
3. Great-grandson (*achterkleinzoon, pronepote, arriere petit-fils, great-grandson, Urenkel*) and Great-granddaughter (*achterkleindochter, pronepote, arriere petite-fille, great-granddaughter, Urenkelin*).
4. Great-great-grandson¹ (*abnepote, bisarriere petit-fils, grand great-grandson, Ururenkel*) and Great-great-granddaughter¹ (*abnepote, bisarriere petite-fille, grand great-granddaughter, Ururenkelin*).

III. In the equal collateral line.

1. Brother and sister.²
2. *Patruales* = children of brothers (*volle neven en nichten, cugini carnali, cousins germains, first cousins, Geschwisterkinder or Vettern or Basen*).

Consobrini = children of sisters, as above.

3. *Sobrini* (*achterneef, nipote in secondo grado, arriere neveu or petit-neveu, great-nephew, Urneffe*) and *Sobrinae* (*achternicht, nipote in secondo grado, arriere-niece or petite-niece, great-niece, Urnichte*).

IV. In the unequal collateral line.

1. In the second degree touching the first there are:

a) On one side, namely in the first degree:

a) Paternal uncle (*patruus*) = father's brother (*oom van vaderszijde, zio paterno, oncle paternel, paternal uncle, Onkel*).

b) Paternal aunt (*amita*) = father's sister (*tante van vaderszijde, zia paterna, tante paternelle, paternal aunt, Tante*).

c) Maternal uncle (*avunculus*) = mother's brother (*oom van moederszijde, zio materno, oncle maternel, maternal uncle, Oheim*).

d) Maternal aunt (*matertera*) = mother's sister (*tante van moederszijde, zia materna, tante maternelle, maternal aunt, Muhme*).

b) On the other side, namely in the second degree:

a) Nephew (*nepos*) = son of a brother or sister (*neef, nipote, neveu, nephew, Neffe*).

b) Niece (*neptis*) = daughter of a brother or sister (*nicht, nipote, niece, niece, Nichte*).

2. In the third degree touching the first there are:

a) On one side, namely in the first degree:

a) Great paternal uncle (*patruus magnus*) = grandfather's brother (*oud-oom van vaderszijde, fratello dell'avolo, grand-oncle paternel, great uncle, Grossonkel*).

b) Great paternal aunt (*amita magna*) = grandfather's sister (*oud-tante van vaderszijde, sorella dell'avolo, grand-tante paternelle, great aunt, Grosstante*).

c) Great maternal uncle (*avunculus magnus*) = grandmother's brother (*oud-oom van moederszijde, fratello dell'avola, grand-oncle maternel, grandmother's brother, Grossoheim*).

d) Great maternal aunt (*matertera magna*) = grandmother's sister (*oud-tante van moederszijde, sorella dell'avola, grand-tante maternelle, grandmother's sister, Grossmuhme*).

b) On the other side, namely in the third degree:

a) Great-nephew (*pronepos*) = son of a nephew (*achterneef, nipote in secondo grado, arriere neveu or petit-neveu, great-nephew, Urneffe*).

b) Great-niece (*proneptis*) = daughter of a nephew (*achternicht, nipote in secondo grado, arriere niece or petite-niece, great-niece, Urnichte*).

¹ In Dutch it is indicated by circumlocution.

² Brothers and sisters are called: 1° full siblings, if they were born from the same father and from the same mother; 2° consanguineous, if from the same father but from a different mother; 3° uterine, if from the same mother but from a different father.

§ II. On Consanguinity Insofar as It Is an Impediment of Marriage

794 I. The reasons for the established impediment are:

1. Reverence owed to blood-relatives. "Naturally a man owes a certain honor to parents, and consequently to those blood-relatives who draw their origin from the same parents from nearby... But it is manifest according to the things said above (q. 142, art. 4, and q. 151, art. 4) that in venereal acts there especially consists a certain baseness contrary to honor; whence men are ashamed concerning these things; and therefore it is unfitting that such venereal commingling should take place between such persons mutually" (St. Thomas, II-II, q. 154, a. 9).
2. The danger of lust to be forestalled. "Persons joined by blood must live together mutually; whence if men were not kept away from venereal commingling, too much opportunity of venereal commingling would be given to human beings, and thus the souls of human beings would be made too soft by lust" (St. Thomas, loc. cit.).
3. Friendship to be promoted. "For while a man takes a wife from outside, all the blood-relatives of the wife are joined to him by a certain special friendship, as if they were his own blood-relatives" (St. Thomas, loc. cit.).
4. Physical harms to be averted from offspring. Now some judge that consanguinity by itself alone produces harmful effects;¹ others deny this,² but concede that morbid qualities, which are found in families after the manner of a certain inheritance, are transmitted more easily and in a more intense degree through marriages between blood-relatives.³

¹ According to Dr. Rillet the effects of marriages of this sort are: sterility, abortion, monstrosity, epilepsy, imbecility, deaf-mutism, paralysis, etc. According to Dr. Boudin, in the city of Berlin, out of 10,000 Catholics there are found 3 deaf-mutes, out of the same number of Protestants 6, out of the same number of Jews 27. But among the latter blood-relatives are more joined in marriage, and Protestants more than Catholics, as all know (Eschbach, op. cit., p. 100; cf. Garnier, *Le Mariage*, p. 81; Devey, *Des dangers des mariages consanguins; De Katholiek*, 1884, p. 30, 173 sq.).

² So Dr. Surbled, who for the sake of argument relates these things: "The very precise observations collected on the island of Batz, isolated off Roscoff in Brittany, whose inhabitants, almost all relatives, truly form only one same family

under the same bell-tower, demonstrate without reply that consanguineous unions give a strong, robust race, remarkably fruitful and endowed with longevity" (*La morale dans ses rapports avec la medecine de l'hygiene*, vol. I, chap. XVI).

³ Dr. Garnier: "Consanguinity must not... be confused with heredity or the transmission of diseases, affections, and constitutional defects, apparent or hidden... This danger exists for all unions tainted by any hereditary defect, for parents transmit to their children, by generation, the morbid predispositions with which they are affected, as they do their qualities and their defects, their physical and moral resemblance. But notable differences are observed in this regard in the results. In unions between unrelated persons, the reaction of contrary, opposed elements tends to neutralize and annihilate morbid germs; all great physicians have observed this, in effect, that chronic, hereditary affections, the deformities of a family, are extinguished and disappear in successive generations through well-made crossings." (*Le Mariage*, article "Mariages consanguins"). Dr. Surbled: "Performed between diathetic or degenerate persons, a consanguineous union is indubitably pernicious, deplorable, and can give only bad fruits; it unites weakened, sick, deviated constitutions... The grave diseases of ancestors, constitutional diatheses, as is known, have only too manifest a tendency to be transmitted in families. Now morbid consanguinity comes to strengthen this tendency and to accumulate elements of destruction in the generations which succeed one another" (loc. cit.).

795 II. The existence and scope of the impediment are established by these things:

1. In the direct line of consanguinity, marriage is invalid between all ascendants and descendants, both legitimate and natural (canon 1076, § 1). With regard to natural law, consanguinity certainly diriments marriage in the first degree of the direct line, and more probably in every degree. For marriage, which introduces a certain equality, is opposed to the relation of superiority and inferiority which exists between ascendants and descendants.
2. In the collateral line marriage is invalid up to the third degree inclusive (canon 1076, § 2).

With regard to natural law, consanguinity beyond the first degree does not diriment marriage.¹ Concerning the first degree itself, brother and sister, there is dispute. Several judge that such marriages are invalid, apart from the necessity of propagating the human race through the sons and daughters of Adam.² But they judge thus both because such marriages obstruct the primary end of marriage, since depraved offspring are accustomed to arise from them; and because admitted validity would give occasion for lust among persons living in the same house. Others admit the contrary, or at least call the matter into doubt, and respond that the integrity of offspring pertains only accidentally to the good of the species, to which marriage is ordered; and that the other reason does not seem so urgent that from it one may conclude to defect of validity.

As to positive law, there are those who judge that marriage between brother and sister is diriment by divine positive law. Others, however, rather deny this, because the Mosaic law has been abrogated, and the evangelical law says nothing concerning it.

Corollary. Marriage between infidels who are blood-relatives, whether in the first degree of the collateral line or in a further degree than the first degree of the direct line, is doubtfully valid. Hence if each, or one or the other, is converted to the faith, the Holy See must be approached.

3. The impediment of consanguinity was restricted by Leo XIII³ for Indians and Negroes⁴ in Latin America and in the Philippine Islands to the second degree of the collateral line. From the declaration of August 16, 1898, this also holds for all the Antilles and the other islands of the Caribbean Sea. We judge that, from the intention of the Legislator, the aforesaid disposition is governed by the law of privilege rather than by the law of a particular law, and therefore, although it is contrary to the general law, it persists.

III. Multiplication of the impediment. Before the current Code, the impediment was multiplied as often as consanguinity itself; but now the matrimonial impediment is multiplied only as often as the common stock is multiplied, or there are as many impediments as there are common stocks (canon 1076, § 2).

IV. Dispensation. The Church cannot dispense in the first degree of the direct line, since it constitutes an impediment of natural law. It is doubtful whether she can dispense in the other degrees of the direct line and in the first degree of the collateral line. In practice, she never dispenses in the aforesaid degrees. Hence canon 1076, § 3: "Marriage is never to be permitted if there is any doubt whether the parties are consanguineous in some degree of the direct line or in the first degree of the collateral line." From this it follows: 1° it can never be permitted to anyone, for example Peter, to marry either a person with whose mother he had copula at such a time before the daughter's birth that every danger of marrying his own daughter is not excluded; or a person with whose mother his father, that is, Peter's father, had copula at such a time before the daughter's birth that every danger of marrying his own sister is not excluded.⁵ 2° A Bishop or priest who can dispense in ecclesiastical impediments in danger of death or if all things are ready for nuptials cannot dispense from these impediments. In the other degrees of the collateral line the Church dispenses if a proportionately grave cause is present.

¹ Chapter 8, *de divortiis*.

² In this case there is not a dispensation in the law of nature, because due order requires that the good of an inferior order yield to the good of a superior order.

³ Constitution *Trans oceanum*, April 18, 1897.

⁴ Who come under the name of Indians and Negroes is taught by the Sacred Congregation for Extraordinary Ecclesiastical Affairs, May 24, 1898: "Under the name of Indians and Negroes, besides the Indians and Negroes themselves, are also included those who were begotten from an Indian or Negro man and a European woman, or a woman of European blood, and likewise those who were begotten from a European man and an Indian or Negro woman, and therefore are called Mixed, Mestizos, or Mulattoes, and have an absolute half of European blood. But those are not included who draw origin from Indians or Negroes only through a great-grandfather or grandmother, and who are called Quarterones, as having only a fourth part of Indian or Negro blood; and much less those who draw origin from Indians or Negroes only through a great-great-grandfather or great-great-grandmother and are commonly called Puchueles or Pucueles. Moreover, by the name of Indians and Negroes are also understood Africans, Asians, and Oceanians, provided they are not of European blood and are staying in Latin America, although they were not born there."

⁵ Pontifical Commission, June 2-3, 1918, ad 5 (A.A.S. 1918, p. 346).

Article X. Affinity

796 I. Notion. Affinity is the relationship which arises from a valid marriage, whether ratified only or ratified and consummated, between the man and the blood-relatives of the woman, and likewise between the woman and the blood-relatives of the husband (canon 97, § 1 and § 2). It is said:

1. From a valid marriage. Therefore affinity does not arise from a marriage invalid in any way. Nevertheless affinity is presumed to be present for the external forum if the invalidity of the marriage is not proved (cf. canons 1086, § 1; 1972).

2. Whether ratified only or ratified and consummated. Therefore, in order that affinity arise, it is required and sufficient that the marriage be ratified.

Corollary I. Affinity canonically taken does not arise from a legitimate marriage, i.e., a marriage of infidels, because, with canon 1015, § 1 considered, it is not a ratified marriage. That infidels are not bound by the impediment of affinity is clear, because they are not subject to the Church.

Corollary II. Affinity canonically taken does not seem to arise either from a marriage between a faithful party and an infidel party, or from a marriage contracted between two infidel parties, of whom only one or the other is baptized. The reason is that the aforesaid marriages do not seem to come under the name of a ratified marriage (n. 713); at least there is a doubt of law concerning the existence of the impediment.

Corollary III. Affinity canonically taken arises from a marriage contracted between two infidel parties and, after the baptism of both, persisting, because it comes under the name of a ratified marriage (n. 713).

3. Between the man and the blood-relatives of the wife, and likewise between the woman and the blood-relatives of the husband. Therefore: 1° those who have entered marriage are not affines between themselves. 2° The blood-relatives of the man and the blood-relatives of the woman are not affines between themselves; this is usually expressed in these words: Affinity does not go out beyond those who are joined. 3° The man becomes affine only toward the blood-relatives, and therefore not toward the affines, of the woman; likewise the woman becomes affine toward the blood-relatives of the man, but not toward his affines; this is usually expressed in these words: Affinity does not beget affinity (St. Alphonsus VI, 1069). Moreover, given a marriage either ratified only or ratified and consummated, affinity also exists with respect to the infidel blood-relatives of the other party. Hence, for example, a widower from a ratified marriage cannot, without dispensation, enter nuptials with an infidel who is blood-related within the determined degrees to his deceased Catholic wife.

II. Line and degree of affinity. Affinity is computed in such a way that those who are blood-relatives of the man are, in the same line and degree, affines of the woman, and vice versa (canon 97, § 3). Hence, for example, one who has entered a valid marriage with Anna, the mother of Rosa, becomes affine to Rosa in the first degree of the direct line, because Rosa is related by blood to Anna in the same line and the same degree; one who contracted with Titia, the paternal aunt of Clara, is affine to Clara in the second degree touching the first in the collateral line, because Clara is related by blood to Titia in the same line and the same degree.¹

Corollary. From what has been said it follows that two persons can be at once blood-relatives and affines. Thus, for example, one who entered marriage with Bertha, his blood-relative, is both a blood-relative and an affine to Bertha's sister.

III. Existence and scope of the impediment. Affinity in the direct line diriments marriage in any degree; in the collateral line up to the second degree inclusive (canon 1077, § 1). Hence today a widower is not bound by this impediment in the collateral line except with regard to the sisters of his deceased wife (degree 1), paternal aunts, maternal aunts, daughters of a brother or sister (degrees 1 and 2), paternal cousins, paternal-aunt's daughters, and maternal cousins (degree 2); similarly a widow is bound only with regard to the brothers of her deceased husband (degree 1), paternal

uncles, maternal uncles, sons of a brother or sister (degrees 1 and 2), paternal cousins, paternal-uncle's sons, and maternal cousins (degree 2).² But note that the more remote degree draws the nearer to itself; wherefore affinity is not contracted by one party with the other party's blood-relatives in the third degree, even if this degree perhaps is mixed with the second or first.

Corollary I. "Two brothers can marry two sisters; father and son can marry mother and daughter. A stepson can marry the mother, daughter, or sister of his stepmother; and conversely a stepdaughter can marry the father, son, or brother of her stepfather. The surviving spouses of a deceased brother and sister can contract marriage between themselves. The son of the husband and the daughter of the wife, begotten from prior marriages, can enter marriage between themselves. Someone can successively marry two widows whose deceased husbands were full brothers" (St. Alphonsus VI, 1069).³

Corollary II. The impediment of affinity persists even if the marriage is dissolved by death or by another cause.

¹ Before the Code of Canon Law, affinity arose not from marriage as such, but from perfect copula, whether free or violent, whether licit or conjugal, or illicit, as fornication or adultery.

² Vlaming, n. 349.

³ Aertnys-Damen, II, n. 763.

797 IV. Multiplication of the impediment of affinity. The impediment is multiplied: 1° as often as the impediment of consanguinity from which it proceeds is multiplied; 2° by repeated successive marriage with a blood-relative of the deceased spouse (canon 1077, § 2). It is said:

1. As often as the impediment of consanguinity from which it proceeds is multiplied; understand this as often as, or when, some person was multiply related by blood to the prior spouse because of a multiple common stock. The case occurs, for example, when the deceased wife of a man was at once the maternal aunt and paternal aunt, or maternal aunt and niece, of that person with whom the man intends to enter nuptials.
2. By repeated successive marriage with a blood-relative of the deceased spouse; for example, Peter successively and validly married Mary and Anna, sisters of Rosa; now he is doubly affine to Rosa in the first degree of the collateral line.

Before the Code of Canon Law, affinity from matrimonial copula dirimented marriage up to the fourth degree inclusive of each line; from fornicatory copula, up to the second degree inclusive of each line.

V. The law by which affinity diriments marriage. Affinity diriments marriage by ecclesiastical law alone; and this, which previously was called into doubt by some, holds even concerning affinity in the first degree of the direct line, indeed even if consummation of the marriage has occurred. It is proved: 1° from canon 1043, which enumerates the aforesaid affinity among impediments of ecclesiastical law; 2° from the fact that the Holy Office¹ absolutely declared: Affinity which is naturally contracted in infidelity from copula, whether licit or illicit, is not an impediment for marriages which are entered in infidelity; 3° from the fact that the Church has already dispensed even in the aforesaid affinity.

VI. Dispensation in affinity of the collateral line is granted for proportionate causes to be assigned later. But in affinity of the direct line, at least in the first degree, it is ordinarily not granted. We have

mentioned above the fact of a dispensation granted, though after the marriage had been contracted.²

¹ August 26, 1891 (*Collectanea*, n. 1766); cf. Holy Office, September 4, 1743; February 20, 1888 (*Collectanea*, n. 1685).

² Rescript of the Sacred Penitentiary, December 2, 1911 (*Nouvelle Revue Theologique* 1912, p. 528).

Scholion. Names of Affines

798 I. In the direct line:

1. *Socer* = father of the husband or wife (schoonvader, suocero, beau-pere, father-in-law, Schwiegervater).

Socrus = mother of the husband or wife (schoonmoeder, suocera, belle-mere, mother-in-law, Schwiegermutter).

2. *Gener* = husband of a daughter (schoonzoon, genero, gendre, son-in-law, Schwiegersohn).

Nurus = wife of a son (schoondochter, nuora, belle-fille, daughter-in-law, Schwiegertochter).

3. *Vitricus* = husband of the mother (stiefvader, padrigno, beau-pere, stepfather, Stiefvater).

Noverca = wife of the father (stiefmoeder, matrigna, belle-mere [maratre], stepmother, Stiefmutter).

4. *Privignus* = son from a prior marriage of the other party (stiefzoon, figliastro, beau-fils, stepson, Stiefsohn).

Privigna = daughter from a prior marriage of the other party (stiefdochter, figliastra, belle-fille, stepdaughter, Stieftochter).

II. In the collateral line:

1. *Levir* = brother of the other party (zwager or schoonbroeder, cognato, beau-frere, brother-in-law, Schwager).

Glos = sister of the other party (zwagerin or schoonzuster or snaar, cognata, belle-soeur, sister-in-law, Schwagerin).

2. *Sororius* = husband of a sister (as was said of *levir*).

Fratrìa = wife of a brother (as was said of *glos*).

Article XI. Public Honesty

799 I. Notion. Public honesty is a certain relationship arising from an invalid marriage, whether consummated or not, and from public or notorious concubinage, between the man and the blood-relatives of the woman, and likewise between the woman and the blood-relatives of the man (canon 1078).¹ It is said:

1. From an invalid marriage, i.e., invalid in any way whatever, whether from a diriment impediment, from defect of legitimate form, or, as it seems, from defect of consent. The reason is that the canon does not distinguish. I said, however, "as it seems" with regard to defect of consent, because the old legislation, according to which a marriage invalid because of defect of consent did not introduce the impediment, gives some persons a reason for doubting.

A merely civil marriage, independently of cohabitation, does not suffice,² because in the mind of the Church it lacks even the appearance of marriage.³ If cohabitation is added, the impediment arises insofar as public or notorious concubinage is added. To what extent this is added will be clear from what must now be said.

2. From public or notorious concubinage. Merely presumed concubinage (cf. canon 133, § 4) does not suffice; nor does occult concubinage. Moreover, note:

a) Concubinage is understood as a relation after the manner of marriage between a man and a woman. Moreover, for concubinage there are required:

Alpha) A permanent or stable relation. For this it certainly suffices if they cohabit; likewise if the woman lives at the man's expense and in a place where he can easily approach her; likewise between two persons between whom intercourse is so frequent and exclusive that it is equivalent to the case just assigned. It does not suffice if the intercourse, however frequent, is not exclusive on the woman's part (a prostitute); nor does carnal intercourse suffice if it is indeed protracted for a long time, but is exercised only from time to time.

Beta) A relation bearing the appearance of a conjugal relation; such a relation exists, for example, in those who have entered what is called a friendly marriage.

Gamma) It is disputed whether carnal intercourse is required or not. But the negative opinion seems to be admitted, and to be drawn from analogy with an invalid marriage, in which abstraction is also made from copula; likewise from comparison with the impediment of affinity, which arises from true marriage as such.⁴

b) Concubinage is public if it has been divulged, or if it has happened or exists in such circumstances that it can and ought prudently to be judged that it will easily be divulged (canon 2197, 1°).

c) Concubinage is notorious by notoriety of law after the sentence of a competent judge which has passed into a thing adjudged, or if the guilty party has confessed it in writing or orally before a competent judge, whether spontaneously or when questioned by the judge (canon 2197, 2°). Concubinage is notorious by notoriety of fact if it is publicly known and was committed in such circumstances that it can be concealed by no tergiversation and excused by no support of law.

Note. This impediment is called that of public honesty because it accords with public honesty; indeed, it is less decent for a man to contract nuptials with the blood-relatives of the other party with whom he contracted a marriage, even though invalid, or lived in public concubinage.

II. Line and degree of public honesty. That relationship is computed in such a way that those who are blood-relatives of the man are, in the same line and degree, relatives of the woman, and vice versa.

III. Existence and scope of the impediment. Public honesty diriments nuptials in the first and second degree of the direct line between the man and the blood-relatives of the woman, and vice versa (canon 1078). Thus, for example, a man cannot contract with the mother or grandmother, nor with the daughter or granddaughter, of a woman with whom he lived in an invalid marriage or in public concubinage.

IV. Multiplication of the impediment. Although the Code is silent concerning the multiplication of this impediment, just as it is silent concerning the multiplication of the impediment of crime,

nevertheless it seems that multiplication must be admitted when the titles are multiplied, i.e., marriage or concubinage. Suppose, for example, that Peter lived successively in public concubinage with Anna and Mary, daughters of Christina; the impediment of public honesty between Peter and Christina is multiplied.

V. Dispensation of the impediment. Public honesty in the second degree is an impediment of lesser degree; otherwise it is of greater degree, and therefore dispensation from the impediment is more difficult.

Corollary I. The impediment persists even if the invalid marriage or public or notorious concubinage has ceased.⁵

Corollary II. When an invalid marriage has been convalidated, and likewise when concubinage has been turned into marriage, the impediment of affinity is added, while the impediment of public honesty also, more probably, persists;⁶ nevertheless in practice, since it is inferior to affinity, it is to be less attended to.⁷

¹ Before the Code of Canon Law, public honesty arose from betrothals and from ratified marriage. Having arisen from betrothals, it dirimented marriage in the first degree of each line; from ratified marriage, up to the fourth degree inclusive of each line.

² Pontifical Commission, March 12, 1929, ad 2 (A.A.S. 1929, p. 170).

³ Cf. Sacred Congregation of the Council, March 13, 1879 (A.S.S. XII, p. 147; XIII, p. 126).

⁴ Cf. Mulders in *Nederlandsche Katholieke Stemmen* 1927, p. 181.

⁵ Sacred Congregation of the Council, July 6, 1658; December 3, 1667; February 28, 1885.

⁶ Sacred Congregation of the Council in the Brixienensis case, December 3, 1667.

⁷ Cf. Mulders, in *Nederlandsche Katholieke Stemmen*, 1927, p. 183.

800 Corollary III. Insofar as the impediment of public honesty arises from an invalid marriage or concubinage of infidels, it is determined by the following:

1° The impediment does not arise from the marriage or concubinage of two non-baptized persons, because "those who have not received baptism are not bound by merely ecclesiastical laws" (canon 12). But it does arise if the invalid marriage or concubinage endures after the baptism of each party. It is disputed among authors whether the impediment arises if each is baptized after the invalid marriage or concubinage has ceased.¹ But while a public doubt stands, at least by force of canon 15 the impediment can be held as not having arisen.

2° The impediment arises from the marriage or concubinage of a party baptized either from the beginning of the union, or while the union still endures, with a non-baptized party. Thus authors teach almost commonly, relying on this principle: that a disposition directly affecting the baptized party also indirectly affects the non-baptized party, unless the contrary is expressly established. There is added the fact that the Sacred Congregation of Propaganda so declared concerning the impediment of crime.²

Note that in order that a marriage to be contracted be dirimented in fact, it is required that at least one of those who enter the marriage be subject to the Church through Baptism. Hence it is rightly established: the impediment of public honesty:

- a) Directly diriments the marriage of a baptized party with a person blood-related in the first or second degree of the direct line to the other non-baptized party, whether that blood-related person is baptized or is not baptized.
- b) Indirectly diriments the marriage of a non-baptized party with a baptized person blood-related to the other baptized party.
- c) It does not diriment the marriage of a non-baptized party with a non-baptized person blood-related to the other baptized party; for in that case neither of the contracting parties is subject to the Church.³

¹ Cf. Mulders, loc. cit.

² August 23, 1852 (*Collectanea*, n. 1079).

³ Mulders, loc. cit.

Article XII. Spiritual Relationship

801 I. Notion. Spiritual relationship is a certain relationship which comes from the ministration and reception of Baptism and Confirmation. Namely, since a human being is spiritually begotten in Baptism and spiritually perfected in Confirmation, therefore spiritual paternity is contracted by those who concur in these sacraments, i.e., by the minister of Baptism and by the sponsors in each sacrament, with respect to the baptized or confirmed person (canons 768, 769, 797).

II. Existence and scope of the impediment. Only spiritual relationship from Baptism diriments marriage, and indeed: 1° between the one baptizing and the baptized person; 2° between the sponsor of baptism and the baptized person (canon 1079). One who performs the office of sponsor through a procurator contracts the impediment himself alone, not the procurator. Therefore the impediment does not exist between the one baptizing and the sponsors, nor between the sponsors among themselves. Moreover, it is in force by ecclesiastical law alone.¹

III. The required conditions are:

1. On the part of baptism it is required that it be truly and validly conferred. Therefore it does not arise from ceremonies supplied later (canon 762, § 2), nor from Baptism invalidly conferred.

Question 1. Whether the impediment arises from private baptism.

Response. With regard to the one baptizing, all affirm. But there is dispute, or at least there was dispute, with regard to sponsors. Yet it seems that it must likewise be affirmed entirely. For: 1° the law does not distinguish between private and solemn baptism (canon 768). 2° The cited canon has these words: "From baptism only the baptizer and the sponsor contract spiritual relationship with the baptized person." But the words "from baptism," with respect to the baptizer, must be understood of both solemn and private baptism; therefore the same must be said with respect to the sponsor. 3° Canon 762, § 2 says thus: "Even in private baptism a sponsor, if he can easily be had, is to be employed; if he was not present, he is to be employed when the ceremonies of baptism are supplied, but in this case he contracts no spiritual relationship." Therefore, in the prior case, i.e., if the sponsor was present at private baptism, he contracts spiritual relationship. 4° Spiritual regeneration, which is the foundation of the impediment, also arises from private Baptism. The responses of the Sacred Congregation of the Council also concur.²

Question 2. Whether the impediment arises from baptism conferred doubtfully or doubtfully validly.

Response. With regard to the sponsor, it must be denied, unless, when baptism is repeated under condition, the same sponsor was employed in each baptism. Outside this case neither the sponsor who was present at the former baptism, nor the one who was present at the later, contracts spiritual relationship (canon 763, § 2); and this holds even if afterward the nullity of one baptism and the validity of the other are established. The same, by analogy, seems to be said of the one baptizing, although the cited canon speaks only of the sponsor.

2. On the part of the one baptizing it is required that he himself be baptized; otherwise the ecclesiastical impediment does not affect him, nor does it seem to affect the other party. For since spiritual relationship is situated in a mutual relation, it seems to affect either each party or neither. Nor does the impediment arise if someone not yet baptized conferred Baptism on someone and afterward himself receives Baptism (n. 757).
3. On the part of the sponsors there are required those things which are necessary for the validity of sponsorship according to what was explained in n. 84.

IV. Multiplication of the impediment can arise only from the fact that someone both baptizes the same person and receives him as sponsor through a procurator.

V. Dispensation of the impediment. It suffices to note that the impediment of spiritual relationship is numbered among impediments of lesser degree (canon 1042).

Note. Spiritual relationship contracted before Pentecost of the year 1918 beyond the limits now defined by the new Code in canon 768 does not cease ipso facto from the aforesaid day of Pentecost with regard to all effects, but only ceases to be an impediment to marriage³ (cf. n. 86).

¹ Before the Code of Canon Law, the impediment was in force: 1° between the one baptizing or confirming and the baptized or confirmed person and the latter's parents; 2° between the sponsor of Baptism or Confirmation and the baptized or confirmed person and the latter's parents.

² April 17, 1603; May 28, 1677; March 5, 1678. The Council of Trent indeed speaks of those who receive from the sacred font; by this it seemed to some that only solemn Baptism was signified. But nothing prevents Baptism as such from being understood by that word, especially because the Council in the preceding words had spoken of those who receive from Baptism. But if you deny this, I would say that the adversaries insisted too much on the letter of the law, against the mind of the legislator, sufficiently clear from the arguments already adduced before the Code of Canon Law.

³ Pontifical Commission, June 2-3, 1918 (A.A.S. 1918).

Article XIII. Legal Relationship

802 I. The notion was explained in n. 760.

II. Existence of the impediment. Those who by civil law are held incapable of entering nuptials between themselves because of legal relationship arising from adoption cannot, by force of canon law, validly contract marriage between themselves (canon 1080). In order to know whether and between whom this impediment exists, recourse must be had to the civil laws of the country, and the matter must be decided according to their norm.

The diriment impediment is in force in Italy, Spain, Brazil, Bolivia, Colombia, Guatemala, and Peru.¹

¹ Wernz-Vidal, *op. cit.*, n. 191; Aertnys-Damen, *op. cit.*, II, n. 771.

Chapter IV. On Dispensation from Impediments

We shall speak first of the power, then of the causes of dispensing, then of the petition, and finally of the execution of the dispensation.

Article I. On the Power of Dispensing

§ I. On the Power of the Supreme Pontiff

803 I. The Supreme Pontiff can dispense in all impediments of ecclesiastical law; indeed, since he himself is the legislator, he can validly dispense in them even without a cause. He cannot dispense in impediments of absolute divine law, whether natural or positive, for example in the impediment of impotence. Nevertheless, by vicarious power he can remove certain impediments of conditioned divine law, i.e., those arising from a human will, for example in vows, betrothals, and ratified marriage (St. Alphonsus VI, nn. 1118-1120).

II. In fact the Supreme Pontiff dispenses: 1° never in impediments concerning which it is doubted whether they are of divine law, namely lest he probably strike against a higher law. But the aforesaid impediments are: consanguinity in the direct line beyond the first degree (p. 645), and consanguinity in the first degree of the collateral line (p. 645). Moreover, the Church never dispenses in the impediment of the episcopate; scarcely ever in the impediments of the presbyterate, raptus, and public spouse-murder. In the others she dispenses more or less with difficulty according to the nature of the impediment, as will be explained later.

III. The Supreme Pontiff dispenses through different organs for different impediments, namely:

1. The Congregation of the Holy Office dispenses in the impediments of disparity of cult and mixed religion (canons 247, § 3; 249, § 1), and likewise in those things which perhaps concur with the aforesaid impediments.² Moreover, it alone takes cognizance of those matters which, whether directly or indirectly, in law or in fact, turn upon the Pauline privilege (canon 247, § 3).
2. The Congregation of the Discipline of the Sacraments dispenses, for the external forum, in public impediments which are not occult in fact; likewise in public impediments which are occult in fact but exposed to danger of manifestation; likewise, according to the circumstances, in public impediments which are occult in fact and not exposed to danger of manifestation.
3. The Sacred Penitentiary dispenses for the internal forum in occult impediments; likewise, according to the circumstances, in public impediments which are occult in fact and not exposed to danger of manifestation;³ likewise it convalidates a dispensation granted by the Sacred Congregation of the Discipline of the Sacraments, but invalidly, because of a concealed circumstance which had necessarily to be manifested and which still remains occult. In addition, the Sacred Penitentiary is also the competent tribunal for the faithful of the oriental rites.⁴ Finally, recourse can also be had to the Sacred Penitentiary in the case in which the dispensation exceeds the ordinary faculties of the Major Penitentiary; for he can obtain extraordinary power from the Holy See.⁵
4. The Sacred Congregation of Propaganda Fide procures dispensations for each forum for places subject to it (cf. canon 252), although even in these places recourse can be had to the Sacred Penitentiary for the internal forum.

5. The Sacred Congregation for the Oriental Church "enjoys all the faculties which the other Congregations possess for Churches of the Latin rite, while nevertheless the right of the Congregation of the Holy Office remains intact according to the norm of canon 247" (canon 257, § 4).
6. In the case in which a twofold impediment, one public and one occult, stands in the way of marriage, or an occult circumstance which must necessarily be manifested, a twofold supplication is to be drawn up: one for the public impediment to the Congregation of the Discipline of the Sacraments, the other to the Sacred Penitentiary, as will be explained later.

¹ Although an Ecumenical Council also enjoys the power of dispensing, no discussion is undertaken concerning it, because in fact it is not exercised by a Council.

² Sacred Congregation of the Consistory, January 21, 1910 (A.A.S. 1910, p. 56).

³ Cf. *Archiv für katholisches Kirchenrecht*, 1922, p. 1 sq.

⁴ Sacred Congregation for the Oriental Church, June 26, 1930 (A.A.S. 1930, p. 394).

⁵ Aertnys-Damen, II, n. 787.

§ II. On the Power of Local Ordinaries

Preliminary note. Besides the Roman Pontiff, no one can abrogate impediments of ecclesiastical law, whether impeding or diriment, or derogate from them; likewise no one can dispense in the same impediments, unless this power has been granted by common law or by a special indult from the Apostolic See (canon 1040). Moreover:

804 I. By force of common law, local Ordinaries can dispense as follows:

1. The Ordinary of the place can dispense in impediments which are doubtful by doubt of fact, if there is question of impediments in which the Roman Pontiff is accustomed to dispense (canon 15). He can use this faculty with regard to subjects by reason of domicile or quasi-domicile wherever they are staying, and likewise with regard to vagi actually staying in his territory (canons 201 and 94).
2. When danger of death urges, local Ordinaries can dispense, for providing for conscience and, if the case warrants, for the legitimation of offspring: 1° concerning the form to be observed in the celebration of marriage; 2° concerning all impediments of ecclesiastical law, except the impediments of sacred presbyterate and of affinity in the direct line when the marriage has been consummated. They can dispense their own subjects dwelling anywhere and all actually staying in their own territory. Nevertheless it is required that scandal be removed, and, if the dispensation is granted concerning disparity of cult or mixed religion, that the customary cautions be furnished before the dispensation (canon 1043). It is said:
 - a) When danger of death urges. The article of death, or a most grave danger of it, is not required; but a grave danger suffices, i.e., such as is required for administering Viaticum. Nor does it matter whether the danger arises from disease or threatens from another cause, for example from shipwreck or from a dangerous operation to be undergone. Finally, it suffices that the danger threaten one or the other contracting party, whether the one who is bound by the impediment or the other.¹ It is no

longer required, as formerly, that approaching the Holy See be impossible, since that limitation is no longer added.

b) They can dispense, and indeed both for contracting and for convalidating marriage; but they cannot, by force of common law, sanate a marriage in the root (canon 1141).

c) For providing for conscience and, if the case warrants, for the legitimation of offspring. Therefore it is required that provision be able to be made either for conscience or for the legitimation of offspring, or for both. Either cause taken separately suffices, as is already clear from the words of the canon: "and, if the case warrants, for the legitimation of offspring." I said:

Alpha) Either provision can be made for conscience, namely of both parties or of one or the other party. Moreover, this reason will occur for the most part if the parties about to marry are joined in a merely civil marriage or at least are living in concubinage. It is likewise present if, granted that they neither live in concubinage nor are joined merely civilly, nevertheless such bad relations exist between them that separation has become impossible or difficult. Nor, however, should it be deduced from this that in such a case only sins of the flesh are to be attended to; for the reason of providing for conscience can also arise from another source, for example if it is hoped that the dying person, once marriage has been contracted, will lay aside hatred against the other party or against the other party's blood-relatives, etc.² Indeed it is rightly said that the case is present as often as an obligation of marrying has been contracted in itself, for example by contracting betrothals or by seducing the other party under promise of marriage, even if accidentally the obligation should be absent. The Sacred Congregation of the Sacraments³ declared that the faculty which it had granted on May 14, 1909 was valid not only concerning concubinarii, but also if another cause is present for providing for conscience.

Beta) Or provision can be made for the legitimation of offspring. For legitimation, whether in the ecclesiastical forum or, a few add, in the civil forum alone. Of offspring, i.e., either already born or only conceived. Provision can be made; now from the marriage to be contracted, offspring already conceived and not yet born is born legitimate (canon 1116); by dispensation from the impediment, provision is made for offspring already born, except adulterine or sacrilegious offspring (canon 1031). Yet there are those who in the case do not exclude even adulterine or sacrilegious offspring from legitimation.

d) Concerning the form and concerning all impediments of ecclesiastical law, both diriment and merely impedient, both public and occult, and also multiple, except the impediments of sacred presbyterate and of affinity in the direct line when the marriage has been consummated. Likewise they cannot dispense in impediments concerning which it is doubted whether they are of divine law or not, i.e., in consanguinity in the direct line beyond the first degree, and in consanguinity in the first degree of the collateral line (p. 645). In addition:

Alpha) The power conferred regards each forum, or the dispensation granted is valid for each forum (canon 203, § 3).

Beta) The power also extends itself to vows, for example of not marrying, of virginity, of perfect chastity, etc., although these too are impediments of divine law, yet founded on a human act. The reason is that the Church herself has power over vows, and is judged to have conferred it in these circumstances. A solemn vow, as diriment, is of merely ecclesiastical law.⁴

Gamma) Finally, the power also extends itself to betrothals, because in these circumstances the Church is not undeservedly presumed to have provided for the dying person insofar as she can prudently provide for him; once this is posited, it is reasonably affirmed that the power which the Church has over betrothals has also been conferred. Moreover, betrothals in the posited hypothesis commonly do not bind, because for the most part the other party can be presumed to yield his or her right.

e) Their own subjects dwelling anywhere, i.e., subjects by reason either of domicile or of quasi-domicile.

f) And all actually staying in their own territory, whether vagi or peregrini.

If the parties about to marry are of different dioceses, and there is question of an impediment common to each, such as consanguinity, it suffices that one or the other party be subject to the one dispensing by reason of domicile or quasi-domicile, or be staying in the territory of the one dispensing (St. Alphonsus VI, 1142).⁵

g) That scandal be removed. These words involve only a circumstance of granting the dispensation, and therefore are not judged to be required for validity.

h) That the customary cautions be furnished before the dispensation, if the dispensation is granted concerning disparity of cult or mixed religion. But the cautions are required for the validity of the dispensation (p. 606).

What if the non-Catholic party refuses to furnish the cautions?

Response. Dispensation from the impediment seems excluded, when, besides the tenor of canon 1043, those things which we noted on p. 605 are considered; but recourse to *epikeia* is not excluded. Once this is admitted, if the Catholic party promises that he or she will provide according to his or her powers for the whole offspring to be educated in a Catholic manner, it is permitted, the cautions of the non-Catholic party being passed over, to proceed to marriage. Thus, saving a better judgment.

¹ Holy Office, July 1, 1891 (*Collectanea de Propaganda Fide*, n. 1758).

² Cf. Sacred Congregation of the Discipline of the Sacraments, May 14, 1909 (A.A.S. 1909, p. 468[†]) and August 16, 1909 (A.A.S. 1909, p. 656).

³ August 16, 1909 (A.A.S. 1909, p. 656).

⁴ We note these things more by reason of the pastor, the priest assisting according to the norm of canon 1098, n. 2, and the confessor, concerning whom there will soon be discussion, than by reason of the local Ordinary, who even in ordinary circumstances can dispense in most vows.

⁵ Sacred Congregation of Propaganda Fide, September 9, 1861 (*Collectanea*, n. 1222).

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3. As often as an impediment is detected when all things are already prepared for the nuptials, local Ordinaries can dispense, the things that must be posited being posited, concerning all impediments of which in canon 1043, the same persons and under the same clauses of which in the cited canon (canon 1045, § 1). It is said:

a) As often as an impediment is detected when all things are already prepared for the nuptials. Ecclesiastical nuptials are understood, to be celebrated according to the norm of ecclesiastical law,

with publications, examination of the betrothed, etc., having first been made; not civil nuptials or nuptials to be entered before a non-Catholic minister. Moreover, it is not required that the impediment had previously been altogether unknown; it suffices that then for the first time it has been brought to the knowledge of the pastor or Ordinary. Nor is the power of dispensing absent in the case in which the parties about to marry in bad faith concealed the impediment, even in order to obtain a dispensation more easily at the last moment. For the end of the law is not only the good of the parties about to marry, but also the avoidance of grave public evil.

b) They can dispense, and indeed both for contracting and, as canon 1045, § 2 establishes, for convalidating marriage.

c) The things that must be posited being posited; namely, it is required that the marriage cannot be deferred without probable danger of grave evil until a dispensation is obtained from the Holy See. It is said:

Alpha) Of grave evil; but an evil of any kind is understood: infamy, scandal of a merely civil marriage, impossibility of obtaining separation if there is question of concubinarii, etc.

Beta) Until a dispensation is obtained from the Holy See. Therefore recall that there is no obligation of recurring by telegraph or telephone,¹ or of using an automobile or airplane; but that a suitable time can be held to be about fifteen days for Italy, twenty to thirty for other regions of Europe, and forty to fifty days for overseas regions.²

d) Concerning all impediments of which in canon 1043 (p. 657). It is disputed whether they can dispense also concerning the form. Some deny this, both because clandestinity is not numbered among the impediments by the Code, and because the preceding canons (1043 and 1044) distinguish the form from impediments. Others affirm it; first because clandestinity was formerly counted among impediments; then because canon 1045 seems to be nothing other than an application of canon 81, by force of which an Ordinary can dispense from all ecclesiastical laws where recourse to the Holy See is difficult and at the same time there is danger of grave harm in delay, provided there is question of a dispensation which the Holy See is accustomed to grant. This opinion is sufficiently probable, and therefore the Church at least supplies.

e) The same persons of whom in canon 1043, i.e., both their own subjects dwelling anywhere and all actually staying in their own territory. With regard to the latter, there is indeed dispute concerning peregrini; but it is affirmed sufficiently probably, because the power seems to regard all whose marriage the Ordinary validly assists, all the more because, in the posited hypothesis, the nuptials are imminent. But he validly assists at the marriage of peregrini.

f) Under the same clauses of which in canon 1043, i.e., it is required that scandal be removed and that cautions be furnished if the dispensation is granted concerning disparity of cult or mixed religion (p. 658).

4. In ordinary circumstances, the Ordinary of the place by force of common law:

a) Can dispense in the impediment of a non-reserved vow, provided the dispensation does not injure a right acquired by others (canon 1313). Now the non-reserved vows impeding marriage are: the vow of virginity, of not marrying, of receiving sacred orders, and of embracing the religious state (canon 1058, § 1); likewise the private vow of perfect chastity and the vow of entering a religion of solemn

vows which were not emitted both absolutely and after the completed eighteenth year of age (canon 1309). But the local Ordinary can use this faculty with regard to subjects dwelling anywhere, and with regard to peregrini and vagi actually staying in his territory (canon 1313, n. 1, compared with 94, § 2 and 201, § 3).

b) He can dispense by a certain epikeia, but only insofar as it is necessary, in private reserved vows, "if there is not easy access to the Pope, and in delay there is danger of grave harm; either spiritual, as of violation of the vow, scandal, quarrels, or another sin; or danger of temporal harm, one's own or another's, namely grave infamy of the woman, and similar things" (St. Alphonsus III, 258; cf. canon 81). We said insofar as it is necessary; hence, "if one bound by a vow of chastity is dispensed so that he may marry a certain woman in order to repair her honor, he cannot marry another" (St. Alphonsus, loc. cit.). But the private vows reserved to the Apostolic See are only the vow of perfect and perpetual chastity, and the vow of entering a religion of solemn vows, which were emitted absolutely and after the completed eighteenth year of age (canon 1309). But the power extends itself to the same persons whom we designated under a).

¹ Pontifical Commission, March 1, 1921 (A.A.S. 1921, p. 178).

² Secretariat of State, December 16, 1891; Holy Office, August 14, 1892; Pontifical Commission, November 12, 1922 (A.A.S. 1922, p. 662).

806 II. What local Ordinaries can do by force of special indults must be drawn from the tenor of the indults themselves, whether general or particular. General indults are granted for the internal forum by the schedule of the Sacred Penitentiary, which generally are for five years; for the external forum, by the Holy Office for mixed religion, disparity of cult, and sanation in the root; for other impediments, by the Sacred Consistorial Congregation, or through the Sacred Congregation of Propaganda Fide for those subject to it.

Question. Whether the Ordinary of the place can delegate faculties to another, whether in whole or in part, whether habitually or for an act.

Response 1. Certainly he can delegate faculties granted by special indults, whether general or particular, unless the industry of the person has been chosen or subdelegation prohibited (canon 199, § 2).

Response 2. There is dispute with regard to faculties of common law. Some deny it, because the aforesaid faculties, as not emanating from the nature of the office, are not formally annexed to the office, and therefore are not ordinary but delegated by law. But it seems that it must be affirmed, because, with canon 197, § 1 considered, it suffices that the faculty be annexed to the office by the law itself, whether it is said to emanate or is said not to emanate from the nature of the office. But the faculties concerning which there is question are annexed to the office by the law itself. At least the Church supplies.

§ III. On the Power of the Pastor and of the Priest Assisting at Marriage according to the Norm of Canon 1098, N. 2

807 I. When danger of death urges, both the pastor and the priest who assists at marriage according to the norm of canon 1098, n. 2, can dispense, the things that must be posited being posited, concerning the form and all impediments of which in canon 1043. They can dispense, I say: the

pastor his own subjects dwelling anywhere and all actually staying in his own territory; the assisting priest those whose marriage he assists; nevertheless, by both, the things to be observed being observed (canon 1044). It is said:

1. They can dispense, and indeed both for contracting and for convalidating marriage.
2. The things that must be posited being posited; namely, it is required that not even the local Ordinary can be approached. If the Vicar General can be approached, this must be done, because he comes under the name of the local Ordinary. If another delegated by the Ordinary, who can dispense, is present or can be approached, they are not bound to have recourse to him, because he is not the Ordinary of the place.
3. Nevertheless, by both, the things to be observed being observed, i.e., they can dispense with scandal removed and cautions furnished, if the dispensation is granted concerning disparity of cult or mixed religion (p. 658).

Note. The pastor or assisting priest dispenses for both the external and internal forum.

If the impediment is public, the dispensation is to be granted publicly, i.e., at least before witnesses, unless it is granted concerning the form; and then the pastor or assisting priest is immediately to inform the local Ordinary about the dispensation granted, and it is to be noted in the marriage book (canon 1046).

If the impediment is occult, the pastor or assisting priest dispenses in the non-sacramental internal forum; and the dispensation granted is to be noted in the secret book of marriages, preserved in the episcopal curia, nor is another dispensation for the external forum necessary, even if afterward the occult impediment becomes public (canon 1047).

II. As often as an impediment is detected when all things are already prepared for the nuptials, the pastor, and likewise the priest assisting at marriage according to the norm of canon 1098, n. 2, can dispense, the things that must be posited being posited, concerning all impediments of which in canon 1043, but only for occult cases. They can dispense, I say, the same persons of whom in canon 1044, nevertheless by both, the things to be observed being observed (canon 1045, § 3, compared with 1045, §§ 1 and 2).

1. They can dispense both for contracting and for convalidating marriage (canon 1045, § 3, compared with 1045, § 2).
2. The things that must be posited being posited; namely, it is required that the marriage cannot be deferred without probable danger of grave evil, and that the local Ordinary either cannot be approached, or cannot be approached without danger of violation of secrecy.
3. Concerning all impediments of which in canon 1043; likewise, sufficiently probably, concerning the form (p. 657).
4. But only for occult cases. By occult cases are understood cases in which the impediment, of whatever nature it may be, is at least occult in fact.²
5. Nevertheless, by both, the things to be observed being observed, i.e., they can dispense with scandal removed and cautions furnished, if the dispensation is granted concerning disparity of cult or mixed religion (p. 658).

Note. The pastor or assisting priest dispenses for both the external and internal forum. But since there is question of occult cases, the dispensation is to be granted in the non-sacramental internal forum; and the dispensation granted is to be noted in the secret book of marriages, preserved in the episcopal curia, nor is another dispensation for the external forum necessary, even if afterward the occult impediment becomes public (canon 1047).

Question 1. Whether a priest delegated by the pastor to assist at marriage has the same faculty of dispensing as the pastor himself.

Response. Some affirm, because the delegate as it were puts on the person of the one delegating, and therefore in these circumstances the same power is presumed to have been granted to him. Others better deny it, because canons 1044 and 1045 are silent concerning him, indeed implicitly exclude him by determining to whom the faculty of dispensing is granted. In practice, when delegating someone to assist, the pastor should grant him the faculty of dispensing as a precaution.

Question 2. Whether the pastor can delegate his faculty to another.

Response. Some deny it, because the aforesaid faculty does not emanate from the office itself, and therefore is not formally annexed to it, but is delegated by law. But it seems that it must be affirmed, because, with canon 197, § 1 considered, for ordinary power it suffices that the faculty be annexed to the office by the law itself, whether it emanates from it or does not emanate from it. At least the Church supplies.

Question 3. Whether the priest assisting according to the norm of canon 1098, n. 2 can delegate his faculty to another.

Response. It must be denied, because as such he lacks an office, and therefore has only delegated power; and because he is delegated by law, he cannot subdelegate. Moreover, a faculty of delegating of this sort would not come into use for him, because another priest assisting in this way also receives the faculty from law; these things also hold concerning the confessor.

¹ There is discussion of the cases in which marriage can be contracted before witnesses alone (n. 738 sq.).

² Pontifical Commission, December 28, 1927, ad III (A.A.S. 1928, p. 61).

§ IV. On the Power of the Confessor

808 The confessor sufficiently probably enjoys the same power of dispensing as the pastor and the priest assisting at marriage according to the norm of canon 1098, n. 2. The reason is taken from the fact that canon 1044 declares: "The same faculty of dispensing is possessed both by the pastor and by the priest who assists at marriage according to the norm of canon 1098, n. 2, and by the confessor." And canon 1045, § 3: "In the same circumstances of things, all of whom in canon 1044 enjoy the same faculty." According to this opinion, therefore, this one distinction is held between the confessor and the pastor and assisting priest: that the confessor can dispense in the internal forum alone, and that sacramental (canon 1044). This opinion, because of the reason adduced, is at least probable with probability of law, and therefore, the Church supplying, safe in practice. Nevertheless observe:

1. A dispensation granted in the sacramental internal forum is not valid for the external forum, even if perhaps the impediment becomes public. Hence:

2. If the impediment is public in fact, and likewise if it is public by nature but occult in fact, yet disclosure is feared, the confessor should see to it that the penitent seeks a dispensation for the external forum, and therefore has recourse to the pastor or his delegate, unless the confessor himself can arrange the whole matter in some way, for example by asking for the manifestation of the impediment outside confession; once this has been done, he will be able to dispense him either as pastor, or, delegation having been requested, as one delegated by the pastor, or, according to the circumstances, as the priest assisting according to the norm of canon 1098, n. 2.
3. If the impediment is occult in fact and disclosure is not feared, the confessor should at least bring it about that the penitent permits the informing of the Ordinary and the notation of the marriage in the secret book preserved in the episcopal curia. But it is better to arrange the whole matter as was said under 2.
4. Finally, the confessor cannot delegate his faculty to another, because as such he lacks a canonical office and therefore ordinary power, as was said of the priest assisting according to the norm of canon 1098, n. 2.

Scholion. Things to Be Noted Regarding the Power of Dispensing

809 I. Regarding the interpretation of power.

1. Ordinary power of dispensing and power delegated for the whole range of affairs is to be interpreted broadly; any other power strictly (canons 50; 66, § 1; 200, § 1).
2. To one to whom power has been delegated are also understood to have been granted those things without which the same power could not be exercised (canon 200, § 1); wherefore in the faculty of dispensing there is also included the power of absolving from ecclesiastical penalties, if any perhaps stand in the way, but only for the effect of obtaining the dispensation (canon 66, § 3). Nevertheless, when a declaratory or condemnatory sentence has been issued, one excommunicated, personally interdicted, or suspended cannot validly obtain any pontifical favor unless mention of the excommunication is made in the pontifical rescript (canons 2265, § 2; 2275, 3°; 2283).
3. In marriages either contracted or to be contracted, one who enjoys a general indult of dispensing concerning some certain impediment can, unless something else is expressly prescribed in the indult itself, dispense concerning it even if the same impediment is multiple (canon 1049, § 1).
4. One who has a general indult of dispensing concerning several impediments of diverse species, whether diriment or impedient, can dispense concerning the same impediments, even public ones, occurring in one and the same case (canon 1049, § 2).

II. Regarding the use of power.

1. Power conferred for the internal forum can also be exercised in the extra-sacramental internal forum, unless the sacramental forum is required (canon 202, § 2).
2. If the forum for which the power was given has not been expressed, the power is understood to have been granted for each forum, unless from the nature of the matter itself something else is clear (canon 202, § 3).

3. If at any time, with an impediment or public impediments concerning which someone can dispense from an indult, another impediment concurs concerning which he cannot dispense, the Apostolic See must be approached for all; if, however, the impediment or impediments concerning which he can dispense are discovered after the dispensation has been obtained from the Holy See, he will be able to use his faculties (canon 1050).
4. If a petition for dispensation has been sent to the Holy See, local Ordinaries are not to use their faculties, if they have any (canon 1048), unless from a grave and urgent cause; and in this case they should immediately warn the Superior about the matter (canon 204, § 2).
5. If an Ordinary dispenses from an Apostolic indult, he should observe all the rules which the Roman Curia is accustomed to observe.¹
6. Those who grant a dispensation from power delegated by the Apostolic See should make express mention in the same dispensation of the pontifical indult (canon 1051).
7. Unless the rescript of the Sacred Penitentiary provides otherwise, a dispensation granted in the non-sacramental internal forum concerning an occult impediment is to be noted in a book to be preserved diligently in the secret archive of the Curia of which in canon 379 (canon 1047).

III. Regarding the forum for which the dispensation is valid. A dispensation granted for the external forum is valid also for the internal forum, but not conversely (cf. canon 202, § 1). Nevertheless canon 1047, after the words just cited, "Unless the rescript of the Sacred Penitentiary provides otherwise, a dispensation granted in the non-sacramental internal forum concerning an occult impediment is to be noted in a book to be preserved diligently in the secret archive of the Curia of which in canon 379"; after these words, I say, continues thus: "nor is another dispensation for the external forum necessary, even if afterward the occult impediment becomes public; but it is necessary if the dispensation had been granted only in the sacramental internal forum."

IV. Regarding cessation of power. Unless in their grant the industry of the person has been chosen, or something else has been expressly provided, habitual faculties granted by the Apostolic See to a Bishop or to others of whom in canon 198, § 1 do not vanish when the right of the Ordinary to whom they were granted has been resolved, even if he himself had begun to execute them, but pass to the Ordinaries who succeed him in governance (canon 66, § 2). The cited canon adds: Likewise those granted to a Bishop also belong to the Vicar General.

¹ Sacred Penitentiary, June 1, 1858.

Article II. On the Causes of Dispensing

810 I. Notion. A cause of dispensing, taken generally, is the reason which moves the superior to dispense. But a canonical cause is one which is recognized by law itself, whether written or customary.

II. Necessity of a cause. A dispensation granted without a just cause, even by the legislator himself, is always illicit; and if it is granted by an inferior, it is also invalid (canon 84, § 1).

III. Division of causes. Causes are divided:

1. Into canonical and non-canonical, according as they are legitimately recognized as true causes, or are not recognized, although perhaps they can impel one to dispense.
2. Into final and impulsive. Final causes are those which suffice of themselves, or which efficaciously move the superior, and without which the dispensation would either not be granted at all, or would be granted in another form or under certain conditions and limitations. Impulsive causes are those which do not suffice of themselves, and without which nevertheless the dispensation would be granted, and indeed in the same form.
3. Into honest and infamous, according as they do not rest, or do rest, upon a delict or at least upon the defamation of the parties about to marry.

811 IV. The enumeration and exposition of causes are chiefly contained in the Instruction of the Sacred Congregation of Propaganda Fide.¹ The principal ones are:

1. "Narrowness of place, whether absolute or relative, only by reason of the female petitioner, namely when in the place of origin or even of domicile the kinship of the woman has been so propagated that she cannot find another of equal condition whom she may marry, unless he is a blood-relative or affine, while it would be hard for her to leave her homeland."

Moreover:

- a) The place of the female petitioner must be narrow. Hence this cause cannot be alleged simply if it exists only on the part of the man. Besides, the female petitioner must be honorable, even if perhaps she is poor or of lower condition.
- b) By place is not understood a parish or civil community, but any aggregation of inhabitants, such as a city, suburb, town, village, or hamlet, sufficiently distinct from other neighboring aggregations, so that one place can contain several parishes, and one parish several places. But if the aggregation is distinct from its neighbors in name and in fact, it does not harm the cause that it is a short distance from the others. Otherwise, as if there is question of a suburb, it is required that it be about twenty minutes distant from the city or village.² In addition, in computing distance, account must also be taken of the difficulty of the roads.
- c) A place is judged narrow when it does not contain more than 1,500 Catholic inhabitants.³ Namely, infidels, heretics, and schismatics are not counted; but impious and unbelieving Catholics must be counted. But if the place is larger, yet the woman because of higher qualities cannot easily obtain a man of equal condition, narrowness of place is not indeed alleged simply, but that higher quality itself should be expressed, with the approximate number added of men of the same quality living in the place.
- d) It suffices that the place of origin or of domicile be narrow. If one differs from the other and each is narrow, likewise if the place of the bridegroom is the same as the place of the bride or at least narrow, this is usefully expressed. It does not suffice if the place of quasi-domicile is narrow and the female petitioner at the same time has a domicile elsewhere. But when she has no domicile elsewhere, or, having a domicile elsewhere, does not live in it, it can suffice if residence in the place of quasi-domicile is notable and sufficiently firm. Therefore this narrowness of the place of quasi-domicile should be expressed in the supplication, with mention made of the domicile.

e) It is required that the woman be unable to find in the place, whether of origin or domicile, another man of equal condition. It is said: 1° in the place, so that the cause remains even if a man can be had from another place; 2° another of equal condition, which is to be understood broadly, concerning state, age, wealth, religious mind, morals, etc.; 3° be unable to find. It suffices that now she is asked by no one of equal condition, even if previously she had been asked. But if only one or another of equal condition offers himself, the Holy See will easily dispense, although the cause does not exist simply.

2. "The over-adult age of the woman, if, namely, having already passed the twenty-fourth year of age, she has thus far not found a man of equal condition whom she can marry. But this cause does not favor a widow who desires to pass to other nuptials."

a) The female petitioner must not be a widow (cf. nevertheless cause 5).

b) It is required that at the time when the dispensation is granted she has completed the twenty-fourth year. If she has only reached it, the cause as such does not subsist; but the Holy See can nevertheless dispense from benignity. If she notably exceeds the required age, this should be expressed so that the dispensation may be granted more easily. Yet some judge that age beyond the fortieth year does not constitute a cause which suffices of itself.

c) That the female petitioner could have found another man of equal condition no longer prevents the cause from being alleged.⁴

3. "Deficiency or insufficiency of dowry; if namely the woman does not actually have so great a dowry that she can marry an outsider of equal condition, who is neither a blood-relative nor an affine, in her own place in which she stays. This cause urges more if the woman exists as altogether undowered, and a blood-relative or affine is prepared to take her as wife or even suitably to endow her fully."

4. "Lawsuits already arisen concerning succession to goods, or grave and imminent danger of the same. If a woman sustains a grave lawsuit concerning succession to goods of great importance, and no one is present who would take a lawsuit of this kind upon himself and prosecute it at his own expense, except him who desires to take her as wife, a dispensation is customarily granted; for it is in the interest of the republic that lawsuits be extinguished. Closely connected with this is another cause, namely, dowry involved in lawsuits, when the woman is destitute of another man by whose help she may be able to recover her goods. But a cause of this kind suffices only for more remote degrees."

5. "The poverty of a widow who is burdened with numerous offspring, and a man promises to support her. But sometimes help is given to a widow by the remedy of dispensation for this cause alone, that she is younger and is in danger of incontinence."

a) If the children are several and younger, it is better to express the number and age so that the dispensation may be obtained more easily. If the widow is sickly, younger, deprived of parents, etc., these things should be opened up for the same reason.

b) When the widow is not burdened with numerous offspring, this cause does not exist. Nevertheless, if she is younger, about thirty years old, or indeed more advanced in age but in danger

of incontinence, hope of obtaining a dispensation is not lacking. Nor is it lacking if there is question of a widower, even one having only a single offspring.

6. "The good of peace; under this name come not only treaties between kingdoms and princes, but also the extinction of grave enmities, quarrels, and civil hatreds. This cause is adduced either for extinguishing grave enmities which have arisen between the blood-relatives or affines of the contracting parties and which would be altogether composed by the celebration of the marriage; or when grave enmities have been in force between the blood-relatives or affines of the contracting parties, and, although peace has already been entered between them, nevertheless the celebration of the marriage would conduce greatly to the confirmation of that peace."

a) Under the name of enmities, more serious lawsuits can also be comprehended.

b) Enmities and lawsuits are understood which arose from elsewhere than from the cause of the intended marriage. Nevertheless, the avoidance of enmities or lawsuits foreseen and to be forestalled by marriage can also be alleged.

7. "Excessive, suspect, dangerous familiarity, and also cohabitation under the same roof, which cannot easily be impeded."

These things do not seem to be understood in such a way that dangerous familiarity or cohabitation which is not suspect is not judged to be a cause for seeking a dispensation; all the more because otherwise this seventh cause is not sufficiently distinguished from the ninth cause. The former seems chiefly to rest upon danger of sinning, the latter upon infamy.

8. "Copula previously had with a blood-relative or affine or another person laboring under an impediment, and pregnancy and therefore legitimation of offspring, so that provision may be made for the good of the offspring itself and for the honor of the woman, who otherwise would remain unmarried. This indeed is one of the more urgent causes."

a) These things are commonly understood of public copula or copula soon to be divulged. Nevertheless even occult copula can be alleged, if it is in the woman's interest to marry the man with whom she had copula, for example because of further dangers of incontinence or quarrels between the families of the petitioners to be forestalled.

b) It is said, "who otherwise would remain unmarried"; there can be added: or would not obtain a man of equal condition.

9. "Infamy of the woman arising from suspicion that she, being too familiar with her blood-relative or affine, has been known by the same, although the suspicion is false; namely when, unless marriage is contracted, the woman would remain gravely defamed or unmarried, or would have to marry a man of unequal condition, or grave harms would arise."

10. "Revalidation of a marriage which was contracted in good faith and publicly, with the form observed...; because its dissolution can scarcely take place without public scandal and grave harm, especially to the woman. But if the betrothed entered nuptials in bad faith, they in no way deserve the grace of dispensation, as the Council of Trent disposes."

a) It is said in good faith, namely at least on the part of one or the other.

b) Today in a case of bad faith a dispensation is granted more easily than formerly.

11. "Danger of mixed marriage, or of marriage to be celebrated before a non-Catholic minister. When there is danger that those wishing to contract marriage in some degree, even one of the greater degrees, because of denial of the dispensation, may approach a non-Catholic minister for celebrating the nuptials, with the authority of the Church spurned, a just cause of dispensing is found, because there is present not only the gravest scandal of the faithful, but also fear of perversion and defection from the faith of those acting in this way and despising matrimonial impediments, especially in regions where heresies run riot with impunity." Likewise a dispensation can be granted "to those Catholics who put forward no other motive than mad love, and at the same time it is foreseen that, if the dispensation is denied, they will enter marriage before an infidel judge... The same must be said of the danger that the Catholic party might dare to celebrate marriage with a non-Catholic."

There is question of a particular danger, for example with the character of the parties about to marry considered, not only of a common danger which arises from the fact that somewhere there are many heretics and many mixed marriages have already been contracted. Nevertheless a common danger can be an impulsive cause. It should be indicated whence the existence of the danger is deduced.

12. "Danger of incestuous concubinage. From the above-mentioned Instruction of the year 1822 it is clear that the remedy of dispensation is to be applied lest someone be defiled in concubinage with public scandal and evident danger to eternal salvation."
13. "Danger of civil marriage. From what has been said it follows that the probable danger that those who seek a dispensation, if it is not obtained, are going to celebrate only a civil marriage, as they say, is a legitimate cause of dispensing."
14. "Removal of grave scandals"; under this name are comprehended not only sins of lust, but also other sins, such as hatreds, etc.
15. "Cessation of public concubinage."
16. "Excellence of merits, when someone has deserved very well of religion either by fighting against the enemies of the Catholic faith, or by liberality toward the Church, or by learning, virtue, or in some other way."

a) Great merits are understood, the species of which is to be indicated. To the doubt whether, in defect of other causes, the offering of some alms in favor of the poor and of the church can be held as a legitimate and sufficient cause, the Sacred Congregation of Propaganda Fide, April 1, 1816, responded: Negative. Moreover, the merits of ancestors can also be alleged; indeed, even strangers can bring forward their merits in order to obtain a dispensation for a client.

b) To this can be referred the case in which noble petitioners, or at least petitioners of a very honorable family, being unable or unwilling to allege any canonical cause, simply allege their state and the quality of their family, asking that they be dispensed "from certain reasonable causes moving their mind." When a dispensation of this kind, which because of defect of some expressed cause is called "without cause," is granted to petitioners of this kind, a certain greater pecuniary composition is imposed on them, to be expended by the Supreme Pontiff for pious uses. Nevertheless, a dispensation cannot be sought in this way from the Sacred Penitentiary, nor from the Bishop, although the latter may be equipped with delegated faculties.⁵

The cited Instruction concludes with these words: "These are the more common and more important causes which are customarily adduced for obtaining matrimonial dispensations; concerning them theologians and interpreters of the sacred canons treat copiously." Therefore there are also other causes, of which some are less common, while others are indeed less powerful, but nevertheless are judged impulsive; indeed, taken together they can suffice.

Less common causes are, for example, royal dignity; princely prerogative; conservation of an illustrious family in the same blood; conservation of goods in the same illustrious family. For it is in the interest of the public good that an illustrious family not perish or fall from its state.⁶

Less powerful causes, but nevertheless impulsive, are, for example, conservation of goods in a non-illustrious family; orphanhood of a girl, i.e., a girl deprived of one or both parents; a girl who, by contracting with a blood-relative, could assist poor or sickly parents; a girl who, because of deformity, physical infirmity, illegitimate birth, or the infamy of her family, would scarcely find a husband not joined to her; the condition of a ward, i.e., of a girl whose interest it is to marry a man joined to her; narrowness of place or insufficiency of patrimony with regard to the man; over-adult age with regard to a widow; notable improvement of fortune with regard to a girl otherwise sufficiently endowed; parents of the petitioners burdened, besides the male or female petitioner, with several other children; mixture of goods, or the inconveniences which would follow the division of goods hitherto mixed; contiguous goods of the petitioners; vehement desire of the parents; special equality of condition between the petitioners; nuptials already prepared in ignorance of the impediment.⁷

¹ May 9, 1877 (*Collectanea*, n. 1470); the praised Instruction enumerates 16 causes; but 28 causes are listed by the catalogue contained in the document inscribed: *Formulae Apostolicae Datariae pro matrimonii iussu Em. Card. Caietani Aloisi Masella reformatae*.

² Sacred Dataria to the Sacred Congregation of the Council, March 8, 1884; cf. Sacred Congregation of the Council, July 8, 1876.

³ Sacred Dataria, August 30, 1847; March 8, 1884.

⁴ Sacred Penitentiary, April 5, 1902.

⁵ Vlaming, II, n. 438.

⁶ Pompen, n. 50.

⁷ Vlaming, II, n. 439.

812 V. Cause required for dispensation. Generally, dispensation is granted more easily in affinity than in consanguinity, more easily in public honesty than in affinity. Moreover:

1. A most grave cause or several grave causes are required by: age required by ecclesiastical law; crime when each party or one or the other is plotting; a degree of consanguinity with which the first is mixed; the first degree of affinity in the transverse line.¹
2. Less grave causes, indeed any of the canonical causes, suffice for impediments of lesser degree, which are: 1° consanguinity in the third degree of the collateral line; 2° affinity in the second degree of the collateral line; 3° public honesty in the second degree; 4° spiritual relationship; 5° crime from adultery with promise of marriage or attempted marriage, even by a merely civil act (canon 1042, § 1).

All impediments not listed here are of greater degree, both diriment and merely impedient; and since no impedient impediment is numbered among impediments of lesser degree, all are of greater degree (cf. canon 1042, § 3).

Several authors indeed judge that the distinction between impediments of greater degree and lesser degree is to be applied only to diriment impediments. But this is little approved, since the whole chapter to which canon 1042 belongs treats of impediments in general.

3. The other impediments require a grave cause.

Note. It should be advised that one who seeks a dispensation set forth all the causes which militate for granting the dispensation.

¹ Vlaming, II, n. 440.

Article III. On the Petition for a Dispensation

§ I. On the Person Petitioning

813 Although petitioners can recur immediately to the Superior, nevertheless in ordinary practice the dispensation is petitioned in their name by the pastor or by the confessor: by the pastor, if the dispensation must be sought for the external forum; by the confessor, if it must be sought for the internal forum. Hence the confessor who detects an impediment whose dispensation must be sought for the external forum should send the penitent back to the pastor. I said:

I. The pastor should petition for a dispensation which must be sought for the external forum; when, however, a dispensation must be sought for the external forum has been explained on p. 655. In the case in which the petitioners belong to different parishes, whether of the same or of different dioceses, the dispensation is to be petitioned:

1. If the impediment is proper to one or to both parties, for instance if one or both are bound by a public vow, through the respective pastor. But if the petitioners belong to different dioceses, he should recur to their respective Bishop.
2. If the impediment is common or correlative, as when there is question of consanguinity, affinity, etc., by common usage the pastor of the bride is accustomed to petition for the dispensation; nevertheless he should not omit to ask the pastor of the bridegroom whether he thinks anything should be noted. But if the petitioners are of different dioceses, the dispensation of one Bishop suffices, because when the impediment is removed on the part of one, the other party also becomes free.¹ Finally, if one party is non-Catholic, the dispensation should be petitioned by the pastor of the Catholic party, and recourse should be had to this party's Bishop.

II. The confessor should petition for a dispensation which must be sought for the internal forum. When, however, a dispensation must be sought for the internal forum has been explained on p. 655. Besides:

1. If the impediment is proper to one or to both parties, for instance if one or both are bound by a private vow, the dispensation should be petitioned through the respective confessor, and therefore by the same confessor if both petitioners approach the same confessor.

2. If the impediment is common, as when there is question of the impediment of crime, the dispensation should be petitioned by the confessor who has detected the impediment, unless the confessor of the other party has already undertaken that matter.

III. The pastor or confessor should petition for the dispensation in the name of those about to marry, and indeed: 1° if the impediment is proper to one party, in the name of this one alone; 2° if it is proper to both parties, in the name of the bridegroom and in the name of the bride individually; 3° if it is common or correlative, in the name of both parties together. If, however, only one party is Catholic, it should be petitioned in this one's name alone.

Finally, a dispensation can also be petitioned with the parties unaware; nevertheless it should not be petitioned in this way unless it is better that the impediment not be made manifest to them except together with the dispensation obtained (St. Alphonsus VI, 1145).

¹ Cf. Sacred Penitentiary, September 4, 1839.

§ II. On the Person to Be Approached for the Petition

814 I. If there is question of a dispensation to be granted for the public forum, and it can be granted by the Ordinary, it should be sought from him. If it cannot be granted by the Ordinary, the petition should nevertheless be sent to the Ordinary, who is to transmit it to the Holy See.

II. If the matter is of a dispensation to be granted for the internal forum, and it can be given by the Ordinary, it should likewise be obtained from him. Except the case in which the infamy of the petitioners or the sacramental seal stands in the way, and the consent of those whose interest is involved is lacking (n. 817); in that case recourse should be had to the Sacred Penitentiary.

III. If a dispensation must be sought for both forums, one should proceed as is explained in n. 817.

Note. A petition to be directed to the Congregation of the Discipline of the Sacraments or to the Congregation of Propaganda Fide should begin: "Most Blessed Father"; one to be directed to the Sacred Penitentiary: "Most Blessed Father," or "Most Eminent and Most Reverend Lord," or also "Most Eminent Prince." The outside address should be: for letters to the Congregation of the Discipline of the Sacraments: To the Most Eminent and Most Reverend Lord Cardinal N., Prefect of the Congregation of the Discipline of the Sacraments, Rome (these things are to be expressed in a living language); for letters to the Congregation of Propaganda Fide: To the Most Eminent and Most Reverend Lord Cardinal N., Prefect of the Congregation of Propaganda Fide, Rome (these likewise in a living language); for letters to the Sacred Penitentiary: To the Most Eminent and Most Reverend Lord N., Cardinal Major Penitentiary, Rome (again in a living language). Finally, the letters are to be transmitted after the postal expenses have been paid.

§ III. On Drafting the Petition

815 Letters to be directed to the Sacred Congregations can be composed in Latin, Italian, French, German, Spanish, English, and Portuguese; letters to the Sacred Penitentiary can be composed in any language. Nevertheless it is better to use the Latin language.

With these points noted, we will speak specifically of those things which, with the style of the Curia considered, that is, with the will and practice of the Congregation to which the petition is directed considered, must be expressed, and which are contained especially in the Instruction of the Sacred

Congregation of Propaganda Fide dated May 9, 1877. First, however, we will speak of the petition by which a dispensation is sought for the external forum; then of the petition by which a dispensation is obtained for the internal forum; finally of the petition which regards a marriage invalidly contracted.

Point I. On the Petition by which a Dispensation Is Sought for the External Forum

The things to be expressed regard: 1° the persons of the petitioners; 2° the impediments; 3° various circumstances; 4° the cause or causes for dispensing; 5° the state of fortune of the petitioners.

816 I. The persons of the petitioners. There should be expressed:

1. The name and surname of the petitioners, each to be written distinctly and clearly and without any abbreviation of letters.
2. The diocese of origin or of actual domicile of the petitioners.

817 II. The impediments. There should be expressed:

1. "The species, even the lowest species, of the impediment; whether it is consanguinity or affinity; in the impediment of public honesty, whether it took its origin from an invalid marriage or from public or notorious concubinage; in the impediment of crime, whether it came from spouse-killing with a promise of marriage, or from spouse-killing with adultery, or from adultery alone with a promise or attempted marriage; in spiritual relationship, whether it is between the sponsor and the baptized person or between the baptizer and the baptized person."¹
2. The degree of consanguinity or affinity or public honesty, and whether it is simple or mixed, not only the more remote degree but also the nearer one, as also the line, whether it is direct or transverse, and likewise whether the petitioners are joined by a double bond of consanguinity, both on the father's side and on the mother's side.²
3. The number of impediments, for example if there is double or multiple consanguinity or affinity, or any other impediment whatever, whether diriment or impeding. Therefore if several impediments concur, ordinarily all must be expressed in one and the same petition.³ The reason is that the more numerous the impediments are, the more difficultly a dispensation is granted; wherefore all must be opened at least to one dispenser (St. Alphonsus VI, 1139). Conformably to this doctrine:

a) If even one of the impediments can be relaxed by the Holy See alone, ordinarily the Holy See must be approached for all (canon 1050). I said "ordinarily"; for, with the cited canon considered: 1° If with an impediment from which the Holy See alone can dispense there concurs either a public impediment from which the Ordinary can dispense by ordinary power, or an occult impediment from which he can dispense in any way whatsoever, then the Ordinary can dispense separately in the impediment of his competence, recourse having been made to the Holy See for the other impediment. 2° If the impediments over which the Ordinary can dispense are discovered after the dispensation has been obtained from the Holy See, the Ordinary will always be able to use his faculties, that is, even if with the impediment to be relaxed by the Holy See there concurs a public impediment in which the Ordinary can dispense by indult. It is said "after the dispensation has been obtained," that is, after the rescript of dispensation has been received, whether in gracious form or, as

it seems should be added, in commissory form, because even in this case the dispensation seems able to be said to have been obtained from the Holy See.

b) If a public impediment and an occult impediment which cannot be opened without infamy or injury of the seal stand in the way of marriage, a twofold petition is needed, one for the external forum, the other for the internal forum, unless the petitioners permit all things to be manifested for the external forum. In that hypothesis, in the petition for the external forum only the public impediments should be expressed; in the petition for the internal forum both the public and the occult impediments should be expressed, adding that a dispensation from the public impediments has been or will be sought for the external forum.

If both petitions cannot be sent to the same Ordinary without infamy of the petitioners or injury of the seal, either consent should be sought for expressing all things in the petition for the external forum, in which case there should be added that this is done by consent given;⁴ or the petition for the internal forum should be sent directly to the Sacred Penitentiary.⁵

¹ Cited Instruction.

² Cited Instruction.

³ Cf. Sacred Penitentiary, April 15, 1853, and canon 1050.

⁴ Vlaming notes: "That practice, namely, of making mention of the occult impediment in the supplication for the external forum, pleases me especially little because I do not see how it will not happen that mention of the occult impediment will then occur also in the rescript; but rescripts of the external forum are customarily preserved in the parochial archive or elsewhere; thus therefore the occult impediment, for the most part arising from sin (crime) or at least pertaining to the forum of conscience (a private vow), is in a certain way handed down to posterity" (II, n. 447).

⁵ According to what was said under a), public impediments in which the Ordinary can dispense by ordinary power are not necessarily expressed in the petition; indeed, it is even disputed whether this is ever required for validity.

818 III. Circumstances. 1. Circumstances of age and condition are not to be expressed except insofar as they are alleged as a cause for dispensing.

2. The same must be said concerning copula perhaps admitted; and by force of the decree of the Holy Office of June 25, 1885 this also holds concerning incestuous copula, which formerly had to be expressed even if it was not alleged as a cause. From the same decree, the hope or malicious intention of obtaining a dispensation more easily by copula or some other crime must now not be expressed, at least if copula is alleged as a mere circumstance; if it is alleged as a cause, it is disputed whether the malicious intention must be expressed. Some affirm this, because the Decree of the year 1885 explicitly speaks only of copula and malicious intention as mere circumstances, but not of the case in which copula is alleged as a cause of dispensation. Others deny it, with both the benign mind of the Holy See and the formulas of dispensations considered, in which there is no mention of malicious intention, even if copula has been alleged as a cause. Whatever the case, by force of the decree of the Holy Office of March 18, 1891, "matrimonial dispensations over any impediment whatever, whether there is question of marriages invalidly contracted or to be contracted, are valid, even if copula or the plan and intention of obtaining the grace more easily through it have been kept silent."

3. The circumstance of offspring, whether already born or conceived, must be expressed only insofar as this is necessary for legitimating the offspring; that is, it must be expressed: 1° if there is

offspring already born or to be born before the subsequent marriage, and there is question of adulterine or sacrilegious offspring, because it is legitimated neither by subsequent marriage (canon 1116) nor by dispensation (canon 1031); 2° if there is offspring already born or to be born before the dispensation has been fulminated, and there is question of a dispensation to be granted by rescript in a particular case, because even in this case the offspring is legitimated neither by subsequent marriage nor by dispensation (the cited canons).

4. The circumstance of a marriage to be contracted or already contracted invalidly. If it has already been contracted, several things must be added, as is explained in n. 822.

819 IV. The causes for dispensing should be set forth clearly and briefly.

820 V. The state of fortune must sometimes be expressed, for instance so that the Congregation may be able to judge in what form it should dispense: in the form of the poor or in the form of the rich, or, setting aside form, altogether gratis. If it is granted in the form of the poor, a minimal tax or composition¹ is required, which is determined with the nature and degree of the impediment considered, together with an agency fee proportioned to the tax. If it is granted in the form of the rich, a tax is required which is determined with the nature and degree of the impediment and the fortune of the petitioners considered, together with an agency fee proportioned to the tax. If the petitioners are "miserable," as it is said, nothing at all is required. Moreover, the tax or composition is imposed both by way of a fine to recompense the wound inflicted on the law by the dispensation, and so that the Holy See may be able to pay the stipends of officials or promote other good works. Therefore:

1. The state of fortune must be expressed in obtaining dispensations from the Congregation of the Discipline of the Sacraments, which observes the distinction between rescripts in the form of the rich and in the form of the poor. It should be set forth how much the male petitioner and the female petitioner possess in reality, and what they hope for from the succession of ascendants, debts, however, being deducted; nevertheless one must not proceed scrupulously. In addition, a dispensation granted in the form of the poor is valid even if the petitioners are not poor;² nevertheless they are bound to pay or supply the rights defrauded.

Note. In practice the state of fortune is rather often expressed in letters directed to the Ordinary, through whom the dispensation is obtained from the Holy See.

2. The state of fortune is not expressed for dispensations to be obtained from the Sacred Congregation of Propaganda Fide or from the Sacred Penitentiary; these Congregations do not impose a tax or composition.³ Only postal expenses must be paid and, unless the rescript is obtained through a person residing at Rome and conducting the business of the Bishop, the rights of the Agent. Nor must the state of fortune be expressed for dispensations to be sought from the Holy Office, which requires a fixed tax and also grants reduction for circumstances. Moreover, although in the cases explained the state of fortune need not be expressed, and even poverty erroneously or falsely alleged does not obstruct the value of the dispensation, nevertheless the petitioners, as we noted above, must pay or supply the rights defrauded.
3. Nor must the state of fortune be expressed if the dispensation is obtained from the Bishop; namely, "except for some modest payment by title of chancery expenses in dispensations for non-poor persons, local Ordinaries or their officials, any contrary custom being reprobated, cannot, on

the occasion of a dispensation granted, exact any emolument, unless this faculty has been expressly given to them by the Holy See; and if they have exacted it, they are bound to restitution" (canon 1056).⁴

¹ The distinction between tax and composition has practically been removed; likewise the distinction between the truly poor and the almost poor.

² Sacred Congregation of the Council, September 9, 1679; Sacred Penitentiary, August 7 and December 3, 1852; *Ordo servandus*, part 1, chapter XI, 3°.

³ *Ordo servandus*, part 1, chapter XI, 150; the other part, chapter VIII, article 1, 3°.

⁴ A privilege perhaps conceded in this matter perseveres even after the Code has been introduced (canon 4).

Point II. On the Petition by which a Dispensation Is Sought for the Internal Forum

821 The same things are to be expressed as in the petition for the external forum, with these exceptions. The petitioners are designated by fictitious names, for example Titius and Bertha. The diocese of the petitioners and the state of fortune are omitted; but the place to which the rescript is to be sent should be accurately indicated.

For convenience there follow:

Forms Of Petitions.

I.

For The External Forum.

(Your Most Reverend Excellency).¹

Peter N., of the diocese of N., and Anna N., my parishioner, desire to enter marriage; but they are bound by the impediment of consanguinity in the second degree touching the first. They humbly petition that a dispensation be granted to them. (If offspring has been born or conceived, let there be added: They also obtain the legitimation of the offspring.)

The causes are:

And God...

N. N., pastor at... Diocese...

II.

For The Internal Forum.

Most Eminent and Most Reverend Lord.

Caius and Caia desire to enter marriage; but they are bound by the impediment of consanguinity in the second degree touching the first, a dispensation from which impediment is being sought in another petition for the external forum. Besides, they are held by an occult impediment contracted from adultery and from a promise of future marriage made mutually to each other during the marriage by which one or the other, or both, parties were formerly bound. They humbly petition that a dispensation be granted to them.

The impediment is altogether occult.

The causes are:

May Your Eminence deign to direct the response to me, the undersigned confessor.

¹ If the Ordinary is able to dispense.

Point III. On the Petition which Regards a Marriage Invalidly Contracted

822 I. First, these things hold: If a dispensation is sought for the external forum, those things must be expressed which we said must be expressed in the petition for the external forum; if a dispensation is sought for the internal forum, those things must be indicated which we noted must be indicated in the petition for the internal forum.

II. Then, concerning the marriage itself, various things must be expressed according as there is question of simple convalidation or of sanation in the root (n. 830 sq. and 833).

1. If there is question of simple convalidation, there must be opened whether the petitioners, or one or the other, contracted the marriage in good or bad faith; whether, with the banns having been published, or if omitted, whether with the banns duly dispensed, they contracted according to juridical form; finally whether both, or one or the other, consummated the marriage in good or bad faith.¹
2. If there is question of sanation in the root, besides those things to be indicated for obtaining simple convalidation, it should be indicated whether the conditions required for acquiring sanation in the root are present (n. 833).

¹ Cited Instruction, p. 673.

Scholion. On Healing Defects of a Dispensation

823 I. A dispensation can be vitiated, that is, rendered void, either by subreption or concealment of the truth, or by obreption or exposition of what is false.

II. A dispensation is in fact rendered void or is not rendered void as follows:

1. No dispensation is rendered void because of an error in the name of the person to whom or by whom it is granted, or of the place in which that person remains, or of the thing of which there is question, provided that, in the judgment of the Ordinary, there is no doubt about the person or the thing itself (canon 47).
2. A dispensation granted from a lesser impediment (n. 812) is rendered void by no defect either of obreption or of subreption; and this holds even if the sole final cause set forth in the prayers was false (canon 1054). Likewise and *a fortiori* the dispensation is valid even if the sole final cause set forth in the prayers ceased before the concession or fulmination of the dispensation. In addition, since no obreption or subreption obstructs validity, a dispensation from a lesser impediment is valid even when another impediment, whether of the same or of another species, has been kept silent; hence in the case only a supplementary dispensation is required for that other impediment.
3. A dispensation from the impediment of consanguinity or affinity, granted in some degree of impediment, is valid, although an error about the degree crept into the petition or the concession, provided the degree really existing is lower, or although another impediment of the same species in an equal or lower degree has been kept silent (canon 1052).

Corollary. If the dispensation was given in an impediment of a greater degree and an impediment, whether of another species or of the same species in a higher degree, has been kept silent, the dispensation is invalid, and a new dispensation of all the impediments is required.

4. Even if there is question of an impediment of greater degree, concealment of the truth or subreption does not obstruct the validity of the dispensation, provided those things have been expressed which, according to the style of the Curia, must be expressed for validity; nor does exposition of what is false or obreption obstruct it, provided either the sole cause proposed or at least one motivating cause from among several proposed causes is true (canon 42). In doubt whether a cause falsely alleged is motivating or impulsive, and likewise whether a motivating cause is true or false, one must stand for the validity of the dispensation (St. Alphonsus VI, 1133). Finally, as was said under 2, a dispensation from a lesser impediment is valid even if the sole motivating cause set forth in the prayers is false.
5. A dispensation in an occult impediment is void if the impediment is not occult, except in a dispensation in an impediment of lesser degree.

Note. For a dispensation to be valid, it suffices that those things which must be expressed for validity be present: in rescripts without an executor, at the time when the rescript is given; in other rescripts, at the time of execution (canon 41).

824 III. When a defect of the dispensation has been detected, letters *Perinde valere*, that is, letters by which the defect is healed and it is declared that the letters of dispensation are valid just as if they had been valid from the beginning, should be petitioned if they can be obtained. I said, "if they can be obtained"; wherefore note that letters of this kind are not granted if a final cause has been falsely alleged, unless both the false cause and the one which truly exists tend to the same end. Otherwise a simply new dispensation is required. Besides, concerning the petitioning of letters *Perinde valere*, observe:

1. In the petition: 1° the prior petition is repeated substantially or integrally, with the substance of the prior grace also added; 2° the cause of nullity is indicated, adding whether perchance a marriage has been entered in the meantime; 3° convalidation of the dispensation is to be obtained, and a new dispensation if another impediment has been added.
2. The petition must be made for the external forum or for the internal forum or for both forums, as follows:
 - a) Even if the prior dispensation was sought for the external forum alone, but the defect pertains to the internal forum, convalidation should be sought in the internal forum, and indeed in the way in which the petition is made if a public and an occult impediment stand in the way of marriage (n. 817).
 - b) If the prior dispensation was sought for the internal forum alone: 1° if the defect pertains to the same forum, convalidation should be sought for the same internal forum; 2° if the defect pertains to the external forum, a dispensation should be sought for this same forum, but convalidation of the dispensation obtained should be sought for the internal forum.
 - c) If the prior dispensation was sought for both forums, a public defect must be healed for both forums, an occult one for the internal forum alone.

3. The Bishop cannot grant letters *Perinde valere* for convalidating a dispensation granted by the Holy See, even if he himself could have granted the dispensation (cf. canon 1050). Except: 1° when and insofar as he has received a special indult; 2° the case of urgent necessity, so that recourse cannot be had to the Holy See (cf. canon 1045, § 1; canon 81).

IV. If the letters *Perinde valere* are invalid, letters *Perinde valere* upon another *perinde valere* must be petitioned.

Warning.

The Council of Trent says thus: "In contracting marriages, either no dispensation at all is to be given, or rarely, and that from a cause and gratis."¹ Moreover, although this practice has been mitigated, dispensations are nevertheless wounds inflicted on ecclesiastical discipline.² Hence pastors and confessors should observe these words of the Provincial Council of Utrecht: "Let them beware especially lest they themselves furnish the occasion for marriages among the impeded, by too easily suggesting the counsel of petitioning for a dispensation and the hope of obtaining it."³

¹ Session 24, *De reformatione matrimonii*, chapter 5.

² Cf. rescript of Pius VII to the Bishops of France, February 19, 1809.

³ P. 179.

Article IV. On the Execution of a Dispensation

825 Dispensations can be granted either in gracious form or in commissory form. It is said to be granted in gracious form when the Superior to whom the petition is directed himself grants the dispensation or applies it to the petitioners; hence a concession of this kind is made without an executor, and has effect from the moment when the letters were given (canon 38). A dispensation is said to be granted in commissory form when the Superior commits the execution of the dispensation to another. The person to whom the execution is committed is called the executor; the whole business to be fulfilled by him is called execution; the part of the business which consists in applying the dispensation is called fulmination. Concerning execution, the following hold:

I. The executor of a dispensation performs his office invalidly before he has received the letters and recognized their authenticity and integrity, unless previous knowledge of them has been transmitted to him by the authority of the rescriptor (canon 53). Besides, note:

1. The executor of dispensations can substitute another for himself according to his prudent judgment, unless substitution has been prohibited or the person of the substitute has been predefined (canon 57, § 1).
2. Any dispensations whatever can be committed to execution also by the successor of the executor in dignity or office, unless the industry of the person has been chosen (canon 58).
3. Through the vacancy of the Apostolic See or of the diocese, no dispensation of the same Apostolic See or of the Ordinary perishes (canon 61).
4. The Ordinary of the petitioners, to whom a dispensation over a public impediment has been committed, should execute the dispensation even if the betrothed have departed into another

diocese before the execution of the dispensation, and are not going to return, provided the Ordinary of the place in which they desire to contract marriage is advised (canon 1055).

II. If in the rescript of dispensation the mere ministry of execution is committed, the execution of the rescript cannot be denied unless either it is manifestly clear that the rescript is null by a defect of subreption or obreption, or conditions are placed in the rescript which the executor knows have not been fulfilled, or the one who obtained the rescript seems, in the judgment of the executor, so unworthy that the concession of the grace will be an offense to others; and if this last thing happens, the executor, the execution having been interrupted, should immediately make the rescriptor more certain about the matter (canon 54, § 1). But if in the rescript of dispensation the concession of the grace is committed to the executor, it belongs to him, according to his prudent judgment and conscience, to grant or deny the grace (canon 54, § 2).

826 III. The execution of a dispensation includes verification of the prayers, fulfillment of clauses, and certain other things to be observed.

1. Verification of the prayers. This consists in the executor's investigating whether or not the things contained in the rescript of dispensation agree with the case as it stands at the time of execution (canon 38), and indeed agree insofar as that is required for the validity of the rescript. To what extent this is required for the validity of the rescript is clear from what was said in n. 823. In a word: for validity, the truth of those things suffices which had to be expressed for validity. Besides, note:

a) Verification is required only for liceity; indeed it does not press if, as happens, it has already taken place before, and the executor is certain that the matters have not changed. In the case it suffices to investigate whether the tenor of the rescript corresponds to the things set forth in the petition.¹

b) Verification is instituted: for the external forum, for example by questioning the petitioners and witnesses, consulting the parochial books, etc.; for the internal forum, by questioning the penitent. Verification for the external forum can also be instituted through another.

2. Clauses to be fulfilled; moreover, the principal clauses are:²

a) In rescripts of the Holy Office, if it dispenses in the impediment of disparity of worship or mixed religion, there is added the clause: provided first that regularly, according to the prescription of canon 1061, § 2, sufficient provision has altogether been made for the conditions required by the Church, and the Ordinary himself is morally certain that these conditions will be fulfilled, namely on the part of the non-Catholic spouse concerning removing from the Catholic party the danger of perversion, and on the part of both persons about to marry concerning all offspring of each sex being altogether baptized and educated in the sanctity of the Catholic religion. This clause is essential. The clause concerning the obligation of warning those about to marry that they also cannot approach a non-Catholic minister to give or renew matrimonial consent is now not essential, but only preceptive.

b) In rescripts of the Congregation of the Discipline of the Sacraments:

a) If the things set forth are true. This clause is essential insofar as the truth of those things which had to be expressed for validity is required (n. 823).

b) The canonical prescriptions being observed. This clause is essential or merely preceptive according as the prescriptions themselves are essential or preceptive, according to what has been said and what

remains to be said.

c) Provided that no scandal intervenes. The clause does not seem to be essential. Moreover, a continuous occasion should be removed by separation if it is voluntary; if it is necessary, it should be rendered remote.³

d) A salutary penance having been imposed on the petitioners. The clause is merely preceptive.

e) Provided that no doubt underlies the matter that the spouse could be offspring generated by the other of the contracting parties. This clause is essential, and in a dispensation in the impediment of public honesty is understood if it is not expressed (cf. canon 1076, § 3).⁴

c) In rescripts of the Sacred Penitentiary:

a) His or her confession having first been heard, or only in sacramental confession. This clause imports that, for validity, it is required that sacramental confession be instituted and that the dispensation be fulminated in confession. Nevertheless the dispensation is not invalid because the confession is sacrilegious or invalid; nor is absolution required⁵ (St. Alphonsus, 1143).

b) Provided that the impediment is occult. The clause is essential.

c) Provided that letters of dispensation over the public impediment have been obtained and the nullity coming from the foregoing remains occult, namely until the nuptials. The clause is essential and is added when a public impediment concurs with an occult one.

d) A grave, or long, or perpetual salutary penance having been enjoined. The clause is merely preceptive; moreover, a penance distinct from the sacramental penance is understood. A long penance is, for example, a penance of one year; a perpetual penance regards the whole life (St. Alphonsus VI, 1143).

"In predefining the quality, gravity, duration, etc., of the penance, let him exceed neither the limits of severity nor those of humanity, and let him take account of the condition, age, infirmity, office, sex, etc., of those on whom the penalty is to be imposed."⁶ If the penitent does not accept the penance, commutation should be obtained; and if this is foreseen, it should be manifested in the petition.

e) Other things having been enjoined which must be enjoined by law, that is, according to the principles of moral theology, for example scandal to be removed, restitution to be made, etc. This clause is likewise merely preceptive.

3. And certain other things to be observed. a) Previous absolution from censures is not required for the validity of the dispensation, unless someone has been censured by a declaratory or condemnatory sentence brought against him (canon 36, § 2); nor is it clear that it is required for liceity. If a sentence has intervened, the censured person cannot validly receive a dispensation unless mention of the censure is made in the pontifical rescript (canon 2265, § 2; 2275, 3°; 2283). Besides, in the case in which absolution from censure has place, the customary form of absolving from censures and sins suffices, that is, the one which is used in sacramental judgment. If absolution from sins cannot be given, for instance because the penitent is indisposed, the absolution from sins being omitted, only absolution from censures is first given.

Note. In the faculty of dispensing is also included the power of absolving from ecclesiastical penalties if any perchance stand in the way, but only for the effect of obtaining the dispensation (canon 66, § 3;

n. 809).

b) The executor must accomplish the fulmination itself for the external forum in writing (canon 56); likewise it is better that he accomplish it in this way if the fulmination is made in the non-sacramental internal forum. In the sacramental internal forum it is to be made by living voice and to a person present. It is made to one person only if the impediment affects only one party, for example a vow; if the impediment is common to both parties, it is to be made to both parties, whether the same or a different confessor is chosen by the petitioners.⁷ If a different confessor is chosen, "the prior confessor, after the dispensation has been granted to one according to the form of the letters, must hand over the letters of the Sacred Penitentiary, closed, to the penitent, so that through him they may be handed over to the other party, who likewise should have the same letters executed with him or her through another confessor, whose duty it will be in a case of this kind, when the business has been completed, to tear up the letters."⁸ Nevertheless, even in this hypothesis the fulmination upon the other party is required only for liceity, and for a grave cause, for instance because the other party refuses to confess, it can be omitted.

A determinate form by which the fulmination is made is not required. If, however, someone grants a dispensation by power delegated from the Apostolic See, he should make express mention of the pontifical indult (canon 1057).

c) After the dispensation has been fulminated, if mention is made in the document concerning legitimation, legitimation of the offspring follows; this can be made in any form. Fittingly one of these forms, taken from Benedict XIV, is used for fulmination and legitimation.⁹

For a marriage to be contracted: After the customary form of absolution, the confessor can proceed thus: "And besides, by Apostolic Authority, or by the authority of the Most Reverend Bishop N., specially delegated to me, I dispense with you over the impediment, which he here expresses, for example, of the second degree of affinity, so that, notwithstanding the aforesaid impediment, you may licitly be able to contract marriage publicly with the woman whom you intend to marry, the ecclesiastical form having been observed, to consummate it, and to remain in it; and by the same Apostolic Authority I declare the offspring already received, if there is any, and to be received from this union legitimate. In the name of the Father and of the Son and of the Holy Spirit. Amen."

For convalidating a marriage already contracted (n. 829 sq.): "Besides, by Apostolic Authority, or by the authority of the Most Reverend Bishop N., specially delegated to me, I dispense with you over the impediment... by which, being bound, you contracted marriage nullly, so that, notwithstanding the aforesaid impediment, you may licitly be able to contract marriage anew with your putative spouse, consent being renewed, to consummate it, and to remain in it; and I declare the offspring already received and to be received from this union legitimate. In the name," etc.

For a marriage to be healed in the root (n. 833): "Besides, by Apostolic Authority, etc.... I heal in its root the marriage contracted by you with N., and I declare the offspring already received and to be received from this union legitimate. In the name," etc.

d) After the fulmination has been completed, these things are to be observed:

a) Rescripts of dispensations granted for the external forum should be deposited in the diocesan archive (cf. canon 375, § 1), and the executory letters in the parochial archive.

b) Unless the rescript of the Sacred Penitentiary provides otherwise, a dispensation granted in the non-sacramental internal forum over an occult impediment should be noted in the book to be carefully kept in the secret archive of the Curia, of which canon 379 treats; nor is another dispensation for the external forum necessary, even if afterward the occult impediment becomes public; but it is necessary if the dispensation had been granted only in the sacramental internal forum (canon 1047).

c) Rescripts by which a dispensation has been granted for the sacramental internal forum are to be torn up or burned, and this according to the rescripts of the Sacred Penitentiary "under latae sententiae excommunication." The obligation must be fulfilled at least within three days after the execution of the dispensation (St. Alphonsus VI, 1143). Nevertheless, the confessor is not prohibited from retaining a transcribed text; in that case he should omit the day and year.

¹ Cf. Sacred Penitentiary, April 27, 1886; Holy Office, August 28, 1895.

² Cf. Aertnys-Damen II, n. 802 sq.

³ Sacred Penitentiary, April 27, 1886.

⁴ Cf. Pontifical Commission, June 2-3, 1918 (A.A.S. 1918, p. 346).

⁵ Sacred Congregation of Propaganda Fide, January 6, 1797 (collection, n. 633); December 18, 1878; Sacred Penitentiary, May 19, 1834; January 4, 1839.

⁶ Sacred Penitentiary, April 8, 1890.

⁷ Sacred Penitentiary, November 15, 1778.

⁸ Response of the Sacred Penitentiary cited.

⁹ Benedict XIV, *Institutiones ecclesiasticae* 87, n. 81.

Appendix I. On Invalid Marriage

827 If any marriage is found to be invalid, the case must be provided for in different ways according to the circumstances: namely, either by leaving the parties in good faith, or by permitting them to live as brother and sister, or by declaring the nullity of the marriage, or by convalidating the marriage. Which mode ought to be chosen will be clear from what is to be said. Ordinarily, however, one must recur either to a declaration of the nullity of the marriage, or, and especially indeed, to convalidation of the marriage. Hence:

Part I. On the Declaration of the Nullity of an Invalid Marriage

828 I. One must regularly proceed to the declaration of the nullity of an invalid marriage: 1° if convalidation cannot have place, because the impediment cannot be removed; 2° if, all things considered, it is better for the parties to be separated.

II. The competent judge in this cause is the judge of the place in which the marriage was celebrated, or in which the respondent party, or, if one is non-Catholic, the Catholic party, has a domicile or quasi-domicile (canon 1964). Nevertheless, recourse can also be had to the Holy See.

1. The tribunal to be constituted by the Ordinary consists of three judges (canon 1576, § 1), to whom are added the "defender of the bond," as it is called, and an actuary.
2. The tribunal must proceed collegially and render sentence by the greater part of the votes (canon 1577, § 1).
3. If sentence is rendered for the nullity of the marriage, appeal should be made to a higher tribunal, different according to the circumstances (canon 1986; compare canon 1594, §§ 1 and 2).¹
4. After the second sentence, which has confirmed the nullity of the marriage, if the defender of the bond in the grade of appeal has not believed according to his conscience that appeal should be made, the spouses have the right, ten days having elapsed from the notification of the sentence, of contracting new nuptials (canon 1987).
5. Canon 1990 establishes when the solemnities enumerated can be omitted: "When from a certain and authentic document, which is subject to no contradiction or exception, there has been established the existence of an impediment of disparity of worship, order, solemn vow of chastity, bond, consanguinity, affinity, or spiritual relationship, and at the same time with equal certainty it has appeared that a dispensation over these impediments was not given, in these cases, the solemnities enumerated up to this point having been passed over, the Ordinary, the parties having been cited, will be able to declare the nullity of the marriage, with the intervention, however, of the defender of the bond." Nevertheless, canons 1991 and 1992 should be consulted.
6. A marriage between two Catholics or between a Catholic party and a non-Catholic party, contracted either merely civilly or by a non-Catholic rite, can be declared null by the Ordinary, or by the pastor after the Ordinary has been consulted, after only the investigation of which canon 1019 sq. treats has first been made.²

¹ Appeal can also be made to the Sacred Rota (canon 1599, § 1, 1°).

² Pontifical Commission, October 16, 1919, to 17 (A.A.S. 1919, p. 479); March 23, 1919 (*Archiv fuer katholisches Kirchenrecht* 1919, p. 64).

Part II. On the Convalidation of an Invalid Marriage

829 The convalidation of an invalid marriage can take place in two ways: by simple convalidation and by sanation in the root, as it is called.¹ These differ especially in this, that simple convalidation, contrary to sanation in the root, requires renewal of consent, to be furnished at least by one party, as will be clear from what is to be said.

¹ Note that marriages, if any are null by reason of impediments abrogated by the new Code, were in no way convalidated by the promulgation itself of the Code. Thus Pontifical Commission, June 2-3, 1918, IV, 7 (A.A.S. 1918, p. 346).

Section I. Simple Convalidation

Three cases of convalidation can be distinguished according to the threefold cause of the nullity of the marriage, namely, on account of a diriment impediment, on account of a defect of consent, and on account of a defect of juridical form.

Chapter I. On the Convalidation of a Marriage Invalid on Account of a Diriment Impediment

830 I. Requisites for convalidation. From canon 1133, § 1, for convalidating a marriage void on account of a diriment impediment, there is required:

1. That the impediment cease, or be removed by dispensation.¹
2. That at least the party conscious of the impediment renew consent. Moreover:
 - a) Renewal of consent is required by ecclesiastical law for validity, even if at the beginning each party furnished consent and did not afterward revoke it (canon 1133, § 2).
 - b) Renewal of consent is required only by ecclesiastical law, but not by natural law. This is clear both from the practice of the Church sometimes remitting renewal of consent and from the fact that matrimonial consent furnished and enduring ought of itself, by the very fact that the impediment or obstacle is removed, to become efficacious.

Some except a marriage or matrimonial consent to which an impediment of natural or divine law stood opposed, and judge that a marriage of this kind cannot be convalidated except by the new consent of each party. But first, every intrinsic reason for admitting the aforesaid exception is lacking. Then the Sacred Penitentiary, in the Paris case, April 25, 1895, sanated in the root a marriage to which an impediment of natural law had stood opposed after the cessation of the impediment. Nevertheless, a difficulty arises from the fact that the Holy Office, March 2, 1904, declared: "A marriage contracted with an impediment of natural or divine law cannot be sanated in the root." But one can answer that, according to the mind of the Holy Office, that cannot be done insofar as the Church cannot remove an impediment of this kind; and this removal is the condition without which sanation cannot have place. Besides, *de facto*, if a marriage has been contracted with an impediment of natural or divine law, even if afterward the impediment has ceased, the Church does not remit renewal of consent, not even from the moment of the cessation of the impediment (canon 1139, § 2).

- c) Renewal of consent must be a new act of the will toward a marriage which is known to have been null from the beginning (canon 1134). Therefore a new act of the will is required, and one

independent of the prior consent, that is, not merely confirmatory of the prior consent, but posited with knowledge of the nullity of the marriage.

II. Form to be observed. 1. If the impediment is public, consent must be renewed by both parties in the form prescribed by law (canon 1135, § 1). If one party refuses renewal in the prescribed form, a dispensation from form should be sought; if one party refuses the very renewal of consent, either it should be petitioned that only one party must renew consent, or that sanation in the root be granted. Nevertheless, in individual cases scandal should be removed by making known the convalidation of the marriage.

2. If it is occult and known to both parties, it is enough that consent be renewed by both parties privately and secretly (canon 1135, § 2). If one party refuses renewal of consent, either it should be petitioned that only one party must renew consent, or that sanation in the root be granted.

3. If it is occult and unknown to one party, it is enough that the party conscious of the impediment alone renew consent privately and secretly, provided the other perseveres in the consent furnished (canon 1135, § 3). Moreover, as canon 1093 has it, although a marriage has been entered invalidly by reason of an impediment, the consent furnished is presumed to persevere until its revocation has been established.

¹ The impediments of age, abduction, bond, and disparity of worship can cease.

Chapter II. On the Convalidation of a Marriage Invalid on Account of Defect of Consent

831 Preliminary note. Here belong marriages null on account of defect of discretion, error, fear, fiction, or a condition repugnant to the substance of marriage.

I. Requisites for convalidation. A marriage void on account of defect of consent is convalidated if the party who had not consented now consents, provided the consent furnished by the other party perseveres (canon 1136, § 1). In the case it is not required that the party who had consented renew consent, because for a contract it suffices that the consent of both parties morally coexist. This obtains if the consent of one perseveres until the other furnishes consent (St. Thomas, Supplement, q. 47, a. 4, ad 2; St. Alphonsus VI, 1114).

II. Form to be observed. From canon 1136, §§ 2 and 3:

1. If the defect of consent was merely internal, it is enough that the party who had not consented consent interiorly.

2. If it was also external, it is necessary also to manifest consent externally, and indeed in this way:

a) If the defect was secret, it suffices to manifest consent privately and secretly, that is, between the parties alone.

b) If the defect was public, consent must be manifested in the form prescribed by law. If in the case the party who did not consent refuses to manifest consent in the form prescribed by law, a dispensation from form should be sought, and scandal should be removed by making known the convalidation of the marriage.

Chapter III. On the Convalidation of a Marriage Invalid on Account of Defect of Form

832 Preliminary note. Here belong, for example, marriages entered merely civilly by those who are bound to ecclesiastical form. Moreover:

A marriage null on account of defect of form, in order that it become valid, must be contracted anew in legitimate form (canon 1137); and indeed, as regards liceity, publicly or occultly, according as the nullity is public or occult.

If the nullity is public, and both parties or one or the other refuses publicly or in the face of the Church to renew consent, it can be permitted by the Ordinary that the marriage be contracted, for example, in the house of the pastor before only the pastor and witnesses. Scandal, however, should be removed by making known the convalidation of the marriage.

If one party refuses to renew consent in legitimate form, a dispensation from form should be sought.

If one party refuses to renew consent, sanation in the root should be sought. In every case, however, scandal, if it is present, should be removed by making known the convalidation of the marriage.

If both parties refuse to renew consent or to renew it in legitimate form, the Church does not grant sanation in the root.

Note. Concerning the drafting of a petition for convalidation of a marriage, see n. 822. For convenience there follow:

Forms Of Petitions.

I.

For The External Forum.

Most Blessed Father.

(Your Most Reverend Excellency).¹

Peter N., of the diocese of N., and Anna N., my parishioner, entered marriage in the form prescribed by law. Afterward the public impediment of affinity in the second degree of the collateral line became known. They humbly ask for a dispensation, so that the invalidly contracted marriage may be convalidated. (If offspring has been born or conceived, let there be added: They also obtain the legitimation of the offspring.)

And God...

N. N., pastor at... Diocese...

II.

For The Internal Forum.

Most Eminent and Most Reverend Lord.

Caius and Caia in good faith entered marriage in the form prescribed by law. Afterward, however, in the internal forum an occult impediment became known, contracted from adultery and from a

promise of future marriage mutually made to each other during the marriage by which one or the other, or both, parties were formerly bound.

That the marriage, whose nullity is known to both, or to one or the other, party, may be convalidated, the confessor humbly asks that the impediment be removed.

May Your Eminence deign to direct the response to me, the undersigned confessor.

¹ If the Ordinary is able to dispense.

Section II. Sanation in the Root

833 I. Notion. "Sanation in the root of a marriage is the convalidation of the same marriage, carrying with it, besides the dispensation or cessation of the impediment, dispensation from the law concerning renewal of consent, and retrotraction by fiction of law, concerning canonical effects, into the past" (canon 1138, § 1). Therefore sanation in the root involves three things:

1. It removes the impediment, unless it has already ceased.
2. It dispenses from the law of renewing consent, or permits the marriage to be convalidated by force of the prior consent, that is, although neither party renews consent.¹ The convalidation, however, takes place from the moment of the concession of the grace (canon 1138, § 2).
3. It effects that the canonical effects, especially the legitimacy of offspring, belong to the sanated marriage not only now, but by fiction of law are so attributed to it as if the marriage had already been valid in the past; indeed, the retrotraction is understood to have been made to the beginning of the marriage, unless something else is expressly provided (canon 1138, § 2).

Therefore sanation in the root differs from simple convalidation: 1° because the former requires renewal of consent from neither party, while the latter requires that consent be renewed at least by one party; 2° the former so attributes canonical effects to the sanated marriage as if they had already previously been annexed to it, while the latter lacks this efficacy.

Note. Dispensation from the law concerning renewal of consent can also be granted with only one party or with both parties unaware (canon 1138, § 3).

II. Possibility of sanation in the root. Any marriage entered with the naturally sufficient consent of both parties, but juridically inefficacious on account of a diriment impediment of ecclesiastical law or on account of defect of legitimate form, can be sanated in the root, provided consent perseveres (canon 1139, § 1). The same must be said of a marriage invalid on account of a diriment impediment of natural or divine law (n. 830). But a marriage contracted with an impediment of natural or divine law, even if afterward the impediment has ceased, the Church does not sanate in the root, not even from the moment of the cessation of the impediment (canon 1138, § 2).

III. Requisites that a marriage can be sanated in the root. For validity it is required:

1. That each party furnished consent and that it was truly matrimonial consent (canon 1140, § 1). Therefore merely fornicary consent does not suffice, nor civil marriage if it was entered as a mere civil ceremony, but not as marriage. But if consent indeed was lacking from the beginning, but afterward was furnished, sanation can be granted from the moment of the consent furnished (canon 1140, § 2).

2. That each party persevere in consent, or that neither party has revoked it (canon 1140, § 1). But that one or both parties would revoke consent if they knew the nullity of the marriage is not yet revocation; indeed, not even separation from bed and board necessarily involves revocation.²

IV. Subject of the power of sanating in the root. Sanation in the root can be granted only by the Apostolic See (canon 1141). The Apostolic See, however, grants it through the Holy Office, or the Congregation of the Discipline of the Sacraments, or through the Sacred Penitentiary, according as the case bears (n. 803). Nevertheless special indults also are customarily granted to others;³ but the power of dispensing in some impediment does not import the power of sanating in the root.

V. Petition for sanation in the root. It is to be sought if, on the one hand, it seems that the convalidation of some marriage must altogether be provided for, but on the other hand one must abstain from simple convalidation. Therefore it should be sought: 1° if in some place many marriages have been entered invalidly, so that renewal of consent would be liable to many inconveniences; 2° if the things required for simple convalidation are foreseen to be lacking, for instance if the party who, according to the laws of simple convalidation, is bound to renew consent or to renew it in legitimate form refuses to perform this, provided the other party is well disposed.

If each party is in good faith, and neither can be warned without inconvenience, the petition for sanation can be omitted and the parties can be left in good faith; although, if the nullity of the marriage came from the fault of others, for example of the pastor or Ordinary, the Church easily grants sanation, so that then it is expedient to seek it (cf. canon 1138, § 3).

Note. Concerning the drafting of a petition for sanation in the root, see n. 822. For convenience there follow:

Forms Of Petitions.

I.

For The External Forum.

Most Blessed Father.

Peter N., of the diocese of N., and Anna N., my parishioner, in good faith entered marriage in the form prescribed by law. Afterward the public impediment of consanguinity in the third degree of the collateral line was detected and became known to both parties. The consent of each endures. But since the man refuses to renew consent in the form prescribed by law, the woman humbly requests sanation in the root. (If offspring has been born or conceived, let there be added: and the legitimation of the offspring received.)

And God...

N. N., pastor at... Diocese...

II.

For The Internal Forum.

Most Blessed Father.

Caius and Caia had contracted marriage in good faith in the form prescribed by law. Afterward, however, in the internal forum an occult impediment became known, contracted from adultery and

from a promise of future marriage mutually made to each other during the marriage by which one or the other, or both, parties were formerly bound. Caia fears that Caius, who is ignorant of the impediment, would refuse to renew consent even privately and secretly. Hence she humbly petitions that Your Holiness would wish to grant sanation in the root of the present marriage and to direct the response to me, the undersigned confessor. (If offspring has been born or conceived, let there be added after the word "marriage": and the legitimation of the offspring received.)

And God...

¹ Therefore it heals the root, that is, consent vitiated from the beginning or inefficacious because of an impediment.

² Some ask whether consent given by one in possession of reason perseveres after the consenting person has fallen into perpetual insanity. Moreover, it seems it must be denied, because consent seems to fail in a person of this kind, as in a dead person (cf. canon 1089, § 3).

³ Cf. Form II, minor faculties of the Sacred Congregation of Propaganda Fide, n. 15 (Vermeersch, *Commentarius*, n. 93).

Scholion I. On the Convalidation of an Invalid Marriage Between a Catholic Party and a Non-Catholic Party

834 We suppose that the marriage is invalid either on account of disparity of worship and defect of form, or on account of defect of form alone. Now, so that a marriage of this kind may be convalidated:

I. First, the things to be posited having been posited, a dispensation should be sought either from the diriment impediment of disparity of worship or from the impeding impediment of mixed religion. Then the marriage should be contracted in legitimate form, and indeed, as regards liceity, publicly or occultly, according as the nullity is public or occult.

If the nullity is public and the non-Catholic party refuses publicly to renew consent, the Ordinary can permit the marriage to be contracted before only the pastor and witnesses.

If the non-Catholic party refuses to renew consent in legitimate form, a dispensation from form should be sought.

If the non-Catholic party refuses to renew consent, sanation in the root should be sought if there is hope of obtaining it, according to what is soon to be said.

II. I said that, the things to be posited having been posited, a dispensation from the impediment of disparity of worship or mixed religion is to be sought. For in order that the said dispensation can be obtained, both the cautions must be furnished and moral certainty must be had concerning the fulfillment of the cautions.

But what if either the non-Catholic party refuses to furnish the cautions, or moral certainty is not had concerning the fulfillment of the cautions?

Response. In the case an ordinary dispensation is excluded; and it seems excluded even in danger of death;¹ hence one must recur to sanation in the root if there is hope of obtaining it, that is, if it is morally certain that the non-Catholic party will not impede the Catholic education of all offspring, both born and to be born. For although sanation in the root can be expected even if the non-Catholic party refuses to furnish the cautions,² nevertheless, if the aforesaid moral certainty is lacking, sanation in the root cannot be expected.³

What, therefore, if even that moral certainty is lacking?

Response 1. Outside danger of death, the cause is hopeless.

Response 2. In danger of death, dispensation and sanation in the root alike seem excluded,⁴ but not recourse to *epikeia*; namely, if the Catholic party promises that he or she will provide according to his or her strength for the Catholic education of all offspring, one should proceed to the convalidation of the marriage, the consent of at least the Catholic party having been renewed (cf. St. Alphonsus VI, 613).

¹ Cf. canons 1043, 1061; likewise the things which we noted on p. 605.

² Holy Office, April 12, 1899 (collection, n. 2042); December 22, 1916 (A.A.S. 1917, p. 13).

³ Holy Office, July 1, 1930 (in *Nederlandsche Katholieke Stemmen*, 1931, p. 168; 1932, p. 68). Moreover, this is clear from the fact that to the faculties of the Congregation of Propaganda Fide concerning sanation in the root of mixed marriage there is now added the clause: "provided it is morally certain that the non-Catholic party will not impede the Catholic education of all offspring, both born and to be born."

⁴ Besides, concerning sanation in the root, which even in danger of death cannot be granted without a special indult, the opportunity of receiving a timely response will easily be lacking.

Scholion II. On the Inscription of a Convalidated Marriage

835 The inscription of a convalidated marriage should be made in this way:

I. Convalidation in the external forum should be noted in the customary register of marriages and in the book of the baptized. If the prior marriage has already been inscribed in the usual way, it can either be noted anew with reference to the prior marriage, or all things can be noted in the margin of the prior inscription.

II. Convalidation in the internal forum should be noted in the secret register of the episcopal Chancery, unless the sacramental seal stands in the way. If that stands in the way and the good of the offspring requires inscription, with the license of the penitent or penitents the notation should have place.

Scholion III. On the Mode of Handling a Case of Convalidation

836 If the pastor or confessor detects that some marriage is certainly invalid, one should proceed thus:

I. If both are unaware of the nullity, ordinarily on account of the danger of incontinence or of some other inconvenience they should be left in good faith for a time. Meanwhile, if the impediment has ceased or is dispensable, simple convalidation or sanation in the root should be procured according to the circumstances.

II. If each party is conscious of the nullity, one should proceed thus:

1. If the nullity is occult to others, the spouses must immediately be separated from bed. Meanwhile, if the impediment has ceased or is dispensable, convalidation should be procured as soon as possible. If the impediment is indispensable, recourse should be had to the Ordinary, who should judge what kind of separation seems to be procured.

2. If the nullity is public, the spouses must at once be separated even from cohabitation. Meanwhile, recourse should be had to the Ordinary either for convalidation or for a declaration of nullity, if it

is impossible or not expedient to procure convalidation. That the spouses do not wish to be separated for a time does not prevent convalidation from being able to be obtained.

III. If only one party is conscious of the nullity, the other party, if it can be done without grave inconvenience, must be warned, and the spouses must be separated at least from bed; then convalidation should be procured as soon as possible. If the other party cannot be warned without grave inconvenience, the warning can be omitted, but the rendering of the debt must be avoided until convalidation has been procured, for instance by undertaking a journey, by excusing oneself under some pretext.

But what if only the wife knows the nullity, and on the one hand convalidation cannot be obtained in time, even with canon 1045 considered, while on the other hand copula cannot be avoided without very grave inconvenience?

Response. In the case, according to several authors, by *epikeia* it can be judged that the ecclesiastical impediment has ceased, so that the spouse, by renewing consent either explicitly or by conduct, through copula, can convalidate the marriage and render the debt. Nevertheless, for greater caution, recourse should be had as soon as possible to the competent power (St. Alphonsus VI, 613).

Appendix II. On the Separation of Spouses

837 Separation of spouses or divorce is distinguished as threefold: namely, dissolution of the bond itself or full divorce; separation from bed and copula; and separation from bed, board, and cohabitation. The latter is called semi-full divorce.

Part I. On Full Divorce

To what extent the matrimonial bond itself can be dissolved we said in n. 720 sq. But the two cases explained theoretically in that place we will make clearer for the sake of practice. Namely, from a just cause the Church can dissolve: 1° marriage between baptized persons which has not been consummated; 2° marriage between a baptized party and a non-baptized party, for instance if the baptized party, heresy or schism having been rejected, or the non-baptized party through baptism, is converted to the Catholic Church.

Section I. On the Dissolution of Marriage Between Baptized Persons, Not Consummated

838 I. Reasons for petitioning the dissolution of marriage between baptized persons, not consummated, are, for example: doubtful impotence, or impotence doubtfully antecedent or doubtfully perpetual and difficultly curable; supervening impotence; infirmity impeding the use of marriage; grave error concerning a quality of the person, detected after marriage; grave and continual discords between the parties; an infamous delict perpetrated by one party, especially if a sentence of a judge followed; danger of perversion; civil divorce, especially with celebration of a new civil marriage; probable nullity of the marriage, but which cannot be sufficiently proved, for instance on account of fear applied, on account of a condition added to the consent; malicious departure.¹

II. The mode of obtaining dissolution is presented summarily in these points:²

1. Only the spouses have the right of petitioning for a dispensation over a ratified and non-consummated marriage (canon 1973).
2. The petition to be directed to the Supreme Pontiff should be transmitted to the Congregation of the Discipline of the Sacraments; moreover, it should be directed through one's own Ordinary.
3. The Ordinary cannot instruct the process unless the Apostolic See has given him the faculty (canon 1963, § 1).
4. The Ordinary will take care to constitute the tribunal as soon as he can, employing for this purpose the ministers constituted in his Curia, or also others. A collegiate tribunal of three judges is not required; however, an instructing judge, a defender of the bond, and an actuary are required.
5. The tribunal should especially inquire: 1° into the legitimate causes of dispensation; 2° into the non-consummation of the marriage.
6. When the process has been finished, all the acts together with the vote of the Bishop and of the defender of the bond are to be transmitted to the Congregation, and the sentence of the Supreme Pontiff himself is to be awaited.

¹ De Smet, op. cit., n. 330; Vlaming, op. cit., II, n. 606.

² The Decree of the Congregation of the Discipline of the Sacraments, May 7, 1923, established the rules to be observed (A.A.S. 1923, pp. 389-436).

Section II. On the Dissolution of Marriage Between a Baptized Party and a Non-Baptized Party

839 I. The petition to be directed to the Supreme Pontiff should be transmitted to the Holy Office, to which this cause is committed.

II. The conditions required so that a marriage between a baptized party and a non-baptized party may be dissolved are:

1. If the non-baptized party desires to be converted to the Catholic Church, he or she should first be baptized, so as to be subjected to the jurisdiction of the Church. Besides, it is required that after receiving baptism he or she has not had copula with the spouse; otherwise there would be a marriage consummated after the baptism of both parties, which cannot be dissolved by the Church. In addition, juridical proof is demanded by which it is proved that baptism had in no way previously been conferred, or had been conferred invalidly.
2. If the baptized party wishes to be converted to the Church, he or she must first in fact be converted to it.
3. Finally, other things are to be inserted into the petition; these indeed will be investigated and inserted by the one to whom this matter is committed.

Part II. On Semi-Full Divorce

The following words of canon 1128 teach that semi-full divorce or separation from bed, board, and cohabitation is of itself illicit, but licit from a just cause: "Spouses must preserve the communion of conjugal life, unless a just cause excuses them." Among the just causes on account of which it is licit to institute or petition semi-full divorce, some confer the right of perpetual separation, others of themselves confer the right only of temporary separation. We will examine the individual causes of each species.

840 I. The causes of perpetual separation are adultery and the mutual consent of the spouses for conversion to a more perfect state.

1. Adultery furnishes to the innocent spouse the right of perpetual separation. This is clear from Sacred Scripture,¹ which, while excluding dissolution of the bond (n. 720), indicates perpetual separation. It is further clear from Tradition,² and from the fact that someone vainly demands that faith be kept with him by one to whom he refuses to keep the faith furnished by himself.³ Hence canon 1129, § 1: "Because of the adultery of a spouse, the other spouse, the bond remaining, has the right of dissolving, even in perpetuity, the communion of life, unless he consented to the crime, or gave cause for it, or expressly or tacitly condoned it, or also himself committed the same crime" (St. Thomas, Supplement, q. 62, a. 1; St. Alphonsus VI, 960). Moreover, adultery must be: consummated, formal, morally certain, not approved, not compensated, not condoned. It is said:

a) Consummated through copula of itself apt for generation, not merely begun through kisses, touches, embraces, etc.; nor, since here carnal union with a third person is considered, does mere lying together or union of bodies, or onanistic copula, suffice.

b) Formal, not committed by oppression or in good faith (St. Thomas, Supplement, q. 62, a. 1; St. Alphonsus VI, 960; *Homo Apostolicus*, tract 18, n. 95).

c) Morally certain. Certainty of this kind can also arise from indications, conjectures, and vehement presumptions (St. Alphonsus VI, 961; *Homo Apostolicus*, tract 18, n. 93).

d) Not approved, that is, it is required that the other did not consent to the adultery nor directly give cause for it; not, however, that he or she did not furnish an indirect cause for it, for instance by denying the debt, by treating the spouse badly (St. Thomas, Supplement, q. 62, a. 1; St. Alphonsus VI, 966).

e) Not compensated by adultery committed by the other party before the sentence of divorce was issued by the ecclesiastical judge. It does not matter that one committed adultery more often than the other, or that the crime of one is occult and that of the other public. But if, after adultery has been committed by both, one comes to his senses while the other continues in adultery, the one who is amended can with sufficient probability institute divorce (St. Alphonsus, loc. cit.).

f) Not condoned either expressly or tacitly. "Tacit condonation is had if the innocent spouse, after he has been made more certain concerning the crime of adultery, has freely associated with the other spouse with marital affection; moreover it is presumed unless within six months he has expelled or left the adulterous spouse, or has made a legitimate accusation" (canon 1129, § 2).

Sodomy with a third person and bestiality are equated with adultery, because what is considered here is present, namely carnal union with a third person. Otherwise one must speak concerning sodomy perpetrated with the spouse (St. Thomas, Supplement, q. 62, a. 1, ad 4; St. Alphonsus VI, 962, question 2°).

Corollary I. The innocent spouse is not bound of himself to institute divorce; incidentally he can be bound either on account of hope of amending the guilty one, or on account of avoiding scandal arising from the fact that someone would seem to consent to the continued adulteries of the spouse. Practically, however, an obligation will scarcely be present, with the inconveniences also about to follow considered (St. Thomas, Supplement, q. 62, a. 2; St. Alphonsus VI, 963, 964).

Corollary II. The innocent party, whether he or she has departed by sentence of a judge or by his or her own authority, is never bound to receive the adulterer, however amended, or to return to him or her (canon 1130), unless the innocent party commits adultery before the sentence of divorce has been issued by the ecclesiastical judge. After this sentence has been issued, the obligation is sufficiently probably lacking according to that maxim, "What has once been well decided... ought not to be reconsidered by any repetition" (St. Alphonsus VI, 965; 967, doubt 2; *Homo Apostolicus*, tract 18, n. 96). Nevertheless it is always laudable to receive the penitent one back into favor.

Corollary III. The innocent spouse can admit or recall the adulterous party, unless with the innocent spouse's consent the latter has taken up a state contrary to marriage (canon 1130), namely sacred Orders or Religion. If, however, the adulterous wife prudently fears cruelties, she is not bound to return (St. Alphonsus VI, 976).

2. Mutual consent confers the right of perpetual separation in a twofold case:

a) If one or both parties emit perpetual religious profession, with the other party consenting; but in order that religious profession be valid, a dispensation of the Holy See is required (canon 542, 1°). Once religious profession has been emitted in this way, neither ever has the right of returning to the other or summoning the other.

b) If the husband receives sacred Orders, with the wife consenting; but in order that the reception be licit, a dispensation of the Holy See is required (canon 987, 2°). The reception of Order without the consent of the spouse is likewise illicit, indeed in such a way that the husband can be compelled to return and to abstain from all acts of Order.

In occurring cases, the Holy See can establish conditions for the other party who does not enter Religion, or for the wife whose husband receives sacred Orders; common law now prescribes nothing.

¹ Matthew 5:32; 19:9; Mark 10:11; Luke 16:18; 1 Corinthians 7:11-12.

² The Dogmatic theologians should be consulted.

³ Rule of Law 75 in VI.

841 II. Causes of temporary separation. 1. Causes of this kind are comprehended by canon 1131, § 1: If one spouse has given his name to a non-Catholic sect; if he has educated the offspring non-Catholically; if he leads a criminal and ignominious life; if he causes grave danger, whether of soul or of body, to the other; if by cruelties he renders common life too difficult: these and other things of this kind are for the other spouse so many legitimate causes of departing. It is said:

- a) If he has given his name to a non-Catholic sect. Therefore it is required that he be formally joined to a sect, whether of infidels, or heretical, or schismatic, and that after the marriage has been entered.
- b) If he has educated the offspring non-Catholically.
- c) If he leads a criminal and ignominious life, as if he joins himself to a band of robbers.
- d) If he causes grave danger, whether of soul or of body, to the other. Danger of soul, for example if he solicits to heresy, poisoning, etc. Add if the husband introduces others into the house with danger that they may tempt to adultery. Or if he wishes to exercise sodomy with the wife, even if she refused to consent (St. Alphonsus VI, 973). Danger of body, to which belongs, for example, a contagious disease of the spouse, unless, which today more easily has place, the danger can be removed in another way (St. Alphonsus VI, 973).
- e) If by cruelties he renders common life too difficult, for example by treating the consort cruelly. Mere beating, however, unless it is grave and happens several times, is ordinarily not judged among common people to be a just cause for withdrawing. Besides, it suffices that a grave evil be prudently feared (St. Alphonsus VI, 970, 971, question 3°). To this can also be referred insanity from which danger is imminent to the spouse; likewise very troublesome cohabitation, namely on account of grave and frequent insults or quarrels, especially if they bring in a just fear of a greater evil. Here, however, as was likewise said concerning cruelty, the condition of the persons is considered (St. Alphonsus VI, 971, question 3°).
- f) And other things of this kind, for example malicious desertion by the spouse.

2. All these causes of themselves furnish only the right of temporary separation. Wherefore canon 1131, § 2 says: In all these cases, when the cause of separation ceases, the custom of life must be restored; but if the separation was pronounced by the Ordinary for a definite or indefinite time, the innocent spouse is not bound to this except by decree of the Ordinary or when the time has been completed.

842 III. The authority by which separation is to be instituted. 1. Adultery, provided it is certain, confers the right of instituting separation by one's own authority (cf. canons 1129, § 1; 1130). Nevertheless, for the sake of avoiding scandal, ordinarily the authority of the ecclesiastical judge must be invoked, unless the adultery is notorious by law or by fact, although even then ordinarily it is expedient to seek the intervention of the ecclesiastical judge. And this is to be advised all the more because, when adultery is neither notorious nor legitimately proved, the judge can compel the spouses to cohabitation; but one must obey the judge, yet not render the debt to the adulterous spouse (St. Alphonsus VI, 968).

2. Mutual consent requires the intervention of Ecclesiastical Authority, as was said in n. 840.

3. Other causes require the authority of the local Ordinary, unless they are certainly established and there is danger in delay; in that case separation can be instituted by one's own authority (canon 1131, § 1).

Finally, separation from bed alone can take place either by mutual consent, according to these words of the Apostle: "Do not defraud one another, except perhaps by consent and for a time, that you may give yourselves to prayer,"¹ or, if a just cause exists, for example a contagious disease, by the authority

of one spouse. The same must be said of a separation not of long duration from bed and cohabitation, for instance to undertake a journey.

Note 1. The ecclesiastical judge in causes of separation of which canon 1131, § 1 treats can proceed without a judicial process, even in the second grade or instance.²

Note 2. In several dioceses the faculty has been granted to vicars forane of granting separation from bed and cohabitation for a time.

Note 3. Those who improperly instituted separation by their own authority can be left in good faith and admitted to the sacraments, if hope of fruit is absent and scandal is not feared. Besides, note that a wife illegitimately expelled by her husband is not numbered among those who are separated by their own authority.

¹ 1 Corinthians 7:5.

² Pontifical Commission, July 25, 1932 (A.A.S. 1932, p. 284).

843 IV. Consequences of separation legitimately instituted. 1. When separation has been instituted, the children must be educated with the innocent spouse; and if one of the spouses is non-Catholic, with the Catholic spouse, unless in either case the Ordinary, for the good of the children themselves, their Catholic education always preserved, has decreed otherwise (canon 1132).

2. The innocent spouse, perpetual separation having been legitimately instituted, can with a dispensation of the Holy See enter Religion or receive sacred Orders; the guilty one cannot do this unless the other either has already changed state by professing Religion or receiving sacred Orders, or consents expressly, or tacitly, for instance by refusing reconciliation repeatedly demanded (St. Alphonsus VI, 969).

3. Separated spouses can restore common life by private authority, and this holds even if the sentence of separation was issued by an ecclesiastical judge.

844 Question 1. Whether it is ever licit to petition for civil divorce.¹

Response 1. If the marriage is invalid from any cause whatever and has been declared such by competent ecclesiastical authority, it is licit, by petitioning, to intend and obtain civil liberty.²

Response 2. If the marriage is valid, the things to be posited having been posited, it is likewise licit if the law in force does not intend the dissolution of the bond. If it intends the dissolution of the bond, it is disputed; but a sufficiently probable opinion affirms it, because the petitioner can abstract from the intention of the legislator, and as a Catholic, for we are speaking of such a person, must be judged to abstract from it. This being posited, the petitioner, as we will immediately say, does not seek something which cannot be furnished by the judge without sin. I said "the things to be posited having been posited," that is, with the approval of the competent ecclesiastical authority first had, insofar as this is required according to what was said in n. 842. I said "can abstract from the intention of the legislator," just as he can and must abstract if there is question of an invalid marriage.

Question 2. Whether a judge can ever render a sentence of divorce if there is question of a valid marriage.

Response 1. If the law intends the dissolution of the bond, it is disputed; but a sufficiently probable opinion affirms it. For the judge can abstract from the intention of the legislator and, as a Catholic,

for we are speaking of such a person, he is judged to abstract from it. This being posited, his action is not evil in itself; nor does it involve approval, and therefore neither formal cooperation, of the action of the petitioners, who perhaps do not abstract from the intention of the legislator or who intend the dissolution of the bond. I said "can abstract from the intention of the legislator," just as he can and must abstract if there is question of an invalid marriage. Besides, a just cause for admitting material cooperation is already had from the fact that otherwise good men would have to abstain almost entirely from an office of such great importance.

The controversy does not seem able to be settled by authority. Some favorers of the more benign opinion appeal to the response given by the Holy Office to the Apostolic Nuncio of Belgium, September 14, 1866. But if you admit that by Belgian law the dissolution of the bond was originally regarded, the sense of the law already for a long time seems to have been so changed by usage that the law rather permits one to act as if the bond were dissolved than itself intends to dissolve the bond. Favorers of the stricter opinion chiefly allege responses of the Holy Office, June 25, 1885 and May 27, 1886; but the adversaries respond that these were probably given by reason of peculiar circumstances.³

Corollary I. Advocates of themselves speak licitly for divorce only insofar as the spouses licitly petition for it. If they petition illicitly, the advocate is not excused except on account of a most grave cause.

Corollary II. Where separation from bed and cohabitation suffices for the intended end, divorce of itself cannot be petitioned. Nevertheless it is licit on account of a very grave cause; for instance if, when divorce is petitioned, the whole offspring will be entrusted to the religious spouse, but if it is not petitioned, a part of the children certainly or probably will be entrusted to the irreligious spouse.

Corollary III. Pastors and confessors should for the most part endeavor to turn the faithful away from the plan of obtaining divorce, and to exhort the separated to restore common life, namely on account of the danger of incontinence which rather often is imminent to each party. There is added the fact that the education of the offspring easily suffers detriment; indeed the fear that the offspring, wholly or in part, may be adjudged to a pernicious spouse can be a reason on account of which one must abstain from divorce or from a lesser separation.

¹ Cf. Duynstee, *Burgerlijk Recht en zielzorg*, n. 76.

² Holy Office, September 9, 1824.

³ De Smet, *op. cit.*, n. 399.

Appendix III. On Civil Marriage

845 I. Notion. Civil marriage strictly taken is a true marriage contracted or attempted according to civil law before a civil official. Broadly taken it is the formality performed before a civil official, or notification made to a civil official of a marriage already contracted, made in order to acquire civil effects for the marriage.

II. Morality. We are speaking of the marriage of Christians; for as regards the marriage of infidels, which is subject to the civil power, there is no difficulty.

1. The law of civil marriage is dishonorable insofar as, according to the mind of the legislator, it commands Christians to emit true consent before an official of the State, and to place civil marriage before ecclesiastical marriage. For the Church prescribes, and indeed for validity, that Christians furnish consent before their own minister; for liceity she commands that they contract before their own minister before they contract before the magistrate.¹ Nevertheless, practically:
2. Those about to marry can posit the civil act and place it before the ecclesiastical act, provided they intend nothing other than to perform the civil ceremony; indeed, ordinarily there is an obligation of acting in this way, namely so that they may provide for themselves, for the other spouse, and for the offspring² (St. Alphonsus II, 16).
3. Officials and witnesses licitly assist at the civil act as follows:
 - a) This is commonly affirmed if the legislator does not intend to touch the bond.
 - b) It is likewise licit, provided a proportionate cause underlies it, even if the legislator intends to touch the bond. And this holds even if those about to marry, who are held by a dispensable impediment, are foreseen not to be going afterward to contract true marriage.³ Indeed, the same is sufficiently probably affirmed even if those about to marry cannot even contract a valid marriage on account of an indispensable impediment, for instance that of bond, which stands in the way. The reason is that the official and witnesses can abstract from the intention of the legislator, and therefore not assist with the intention of assisting true consent; this is not evil in itself. And since they can abstract, and therefore, as Catholics, for we are now speaking of them, truly do abstract and must be judged to abstract, their action does not involve approval, and therefore not formal cooperation, of the action of those about to marry, who perhaps do not abstract from the intention of the legislator or who intend true consent. I said that they can abstract from the intention of the legislator, just as those about to marry themselves can and must abstract from it.

This question, if an indispensable impediment stands in the way of the marriage, especially bond, is sharply disputed; moreover, it does not seem able to be settled by authority. Defenders of the stricter opinion appeal to the Sacred Penitentiary (November 28, 1883) and to the Holy Office (December 11, 1830 and May 27, 1886). But the Congregations "do not mark that assistance as intrinsically evil, which could be tolerated in no case. Besides, the first treats of missionaries, not of laypersons; the second was given for France soon after the law of divorce had been introduced; and the Sacred Penitentiary responded to a Bishop of Italy, where divorce in the civil forum is not yet in force, and a new marriage was evidently contracted after the religious marriage had been legitimately celebrated."⁴ In a word: the Sacred Congregations perhaps responded in this way because they judged that, on account of special circumstances, no proportionate cause was given by which material cooperation would be made honorable.

One who admits the stricter opinion should leave officials in good faith, and should send those asking questions, on account of the importance of the matter, to the Ordinary.

¹ Cf. Letter of Leo XIII to the Bishop of Verona, February 8, 1893.

² Constitution of Benedict XIV *Redditae sunt nobis*, September 17, 1746; Instruction of the Sacred Penitentiary, January 15, 1866; Encyclical of Leo XIII *Arcanum*; Sacred Congregation of the Sacraments, July 1, 1917.

³ Cf. Instruction of the Sacred Penitentiary, January 15, 1866, which in the case responded that "Officials are to be directed according to the rules handed down by approved authors, and especially by St. Alphonsus de Liguori,

concerning cooperators"; Instruction, March 29, 1885.

⁴ Wernz-Vidal, *op. cit.*, n. 591.