MANUAL OF MORAL THEOLOGY

by Ludovicus Wouters, C.SS.R.

Emeritus Professor of Moral and Pastoral Theology

VOLUME II

On the Aids of the Christian Life, and on Ecclesiastical Penalties

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Book III. On the Aids of the Christian Life, or on the Sacraments

We shall speak first of the sacraments in general, then of the sacraments in species.

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 Trent[1] 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 Trent[1] 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 Sacraments[1] 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 confection 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 confection 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 confected 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 honorable[1] (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 reputation[4] 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 publicly[1] 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 confected 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 confect 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 confection. 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 dioecesana*, 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 XIV[2] (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 III[3] 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 Ritual[4] 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; Lehmkuhl (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 II. On Baptism

(St. Thomas, part 3, qq. 66-69; St. Alphonsus, *Theologia Moralis*, book VI, nn. 95-160; *Homo Apostolicus*, tract 14, nn. 7-38.)

We shall speak first of Baptism considered in itself, then of its ministration, and finally of the reception of Baptism.

Dissertation I. On Baptism Considered in Itself

50 Baptism is a sacrament by which man is spiritually regenerated through the washing of the body with water, done by another, under the express invocation of the individual Persons of the Most Holy Trinity. With this summary notion premised, we shall treat first of the existence, then of the essence, then of the effects, and finally of the necessity of Baptism.

Part I. On the Existence of the Sacrament of Baptism

51 Baptism is a true sacrament of the New Law. This is of faith from the Council of Trent,[1] and it is clear from Sacred Scripture, which openly teaches that Baptism is a sensible sign instituted by Christ and efficacious of grace.

I said a sensible sign, that is, consisting of matter, which is washing with water, and of form, which is situated in the invocation of the Most Holy Trinity. It suffices to have alleged John 3:5: Unless one is born again of water and the Holy Spirit, he cannot enter into the kingdom of God; and Matthew 28:19: Going therefore, teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Spirit.

I said a sign efficacious of grace; since regeneration, concerning which Matthew speaks in the cited place, cannot be understood except as spiritual regeneration, which is effected through grace. For the rest, let the dogmatic theologians be consulted.

Note 1. It is disputed concerning the time at which Christ instituted Baptism. The more common and more probable opinion teaches that it was instituted by Christ before the Passion. Otherwise the Apostles would have received the Holy Eucharist and Order before Baptism had been received. There is added that the disciples of Christ baptized before the Passion of the Master.[2] Now the Baptism conferred by the disciples seems to have been different from the Baptism of John the Baptist. This is deduced from John 3:25 ff. It remains, therefore, that we say that the Baptism conferred by the disciples of Christ was our sacrament. For a third Baptism is invented without sufficient reason (St. Thomas, III, q. 66, a. 2; St. Alphonsus, VI, 96).

It is more disputed at what precise moment Christ instituted Baptism. According to some, in the discourse with Nicodemus;[3] according to others, when He sent the disciples to baptize.[4] According to St. Thomas (III, q. 66, a. 2 and q. 73, a. 5, ad 4), St. Alphonsus (VI, 96), and others, when He Himself was baptized by John.[5]

Note 2. The Baptism of John was not of the same efficacy as the Baptism of Christ. This is of faith from the Council of Trent.[6] Further, according to St. Thomas, "the Baptism of John was not of itself a sacrament, but as it were a certain sacramental disposing for the Baptism of Christ, and therefore in some way it belongs to the law of Christ, but not to the law of Moses" (III, q. 38, a. 1, ad 1).

[1] Session 7, On Baptism, canon 1.

[2] John 4:1, 2.

[3] John 3.

[4] John 4:1, 2.

[5] Matthew 3:11-17.

[6] Session 7, On Baptism, canon 1.

Part II. On the Essence of the Sacrament of Baptism

Section I. On Remote Matter

52 **I. The remote matter of Baptism required for validity is true and natural water.** This is of faith from the Council of Trent,[1] and is declared by canon 737, § 1. By true and natural water is understood that which according to common estimation comes under the name of natural water; for attention must be paid to this more than to the assertions of chemists. Water remains valid matter even if a diverse element has been mixed in, provided the quantity mixed in is small and does not change the water substantially. Thus, for example, valid matter is water into which a thousandth part of corrosive bichloride of mercury has been mixed;[2] with which water many physicians in a case of necessity baptize infants, especially in the womb of the mother, namely lest the mother's uterus be affected by disease.[3]

Water composed by chemical art from the elements which constitute water, that is, from oxygen and hydrogen, is doubtful matter. In the case there is true water; likewise water natural according to intrinsic causes, but artificial according to the extrinsic cause. Further, it is doubted whether water of this kind is valid matter.

Corollary I. Matter certainly valid is: 1. water drawn from wells, spring water, sea water, rain water; 2. water melted from ice, snow, or hail; likewise water condensed from vapor; likewise water purified from foreign elements by distillation; 3. sulphurous, ferruginous, or mineral water, provided that according to common estimation it is still called water.

Corollary II. Matter certainly invalid is: 1. blood, milk, wine; 2. fluids of the body, such as sweat, urine, saliva; 3. ice, snow, and hail, so long as they have not yet melted; 4. the sap of plants is almost certainly invalid matter. Amniotic fluid, that is, the fluid by which the fetus enclosed in the afterbirth is surrounded, seems to be invalid matter. For it is constituted by secretions from the body of the mother and of the infant, and therefore seems to have to be equated with other secretions, such as sweat, etc. Since, however, the matter is not so certain, in a case of necessity, if Baptism cannot be conferred in a more certain way, it can be ministered with amniotic fluid.[4]

Corollary III. Doubtful matter, besides water composed by chemical art, concerning which above, is: 1. moisture flowing from a vine or other trees; 2. liquid from dissolved salt; 3. water drawn by chemical art from plants, flowers, roots, such as rose water; 4. finally, broth, beer, coffee, tea, ink, mud, lye, and artificial waters are more or less doubtfully valid, according as they are thicker or thinner, or contain a greater or lesser quantity of foreign elements (St. Alphonsus, VI, 103, 104).

[1] Session 7, On Baptism, canon 2.

[2] In French: *chloride de mercure*.

[3] Holy Office, 21 August 1901, in *Nederlandsche Katholieke Stemmen*, 1901, p. 289.

[4] Cf. Aertnys-Damen, *Theologia moralis*, vol. II, n. 47.

53 **II. The remote matter required for liceity is water certainly valid, pure, and, if there is question of solemn Baptism, that is, Baptism which is administered with all the rites and ceremonies (can. 732, § 2), baptismal water, that is, water blessed for baptizing (can. 757, § 1).** It is said:

1. Certainly valid; nevertheless, in extreme necessity only matter certainly invalid is excluded. If the matter is doubtful, Baptism should be conferred under condition: if the matter is valid; and afterwards it should be repeated under condition (St. Alphonsus, VI, 103).
2. Pure, that is, neither mixed[1] nor filthy. To use very impure water without necessity is a grave sin (St. Alphonsus, VI, 102).
3. Baptismal for solemn Baptism (can. 757, § 1); and this obligation is grave (St. Alphonsus, VI, 102). The consecration, however, must be done twice in the year, namely on Holy Saturday and on the Vigil of Pentecost, the old water having been poured into the sacrarium;[2] the precept of consecrating the water at the aforesaid times is grave. If lack is feared, common water can be mixed with it, even repeatedly, but in a smaller quantity (can. 757, § 2); if, however, it has become corrupted, or has flowed out, or has failed in any way whatsoever, the pastor is to pour fresh water into the font, well cleaned and neat, and bless it by the proper rite prescribed in his liturgical books (can. 757, § 3). Moreover, if the baptismal water is too cold, it can licitly be warmed or mixed with warmed common water.

With regard to the water to be used in private Baptism, it is better, if it can be done, to use baptismal water, but there is no obligation (cf. can. 757, § 3). Hence a priest called to confer private Baptism will laudably carry with him a sufficient quantity of baptismal water. "If baptismal water is not had and danger threatens, let the priest use simple water,"[3] whether holy water or common water, as it is permissible to interpret this word.[4]

[1] The Holy Office, on 21 August 1901, responded that the mixture of corrosive bichloride of mercury, concerning which in the text under I, is licit only where a true danger of disease is present.

[2] Roman Ritual, title 2, chapter 2, n. 5; Sacred Congregation of Rites, nn. 2878, 3331.

[3] Roman Ritual, title 2, chapter 2, n. 29.

[4] The Holy Office, 20 June 1883, prefers holy water.

Section II. On Proximate Matter

54 **I. The proximate matter required for validity is the washing of the one to be baptized, done by the baptizer himself.** This is clear from Sacred Scripture, which declares that man through Baptism is born again of water,[1] and is washed.[2] Canon 737, § 1, declares the same.

It is said:

1. **Washing;** and this indeed can be done in three ways, namely by immersion, pouring, and sprinkling. As regards validity, however, it makes no difference in what way it is done (can. 758). Nevertheless, true washing wholly requires:

a) That the water physically or immediately touch the one to be baptized. Hence: 1. Baptism is doubtful if the water has touched only the hair, scab, or birth matter still adhering in notable quantity. To birth matter there also seems to be numbered the *vernix caseosa*, which is accustomed to adhere to the fetus before cleansing. Hence surgeons and midwives, having removed scab and filth if need be, should either part the hair with the left hand while baptizing, or rather effect that the water flow over the temples of the head. Likewise, the sacred minister can, while pouring the water, divide

the hair, or rather proceed in such a way that the water flows somewhat over the forehead (St. Alphonsus, VI, 107, q. 3).

2. With regard to Baptism conferred on the afterbirth, some teach absolutely that it is invalid, in whatever afterbirth the conferral may be done; namely, they judge that no afterbirth is a part of the fetus. Others hold Baptism conferred on the external afterbirth, or decidua, as certainly invalid, but Baptism on the inner afterbirths as doubtfully invalid. The reason is that they judge the decidua certainly, but the other afterbirths only probably, not to be parts of the fetus. According to others, Baptism conferred on whatever afterbirth is doubtfully valid. Many allege as the reason that the afterbirths are united with, or constitute as it were one continuum with, the umbilical cord, which probably belongs to the fetus; and thus Baptism conferred on the afterbirths would not be certainly invalid. There is added, they say, with regard to the inner afterbirths, that it is not yet wholly established that they do not belong to the fetus.[3] In what way, all things considered, the fetus must be baptized will be explained in n. 93.

3. Baptism on the umbilical cord is more probably valid than on the afterbirths, because the cord is united immediately with the infant, while the afterbirths are united with the infant by means of the cord.[4]

b) That the water touch the one to be baptized with successive motion, unless several parts of water touch several parts of the body at the same instant, as happens, for example, in Baptism by sprinkling. For the rest, successive motion can occur in two ways, namely both by moving the body to the water, as in immersion, and by moving the water to the body, as in pouring and in sprinkling.

Moreover, a small quantity of water suffices, provided nevertheless that it flows over a sufficient part of the body; hence only one or another little drop, even if it flows, will leave Baptism practically doubtful (St. Alphonsus, VI, 107, q. 6). It also suffices that the baptizer, by the motion of a finger or of a moistened cloth, wash a part of the body (St. Alphonsus, loc. cit.). Note, however, that according to the Holy Office, Baptism conferred "by way of anointing on the forehead, with the thumb moistened in baptismal water," had to be repeated.[5]

2. **Of the one to be baptized;** namely, in such a way that the man can morally be said to have been washed. Further, Baptism is certainly valid if the washing is done on the whole body or on the head, whether on the forehead, cheek, or crown; most probably if on another more principal part, as on the shoulder-blades, shoulders, or chest; it is more doubtful if on a less principal part, as on the hand, finger, or foot. The reason why Baptism conferred otherwise than on the whole body or on the head remains doubtful is "because ... in none of the exterior parts does the integrity of life consist as in the head" (St. Thomas, III, q. 68, a. 11, ad 4; St. Alphonsus, VI, 107, qq. 3 and 4). Hence canon 746, §§ 2 and 3: If the infant has put forth the head and danger of death threatens, let him be baptized on the head; nor afterwards, if he comes forth alive, is he to be baptized again under condition. If he has put forth another member, let him be baptized on it under condition if danger threatens; but then, if he is born alive, he is again to be baptized under condition.

3. **Done by the baptizer himself.** Therefore it does not suffice that the washing be done by the one to be baptized, or by a third party, or by a natural cause alone. Therefore:

a) Baptism would certainly be invalid: 1. if someone, seeing another washing himself or falling into a river, were to pronounce the form; 2. if someone were to utter the form while a third party poured the

water (n. 20).

b) It would be doubtfully invalid if the baptizer himself were to place the one to be baptized under water poured by a third party, provided that the third party is not employed as applying the matter.

c) Baptism would be almost certainly valid if the baptizer himself moved the one to be baptized to water falling from a roof or from the sky, or springing from a fountain (St. Alphonsus, VI, 106).

Corollary I. If Baptism is conferred by immersion, it does not suffice that someone be held motionless in motionless water, because the baptizer cannot be said to wash the one to be baptized. Besides, according to some authors it is also required that the one to be baptized be drawn out of the water, according to that saying of Paul: Do you not know that all we who have been baptized in Christ Jesus have been baptized in His death? For we have been buried together with Him through Baptism into death, so that, as Christ rose from the dead by the glory of the Father, so we also may walk in newness of life; for if we have been planted together in the likeness of His death, we shall also be in that of His resurrection.[6]

Corollary II. They also ask about the throwing of the one to be baptized, for example an infant, into a river. Now Baptism of this kind is doubtfully valid, for example because there is not had, as we suppose, emergence. Moreover, a manner of acting of this kind seems absolutely illicit, because the said throwing of itself tends only to killing. "Nevertheless it is licit to baptize a child soon to die with even icy water, if other water cannot be had, even if it were feared that death would be hastened by this ... because then death would not occur of itself, but accidentally; since such an action of itself does not tend to killing, but to washing" (St. Alphonsus, VI, 100). The same, with the same circumstances supposed, holds concerning poisoned or boiling water from which the infant would be killed.

[1] John 3:5.

[2] Eph. 5:26; Tit. 3:5; Acts 22:16; Heb. 10:22.

[3] The fetus is enveloped in three membranes or afterbirths, which are: 1. the exterior afterbirth, which is called the decidua; 2. the inner afterbirths, namely the chorion and amnion. Cf. Cavellmann-Bergmann, *Pastoral-Medizin*, p. 242; *Nouvelle Revue Theologique* 1912, p. 581.

[4] *Nederlandsche Katholieke Stemmen*, 1927, p. 146.

[5] 14 December 1898 (*Collectanea*, n. 2028); cf. Holy Office, 8 November 1770; 9 July 1779 (*Collectanea*, nn. 486, 530).

[6] Rom. 6:3-5.

55 **II. The proximate matter required for liceity in solemn Baptism is gathered from canon 758 and the Roman Ritual.** The cited canon declares: "Although Baptism can be conferred validly either by pouring, by immersion, or by sprinkling, nevertheless the first or second mode, or one mixed from both, which is more in use, is to be retained, according to the approved ritual books of the diverse Churches." Therefore the third mode, by sprinkling, is no longer to be used. The Roman Ritual defines the mode of baptizing more by these words: "The priest takes baptismal water in a small vessel or pitcher and pours it three times over the head of the infant in the form of a cross ... But where there is a custom of baptizing by immersion, the priest takes the infant and, taking care that he not be harmed, cautiously immerses him and baptizes by a triple immersion."[1] The triple pouring or immersion in solemn Baptism obliges under grave obligation (St. Thomas, III, q. 66, a. 8; St. Alphonsus, VI, 107, q. 5); in private Baptism it is recommended insofar as it can be done.

[1] Title II, chapter 2, nn. 19, 20. In almost all Churches which use the Latin rite, Baptism is conferred by pouring.

Section III. On the Form

56 The legitimate form of Baptism is:

For the Latin Church: **I baptize you in the name of the Father and of the Son and of the Holy Spirit.** This is clear from the Fourth Lateran, Florentine, and Tridentine Councils,[1] and likewise from the Roman Ritual.[2] That *Amen* is not to be added at the end is clear both from the cited documents and from the response of the Sacred Congregation of Rites on 9 June 1853.

For the Greek Church: **The servant of Christ, N., is baptized** (here the name of the one to be baptized is placed) **in the name of the Father and of the Son and of the Holy Spirit.** This is established from the Council of Florence and from the decree of Eugene IV for the Armenians.

[1] Session 7, canon 4, On Baptism.

[2] Title II, chapter 2, n. 8.

57 **I. For validity, so that it be certain, it is required that there be expressed in the form:** 1. the person baptizing (*I*); 2. the person to be baptized (*you*); 3. the act of baptizing (*baptize*); 4. the unity of the divine nature (*in the name*); 5. the express distinction of the three Persons, and indeed by proper names: Father, Son, and Holy Spirit. That the act of baptizing and the distinct invocation of the three Persons must be expressed, all concede. Concerning the rest there is dispute. Therefore let there be expressed:

1. **The person baptizing.** Whether the expression of this in the form of the sacrament is required for validity can be disputed. For the rest, it certainly suffices that it be expressed implicitly, as is done in the form of the Greeks, where they say that *is baptized* has the same force as *is baptized by me* (cf. St. Thomas, III, q. 66, a. 5; St. Alphonsus, VI, 108).

Corollary. The word *I* is not essential in the Latin and Greek languages, because the first person, as it is said, is expressed through the word *baptize*; the same cannot be said of several more recent languages.[1]

2. **The person to be baptized** indeed seems to have to be expressed, "because, just as the washing, so also the form must be concerned with a certain person" (St. Alphonsus, VI, 108). Yet it seems to suffice that it be expressed implicitly; this can be done even if the word *you* is omitted. Hence the Holy Office on 8 September 1633 declared valid the form of the Armenians: *Now my hand baptizes in the name of the Father and of the Son and of the Holy Spirit*.[2] But the declaration of the Sacred Congregation de Propaganda Fide, dated 11 September 1841, that Baptism is rendered invalid through omission of the word *you*, was omitted in the new edition.

3. **The act of baptizing, and indeed the present act or act now being placed, must be expressed,** as is clear: 1. from the Council of Florence;[3] 2. from proposition 27 condemned by Alexander VII: "Baptism conferred under this form was at some time valid: In the name of the Father, and of the Son, and of the Holy Spirit, these words being omitted: I baptize you";[4] 3. from the Decretal of Alexander III;[5] 4. from this reason of St. Thomas: "Because the washing of a man in water can be for many things, it is necessary that it be determined in the words of the form for what it is done; and this indeed is not done by the fact that it is said: In the name of the Father, and of the Son, and of the Holy Spirit, because we ought to do all things in such a name, as is had

in Colossians 3. And therefore, if the act of Baptism is not expressed either according to our mode or according to the mode of the Greeks, the sacrament is not perfected" (III, q. 66, a. 5, ad 2; St. Alphonsus, VI, 108). But the present act of baptizing, or the act now being placed, must be expressed; otherwise, considering the form, nothing would be effected now.

Corollary I. The word *baptize*, or another equivalent, such as *wash* or *lave*, is essential; but not *anoint*, because it does not involve the signification of washing. But in order that a certainly valid word be used, it is better in the vernacular language to use a word derived from the Latin *baptizare*, such as *baptiser*, *to baptize*, unless there is had a word which by usage has been consecrated for signifying sacramental washing, such as *doopen*, *taufen*.

Corollary II. There is doubt concerning the form: *I christianize you*, or concerning the English formula: *I christen thee*, because it expresses rather the effect of the sacramental action than the action itself. Yet if that or a similar formula somewhere by common acceptance signifies the action of baptizing, it is certainly valid. Hence it is valid among the Yugoslavs, as is clear from the Slavic Ritual, which was approved by the Holy See in 1894 and contains for the Greek rite the form: *krescaetsja* (= is christianized), for the Latin rite: *Ia te krstim* (= I christianize you).

[1] The Sacred Congregation of the Council on 11 February 1797 declared valid Baptism conferred thus, provided that a bad or heretical mind is set aside: *Enfante, te baptize en nom de Pere, de Fils et de Saint-Esprit*.

[2] *Collectanea*, n. 74.

[3] Denzinger-Bannwart, n. 696.

[4] Denzinger-Bannwart, n. 1317.

[5] Chapter 1, X 3, 42.

58 **4. The unity of the divine nature likewise seems to have to be expressed,** considering the words of Christ: Baptizing them in the name of the Father and of the Son and of the Holy Spirit.

Corollary I. *In the name* is essential, at least insofar as it signifies unity; hence it would be invalid: 1. with the words *in the name* omitted, to say *in the Father*, etc.; 2. in place of *in the name*, to use the words *in the names* (St. Alphonsus, VI, 111).

Corollary II. The following forms are valid: 1. *I baptize you in the name of the Father, in the name of the Son, in the name of the Holy Spirit*;[1] 2. *I baptize you in the name of the Father, I baptize you in the name of the Son, I baptize you in the name of the Holy Spirit*;[2] 3. *I baptize you in the name of the Father and in the name of the Son and in the name of the Holy Spirit*;[3] 4. *I baptize you with the name of the Father*, etc.[4] Further, the four assigned forms, according to the mind of the Sacred Congregations, are valid if, a depraved or heretical mind being set aside, they are used. 5. *I baptize you into the name of the Father*, etc.; for this form plainly agrees with the form handed down in Sacred Scripture.[5]

Corollary III. Since it is somewhat doubtful whether the words *in the name* signify *the name having been invoked* or *by the authority*, the following forms are doubtful: 1. *I baptize you by the authority of the Father*, etc.; 2. *I baptize you name of the Father*, *in* being omitted (St. Alphonsus, VI, 112, dub. 2). In the case of Faesulae,[6] Baptism conferred in Italian in this way, *Io ti battezzo 'nnome del Padre*, etc., is indeed judged valid; but the consultor argued from the usage in the Italian language, or in the Etruscan idiom, of omitting the letter *i* before *m* and *n*. Hence the declaration cannot be referred to another language.

[1] Cf. Holy Office, 11 January 1882, and Sacred Congregation of the Council, 4 May 1641.

[2] Holy Office, 11 January 1882.

[3] Sacred Congregation of the Council, 4 May 1641.

[4] Sacred Congregation of the Council, 16 August 1828; 24 May 1823; Holy Office, 23 May 1720. See *Thesaurus resolutionum*, vol. 83, fol. 134 and following.

[5] Cf. the Greek text, Matthew 28:19; Acts 19:5; 1 Cor. 1:13.

[6] 12 September 1801.

59 **5. The express distinction of the three Persons.** It is required that the three Persons be expressed explicitly, and, in order that every doubt about validity be excluded, by proper names, and those common or such as are accustomed to be used, and so joined that the distinction is sufficiently signified. This is clear from the words of Christ: Baptizing them in the name of the Father and of the Son and of the Holy Spirit; likewise from Tradition[1] (St. Thomas, III, q. 66, a. 5 and ad 7; St. Alphonsus, VI, 108, 109). Therefore the three Persons:

a) Must be expressed. It is indeed disputed whether, by special dispensation in the time of the Apostles, Baptism conferred under the form *in the name of Jesus* was valid. But after the times of the Apostles all concede that Baptism conferred in this way is not valid. This is drawn from the words of Christ: Baptizing them in the name of the Father and of the Son and of the Holy Spirit. Likewise from Tradition.[2] Hence the forms are invalid: *in the name of God*; *in the name of Christ* (St. Alphonsus, VI, 108).

b) Explicitly, as is proven by the arguments brought forward under a). Hence likewise the forms are invalid: "in the name of the Most Holy Trinity"; "in the name of the three Persons" (St. Alphonsus, VI, 111).[3]

c) By proper names. This is urged by the words of Christ and the ancient practice of the Church. The form is very doubtful: "in the name of the Omnipotent and the Wise and the Good."

d) And by common names. "As," says St. Thomas, "water is taken for Baptism because its use is more common for washing, so for signifying the three Persons in the form of Baptism those names are assumed by which the Persons have been more commonly accustomed to be named in that language; nor is the sacrament perfected in other names" (III, q. 66, a. 5, ad 7). Therefore in the Latin language it should be said: "in the name of the Father and of the Son and of the Holy Spirit." But the following forms are doubtful: "in the name of the Begetter and of the Begotten and of the One Proceeding from Both"; "in the name of the First and Second and Third Person of the Most Holy Trinity"; "in the name of the Father and of Jesus Christ and of the Holy Spirit" (St. Alphonsus, VI, 109). The form "in the name of the Father and of the Son and of the Holy Spirit and of Mary" is invalid if *of Mary* is said in the same sense as *of the Father*, etc.; but it is valid if the minister wills to invoke her as a helper in obtaining grace (St. Alphonsus, VI, 108).

e) And joined in such a way that the distinction is sufficiently signified. Now: 1. The form is certainly valid if the conjunction *and* is omitted only between *Father* and *Son*, and therefore it is said: "in the name of the Father, the Son, and the Holy Spirit." The reason is that the very word *Son* designates a distinct Person. Then, the usage is sufficiently customary of denoting distinct members in this way. There is added the response of the Sacred Congregation of the Council.[4] 2. The forms are somewhat doubtful: 1. if the conjunction is omitted twice: "in the name of the Father, the Son, the Holy Spirit"; 2. if it is expressed only between *Father* and *Son*: "in the name of the Father and of the Son, the Holy

Spirit." The reason for both is that then *Holy Spirit* can seem to be an apposition of *Son*; for the name Holy Spirit belongs both to the Father and to the Son (St. Alphonsus, VI, 112). Responses are indeed reported which declared valid Baptism conferred in this way: *Mi te abattezzo in nome del Padre e del Figliuolo, dello Spirito Sancto*; but the matter is not sufficiently certain and clear to remove every doubt.[5]

[1] Rath, *De Baptismo*, n. 287.

[2] Cf. Rath, *De Baptismo*, n. 287.

[3] Nicholas I in the year 876 to the Bulgarians holds as valid Baptism conferred in the name of the Most Holy Trinity or only in the name of Christ, and argues from Acts; cf. Acts 2:38; 19:5 (Denzinger-Bannwart, n. 335).

[4] 12 September 1801.

[5] Cf. Lehmkuhl, *Theologia Moralis*, II, n. 90, note 1.

60 **II. For liceity it is required that Latins use the formula of the Roman Ritual, and Greeks the formula shown in their Rituals.** Besides, observe that by any change a grave sin is easily committed; for some doubt about the validity of so necessary a sacrament will easily arise.

Corollary. From what has been said both in the present number and in the treatise on the Sacraments in general (n. 23), it is gathered that faulty pronunciation of the form is generally not substantial if it is made from haste, inadvertence, or because of stammering; more easily if it is made with a heretical mind.

Part III. On the Effects of Baptism

61 The effects of Baptism are:

I. Sanctifying grace, of itself first grace, accidentally second grace (n. 6), with the infusion of all the virtues and gifts of the Holy Spirit attached.

II. Sacramental grace; this consists in the fact that the sanctifying grace which Baptism confers is both ordered to this, that man be spiritually regenerated and live Christianly, and carries with it a right to actual graces in order to living Christianly. This spiritual regeneration involves the remission of all guilt, both original and personal; the remission of all punishment, both eternal and temporal, with the things to be posited being posited, that is, sorrow for sins.

III. Character. 1. The existence of character is clear from the things said in n. 8.

2. Effects of character. Baptismal character effects that man:

a) Is deputed to the worship of God according to the rite instituted by Christ and exercised in the Church, especially with regard to the sacraments, for the reception of which, therefore, he is rendered capable by character (St. Thomas, Supplement, q. 35, a. 3; III, q. 63, a. 6; St. Alphonsus, VI, 79; cf. can. 737, § 1).

b) Becomes a member of the Church, and is obliged to lead a Catholic life, and is subjected to the authority and laws of the Church, that is, of the spiritual society instituted by Christ (cf. can. 87).

Corollary. In order that the baptized be bound to live Catholicly and obey the Church, it is not required that, after attaining the use of reason, they be asked whether they wish to hold the baptismal promises as ratified and in fact hold them as ratified.[1] Nor should you say: It is repugnant that someone be subjected to authority and laws without the consent of his will. That this is not repugnant is clear even from the fact that without the consent of their will infants are subjected to the authority and precepts of parents, and citizens to the authority and laws of their country.

[1] Council of Trent, Session 7, On Baptism, canon 14.

Part IV. On the Necessity of Baptism

Baptism is necessary by necessity of means and of precept.[1]

[1] On the notion of each necessity, see vol. I, n. 484.

Section I. On Necessity of Means

62 After the sufficient promulgation of the Gospel, the sacrament of Baptism is necessary for salvation by necessity of means, yet not absolutely but hypothetically. It is said:

I. After the sufficient promulgation of the Gospel. Thus the Council of Trent.[1] Now sufficient promulgation for some, but not for all, was effected through the sermon of St. Peter on the day of Pentecost. For the rest, authors more commonly teach that the promulgation of the Gospel for different nations took place at different times, and that for the whole world it has already long since occurred, although its diffusion has not yet been extended everywhere.

II. The sacrament of Baptism is necessary for salvation by necessity of means; this proposition is of faith from the Council of Trent: "If anyone says that Baptism is free, that is, not necessary for salvation, let him be anathema."[2] Cf. canon 737, § 1.

III. Yet not absolutely, but hypothetically; by these words it is signified that there are means which can supply the place of Baptism, namely Baptism of desire and perhaps Baptism of blood, concerning which we shall speak in the scholia.

[1] Session 6, chapter 4.

[2] Session 7, On Baptism, canon 5.

Scholion I. On Baptism of Desire

63 **I. Notion.** Baptism of desire is so called because it is the effect of the Holy Spirit, who is also called *Flamen* (from breathing or inspiring). Now Baptism of desire is an act of perfect charity or perfect contrition.

64 **II. Suppletive Character.** Baptism of desire is a suppletive means of Baptism, that is, it does not justify except dependently on a desire, whether explicit or implicit, for Baptism. Now an implicit desire for Baptism is always included in an act of charity or perfect contrition elicited by one not baptized; for in such an act there is contained a general purpose of fulfilling all things which have been established by God, among which is the reception of Baptism by one not baptized.

65 **III. Suppletive Force.** An act of charity or perfect contrition supplies the place of Baptism with respect to justification, or the infusion of grace, and consequently with respect to all things which cannot be separated from it, namely the remission of original and actual sins, at least mortal sins, the remission of eternal punishment, the infused virtues, and the gifts of the Holy Spirit; but not with respect to sacramental grace, character, and the remission of all punishment.

66 **IV. The requisites for Baptism of desire to justify** are only those which constitute Baptism of desire.

67 **V. The manner in which Baptism of desire produces its effects.** Baptism of desire produces its effects only *ex opere operantis*; otherwise than the sacrament, which operates *ex opere operato*,[1] and

Baptism of blood, which operates at least partly, as it were, *ex opere operato*.[2]

Corollary. For one who has been justified through Baptism of desire, there remains the obligation of receiving the sacrament of Baptism, if this can be done; nor can he receive other sacraments before that.

[1] Others say: *ex opere operato* actively.

[2] Others say: *ex opere operato* passively.

Scholion II. On Baptism of Blood

68 **I. Notion.** Baptism of blood is martyrdom endured by one not baptized.

69 **II. Suppletive Character.** 1. Martyrdom in little children not baptized is not a suppletive means of Baptism, that is, it does not justify them dependently on a desire for Baptism. With respect to the fruitful martyrdom of adults, even if you posit that a desire for Baptism is contained in such martyrdom, nevertheless it seems doubtful whether justification takes place dependently on the aforesaid desire; in a word: it is doubtful whether or not Baptism of blood was instituted by God as a suppletive means of the sacrament; perhaps the desire for Baptism is required only as removing an obstacle, with respect to the infusion of grace.

70 **III. Suppletive Force.** Martyrdom in the non-baptized, both adults and infants, supplies the place of Baptism with respect to the remission of all guilt and punishment (vol. I, n. 418).

71 **IV. The requisites for Baptism of blood to justify.** 1. In little children no disposition is required.

2. In adults there are required the same things which are required for martyrdom strictly so called (vol. I, n. 418). Besides, if the adult has committed grave personal sin, according to some there are required acts of charity or perfect contrition; according to others attrition suffices; according to others, per se an act of charity or perfect contrition is required, while per accidens attrition suffices (cf. St. Alphonsus, VI, 98).

72 **V. The manner in which Baptism of blood produces its effects.** According to some, justification in itself is effected *ex opere operantis*, while from a quasi *ex opere operato* there is given a higher degree of justification; similarly, some remission of punishment is given *ex opere operantis*, while total remission of punishment is granted by a quasi *ex opere operato*. According to others, both justification and the remission of all punishment are effected by a quasi *ex opere operato*. According to others, the effects are produced in the manner of the former opinion if the martyr elicits an act of charity or perfect contrition; in the manner of the latter opinion if he is only attrite; wherefore the dogmatic theologians should be consulted.

Corollary. An adult who knows that martyrdom is imminent is certainly bound, if he can, to receive Baptism; likewise, if he is a sinner and baptized, to confess, or, if he cannot confess, to elicit perfect contrition, and this already because according to what has been said mere attrition with martyrdom probably does not suffice for justification; and so the hope of martyrdom does not free them from these things.

Section II. On Necessity of Precept

73 The necessity of precept already follows from the necessity of means. Moreover:

I. Adults not yet baptized, or doubtfully baptized, are bound to receive Baptism as soon as they can receive it worthily and, considering the circumstances and the dignity of the sacrament, suitably.

"For adults," says St. Thomas, "the sacrament of Baptism is not to be conferred immediately when they are converted, but it must be deferred until some certain time, first indeed because of the caution of the Church, lest she be deceived in conferring the sacrament on those who approach falsely, according to that passage of 1 John 4: Believe not every spirit, but prove the spirits whether they are of God; and this proving is taken concerning those approaching Baptism when for some space of time their faith and morals are examined. Secondly, this is necessary for the benefit of those who are baptized, because they need some space of time for this, that they may be fully instructed concerning the faith and exercised in those things which pertain to the Christian life. Thirdly, this is necessary for a certain reverence of the sacrament, while in the principal solemnities, namely of Easter and Pentecost, men are admitted to Baptism, and thus they receive the sacrament more devoutly" (III, q. 68, a. 3).

II. An adult who without reason defers Baptism for a long time sins gravely, because he is bound to be enrolled in the Church and to live as a Christian.

For the rest, compare what is to be said concerning the time of conferring Baptism (n. 87).

Dissertation II. On the Ministration of Baptism

We must speak first about the person ministering, then about the manner of ministering.

Part I. On the Person Ministering

74 **I. Every priest is the ordinary minister of solemn Baptism** in this sense, that by the force of his ordination he is deputed principally, not secondarily as a deacon is, for baptizing, and can always be delegated by the proper pastor of the person to be baptized to baptize, and that solemnly (cf. canon 738, § 1).

75 **II. A deacon is the extraordinary minister of Baptism** in this sense, that by the force of his ordination he is deputed secondarily for baptizing, and can be delegated by the Ordinary or by the proper pastor of the person to be baptized, for a just cause, to baptize, and that solemnly. Hence he is not to use his power without the delegation or permission of the local Ordinary or of the pastor, to be granted for a just cause, which, where necessity urges, is legitimately presumed (cf. canon 741; St. Alphonsus, VI, 116, doubt 1). It was said:

1. A deacon is deputed secondarily, because he is ordained rather to assist a minister of a higher order, and secondarily to supply his place.
2. For a just cause to be granted: for example, if the pastor is absent or ill or subject to excommunication or occupied in hearing confessions; perhaps also if the parents desire it, for example because of consanguinity, etc.
3. Where necessity urges, granted permission is not required, but presumed permission suffices. Now necessity urges if the person to be baptized is in the article or danger of death; likewise if it is foreseen that the priest will be absent for a long time, and no other can be approached.[1]

[1] Cf. Sacred Congregation de Propaganda Fide, 21 January 1788; 16 January 1804; 11 September 1841 (*Collectanea*, nn. 593, 674, 939).

76 **III. With respect to the right of baptizing solemnly, hold the following:**

1. The Ordinary of the place and the pastor enjoy the right of baptizing solemnly their own subjects, or rather the inhabitants of their territory; this does not belong to another priest except by permission of the same pastor or of the local Ordinary, which in a case of necessity is legitimately presumed (canon 730, § 1). He who performs this without due permission sins gravely (St. Alphonsus, VI, 115); likewise parents violate the right of the pastor when, without necessity or permission, they bring their child to another priest to be baptized.
2. Even a traveler is to be baptized solemnly by his own pastor in his own parish, if this can be done easily and without delay; otherwise any pastor can solemnly baptize a traveler in his own territory (canon 730, § 2).
3. Where parishes or quasi-parishes have not yet been established, account must be taken of special statutes and received customs, so that it may be established to which priest, besides the Ordinary, the right of baptizing belongs in the whole territory or in part of it (canon 740).

Note. The Baptism of adults, where it can conveniently be done, is to be referred to the local Ordinary, so that, if he wishes, it may be conferred more solemnly by him or by his delegate (canon 744).

77 **IV. With respect to the territory in which solemn Baptism may be conferred,** canon 739 establishes: In another's territory no one may, without due permission, confer solemn Baptism, not

even on inhabitants of his own place.

Corollary I. If a woman gives birth outside her own parish, she ought to see that the child is baptized in her own parish, if this can be done easily and without delay; otherwise she can choose either her own parish or that in which she gave birth to the child, or even another (canon 738, § 2; St. Alphonsus, VI, 115).

Corollary II. Those without fixed domicile can choose whichever church they prefer (cf. canon 94, § 2).

78 **V. Every human being is the minister of Baptism** in this sense, that he can baptize validly; in a case of necessity also licitly, though not solemnly (canon 742, § 1). If, when a case occurs, several are present, the prescribed order, to be assigned under 2 below, is to be observed. I said:

1. **In a case of necessity;** wherefore note:

a) Extreme necessity is not required, but a well-founded danger suffices, lest an infant soon to die should die. The Holy Office, to the question "whether a midwife, when she foresees that Baptism will have to be deferred for a long time, can immediately wash a newborn, although he is found in good health, even without the knowledge of one or both spouses, the pastor nevertheless having been warned of this," responded on 11 January 1899: "It must be urged that Baptism be administered as soon as possible; but then it will be permissible for the midwife to confer it when danger is positively feared that the child will die during the time of the delay."

b) To danger of death is equivalent a necessity which can arise especially in mission places from the lack of any priest whatever or from difficulty in approaching him; namely, the Sacred Congregation de Propaganda Fide several times approved the practice prevailing in several places by which catechists or other approved laypersons baptize the infants of Christians quickly, for example not beyond eight days from birth, even when they are in good health.[1]

2. **The order to be observed among several ministers of necessity** is set forth in these words by canon 742, §§ 2 and 3: If nevertheless a priest is present, he is to be preferred to a deacon, a deacon to a subdeacon, a cleric to a layperson, and a man to a woman, unless for the sake of modesty it is fitting that a woman rather than a man baptize, or unless the woman knows better the form and manner of baptizing. A father or mother is not permitted to baptize his or her own child, except in danger of death, when no other is present who can baptize. Thus also the Roman Ritual.[2] Now the prescribed order must be understood so that: 1. any of the faithful, even a woman, existing in union with the Church, must be preferred to any unbeliever, heretic, schismatic, or excommunicate to be avoided, even if he is a priest; 2. a woman is to be preferred to the father, but not to the mother.

3. **An inversion of the order** is per se illicit because of the precept of the Code and the Roman Ritual; but it is a grave sin only then: 1. when a non-priest is preferred to a priest existing in union with the Church; 2. when a non-Catholic or a person to be avoided is preferred to a Catholic. There is indeed doubt when a layperson is preferred to a deacon, since from the text of the law he is a minister by office (canon 741); but because he is only a secondary minister, it does not seem sufficiently established that there is grave sin. Besides, a just cause always seems to excuse from every sin; hence canon 742, § 2: "unless for the sake of modesty it is fitting that a

woman rather than a man baptize, or unless the woman knows better the form and manner of baptizing" (St. Alphonsus, VI, 117).

Corollary. Let the pastor see to it that the faithful, especially midwives, physicians, and surgeons, thoroughly learn the correct manner of baptizing for a case of necessity (canon 743).[3] If Baptism was administered neither by the proper pastor nor in his presence, the minister should as soon as possible inform the proper pastor of the baptized person by reason of domicile concerning the Baptism conferred (canon 778). In private Baptism, so far as it can be done, two witnesses, or at least one, are to be used, by whom the conferral of Baptism can be proved (canon 742, § 1).

[1] 21 January 1788 (*Collectanea,* n. 533); 16 January 1804 (*Collectanea,* n. 674); 11 September 1841 (*Collectanea,* n. 939).

[2] Roman Ritual, title 2, chapter 1, n. 16.

[3] Roman Ritual, title 2, chapter 1, n. 13.

Part II. On the Manner of Administering Baptism

It has been explained above what things are generally required for administering the sacraments validly and licitly. It is sufficient to develop more fully one of the requisites for licit ministration, and to apply it to Baptism, namely the obligation of ministering the sacrament duly, that is, according to the prescriptions of the Church. For the sake of completeness we shall explain both the things which must be observed in the conferral of Baptism and the things which must be observed after it. The prescriptions of the Church regard first the rites and ceremonies, then the sponsors to be used, then the time and place, and finally the notation and proof of Baptism conferred.

Section I. On the Rites and Ceremonies of Baptism

79 **I. The rites and ceremonies to be used.** 1. Per se Baptism is to be conferred solemnly (canon 755, § 1), that is, with all the rites and ceremonies which are prescribed in the ritual books being observed (canon 737, § 2). Now:

a) The prescribed rites and ceremonies differ according as Baptism is to be conferred on adults or on little children. Nevertheless the local Ordinary can, for a grave and reasonable cause, allow the ceremonies prescribed for the Baptism of infants to be used in the Baptism of adults (canon 755, § 2); wherefore note that the Baptism of adults is indeed more beautiful, but longer, so that it can more easily produce weariness both for the neophytes and for those standing by.

b) The offspring must be baptized in the rite of the parents. If one parent belongs to the Latin rite and the other to an Eastern rite, the offspring is to be baptized in the rite of the father, unless another provision is made by special law. If only one is Catholic, the offspring must be baptized in the rite of this one (canon 756). From these things it follows that, so far as it can be done, care must be taken that the offspring be baptized by a minister belonging to the rite in which the offspring must be baptized;[1] since each person is bound to follow his own rite in confecting and ministering the sacraments (canon 733, § 2; n. 27).

c) The interrogations are to be made in the Latin language; but from the response of the Holy Office[2] it is permitted that the minister, after he has said the interrogation and responses in the Latin language for himself, repeat the interrogation in the vernacular language, so that he may receive the response of the sponsors.[3]

2. In danger of death, Baptism may be conferred privately; and, if it is conferred by a minister who is neither a priest nor a deacon, only those things are to be done which are necessary for the validity of Baptism; if by a priest or deacon, the ceremonies which follow Baptism are also to be observed, if there is time (canon 759, § 1).

It is disputed whether, if the danger of death is fairly remote, the ceremonies preceding Baptism also must be performed. Now this is denied quite probably, because the canon speaks only of the subsequent ceremonies, and perhaps does so in order that every danger that someone might die before Baptism may be radically forestalled.

3. Outside danger of death, the local Ordinary cannot permit private Baptism, unless the case concerns heretics who in adult age are baptized conditionally (canon 759, §§ 1 and 2). In such a case even the ceremonies which follow Baptism can be omitted.

[1] Here note canon 98, § 1: "Among the various Catholic rites one belongs to that rite with whose ceremonies he was baptized, unless perhaps Baptism was conferred by a minister of another rite by fraud, or because of grave necessity, when a priest of the proper rite could not be present, or by apostolic dispensation, when the faculty was given that someone be baptized in a certain rite, yet without remaining ascribed to it." Moreover, one who, at the prayers of the parents, contrary to the prescription of canon 756, was baptized by a minister of another rite, belongs to the rite in which he ought to have been baptized according to the prescription of canon 756. Thus the Pontifical Commission, 16 October 1919 (*A.A.S.* 1919, p. 476).

[2] 25 August 1880 (*Collectanea*, n. 1538).

[3] In some places it has been conceded that the interrogations be made in the vernacular language alone.

80 **II. The obligation of the rites and ceremonies** is grave from its genus. Hence it would be mortal to omit a ceremony of greater moment, on account of a special end or signification. Such are the use of consecrated water, the anointing both that which must be performed before and that which must be performed after Baptism, the use of oil and chrism consecrated in the present year, insufflation, the imposition of saliva and salt, the profession of faith, and the threefold ablution. Besides, several ceremonies of lesser moment omitted together can coalesce into grave matter (St. Alphonsus, VI, 107, question 5a, 141, 142).

81 **III. Ceremonies to be supplied.** 1. Ceremonies which in the conferral of Baptism were omitted for any reason whatever are to be supplied as soon as possible in church, unless the case concerns heretics who in adult age have been baptized conditionally and privately by permission of the Ordinary (canon 759, § 3). Now the ceremonies from the Baptism of infants are used if Baptism was conferred in infancy, even if the supplying is done in adult age;[1] otherwise those from the Baptism of adults are used.

2. When Baptism is repeated conditionally, the ceremonies, if indeed they were omitted in the former Baptism, are to be supplied, except in the case in which an adult heretic is baptized conditionally and privately by permission of the Ordinary; but if they were used in the former Baptism, they can be repeated in the second or omitted (canon 760). The same things seem to have to be said of the case in which a heretic, as one certainly baptized invalidly in heresy, is baptized absolutely.

3. If a heretic validly baptized is converted to the faith, the ceremonies likewise are to be supplied, unless for a reasonable cause it seems otherwise to the local Ordinary.[2]

Note. From baptismal vows no new obligation arises.

[1] Cf. Sacred Congregation of Rites, 27 August 1836, n. 2743, III.

[2] Roman Ritual, title II, chapter 3, n. 12.

Section II. On Sponsors

82 **I. Notion.** Sponsors, or receivers, are those who lift the baptized person from the sacred font or receive him from the minister of Baptism. St. Thomas sets forth the reason for this institution in these words: "Spiritual regeneration, which is effected through Baptism, is in a certain way likened to carnal generation; hence it is said in 1 Peter 2: 'As newborn infants, desire the rational milk without guile.' Now in carnal generation the recently born little child needs a nurse and teacher; hence also in the spiritual generation of Baptism someone is required who performs the office of nurse and teacher,

by informing and instructing him, as one newly received into the faith, concerning those things which pertain to the faith and Christian life" (III, q. 67, a. 7).

83 **II. The obligation of taking a sponsor.** 1. From the most ancient custom of the Church, no one is to be baptized solemnly unless, so far as it can be done, he has his sponsor (canon 762, § 1; Council of Trent, session 24, chapter 2, on reform of marriage). Also in private Baptism a sponsor is to be used if one can easily be had; if he was not present, he is to be used when the baptismal ceremonies are supplied (canon 762, § 2). When Baptism is repeated conditionally, the same sponsor is to be used, so far as it can be done, who perhaps was present at the former Baptism; outside this case, in conditional Baptism a sponsor is not necessary (canon 763, § 1).

It is said, so far as it can be done; hence Baptism is rather to be conferred without a sponsor than to be deferred for a long time because of the lack of a sponsor.

2. Only one sponsor, even of a different sex from the one to be baptized, or at most one male and one female, are to be used (canon 764). It makes no difference of what sex the sponsor is; but if several are used, they must be one male and one female; more than two cannot be admitted.

3. The obligation of taking a godfather or godmother is grave if solemn Baptism is in question; if private Baptism or the supplying of ceremonies is the matter under discussion, the obligation seems only light, just as also the obligation of using the same sponsor if Baptism is repeated conditionally. He who takes two male sponsors or two female sponsors sins lightly if both are of the same sex as the one to be baptized; gravely, if they are of different sex, because kinships are multiplied contrary to the mind of the Church (St. Alphonsus, VI, 155, 159).

84 **III. The requisites for someone to be taken as sponsor.** 1. In order that someone be validly constituted sponsor, it is required: 1. that he be baptized, have attained the use of reason, and have the intention of carrying out that office; 2. that he belong to no heretical or schismatical sect, nor be excommunicated or infamous with infamy of law by condemnatory or declaratory sentence, or excluded from legitimate acts, nor be a cleric deposed or degraded; 3. that he be neither father nor mother nor spouse of the person to be baptized; 4. that he be designated by the person to be baptized himself, or by his parents or tutors, or, these failing, by the minister; 5. that in the act of Baptism he physically hold or touch the one to be baptized, either by himself or by a procurator, or immediately lift or receive him from the sacred font or from the hands of the one baptizing (canon 765).

Note. If more are designated than the law permits, some judge that all those designated become sponsors whether they touch simultaneously or successively, unless it is known who were designated first, in which case only these are constituted sponsors. Others with St. Alphonsus (VI, 154, doubt 2) distinguish and teach: if they touch successively, the first man and the first woman who touch become sponsors, not others; if all touch simultaneously, according to some no one, according to St. Alphonsus all are constituted sponsors.

2. In order that someone be licitly admitted as a sponsor, it is required: 1. that he have reached the fourteenth year of his age, unless for a just cause something else seems good to the minister; 2. that he not be excommunicated or excluded from legitimate acts or infamous with infamy of law because of a notorious delict, even though no sentence has intervened, nor be interdicted or otherwise publicly criminal or infamous with infamy of fact;[1] 3. that he know the rudiments of the faith; 4. that in no religious institute he be a novice or professed, unless necessity urges and the

permission of at least the local superior is expressly had;[2] 5. that he not be constituted in sacred orders, unless the express permission of his own Ordinary is added (canon 766). It was said licitly, which does not prevent all those excluded from being able to be validly taken, with the things saved which were set forth under 1. Besides, whenever someone must be rejected, he can nevertheless, if otherwise grave inconvenience would follow, be permitted to assist at the Baptism as a witness, omitting the things which belong to sponsors[3] (St. Alphonsus, VI, 156). For the rest, one who is ignorant that touching must be done is very easily kept from touching; commonly it suffices not to warn him. Finally, the minister of Baptism, if he wishes to act as sponsor, which is licit for him,[4] should choose a procurator who fulfills the parts of the sponsor, namely so that the observance of the ceremonies may be better provided for.

3. In doubt whether someone can validly or licitly be admitted to the office of sponsor or not, the pastor, if time permits, should consult the Ordinary (canon 767).

[1] By common law there are not excluded, for example, those who do not assist at Mass on Sunday or have neglected, even several times, the precept of annual confession or of Easter Communion. For the rest, the same persons are not included in different regions under the name of publicly criminal persons or persons infamous with infamy of fact.

[2] Nor can a religious who has been made bishop undertake the office of sponsor (cf. canon 627, 2).

[3] Holy Office, 9 December 1745; 5 July 1878 (*Collectanea de Propaganda Fide*, nn. 345, 447, 1495).

[4] Sacred Congregation of Rites, 14 January 1873.

85 **IV. The choice of sponsors** per se belongs to the person to be baptized, if he is his own master; otherwise to the parents or tutors; but if these are lacking, to the pastor (canon 765, 4).[1] Therefore it is prohibited to the pastor, and indeed under grave obligation, to reject suitable persons chosen by the person to be baptized or by his parents or tutors, and to substitute others; indeed this kind of illegitimate substitution seems to be invalid, since someone, in order validly to be a sponsor, must be designated by the minister only when the person to be baptized and his parents or tutors are lacking (cf. canon 765, 4).

Note. The Provincial Council of Utrecht wisely admonishes:[2] "If the pastor understands before Baptism that an unworthy person has been chosen by the parents for the office of sponsor, let him teach them the law of the Church in time, and prudently induce them to choose another. If an unworthy person presents himself unexpectedly, let the priest signify to him in an honorable manner that the law of the Church does not permit him to be admitted, but let him by no means rebuke him before others; indeed, let him easily permit him to assist as a witness; and lest, Baptism having been delayed to another time, the infant be exposed to danger of dying without it, let him baptize even without any sponsor."

[1] Council of Trent, session 24, chapter 2, on reform of marriage; Roman Ritual, 2, chapter 1, n. 24.

[2] Page 76.

86 **V. The effects of sponsorship.** 1. From Baptism only the one baptizing and the sponsor contract spiritual kinship with the baptized person (canon 768). This kinship, concerning which more fully in the treatise on Matrimony, is not contracted: 1. if a sponsor is used in supplying the ceremonies (canon 762, § 2); 2. when Baptism is repeated conditionally, neither by the sponsor who was present at the former Baptism nor by him who was present at the later one, unless the same sponsor was used in both Baptisms (canon 763, § 3).

2. The kinship which has been contracted constitutes an impediment diriment of marriage between the baptized person and the one baptizing and the sponsor (canon 1079), and causes a sin of lust committed by the aforesaid persons with the baptized person to be spiritual incest (St. Alphonsus, VI, 146, 147). Now "the receivers are to be admonished concerning the spiritual kinship which they contracted with the baptized person";[1] likewise concerning the impediment that has arisen.

3. It belongs to sponsors, from the office undertaken, to have the spiritual child perpetually commended to themselves, and, in those things which concern instruction in the Christian life, diligently to see to it that he show himself throughout his whole life such as, in the solemn ceremony, they promised he would be (canon 769). The obligation of sponsors is grave, but it binds only when parents or tutors are lacking. Practically, sponsors, where the baptized are "nourished among Catholic Christians, can sufficiently be excused from this care, presuming that they are diligently instructed by their parents; yet if in any way they should perceive the contrary, they would be bound, according to their manner, to spend care on the salvation of their spiritual children" (St. Thomas, q. 67, a. 8).

[1] Roman Ritual, title II, chapter 2, n. 31.

Section III. On the Time and Place of Conferring Baptism

87 **I. Time.** 1. Private Baptism, when necessity urges, is to be administered at any time and place (canon 771).

2. Even solemn Baptism can be administered on any day; nevertheless it is fitting that the Baptism of adults, according to the most ancient rite, be conferred, if it can conveniently be done, on the vigils of Easter and Pentecost, especially in metropolitan or cathedral churches (canon 772).

88 **II. Place.** 1. Private Baptism, when necessity urges, is to be administered at any time and place (canon 771). The same holds for private Baptism which is conferred outside urgent necessity, that is, for Baptism which, by permission of the Ordinary, is administered privately and conditionally to an adult heretic (cf. canon 759, § 2); and for every conditional Baptism which is conferred without ceremonies (cf. canon 760); if the ceremonies are supplied, this is to be done in a church or public oratory (cf. canon 759, § 3).

2. With respect to solemn Baptism, the following hold:

a) The proper place for administering solemn Baptism is the baptistery in a church or public oratory (canon 773). Hence every parochial church, any contrary statute or privilege or custom being revoked and reprobated, is to have a baptismal font, saving the legitimate cumulative right already acquired by other churches (canon 774, § 1).[1] Besides, for the convenience of the faithful the local Ordinary can permit or order that a baptismal font be placed also in another church or public oratory within the boundaries of the parish (canon 774, § 2).

b) If the person to be baptized, because of the distance of places or other circumstances, cannot approach or be transferred to the parish church, or to another church which enjoys the right of a font, without grave inconvenience or danger, solemn Baptism can and must be conferred by the pastor in the nearest church or public oratory within the boundaries of the parish, even though these lack a baptismal font (canon 775).

c) But in private houses solemn Baptism must not be administered, except in these circumstances: 1. if those to be baptized are the children or grandchildren of those who actually hold supreme rule over peoples or have the right of succession to the throne, whenever they have duly requested this; 2. if the local Ordinary, according to his prudent judgment and conscience, has judged that it should be conceded in some extraordinary case for a just and reasonable cause (canon 776, § 1).[2] In the cases mentioned, Baptism is to be conferred in the chapel of the house or at least in another decent place, and with baptismal water blessed in the usual way (canon 776, § 2).

In places of the missions, where Catholics live far from a church and infants cannot be brought to the church without great dangers and inconveniences, in those places, I say, the permission to baptize solemnly at home seems to persist.[3]

Note. Let pastors see to it that a Christian name be imposed on the one who is baptized; but if they cannot obtain this, let them add to the name imposed by the parents the name of some Saint, and write both names in the book of the baptized (canon 761). This addition can be made in a low voice.[4] Note, however, that there are many names of saints which occur rarely, or have been taken from other languages and altered.

[1] The Pontifical Commission, 12 November 1922, reply to IV, declared that canon 774, § 1 is to be understood so that a church which has the right of a font cumulatively with other parochial churches of the whole city obtains it also before parochial churches newly erected in the city with a baptismal font. But the cumulative right of a font cannot in future be obtained by custom, which must be called corruption. A church which before the promulgation of the Code had an exclusive right of font before other parochial churches, after the promulgation of the Code and the erection of a font in the same churches according to the prescription of the cited canon, obtains only a cumulative right, saving the prescription of canon 778 (*A.A.S.* 1922, p. 662). Canon 778 prescribes that the pastor of the baptized person be informed.

[2] The Sacred Congregation for the Discipline of the Sacraments, 22 July 1925 (*A.A.S.* 1925, p. 452), to the question "whether the practice is conformable to law according to which infants who are not in danger of death, but cannot be transferred to the church without danger, are solemnly baptized at home by the pastor or by another priest with the pastor's permission," responded that it is conformable to law that, if the infant is not in danger of death but cannot without danger be transferred to the church according to canon 775, the Ordinary, by force of canon 776, § 1, n. 2, can permit, according to his prudent judgment and conscience, for a just and reasonable cause, in some extraordinary case, that Baptism be solemnly administered at home; but judging the gravity of the extraordinary case is left to the prudence and conscience of the Ordinary himself in individual cases.

[3] Sacred Congregation of Rites, 4 February 1871 (n. 3234, reply to III).

[4] Holy Office, June 1883.

Section IV. On the Notation and Proof of Baptism Conferred

89 **I. Notation.** 1. Pastors must carefully and without any delay enter in the baptismal book the names of the baptized, with mention made of the minister, the parents and sponsors, and the place and day of the Baptism conferred (canon 777, § 1).

But where illegitimate children are concerned, the mother's name is to be inserted if her maternity is publicly established, or if she herself spontaneously asks this in writing or before two witnesses; likewise the name of the father, provided he himself spontaneously asks this of the pastor either in writing or before two witnesses, or is known from a public authentic document; in other cases the newborn is to be inscribed as the child of an unknown father or of unknown parents (canon 777, § 2). Moreover the Pontifical Commission responded[1] that the names of parents are to be inserted in such

a way that every occasion of infamy is avoided; but in particular cases recourse must be had to the Sacred Congregation of the Council.

2. If Baptism was administered neither by the proper pastor nor in his presence, the minister should as soon as possible inform the pastor of the baptized person by reason of domicile concerning the Baptism conferred (canon 778). "If the baptized person lacks a domicile, the pastor of the quasi-domicile, or, if he was without fixed domicile, the pastor of the place of Baptism, seems to be the one to be informed."[2]

3. The use of the baptismal book is prescribed under grave obligation, regard being had, namely, to the grave end of the law, that is, the proof of Baptism received, which, if the baptismal register is lacking, would sometimes be impossible.

[1] 14 July 1922, reply to VIII (*A.A.S.* 1922, p. 528).

[2] Vermeersch-Creusen, *Epitome*, n. 55.

90 **II. Proof.** To prove Baptism conferred, if prejudice is done to no one, one witness beyond all exception suffices, or the oath of the baptized person himself, if he received Baptism in adult age (canon 779).

Dissertation III. On the Reception of Baptism

Part I. On the Person Receiving

The subject capable of Baptism is every and only wayfaring human being not yet baptized (canon 745, § 1; On the Sacraments in general, n. 38). Having noted these things about the subject generally, we shall speak specifically about the different subjects.

Section I. On Infants

91 **Preliminary Note.** When Baptism is in question, under the name of little children or infants, according to the norm of canon 88, § 3, come those who have not yet attained the use of reason, and to these are reckoned the insane from infancy, in whatever age they may be constituted[1] (canon 745, § 2, 1).

I. Infants before the use of reason can be baptized validly. This is of faith from the Council of Trent.[2]

II. Infants must already be baptized before the use of reason. Now:

1. It is clear that this is prescribed under grave obligation and by divine law itself if danger of death is imminent.
2. Outside danger of death, there is the obligation of baptizing them as soon as possible, as is clear from canon 770 in these words: Infants are to be baptized as soon as possible; and pastors and preachers are frequently to remind the faithful of this grave obligation of theirs.

It is disputed how much delay, if the infant is healthy, is to be considered grave. Some say fifteen or more days, others one or another day, others with St. Alphonsus (VI, 118) require a delay which exceeds ten or eleven days; this estimation of the holy Doctor is to some extent confirmed by the Instruction of the Sacred Consistorial Congregation concerning the visitations of bishops.[3]

[1] Those of seven years are presumed to have the use of reason; those not yet seven are presumed not to have the use of reason (canon 88, § 3).

[2] Session 5, canon 4.

[3] N. 148 (*A.A.S.*, vol. II, p. 39).

Section II. On Abortive Fetuses

An abortive fetus is a fetus prematurely projected from the womb (vol. I, n. 733).

92 **I. Every abortive fetus brought forth at any time must be baptized,** unless it is wholly certain that he is dead (cf. canon 747). The reason is that in the case it is at least somewhat probable that a wayfaring human being is present (vol. I, n. 732).

The same must be said of everything which is cast out from the womb of a pregnant woman and concerning which it is doubted whether it is a fetus or a mole, as it is called. For the rest, even if it seems to be a mole, this should be carefully dissected, so that it may be inspected whether perhaps a fetus lies hidden in it; likewise, if a pregnant woman suffers a flow of blood, it is expedient that the flow be moved and palpated, because sometimes something is found in it concerning which it is rightly doubted whether it is a fetus (St. Alphonsus, VI, 124).

II. Abortive fetuses, brought forth at any time, if they certainly live, are to be baptized absolutely; if doubtfully, conditionally[1] (canon 747). If the fetus brought forth is still enclosed in membranes or in a vesicle, proceed in this way: Place the vesicle on a table or in a basin or dish, and place a bowl of water nearby. Then first either pour some water over the vesicle or immerse the vesicle itself in the water of the bowl,[2] meanwhile saying: **If you can be baptized, I baptize you in the name of the Father and of the Son and of the Holy Spirit.** Then, holding the vesicle somewhat obliquely in the bowl of water, open it with the thumb and index finger of each hand, so that the liquid flows out from it. Then again say, moving the fetus somewhat here and there in the water: **If you can be baptized, I baptize you in the name of the Father and of the Son and of the Holy Spirit.** Afterward you must again draw the fetus out of the water (n. 54).

Note 1. They say that even very small abortive fetuses sometimes preserve life for a longer time, indeed for several days. Nevertheless there is danger that they may soon die; hence inquiry into whether the fetus is alive should not be prolonged too much.

Note 2. The things explained above must be especially inculcated to midwives and mothers. And although pastors are bound more than others to this instruction, nevertheless confessors too, from a confession heard, can and not rarely must prudently take occasion to ask whether they have been sufficiently instructed.

[1] Before the sixth month there can scarcely be certainty about the life of the fetus, whether it exists in the womb or is brought forth before the sixth month; in the latter case it is either dead or appears dead. Today, however, by means of the stethoscope the pulsations of the heart can ordinarily be perceived from the fifth month.

[2] Therefore the vesicle is not immediately ruptured, but is first immersed in water and cut there, namely because rupture outside water, on account of the contact of air, according to some, though others deny this, can be so dangerous that the fetus dies before Baptism has been conferred.

Section III. On Fetuses Not Yet Brought Forth

93 No one enclosed in the womb of the mother is to be baptized until there is probable hope that, duly brought forth, he can be baptized (canon 746, § 1). Therefore a fetus not yet duly brought forth cannot be baptized unless, Baptism being delayed, he will probably die without Baptism.

When the case occurs, proceed in this way:

I. If the infant has put forth the head and danger of death is imminent, let him be baptized on the head; nor afterward, if he comes forth alive, is he to be baptized again conditionally (canon 746, § 2).

II. If he has put forth another member and danger is imminent, let him be baptized on that member, however small it may be, for example on a finger or toe (cf. canon 746, § 3). But if you receive the occasion of baptizing again on a more principal member, for example on the hand or foot, then on that member you must baptize again, and indeed as often as you can on a member more worthy than before, for example on the breast or back or shoulders, until you have baptized on the head; for only then, when you have duly baptized on the cleansed head, is one of the Baptisms certainly valid. But if after you have baptized on a finger or toe you can immediately baptize on the head, then omit the other members which I have named between these two extremes and baptize immediately on the head.

Note. In cases in which you cannot immediately baptize on the head, each time in washing the member you must use these words: **If you can be baptized, I baptize you**, etc.[1]

III. If the infant is entirely hidden in the womb, he is to be baptized conditionally. If afterward he is brought forth, he must again be baptized conditionally (canon 746, § 5).[2] A fetus enclosed in the womb is to be baptized conditionally, both because in practice it will be doubtful whether the infant was truly washed or was washed on the head, and because it is somewhat doubted whether a human being not yet born according to common estimation can be reborn.[3] But, "just as original sin is contracted by generation alone, so likewise, in order that a man be regenerated by grace, it suffices that he has already been generated. And therefore Baptism is called regeneration by the Council, which does not require birth from the womb, since this is not called generation, but only that nativity which takes place in the womb and by which man becomes a son of Adam" (St. Alphonsus, VI, 107). For the rest, note:

1. The obligation of baptizing an infant in the womb of the mother before the completed fifth month of pregnancy will rarely be present. The reason is that on the one hand there is often great doubt about the life of the infant and about the required washing having been performed; on the other hand intrauterine Baptism, because of the destruction of the afterbirth membranes, will both increase the danger to the mother and bring on the danger of accelerating the death of the offspring.[4] After the completed fifth month of pregnancy the obligation can more easily be present.

2. Concerning the manner of baptizing a fetus in the womb of the mother, I note: the infant, the afterbirth membranes having been perforated,[5] can be reached and baptized by means either of a small syringe filled with water, or of a sponge filled with water, or of a moistened finger.[6] Water mixed with corrosive mercuric chloride is usually used, and this licitly where otherwise there is true danger of disease for the mother (n. 53).

Note. It is clear that intrauterine Baptism must commonly be conferred by a physician or by a midwife, both because of decency and because of the difficulty and dangers attached to the matter. But if on the one hand it is foreseen that the infant will probably die in the womb, and on the other hand intrauterine Baptism cannot be conferred, it sometimes remains that the infant be extracted from the womb and, once extracted, baptized, absolutely indeed if he certainly lives, if doubtfully, conditionally (canon 746, § 4).[7] Now the infant is extracted by means of some incision of the mother, especially by Caesarean section, as it is called. Concerning these we shall speak in a scholion.

[1] Theoretically, more perfectly thus: In cases in which you cannot immediately baptize on the head, the first time in washing the member you must use these words: **If you can be baptized, I baptize you in the name of the Father and of the Son and of the Holy Spirit**; at other times: **If you are not baptized and can be baptized, I...** etc. (cf. Roman Ritual, title II, chapter 1, n. 16; canon 746, §§ 2 and 3).

[2] Sacred Congregation of the Council, 12 July 1794 and 16 March 1877.

[3] For the opinion which holds that an infant in the womb of the mother cannot validly be baptized, St. Thomas cannot be cited; for he supposes that Baptism cannot be conferred except by washing the body of the mother, so that he does not deny that the infant is validly baptized if the water touches him immediately (cf. St. Thomas, III, q. 68, a. 11).

[4] Cf. Capelmann-Bergmann, *Medicina pastoralis*, II, p. 109; *Pastoral-Medizin*, p. 243; Antonelli, *Medicina pastoralis*, II, n. 16.

[5] Baptism first on the afterbirth membranes is omitted, because contact of air is not feared, contrary to the case in which a fetus already brought forth is to be baptized. The perforation of the afterbirth membranes, so that the fetus

may be baptized rather certainly than very doubtfully over the membranes, is quite probably licit, because it yields equally immediately to a good effect, namely the possibility of baptizing the fetus, and to an evil, that is, the death of the infant to follow from the outpouring of the amniotic fluid.

[6] Cf. Capelmann-Bergmann, *Pastoral-Medizin*, p. 242.

[7] Roman Ritual, II, chapter 1, n. 20.

Scholion. On Caesarean Section and Other Incisions

Besides Caesarean section, symphysiotomy, pubiotomy, and combined operations are distinguished.[1]

[1] Cf. Antonelli, *Medicina pastoralis*, I, n. 308 and following; Capelmann-Bergmann, *Pastoral-Medizin*, p. 57 and following.

94 **I. Notions.** 1. Caesarean section is an operation by which, the maternal womb having been cut, the fetus is extracted from the womb. It is called Caesarean section from Julius, who was brought into the light by cutting and thence was called Caesar. Now Caesarean section can be done either on a living mother or on the body of a mother recently dead.

2. Symphysiotomy is an operation by which the cartilage, the symphysis, which joins the two pubic bones, is cut, whereby it happens that the width of the pelvis is increased and the fetus can more easily come forth into the light.

3. Pubiotomy is an operation by which one or both pubic bones are cut, and in that way the exit of the fetus is rendered easier.

4. Combined operations are constituted by symphysiotomy together with artificial premature delivery.[1]

[1] Cf. Antonelli, loc. cit.

95 **II. Morality.** 1. Caesarean section or another incision of the living mother, according to the circumstances:

a) Is licit if there is a well-founded hope of saving both the mother and the offspring, and by the section the hope of baptizing the offspring is increased.[1] It is said:

1. If there is a well-founded hope of saving both the mother and the offspring; for otherwise the section would involve homicide. "Evils are not to be done," says St. Thomas, "that goods may come, as is said in Romans 3:8; and therefore a man ought not to kill the mother in order to baptize the child" (III, q. 68, a. 11, ad 3; St. Alphonsus, VI, 106). Now hope of saving the offspring is not present except after 28 weeks from conception; before that he is not viable. For the rest, observe that hope of performing the operation with a happy outcome is present today much more easily than formerly because of the progress of surgical art.[2]

2. And by the section the hope of baptizing the offspring is increased. For it is licit for the mother to expose herself to danger of death so that the spiritual salvation of the offspring may be better provided for.

b) It is obligatory, that is, it must be sustained by the mother, if: 1. there is a well-founded hope of saving the mother and the offspring; and 2. by the section the hope of baptizing the offspring is notably increased. The reason is that the mother is bound to prefer the eternal life of the offspring to her own temporal life. Now since the infant can commonly be baptized either in the womb of the living mother, or after, the mother being dead, he has been cut out, therefore section of the living

mother will very rarely be obligatory. If the case obtains, prudence will commonly require that the section be urged upon the mother rather than imposed.

2. Section on the body of a dead mother:[3]

a) Is laudably done whenever there is even the least hope of extracting a living fetus. Now some hope is already had about the fortieth day from conception, indeed even before, since they narrate that it has happened that fetuses have been extracted alive at the assigned time.[4]

b) Is obligatory, and indeed under grave obligation, whenever there is probable hope of extracting a living fetus. Now probable hope seems to be present after about the completed fourth month from conception.[5] But the obligation once begun "perseveres until the morally certain death of the offspring... How long life can be preserved for infants in the womb of a deceased mother cannot be determined: this depends much on the character of the illness from which the pregnant mother died; but there is no doubt that a fetus can survive the mother for an hour, indeed for several."[6]

[1] It suffices practically to note this; for there are also other cases in which the section is licit, for example if not only is there a well-founded hope of saving the mother and the offspring, but by the section the hope of saving the mother is increased, while the hope of baptizing the offspring is not diminished, etc.; but these cases cause no difficulty.

[2] *Nederlandsche Katholieke Stemmen*, 1907, p. 15.

[3] Note that the death of the mother is not certainly established unless the first signs of putrefaction are present.

[4] Cangiamilla, *Embryologia sacra*, book II, chapter 5.

[5] Cf. Capelmann-Bergmann, op. cit., p. 62.

[6] De Smet, *De Sacramentis*, n. 313. Cf. Ferreres, *Mort reelle et mort apparente*.

96 **III. By whom is it to be performed?** 1. Section of a living mother, as is clear, belongs only to an expert; one who is not an expert would become guilty of homicide.

2. Section of a mother not certainly dead, but perhaps only apparently dead:

a) If revival, as it is called, is held as possible, the section should be done by an expert if one is present, because otherwise the operation would expose the life of the mother to graver danger without sufficient reason. If an expert is lacking, generally whoever is sufficiently skilled is bound, or at least one who has hope of extracting the fetus; because then there is sufficient reason for admitting the graver danger. Now revival is held as possible if the mother succumbs after a crisis of the nerves, whether induced by vehement pain or by another cause.

b) If revival is held as impossible, namely if the mother is seen to succumb after longer pains, the section again belongs primarily to an expert, who can admit the danger of accelerating death if it is present. If an expert is lacking, generally another is bound, as was said above.

3. If the mother is certainly dead, the things just said under b) hold.

I said above, generally he is bound, etc., because authors do not agree to what extent even a priest must, or licitly can, perform the section, or command that it be performed, that is, by ordering see to it that it is done. Now he certainly cannot proceed to the said operation if the common good stands in the way, namely if, considering the circumstances, it must be feared that by this kind of manner of acting the priest would become less capable of promoting the salvation of people, or that other inconveniences would arise from it for the faithful.[1] If danger to the common good certainly is not

imminent, some judge that the priest is bound, because natural law, to which the decrees are not thought to be contrary, imposes the obligation. Others teach that he is prohibited from performing the section. They rely on decrees of the Holy Office.[2] The first decree indeed regards in itself circumstances in which the common good stood in the way; but the second, they say, which refers the petitioner to the first, seems to signify that a general prohibition is intended. Finally, others hold each opinion as truly doubtful, and consequently think that a priest can perform the section or command that it be performed, but is not bound. The matter seems truly doubtful to me also; but for that reason I think that natural law, as possessing priority, should prevail, or that the section is to be performed, except, of course, in the case in which danger to the common good stands in the way.

Corollary. All to whom the matter becomes known are per se bound prudently to see to it that the section is done, but especially relatives and the pastor. Therefore a surgeon should be called as quickly as possible, and meanwhile the uterus of the deceased mother should be kept warm.[3] Nor should the section be omitted, even if a fairly notable time has elapsed from the death of the mother; for they narrate that it has happened that fetuses have survived the mother for 24, indeed for 48 hours and beyond.[4] Hence a physician asserting that the fetus has certainly died should not easily be believed. Indeed Dr. Brillaud even contends: "Since medical science knows no sign by which it may be judged with certainty that the fetus is dead, the Caesarean operation after death must always be undertaken."[5]

[1] Civil laws commonly stand in the way.

[2] 15 February 1780 (*Collectanea*, n. 541) and 13 December 1899.

[3] Older authors add that the mouth of the mother is to be opened; but according to physicians the infant does not breathe in the womb of the mother.

[4] Eschbach, *Disputationes physico-theologicae*, p. 356.

[5] In Eschbach, op. cit., p. 363.

97 **IV. The manner of performing the section.** 1. The section is made from the navel to the genitals or pubic bone; but lest the intestines be injured, this precaution is to be used: once a small opening has been made, the operator immediately puts into it the index finger placed beneath the back of the scalpel or knife, and in the aforesaid manner cuts first the skin, then the other coverings which cover the intestines. When this has been done, the uterus, if the pregnancy is more advanced, will appear of itself; otherwise it will be found back behind the bladder. If this is filled with urine and impedes the finding of the uterus, let it be compressed by the hand and emptied.

2. The uterus, once found, is immediately cut, proceeding from the upper and anterior part to the lower; then the afterbirth membranes also are cut or ruptured, by which the fetus is enveloped.

3. The infant or fetus is extracted, and if certain or doubtful signs of life appear, he is to be baptized at once. If nevertheless danger of death is thought or feared to be present, the fetus is to be baptized before he is extracted.

4. After Baptism has been conferred, if the infant survives with hope of preservation, the umbilical cord is cut at a distance of two or three inches from the abdomen and is strongly tied with thread at a distance of one inch from the abdomen; when these things have been done, he is handed over to be nourished.[1]

Question. What should be done by a confessor who, from the confession of a sick girl, discovers that she is pregnant?

Response 1. If the girl is already pregnant from about the fourth month, she is bound under grave obligation to see to it that after her death she be cut; nor is she excused on account of the loss of reputation. Therefore let the girl reveal her condition to a prudent person either by word of mouth, or let her hand over to him a writing to be read after death, in which she declares her pregnancy and her will that after death the infant be extracted and baptized.

Response 2. If the girl is ignorant of the grave obligation, and it is feared that, once taught, she will not obey it, let the confessor proceed only by persuading.

[1] Aertnys-Damen, *Theologia Moralis*, II, n. 57.

Section IV. On Monsters

98 **I. Monsters and prodigies** are always to be baptized at least conditionally (canon 748). Namely, if the monster has a head and breast, or at least a head, even if beast-like, it is certainly a human being; since it cannot be anything else, because there cannot be generation between a human being and a brute: hence it is to be baptized absolutely. Otherwise Baptism is to be conferred conditionally; this also holds concerning one about whom it is doubted whether or not he ought to be reckoned among monsters and prodigies (St. Alphonsus, VI, 125).

II. If the monster has two heads and two sufficiently distinct breasts, there is a double human being; hence a double Baptism is to be conferred. If nevertheless danger of death is imminent, both are to be baptized at once under the form: **I baptize you**, etc.

III. But in doubt whether there is one human being or several, one is to be baptized absolutely, the others conditionally (canon 748). In practice, proceed in this way:

1. If the doubt arises from the fact that the monster does not have two sufficiently distinct heads and two sufficiently distinct breasts, then first one must be baptized absolutely, and afterward the other conditionally in this way: **If you are not baptized, I...**, etc.
2. If the doubt arises from the fact that the monster has two heads and one breast, proceed in the same way as was said under 1.
3. If the doubt arises from the fact that the monster has two breasts and, apparently, only one head, then let the head be baptized absolutely, then each breast conditionally: **If you are not baptized, I...**, etc.[1]

[1] Namely, if, as commonly happens, it is doubtful which breast belongs to the baptized head.

Section V. On Infants of Non-Catholics

99 An infant of non-Catholics, that is, of unbelievers, heretics, schismatics, and Catholics who have fallen into apostasy or heresy or schism, is licitly baptized:

I. When he is in such danger of life that it is prudently foreseen that he will die before he reaches the use of reason (canon 750, § 1), or when "it is very prudently doubted that, from the infirmity by which they are actually affected, they will not live, but will die before the age of discretion."[1]

Therefore a probability founded on this, that in some place, for example, half of infants die before the use of reason, does not suffice; nor a probability arising from this, that in some region a contagious disease is raging and there is grave danger that the disease may be transferred to infants.[2] If it is doubted whether an infant who is in danger of death has reached the use of reason, "let the missionaries try to instruct them in the better way in which it can be done; otherwise let them be baptized conditionally."[3]

II. When the infant appears perpetually insane;[4] in this case there can be no discussion of education properly so called (St. Alphonsus, VI, 130).

III. Outside the case of danger of death or insanity, the infant is licitly baptized, provided that his Catholic education is safeguarded: 1. if the parents or tutors, or at least one of them, consents; 2. if the parents, that is, father, mother, grandfather, grandmother, or tutors, are lacking, or have lost their right over him, or can in no way exercise it (canon 750, § 2). It is said:

1. **Provided that his Catholic education is safeguarded.** Now, considering the responses of the competent Authority,[5] it suffices that, all things considered, the Catholic education be in some way safeguarded, or that, all things having been seen, a noteworthy hope of Catholic education shines forth. Here, however, note that this kind of hope is more easily present in the case in which either parent is Catholic and the Catholic party consents, than in the case in which each parent is non-Catholic.

2. **If the parents... consent;** and so even the consent of the mother alone or of a female tutor suffices. And this holds even if it is foreseen that the other parent will afterward see to it that the infant is baptized by a heretical minister.[6] Now the said consent is required per se if it is a question of an infant of unbelievers. This is clear from the Instruction of Benedict XIV *Postremo mense*;[7] the same is taught by the Sacred Congregation de Propaganda Fide.[8] But the reason seems to be that the Church, by conferring Baptism on the offspring of parents over whom she has no right, places that offspring in such a condition that it can and per se must be separated from the parents. But this seems to involve a violation of right (St. Thomas, II-II, q. 10, a. 12; St. Alphonsus, VI, 132). If the discussion concerns an infant of baptized non-Catholics, consent is not required per se, because the Church has a right over them as her subjects. It is, however, commonly required per accidens, because if it is lacking, hope of Catholic education will commonly be absent. Hence canon 751 declares that, with respect to infants of two heretics or schismatics, or of two Catholics who have fallen into apostasy or heresy or schism, generally the norms established by canon 750 are to be observed.

3. **If the parents... have lost their right over him, or can in no way exercise it.** The case would occur if the infant had been entrusted to a Catholic, or had been abandoned and received in a Catholic hospital or by a Catholic.[9] But if the parents have entrusted the infant to a Catholic to be educated, per se he ought not afterward be returned to them, even if they ask for him back and the infant has not yet been baptized; since the prior offering and acceptance ought not afterward be rescinded to the prejudice of the eternal salvation of the one offered (St. Alphonsus, VII, 130).

4. Finally, it is permitted to baptize infants offered by unbelievers if the missionary has a well-founded motive for believing that their parents too will in the future seek Baptism.[10]

[1] Holy Office, 18 July 1894 (*Collectanea*, n. 1877); Sacred Congregation de Propaganda Fide, 15 February 1781.

[2] Instruction of the Sacred Congregation de Propaganda Fide, 17 April 1777, reply to VIII (*Collectanea*, n. 522).

[3] Instruction of the Sacred Congregation de Propaganda Fide, 17 April 1777, reply to VIII (*Collectanea*, n. 522).

[4] Holy Office, 18 July 1892.

[5] Instruction of the Sacred Congregation de Propaganda Fide, 17 April 1777 (*Collectanea*, n. 522).

[6] Cf. Holy Office, 12 October 1600; 29 November 1672, reply to I (*Collectanea*, n. 205); Instruction of the Holy Office, 1827; Holy Office, 6 July 1898, reply to IV (*Collectanea*, n. 2007).

[7] 28 February 1747.

[8] Holy Office, 29 November 1672, reply to I (*Collectanea*, n. 205).

[9] The cited Instruction of Benedict XIV.

[10] Holy Office, 11 December 1850, reply to IV (*Collectanea*, n. 1054).

100 **Corollary I.** An infant of non-Catholic parents, whether legitimately or illegitimately baptized, per se must be withdrawn from the care of the parents so that he may be educated Catholicly. But in practice the Church will not be able to use her right (St. Alphonsus, VI, 127, 128).

Corollary II. The fact that parents baptized Catholic live so non-Catholicly that there is little hope of Christian education is not a reason for refusing Baptism.[1] The same must be said of infants of Catholics who have given their name to socialism.

Corollary III. If a Catholic mother desires that the infant be baptized Catholicly, but the non-Catholic father wishes him to be baptized after some time by a heretical minister, proceed in this way: If the offspring will soon be baptized by a heretical minister, it is better to wait and afterward baptize the offspring conditionally. If one must wait longer, it is better to baptize the infant Catholicly at once. In the case, per se indeed, the heretical spouse is to be warned about the Baptism conferred; but if grave inconvenience stands in the way of warning, a second Baptism can be permitted. Besides, prudence will sometimes suggest that the Baptism be conferred by someone other than the pastor himself; let a Catholic and trustworthy person be chosen.

[1] Sacred Congregation de Propaganda Fide, 31 January 1796 (*Collectanea*, n. 625).

Section VI. On Adults

When Baptism is in question, those are considered adults who enjoy the use of reason (canon 745, § 2). Moreover:

101 **I. Adults are bound, as soon as it can morally be done,** to acquire sufficient instruction for themselves and to receive Baptism. If they are sufficiently instructed and rightly disposed and ask for it, per se they must be baptized, even if they are minors and their parents contradict it (canon 745, § 2). The reason is that with respect to eternal salvation they are in their own right (St. Thomas, II-II, q. 10, a. 12; St. Alphonsus, VI, 128). I said per se, since circumstances or even the common good sometimes require that Baptism be delayed.

The Holy Office,[1] to the question "whether a girl of ten years living in a monastery can safely be admitted to the profession of the Catholic faith, her heretical father being unwilling," responded: "Let the Vicar Apostolic first take care with all his strength to obtain the consent of the girl's father. If consent is not obtained, let him seriously weigh the inconveniences which are foreseen to arise from the admission of such a girl into the Church, both with respect to grave damage to the Catholic

school and mission; and insofar as no inconveniences, or only contemptible ones, are foreseen, let him admit her without delay; but insofar as grave inconveniences are foreseen as future, let him defer her admission to the formal and public profession of the Catholic faith, unless danger of death is imminent; and meanwhile let him take care to exhort her to persevere in her good purpose, and to pray God that He deign to remove all obstacles; and at the same time let him see to it that she continue in the monastery, so that in this way she may complete and perfect her Catholic education." Therefore great prudence is necessary, and in cases of this sort a new reason is found for observing canon 744, by force of which the Baptism of adults, where it can conveniently be done, is to be referred to the local Ordinary.

Corollary. Children baptized against the will or without the knowledge of their parents per se can, if they are exposed to dangers of faith, withdraw themselves from their parents and be helped in this by others; but prudence commonly prohibits these things from being put into practice, all the more because civil law commonly stands in the way.

[1] 16 July 1881.

102 **II. With respect to the Baptism of dying adults,** these things specifically must be noted:

1. A dying adult who can no longer ask for Baptism, but who either previously or in the present state with some probability manifested an at least more or less explicit intention of receiving Baptism, is to be baptized conditionally; if afterward he recovers and a doubt remains concerning the value of the Baptism conferred, Baptism is again to be conferred conditionally (cf. canons 752, § 3 and 754, § 3).
2. A dying adult who can no longer ask for Baptism, but who with some probability is judged contrite or attrite, or to have the will of employing the means of salvation, in our opinion can, but need not, be baptized conditionally if he more or less explicitly rejects Baptism, as if the case concerns a Jew (n. 41). If that does not obtain, per se he seems to be baptized conditionally (n. 41). I said per se, because prudence can prohibit this doctrine from being brought into practice.

Section VII. On the Insane and the Furious

103 **I.** The insane and the furious who are such from birth, or at least before attaining the use of reason, are to be baptized, even against the will of their parents insofar as prudence permits it (cf. canon 754, § 1; n. 99). Those who became insane or furious after the use of reason are to be treated as adults, and therefore cannot be baptized unless, before they became insane, they had the desire of receiving Baptism; but if it is certain or probable, even slightly, that this took place, they are to be baptized when danger of death is imminent (canon 754, § 3), or even during the course of life if it is rightly feared that, when danger of death is imminent, Baptism will be omitted.

II. Those who have lucid intervals, while they are in possession of their mind, are to be baptized if they wish (canon 754, § 2). They are also to be baptized, as was said concerning other insane persons, when danger of death is imminent, if before they became insane they showed a desire of receiving Baptism (canon 754, § 3).

III. One who labors under lethargy or frenzy is to be baptized only when awake and willing; but if danger of death threatens, let the things said concerning the insane and concerning those who have lucid intervals be observed (canon 754, § 4).

Scholion. On the Doubtfully Baptized

104 **I. Those doubtfully baptized or doubtfully validly baptized** must be rebaptized under condition whenever, after diligent examination has been instituted, a prudent doubt remains about the conferral and its validity (cf. canon 732, § 2). It is said:

1. **After diligent examination has been instituted.** The reason is that the examination instituted perhaps will procure sufficient certainty about the value of Baptism, so that, the examination being neglected, it would be rash and injurious to the sacrament to repeat Baptism immediately (St. Alphonsus, VI, 136 and following). Some authors indeed judged that those baptized by a layperson can be rebaptized even when no inquiry has been carried out; indeed there were synods which in such a case simply prescribed repetition. But that this opinion must be rejected is clear from the fact that it can happen that the value of Baptism conferred by a layperson is morally certain. Hence the said synods were afterward corrected, and Benedict XIV teaches that they are to be disapproved.[1]
2. **Whenever a prudent doubt remains about the conferral and its validity.** With respect to proof of Baptism, canon 779 establishes: "To prove Baptism conferred, if prejudice is done to no one, one witness beyond all exception suffices, or the oath of the baptized person himself, if he received Baptism in adult age." But authors dispute what things for the most part are required so that one may be permitted to trust, with moral certainty, the testimony of a layperson concerning Baptism duly conferred. Some judge that it suffices that a physician or midwife, taught the method of baptizing, testifies in the particular case that he or she baptized duly, provided nothing occurs which weakens the testimony.[2] Others besides require that the physician or midwife of unimpaired reputation has often been found to baptize duly. Others require that the testimony of the layperson be confirmed by at least one witness. But the circumstances must be inspected, which certainly can be such that certainty about the value of Baptism is had, although the layperson has not often been found to have baptized duly, or his testimony is not confirmed by another witness. Nor do I think that this is simply denied by any author.[3] Nevertheless midwives should be admonished that they baptize in the presence of one or another witness, who attends to the manner of baptizing, warns the midwife if she errs, and afterward can testify concerning Baptism duly conferred. The same must be applied in many regions to catechists, since very great is the levity of many peoples in asserting even grave matters.

Corollary I. Those who, a long time after Baptism received, begin to doubt whether they were duly baptized by a pastor or by a midwife should put away scruples. It must be judged that he was duly examined at the proper time, if it was necessary. Besides, according to many, one born of Catholic parents and educated among Catholics, although no testimony concerning Baptism exists, is not to be rebaptized. Nevertheless the presumption deduced from these things is today rather often destroyed by a contrary presumption in regions where negligence of parents is not rare, for example by easily deferring Baptism. Therefore if, after inquiry, a prudent doubt remains, Baptism is to be repeated under condition. Moreover, the sole reason that no positive testimony exists is not sufficient for repeating Baptism before ordination.[4] Nor in the case of a mixed marriage, before the marriage, must the non-Catholic party be baptized under condition because of doubt about Baptism, if that party wishes to remain in heresy.[5]

Corollary II. Exposed and found infants, unless, the matter having been diligently investigated, their Baptism is established, are to be baptized under condition (canon 749). In practice they commonly must be baptized under condition, and this even if a slip is attached by which the conferral of Baptism is signified, unless the person who wrote the slip is both certainly known and held for certainly worthy of trust, or it is proved from another source that Baptism was duly conferred (St. Alphonsus, VI, 135).[6] Considering the documents cited in the note, per se inquiry must first be made, unless there is danger in delay; in practice, however, in some regions it is not customary to do this. The things which have been said about exposed infants are also to be applied to infants abandoned by vagrant parents, and this even if they have already been born, for example, three or five or more years, unless there is indubitable certainty about Baptism received.

Corollary III. Those baptized by a layperson, for example by a physician or by a midwife, must not rarely be baptized under condition, because, when inquiry has been made, a doubt often remains. Except if a duly instructed, Catholic, sincere person of proven solidity affirms that he or she baptized duly. If the case concerns a non-Catholic person, some doubt will more easily remain; indeed if a hater of religion, for example a Jew, baptized, there can be reason for doubting due intention.

If an infant was baptized by a layperson, let the priest inquire: 1. what form he used; 2. whether the water was natural; onto what part it was poured; whether it touched the skin, or only the hair or the uncleanness of birth; whether it was poured in sufficient quantity, so that it flowed; whether he washed the infant and pronounced the form with sufficient simultaneity.

Corollary IV. Converted heretics commonly must be baptized under condition, because, when examination has been instituted, doubt about the value commonly remains. The Holy Office declared that examination must be instituted.[7] Inquiry should be made whether the sect to which the newly converted person belonged holds Baptism in great esteem and is accustomed to take great care about the form and matter; whether the little minister is religious, and in what manner he was accustomed to baptize. When the matter has been examined, outside the case of imminent danger of death, the judgment of the Bishop must always be sought; he will judge in particular cases whether some probable doubt concerning validity underlies.

[1] *De Synodo dioecesana,* book 7, chapter 6, n. 7.

[2] Benedict XIV, *De Synodo dioecesana,* book 7, chapter 7, n. 11.

[3] The Sacred Congregation de Propaganda Fide on 8 September 1869 for the East Indies established: "In order that the missionary not be bound to baptize under condition those baptized by a trustworthy catechist, it is required that there be two witnesses who can testify that Baptism was legitimately conferred; excepting, however, certain cases in which, with the individual circumstances weighed, and with attention paid to the skill and probity of the catechist, to whom nevertheless trust is not to be granted too easily, it can happen that no probable doubt at all about the validity of Baptism arises, even if two witnesses were not present."

[4] Sacred Congregation de Propaganda Fide, 30 September 1848 (*Collectanea,* n. 1034).

[5] Holy Office, 13 April 1878.

[6] Holy Office, 5 January 1724 (*Collectanea,* n. 299).

[7] 20 November 1878 (*Collectanea,* n. 1504); 21 February 1883 (*Collectanea,* n. 1590).

105 **II. The order to be observed in reconciling a heretic** from the responses of the Holy Office is this:[1]

1. If Baptism is conferred absolutely, no abjuration nor absolution is required, because the sacrament of regeneration washes away all things.
2. When Baptism has been judged valid, only the abjuration or profession of faith is received, which is followed by absolution from censures.
3. If Baptism is to be repeated under condition, it is permitted to proceed in a twofold order, namely:

a) Either thus: 1. Abjuration or profession of faith; 2. conditional Baptism; 3. sacramental confession with conditional absolution.

b) Or thus: 1. Abjuration or profession of faith; 2. sacramental confession without absolution; 3. conditional Baptism; 4. a summary repetition of the confession and conditional absolution.

With respect to abjuration, the Profession of Faith which is found at the beginning of the Code suffices; and it "is held juridically performed when it is made before the local Ordinary himself or his delegate and at least two witnesses" (canon 2314, § 2).

[1] 20 July 1859 (*Collectanea*, n. 1178); 2 December 1874 (*Collectanea*, n. 1426).

Part II. On the Manner of Receiving Baptism

With respect to the reception of Baptism, both valid and licit, we refer to those things which we noted in the treatise On the Sacraments in general (n. 39 and following). Nevertheless, it is pleasing to enlarge what was said about licit reception with these things concerning the Baptism of an adult. Therefore in an adult to be baptized there are required:

106 **I. Faith.** This is clear from these words of Christ in Mark 16:16: "He who believes and has been baptized will be saved." Now explicit faith is required in those things which certainly or probably must be believed by necessity of means: in those certainly to be believed, because otherwise the sacrament would certainly be received fruitlessly; in those probably to be believed, because it would probably be received fruitlessly (vol. I, n. 488).

107 **II. Instruction,** according to these things in canon 752:

1. An adult is not to be baptized unless knowing and willing and well instructed (§ 1).
2. But in danger of death, if he cannot be instructed more diligently in the principal mysteries of faith, it is sufficient, for Baptism to be conferred, that he in some way show that he assents to them and seriously promise that he will observe the commandments of the Christian religion (§ 2).
3. Indeed, if because of impending death or other circumstances instruction cannot be premised, nevertheless Baptism is to be conferred, even if explicit faith is lacking in those things which are only probably to be believed by necessity of means.
4. Finally, if it is doubted whether a dying person has reached the state of discretion, let him be instructed in the better way in which it can be done.[1]

[1] Holy Office, 18 July 1892, reply to IV (*Nouvelle Revue Theologique*, 1897, p. 95).

108 **III. Attrition, and indeed supernatural attrition,** concerning mortal sins, if any have been committed by the one to be baptized (canon 752, § 1). Habitual attrition suffices, that is, attrition elicited and not retracted. Attrition cannot be had concerning original sin; nevertheless a certain displeasure about it is required. Contrition and attrition are "sorrow regarding and in some way breaking down the hardness of the will; and therefore they can exist only concerning those sins which come upon us from the hardness of our will; and because original sin has not been introduced by our will, but contracted from the origin of a vitiated nature, therefore concerning it there cannot be contrition, properly speaking, but only displeasure or sorrow" (St. Thomas, Supplement, q. 2, a. 2). The required displeasure is always had in him who supplies the other requisites.

Hope and initial love are also required; but these too are always found in him who enjoys the dispositions explained.

109 **IV.** It is fitting that both the priest who is about to baptize adults and the adults themselves, if they are healthy, be fasting. Unless grave and urgent causes stand in the way, a baptized adult should immediately assist at the sacrifice of the Mass and receive Holy Communion (canon 753).[1]

Corollary. Confession of sins is not to be imposed on an adult to be baptized absolutely. Nevertheless it is usefully instituted, so that the one to be baptized may be admonished about vices and better

disposed for Baptism (St. Thomas, III, q. 68, a. 6). Nor are satisfactory works to be imposed, because Baptism is ordered to removing every debt both of guilt and of punishment.

[1] Roman Ritual, title 2, chapter 3, n. 7.

Treatise III. On Confirmation

(St. Thomas, III, q. 72; St. Alphonsus, *Theologia Moralis*, book VI, nn. 161-188; *Homo Apostolicus*, tract 14, nn. 39-53).[1]

We must speak first about Confirmation considered in itself, then about its ministration, finally about the reception of Confirmation.

[1] Cf. Dolger, *Das Sakrament der Firmung historisch-dogmatisch dargestellt*; Umberg, *Die Schriftlehre vom Sakrament der Firmung*.

Dissertation I. On Confirmation Considered in Itself

110 Confirmation is a sacrament by which the Holy Spirit is conferred for strength in faith through anointing and imposition of the hand under a certain form of words. Confirmation is the complement of Baptism, insofar as, namely, it increases and strengthens the spiritual life received through Baptism (n. 115), and joins to the army of the Lord the human being who has been enrolled by Baptism in the family of Christ (n. 115). It is called Confirmation from the word confirming, that is, making firm. With these things premised, we shall treat first of the existence, then of the essence, then of the effects, finally of the necessity of Confirmation.

Part I. On the Existence of the Sacrament of Confirmation

111 Confirmation is a true sacrament of the New Law. This is of faith from these words of the Council of Trent: "If anyone says that the Confirmation of the baptized is an idle ceremony and not rather a true and proper sacrament... let him be anathema."[1]

It is doubtful at what time Christ instituted Confirmation. According to some, at the Last Supper; according to others, after the resurrection and before the ascension, namely while He was speaking with the Apostles about the kingdom of God and completing the mysteries of salvation;[2] according to others, on the day of Pentecost.

[1] Session 7, On Confirmation, canon 1.

[2] Acts 1:3.

Part II. On the Essence of Confirmation

Section I. On the Matter

112 **I. Remote matter.** 1. For validity, so that this be undoubted, there are required: 1. chrism, that is, a composition from olive oil and balsam; 2. consecrated; 3. by a bishop; 4. and this by a special consecration of chrism. Now from the aforesaid:

a) Olive oil is certainly required, as is clear from the universal and constant tradition of the Church[1] (St. Thomas, III, q. 72, a. 2; St. Alphonsus, VI, 162).

b) The admixture of balsam is most probably required, regard being had both to the decree of Eugene IV for the Armenians, which hands down that the matter is chrism confected from oil and balsam, and from the practice of the Church. The reason for doubting is taken from the fact that Paul IV and Pius V conceded to the Indians the privilege of using in place of balsam a liquid which is called balsam by them, but is not; likewise from the fact that the use of balsam does not appear before the sixth century, although even before that oil came under the name of chrism.

c) Some consecration or blessing likewise seems to be required, attention again being paid to the decree of Eugene IV and to the practice of the Church (St. Alphonsus, VI, 163).

d) Consecration by a bishop is certainly prescribed, but it is not so certain that it is required for validity (cf. canon 781, § 1). The power of consecrating chrism seems in antiquity sometimes to have been conferred on a simple priest.[2] It is also certain that the faculty of confirming with chrism consecrated by a bishop can be granted to a simple priest (canon 781, § 1).

e) A special consecration or blessing, that is, the consecration proper to chrism, likewise seems to be required; this is already suggested by the very necessity of chrism.

Corollary. Since olive oil is certainly required for validity, note that nut oil or other kinds of oil can never be used.

2. For liceity it is required that certainly valid matter be used, and that the chrism have been consecrated on the most recent Lord's Supper day (canon 734, § 1). Hence it is not permitted to confirm with old chrism, unless necessity urges. It is said, certainly valid matter; this does not prevent Confirmation from being conferred under condition, at least in danger of death, with oil of catechumens if chrism consecrated by a special blessing cannot be had; for the great usefulness of the sacrament suffices so that it can be exposed to the danger of nullity (St. Alphonsus, VI, 162).

[1] Cf. Innocent III, Decretals, book I, title 15, at the beginning of chapter 1, *Cum venisset*.

[2] Dolger, op. cit., pp. 108-112.

113 **II. Proximate matter.** 1. For validity, so that this be undoubted, there are required: 1. anointing; 2. on the forehead; 3. made immediately by the hand of the minister, not through an instrument; 4. in the form of a cross (cf. canon 780). But what degree of certainty belongs to each of the things enumerated, see among the dogmatic theologians.

The imposition of the hand is certainly required for the essence of Confirmation, as is already clear from Sacred Scripture itself.[1] But, according to the opinion which today is commonly held as certain,

the required imposition of the hand is neither that imposition or extension of the hand which is had at the beginning of the rite and is made over all those to be confirmed under the prayer: *Almighty, everlasting God,* etc. (cf. canons 780 and 781, § 2);[2] nor is it that imposition of the hand by which the minister, during the anointing itself, places the rest of the hand on the head of the one to be confirmed;[3] but it is the anointing itself, so that this is at once both anointing and imposition of the hand.

2. For liceity it is required that certainly valid proximate matter be used, and that the anointing be made with the thumb of the right hand; for this is the usage of the Church, which nevertheless quite probably obliges only under light obligation, because in the consecration of a bishop the thumb and index finger of each hand, indeed even both whole hands, are anointed (St. Alphonsus, VI, 165).

[1] Acts 8:17; 19:6; Hebrews 6:2.

[2] Decree for the Armenians; Sacred Congregation de Propaganda Fide, 6 August 1840 (*Collectanea,* n. 908).

[3] Innocent III, Decretals, book I, title 15, chapter 1.

Section II. On the Form

114 The legitimate form is:

I. For the Latin Church: "I sign you with the sign of the cross and confirm you with the chrism of salvation, in the name of the Father and of the Son and of the Holy Spirit." Probably these suffice for the essence: **I sign and confirm you**; or, **I confirm you with the chrism of salvation**; since these alone are found equivalently in the form of the Greeks. Nevertheless it is also probable that all things in the form are essential; this depends on the question what the direct power of the Church is concerning the value of the sacraments (cf. St. Thomas, III, q. 72, a. 4; St. Alphonsus, VI, 167, 168).

II. For the Greek Church: "The seal of the gift of the Holy Spirit." Yet it is disputed whether the invocation of the Most Holy Trinity also, which in the Greek Euchologia is premised to chrismation, pertains to the essence. Several of those who judge that in the Latin form all things, even the expression of the Most Holy Trinity, are essential affirm this; and they are bound to affirm it unless they admit that Christ did not determine the form of Confirmation in a fixed specific form.

Part III. On the Effects of Confirmation

115 The effects of Confirmation are:

I. Sanctifying grace; per se second grace or an increase of grace, per accidens more probably first grace (n. 6); there is joined an increase of the virtues and gifts of the Holy Spirit.

II. Sacramental grace: this consists in the fact that the sanctifying grace which Confirmation increases is both ordered to this, that the faithful constantly hold and constantly profess the faith, and carries with it the right to actual graces to be received in order to those effects (St. Thomas, III, q. 62, a. 1; St. Alphonsus, VI, 169).

III. Character. 1. The existence of character is clear from what was said in n. 8.

2. The effects of character. It causes the baptized person to be constituted a soldier of Christ and to be deputed to profess the faith fearlessly (St. Thomas, III, q. 72, a. 5).

Part IV. On the Necessity of Confirmation

116 **I. Necessity of means** is rightly denied (canon 787); for Confirmation is necessary neither for acquiring sanctifying grace, because it is ordered to increasing it, nor for obtaining actual graces by which the spiritual life can be preserved, since a right to graces simply necessary is already given through Baptism.

117 **II. Necessity of precept.** There is an obligation of receiving Confirmation; and that obligation seems to be grave. It is said:

1. **There is an obligation.** This is clear: 1. From canon 787: "It is permitted to no one, when the occasion is offered, to neglect it"; add canon 1021, § 2: "Catholics who have not yet received the sacrament of Confirmation are to receive it before they are admitted to marriage, if they can do so without grave inconvenience." 2. From these words by which Pope Urban draws out the obligation from the end and character of Confirmation: "All the faithful, through the imposition of the hands of bishops, ought to receive the Holy Spirit after Baptism, so that they may be found fully Christians."[1] 3. From those things by which we shall prove the grave obligation.
2. **The obligation seems to be grave.** I understand a grave obligation per se, not only sometimes per accidens. Namely, all concede that one who neglects to receive Confirmation can per accidens sin gravely: 1. by reason of scandal; 2. by reason of contempt; 3. by reason of a particular danger and spiritual weakness (St. Alphonsus, VI, 182). But it is disputed whether a grave obligation per se must be asserted. With St. Alphonsus (loc. cit.), against several more recent authors, it seems that it must be affirmed. For first, St. Paul[2] reckons Confirmation among the fundamental institutions of Christianity; this hints that it obliges under grave obligation, all the more because all the other things enumerated there[3] oblige under grave obligation.[4] Then Benedict XIV, in the bull *Etsi pastoralis*,[5] declares with respect to the Italo-Greeks who had been confirmed by a non-competent priest and therefore invalidly: "that they are held guilty of grave sin if, when they can approach Confirmation, they refuse and neglect it."[6]

Now Benedict XIV by these words intends and signifies a grave obligation existing per se, not only that which held the Italo-Greeks per accidens by reason of special circumstances. For: a) This is the more obvious sense, since the preceding words regard all, so that even the words cited seem to regard all and not only the Italo-Greeks; for the rest, for a whole century all theologians understood the words of the Supreme Pontiff in the aforesaid sense. b) The Instruction of the Sacred Congregation de Propaganda Fide,[7] approved by Clement XIV, which teaches that the obligation is present per se, refers to the bull of Benedict XIV. c) Benedict XIV himself sufficiently signifies that this is the meaning of his bull, as can be seen in the unpublished works of Pope Benedict XIV.[8] Observe also that Benedict XIV, as a private doctor, held as certain and almost common the opinion which teaches that there is per se a grave obligation of receiving Confirmation.[9] Besides, the Instruction of the Sacred Congregation de Propaganda Fide,[10] which Clement XIV "approved and commanded to be inviolably observed by all whom it concerns," declares: This sacrament "cannot be rejected and neglected without guilt of grave sin when a suitable occasion of receiving it is present."[11] Moreover a sacrament which is held as the complement of Baptism, or which pertains to the integrity of Christian being, seems to be imposed under grave obligation. But Confirmation is of this kind; hence Pope Urban, to use his words again: "All the faithful, through the imposition of the hands of bishops,

ought to receive the Holy Spirit after Baptism, so that they may be found fully Christians." Then Confirmation confers the Holy Spirit, who is called "the Promise of the Father"; it confers grace which both in the Old and in the New Testament is assigned as the proper gift of the Messianic kingdom. Now it is difficult to admit that these things are not to be pursued under a precept, and that a grave one.[12]

Corollary I. It seems it must be said that the obligation of Confirmation is not only of ecclesiastical law, but also of divine law, since several of the arguments brought forward indicate divine law.

Corollary II. Per se the sacrament must be repeated under condition if a prudent doubt exists whether it was truly or validly conferred (canon 732, § 2).

Corollary III. Those more advanced in age who are very ashamed to receive the sacrament with children can, if they cannot be confirmed privately, scandal being excluded, be left in good faith.

[1] In canon *Omnes*, 1, distinction 5, *De consecratione*.

[2] Hebrews 6:2.

[3] Hebrews 6:1-2.

[4] Cf. Umberg, op. cit., p. 200.

[5] 26 May 1742.

[6] The complete text here is: "Although those confirmed by a simple priest are not to be compelled to receive this kind of sacrament of Confirmation from a bishop if scandals could arise from such compulsion, since the sacrament of Confirmation does not have such necessity that without it someone cannot be saved, nevertheless they are to be admonished by the Ordinaries of places that they are held guilty of grave sin if, when they can approach Confirmation, they refuse and neglect it."

[7] 4 May 1774 (*Collectanea*, n. 503).

[8] These were edited by Dr. F. Heiner; there, on p. 215, Benedict XIV declares that in his Constitution *Etsi pastoralis* he established several things, among them: "That, although one of the Italo-Greeks has received Chrismation from some simple priest, he must not be forced to receive Chrismation from the bishop when some grave scandal could perhaps be feared from this step; nevertheless, since this sacrament is not absolutely indispensable for eternal salvation, the Ordinary of the place to whom the Italo-Greek is subject ought wisely to admonish him that, in order not to be guilty of grave sin, when the occasion of being confirmed comes, he should not neglect it, since in this case contempt of the sacrament would have place, as we also demonstrated in our sixth Instruction."

[9] "It is certain," he writes, "that men already in adult age must, either in fact or at least in desire, be confirmed by necessity of precept, which is also numbered among the precepts of God. It is called a precept of the Church when one endowed with the use of reason, if a bishop, the minister of this sacrament, is present, is impeded by no legitimate cause from receiving it. Thus almost all theologians teach, and those who are especially commended by praise of wisdom; they testify that those are stained with grave fault who, because of contempt or yawning sluggishness, omit to have the soul fortified with the grace of this sacrament" (*Institutiones Ecclesiasticae*, VI, n. 10).

[10] 4 May 1774 (*Collectanea*, n. 503).

[11] The complete text here is: "For the rest, let missionaries not omit also to exhort the peoples entrusted to them to receive Confirmation at the due time, and also that parents see to it that their children are confirmed; for although this sacrament is not of necessity of means for salvation, nevertheless it cannot be rejected and neglected without guilt of grave sin when a suitable occasion of receiving it is present. Now this doctrine, if it is true for all Christ's faithful everywhere, has much more place in those who live in lands of heretics or pagans, in which persecutions sometimes arise against Catholics."

[12] "If Confirmation," says Pohle, "were a merely useful and not a necessary sacrament, why would it have been instituted and ordained by Christ as the supplement and completion of Baptism for all Christians?" (*Lehrbuch der Dogmatik*, vol. III, p. 158). Cf. Umberg, op. cit., p. 198.

Dissertation II. On the Ministration of Confirmation

118 **I. The person ministering.** 1. A bishop can validly confer Confirmation. This is of faith from the Council of Trent.[1] Therefore a bishop can always validly minister the sacrament.

2. A presbyter in fact cannot validly confer Confirmation without delegation. Thus all. But it is disputed whether or not even a presbyter per se or of himself enjoys the faculty of validly ministering Confirmation. Some affirm this; nevertheless they add that, by force of ecclesiastical or even divine disposition, the valid exercise of the said power does not belong to the presbyter. Others deny that a presbyter can per se or of himself confer Confirmation validly, but say that he enjoys only an incomplete power of confirming, to be completed by delegation. Among these, however, some teach that this kind of delegation, regard being had only to divine law, belongs even to a bishop; others judge that it is reserved, not only in fact but also by force of divine law, to the Supreme Pontiff alone.[2] From what has been said, draw out the things which follow.

3. The ordinary minister of Confirmation is the bishop alone (canon 782, § 1). The extraordinary minister is a presbyter to whom this faculty has been granted either by common law or by a special indult of the Apostolic See (canon 782, § 2). Now:

a) Besides Cardinals of the Holy Roman Church according to the norm of canon 239, § 1, n. 23,[3] an abbot or prelate nullius, a vicar and prefect apostolic enjoy this faculty by the law itself; these, however, cannot use it validly except within the boundaries of their territory and only during their office (canon 782, § 3). To the said persons are also reckoned the pro-vicar and pro-prefect to whom the care of the vicariate or prefecture has come according to the norm of canon 309 (canon 310, compared with canon 294, § 2). The aforesaid persons can validly confirm all within the boundaries of their territory.

b) A presbyter of the Latin rite to whom this faculty belongs by force of an indult validly confers Confirmation only on the faithful of his own rite, unless another thing has been expressly provided in the indult (canon 782, § 4). If, however, the indult is local, in the territory designated for him he validly confirms all the faithful of his own rite, even outsiders. If the indult is personal, he validly confirms only those persons who are comprehended by the indult.

c) Priests of the Eastern rite, by force of immemorial custom, validly and licitly administer Confirmation together with Baptism to infants of their own rite, except in those churches to which by a special statute the Latin discipline has been extended,[4] as has taken place in Bulgaria, Italy, and the adjacent islands. But "it is unlawful for priests who enjoy the faculty or privilege of conferring Confirmation together with Baptism on infants of their own rite to minister the same to infants of the Latin rite" (canon 782, § 5); since these words do not exclude validity, the conferral does not seem invalid.

[1] Session 7, On Confirmation, canon 3.

[2] Cf. Gilsamann, *Zur Lehre der Scholastik vom Spender der Firmung*; De Smet, *Tractatus dogmatico-moralis de sacramentis in genere, de Baptismo et Confirmatione*, n. 400 and following.

[3] Cardinals confirm validly everywhere, with the burden, however, of recording the name of the confirmed person (canon 239, § 1, n. 23).

[4] Aertnys-Damen, II, n. 87.

119 **II. Liceity of ministering.** 1. A bishop legitimately ministers this sacrament in his own diocese even to outsiders, unless an express prohibition of their proper Ordinary stands in the way (canon 783, § 1). In another diocese he needs the permission of the local Ordinary, at least reasonably presumed, unless the case concerns his own subjects to whom he confers Confirmation privately and without staff and mitre (canon 783, § 2).

2. A presbyter who is furnished with a local apostolic privilege licitly confirms even outsiders in the territory designated for him, unless their Ordinaries have expressly forbidden it (canon 784).

120 **III. Obligation of ministering.** 1. A bishop is bound by obligation to confer this sacrament on subjects rightly and reasonably asking for it, especially at the time of the visitation of the diocese. A presbyter endowed with apostolic privilege is held by the same obligation toward those in whose favor the faculty has been granted (canon 785, §§ 1 and 2). Nevertheless they are not bound to confer Confirmation on a dying person who asks for it; for they cannot furnish that office to one and deny it to another, but to satisfy all would be an excessive burden (St. Alphonsus, VI, 175).

2. An Ordinary impeded by a legitimate cause or lacking the power of confirming must, so far as it can be done, provide at least within every five-year period that this sacrament be administered to his subjects (canon 785, § 3).

3. If he has gravely neglected to minister the sacrament of Confirmation to his subjects by himself or through another, the Metropolitan is bound to inform the Holy See (canon 785, § 4). Grave neglect seems to be present if the occasion of receiving Confirmation is deferred beyond five years.

121 **IV. Things to be observed in ministering** regard time, place, sacred vestments, ceremonies, and sponsors.

1. **Time.** This sacrament can be conferred at any time; but it is especially fitting that it be administered in the week of Pentecost (canon 790). It is only of counsel that the one confirming and those to be confirmed be fasting (St. Alphonsus, VI, 174, question 1).

2. **Place.** The proper place for administering Confirmation is a church; nevertheless the minister, for a cause which he has judged just and reasonable, can confer it in any decent place (canon 791). A bishop has the right of administering it within the boundaries of his diocese also in exempt places (canon 792).

3. **Sacred vestments** are set forth in the Pontifical; to omit most of them would be grave (St. Alphonsus, VI, 184, note 1).

4. **Ceremonies** to be observed by a bishop are found in the Roman Pontifical; those to be observed by a presbyter are contained in the Instruction of the Sacred Congregation de Propaganda Fide.[1] Their obligation is grave from its genus (St. Alphonsus, VI, 184).

5. **Sponsors:** a) A sponsor, if he can be had, is to be used (canon 793), and this under grave obligation (St. Alphonsus, VI, 185). Moreover:

1. There is to be only one sponsor for each person to be confirmed (canon 794, § 2); hence the person to be confirmed cannot have two sponsors.

2. The same person can be sponsor for only one or two, unless for a just cause something else seems good to the minister (canon 794, § 1). Therefore the minister can for a just cause permit that the same person be sponsor even for several, indeed that one man be sponsor for all males, and one woman for all females.[2]

b) In order that someone be validly constituted sponsor, it is required: 1. that he himself also be confirmed, have attained the use of reason, and have the intention of carrying out that office; 2. that he be ascribed to no heretical or schismatical sect, nor be excommunicated or infamous with infamy of law by a condemnatory or declaratory sentence, or excluded from legitimate acts, nor be a cleric deposed or degraded; 3. that he not be the father, mother, or spouse of the person to be confirmed; 4. that he be designated by the person to be confirmed or by his parents or tutors, or, if these are lacking or refuse, by the minister or by the pastor; 5. that in the very act of Confirmation he physically touch the person to be confirmed, either by himself or through a procurator (canon 795).

c) In order that someone be licitly admitted to the office of sponsor, it is required: 1. that he be someone other than the sponsor of Baptism, unless a reasonable cause, in the judgment of the minister, suggests otherwise, or Confirmation is legitimately conferred immediately after Baptism; 2. that he be of the same sex as the person to be confirmed, unless in particular cases something else seems good to the minister for a reasonable cause; 3. that the prescriptions of canon 766 also be observed (canon 796).[3]

d) From valid Confirmation there arises between the confirmed person and the sponsor a spiritual kinship, from which the sponsor is bound by obligation to have the confirmed person perpetually commended to himself and to care for his Christian education (canon 797). Nevertheless the said kinship does not carry with it an impediment of marriage.

[1] 4 May 1774 (*Collectanea*, n. 503).

[2] Cf. Sacred Congregation of the Council, 24 June 1823; 12 July 1823; Holy Office, 16 June 1884 (*Collectanea*, n. 1619).

[3] Canon 766 sets forth the requisites for someone to be licitly admitted as sponsor in Baptism (n. 84).

122 **V. Notation and proof of Confirmation ministered.** 1. The pastor is to inscribe in a special book the names of the minister, of those confirmed, of the parents and sponsors, and the day and place of Confirmation (canon 798). Besides, it should be noted in the book of the baptized if the baptized person has received Confirmation (canon 798). If the proper pastor of the confirmed person was not present, concerning the Confirmation conferred the minister, either by himself or through another, should as soon as possible inform the same pastor (canon 799).

2. To prove Confirmation conferred, provided prejudice is done to no one, one witness beyond all exception suffices, or the oath of the confirmed person himself, unless he was confirmed in infant age (canon 800), that is, before the completed seventh year (canon 88, § 3).

Dissertation III. On the Reception of Confirmation

123 **I. The person receiving.** Every and only baptized person not yet confirmed can validly be confirmed (canon 786; n. 38). Per se even those perpetually insane are to be anointed, namely so that at least according to being they may be constituted perfect and complete Christians; and this must be urged even more if the discussion concerns the partially insane (St. Alphonsus, VI, 180).

124 **II. The age of reception.** In the first twelve centuries there was the usage of conferring Confirmation together with Baptism. This practice still flourishes in the Greek Church; but in the Latin Church it has been changed, except in some regions in which even little children are presented to be confirmed, as in Spain and in Latin America. For the rest, with respect to the Latin Church this rule holds: the administration of Confirmation is suitably deferred to about the seventh year of age; nevertheless it can be conferred even before then if the infant is constituted in danger of death, or if it seems expedient to the minister for just and grave causes (canon 788), for example if otherwise the infants would lack the occasion of receiving the sacrament for a very long time (St. Alphonsus, VI, 178). In other cases it cannot be conferred before about the seventh year of age.[1] It is not expedient to defer Confirmation longer than about the seventh year of age, since "thus the young adolescents confirmed become more pliant for grasping precepts, and more suited for receiving the Eucharist afterward, and from having received it they receive more abundant advantages."[2] Cf. St. Thomas, III, q. 65, aa. 1 and 2.

[1] Pontifical Commission, 16 June 1931, reply to II (*A.A.S.* 1931, p. 353); compare, however, with respect to the custom which flourishes in Spain and elsewhere, the response of the Sacred Congregation of the Sacraments, 13 June 1932 (*A.A.S.* 1932, p. 271).

[2] Thus Leo XIII in the brief *Abrogata*, 22 June 1897.

125 **III. Things to be observed in reception.** In the one receiving there are required: 1. the state of grace (canon 786), which, if it has been lost, is to be recovered through confession or through perfect contrition; 2. sufficient instruction, if the one to be confirmed possesses the use of reason (cited canon), namely instruction in the rudiments of faith and in the principal things which regard the sacrament of Confirmation.[1] It is only of counsel that the one to be confirmed, if it can conveniently be done, be fasting.[2] Finally, those to be confirmed, if there are several, are to be present for the first imposition or extension of hands, nor are they to depart until the rite has been completed (canon 789). It is said, if there are several, for if there is only one person to be confirmed and he is absent, the ceremony cannot even be begun.

Note. The precept of the Roman Pontifical of wearing a linen band until the chrism has dried is no longer observed, but immediately after the anointing the chrism is wiped from the forehead of the confirmed person (St. Alphonsus, VI, 180).

[1] The Sacred Congregation de Propaganda Fide, 4 May 1774, says thus: "Those to be anointed with sacred chrism must first be diligently instructed, according to the teachings of the Roman Catechism, concerning the nature, dignity, effects, and dispositions prerequired for receiving this sacrament worthily. Likewise they must be instructed concerning the rudiments of faith, the precepts of the Decalogue and of the Church, the acts of the theological virtues, and they must hold in memory the Lord's Prayer and the Apostles' Creed" (*Collectanea*, n. 503).

[2] Cf. Roman Pontifical.

Treatise IV. On the Most Holy Eucharist

(St. Thomas, III, qq. 73-83; St. Alphonsus, *Theologia Moralis*, book VI, nn. 189-424; *Homo Apostolicus*, tract 15).[1]

The Most Holy Eucharist is not only a sacrament, but also a sacrifice. Now the foundation of the whole doctrine on this matter is the real presence of Christ in the Eucharist. Hence we shall speak first about the real presence of the Lord in the Eucharist, then about the Most Holy Eucharist as it is a sacrament, finally about the Most Holy Eucharist as it is a sacrifice. These three things are set forth in these words of canon 801: In the Most Holy Eucharist, under the species of bread and wine, Christ the Lord is contained, offered, and received.

[1] Cf. Billuart, *Tractatus de almo Eucharistiae sacramento* (VI, vol. VI); Rath, *De Eucharistia*.

Dissertation I. On the Real Presence of Christ in the Eucharist

126 (St. Thomas, III, qq. 75-77; *Contra Gentiles*, book 4, chapters 62-67.)

I. The truth of the real presence of Christ. In the Most Holy Eucharist Christ is truly, really, and substantially present. This is of faith from the Council of Trent solemnly declaring: "If anyone denies that in the sacrament of the Most Holy Eucharist there are contained truly, really, and substantially the body and blood, together with the soul and divinity, of our Lord Jesus Christ, and therefore the whole Christ, but says that He is in it only as in a sign, or figure, or power, let him be anathema."[1] "The Council," says St. Alphonsus, "says truly, so that it may exclude a figurative presence; for figure is opposed to truth; really, to repel an imaginary presence, apprehended by faith, which the Sacramentarians admitted; substantially, so that it may remove the opinion of Calvin, who asserted that the Eucharist does not contain the body, but only the power of Jesus Christ, who communicates Himself to us" (*Opera dogmatica*, vol. I, p. 555, ed. Walter).

[1] Session 13, canon 1.

127 **II. The manner in which Christ is made present.** Christ is made present in the Most Holy Eucharist through transubstantiation; concerning this I note:

1. The proposition stated is of faith from the Council of Trent: "If anyone says that in the most holy sacrament of the Eucharist there remains the substance of bread and wine together with the body and blood of Our Lord Jesus Christ, and denies that wonderful and singular conversion of the whole substance of bread into the body and of the whole substance of wine into the blood, the species of bread and wine alone remaining, which conversion indeed the Catholic Church most fittingly calls transubstantiation, let him be anathema."[1]
2. Transubstantiation, according to the cited words of Trent, is: "The conversion of the whole substance of bread into the body and of the whole substance of wine into the blood of Christ, the species of bread and wine alone remaining." It is said:

a) **Conversion;** therefore consubstantiation is excluded, which admits a simple conjunction, and impanation, which admits the hypostatic union of the body and blood of Christ with bread and wine.

b) **Conversion... of the substance of bread and wine.** Therefore it is distinguished from accidental transformation, in which the same substance remains and only receives, for example, a new figure, as if a stone is transformed into a statue.

c) **Conversion of the whole substance.** Hence it is distinguished from substantial transformation, in which there is not a conversion of the whole substance, namely while the matter of the prior substance remains, as if daily foods pass into the substance of our body.

Transubstantiation regards a double term, namely the term from which and the term into which; or the term which passes away, namely bread and wine, and the term which succeeds, namely the body and blood of Christ. Now:

It is disputed first how the term from which, or the substance of bread and wine, passes away. Some judge that it is annihilated. Others, such as St. Thomas (III, q. 75, a. 3) and St. Alphonsus (*Opera dogmatica*, vol. I, p. 562, ed. Walter), teach that it ceases through a true and simple conversion,

because in annihilation, which is reduction to nothing, the concept of conversion into another thing is not verified.

It is disputed besides how the term into which, or the body and blood of Christ, succeeds. Some, such as the Scotists, think that this is done by way of adduction, insofar, namely, as God in the consecration effects with respect to the body of Christ, without local motion, what local motion effects in the natural order; that is, God gives to the body of Christ non-distance from this space and from these accidents of bread and wine. Others, among whom are several Thomists, teach that this is done through production, or reproduction, of the body and blood of Christ, and this not simply, but by way of conversion from the substance of bread and wine; this opinion better corresponds to the concept of the conversion of bread and wine into the body and blood of Christ. Others[2] say that transubstantiation is a simple action by which God immediately changes whatever entity is in the substance of bread into that which is entity in the substance of the body of Christ; yet in such a way that the body of Christ is in no way changed, but the whole change takes place in the bread, whose substance passes away while the dimensions remain. According to this explanation, Christ suffers nothing in the consecration, receives nothing, but becomes present where He was not before, not locally but sacramentally, from this alone, that by force of the conversion He is now really contained under the dimensions of bread, under which the substance of bread was previously contained.[3]

d) **The species of bread and wine alone remaining.** Concerning the species, note:

1. The species of bread and wine have objective reality; this is "the perpetual and constant doctrine of the Catholic Church,"[4] and therefore at least theologically certain.
2. The species inhere in no substance as a subject, but are sustained divinely.

I said, in no substance: neither in the substance of bread and wine, since it has passed away; nor in the body of Christ, which in the sacrament is entirely glorious and exists supernaturally.

I said, are sustained divinely: understand this so that God immediately sustains only the quantity, but accidents distinct from quantity inhere in the quantity as in a subject (St. Thomas, III, q. 77, a. 2).

Corollary. From the Eucharistic species a new substance is generated. This is explained in different ways by different authors. According to some, to set forth the principal opinion, in the last instant of corruption matter is produced by God, from which a new form is educed (St. Thomas, III, q. 77, a. 5). But it is disputed whether the said production is done by way of creation or by way of conversion of quantity into matter. And thus it is also explained how the species can nourish (St. Thomas, III, q. 77, a. 6).

[1] Session 13, canon 2.

[2] Thus Billot.

[3] Tanquerey, n. 406.

[4] Roman Catechism, part 2, On the Eucharist, n. 44.

128 **III. The manner in which Christ is present** is circumscribed in these terms:

1. The whole Christ is present under each Eucharistic species. This is of faith from the Council of Trent.[1]

By force of the words, under the species of bread only the body becomes present, and under the species of wine only the blood. By force of natural connection and concomitance, under the species of bread the blood and soul exist, and under the species of wine the body and soul exist.

2. The whole Christ is contained under each part of the species both before and after division. That the whole Christ is contained under each part after division is of faith from the Council of Trent.[2] With respect to presence under each part before division, it is theologically certain.

[1] Session 13, canon 3.

[2] Session 13, canon 3.

129 **IV. The time during which Christ is present.** Christ is present in the manner which we have stated from the moment of consecration until the essential alteration of the species; and this is had when the species are so altered that, if the substance of bread and wine had persisted, this substance according to common estimation would have ceased to persist. Moreover:

1. Authors do not agree when the species are corrupted. Von Olfers judges that the species of bread is changed already in the mouth itself; yet Capellmann-Bergmann[1] rejects this entirely. Nevertheless even for the sake of security the species should not be kept long in the mouth, namely so that Christ is certainly eaten and the grace of the sacrament is certainly conferred (St. Alphonsus, VI, 226; n. 171). With respect to corruption in the stomach, some assign half an hour, others a much longer time, especially for the infirm; and it is certain that the matter depends on the condition of the stomach. With attention to all these things, I say:

a) Because of doubt about the presence of the species, it is illicit to provoke vomiting or to wash the stomach within two to three hours after the reception of the Eucharist, especially since these things are ordinarily not done except because of illness.

b) Whatever may be true about the duration of the presence, it is permitted to anyone to eat after he has spent a reasonable time in thanksgiving, because the sacraments must be ministered and received in a human manner (cf. St. Thomas, III, q. 80, a. 8, ad 6; St. Alphonsus, VI, 283).

2. If unconsecrated wine is mixed in a small quantity with consecrated wine, Christ remains present. If another liquid is mixed with consecrated wine, the matter depends both on the quantity and on the quality of the other liquid. If unconsecrated wine is mixed in a greater quantity with consecrated wine, it is disputed whether the presence of Christ endures. Some affirm this, because, as modern chemists teach, the molecules of the consecrated species retain their individuation. Others with St. Thomas (III, q. 77, a. 8) deny it, because the consecrated species, at least according to common estimation, do not remain the same numerically, but receive a new individuation from the greater quantity.

Note. When flesh or blood appears in the Most Holy Eucharist, it is not the flesh or blood of Christ. Apparitions of this kind are explained either from this, that species are formed by God in the eyes of those seeing, and thus it happens as if flesh or blood were truly seen; or from this, that a miraculous figure is formed which represents the flesh or blood of Christ. Hence to such figures, which are called relics of the Most Holy Blood, only relative worship is rendered (St. Thomas, III, q. 76, a. 8).

[1] Cf. Von Olfers, *Pastoral-Medizin*, p. 44 and following; Capellmann-Bergmann, op. cit., p. 270 and following; ibid., p. 271.

Scholion I. On the Custody of the Holy Eucharist

130 **I. Liceity of reserving the Holy Eucharist.** That the Holy Eucharist can licitly be preserved in the sacrarium after the sacrifice has been completed is of faith from Trent: "If anyone says that it is not permitted for the Sacred Eucharist to be reserved in the sacrarium, but that immediately after the consecration it must necessarily be distributed to those present, or that it is not permitted for it to be carried honorifically to the sick, let him be anathema."[1]

[1] Session 13, canon 7.

131 **II. Places for reserving the Holy Eucharist.** In order that the Holy Eucharist must or can be reserved in the places soon to be assigned, two things are required: 1. that there be someone who has care of it; 2. that regularly a priest celebrate Mass at least once a week in the sacred place (canon 1265, § 1). These things being posited:

1. It must be kept in a cathedral church, in the principal church of an abbey or prelature nullius, of a vicariate and prefecture apostolic, in any parochial or quasi-parochial church, and in a church attached to a house of exempt religious, whether men or women (canon 1265, § 1, 1).

2. It can be kept, with the permission of the local Ordinary, in a collegiate church and in the principal oratory, whether public or semi-public, both of a pious or religious house and of an ecclesiastical college which is governed by secular clerics or by religious (canon 1265, § 1, 2). The same seems to be applied a fortiori to succursal churches, over which a priest presides who is bound to exercise the care of souls for a determined part of the parish. The Pontifical Commission declared[1] that the Ordinary can permit this if immemorial custom is added.

3. In order that it can be kept in other churches or oratories, an apostolic indult is necessary; the local Ordinary can grant this permission only to a church or public oratory for a just cause and by way of act (canon 1265, § 2).

Note 1. It is permitted to no one to retain the Most Holy Eucharist with himself or to carry it with him on a journey (canon 1265, § 3). Exceptions: 1. if, insofar and for as long as otherwise the security of the Holy Eucharist would not be sufficiently provided for; 2. if, which is to be prevented so far as can be done, the Holy Eucharist cannot be kept decently in the church.

Note 2. Churches in which the Most Holy Eucharist is reserved, especially parochial churches, should be open to the faithful daily for at least some hours (canon 1266).

4. Any contrary privilege having been revoked, in the religious or pious house itself the Most Holy Eucharist cannot be kept except either in the church or in the principal oratory; nor among nuns within the choir or enclosure of the monastery (canon 1267). The cited canon sets forth to what extent the Holy Eucharist can be reserved in two places, that is, both in the church and in the principal oratory. Now, considering the response of the Pontifical Commission,[2] it must be established thus:

a) If a religious or pious house has a public church attached and uses it for carrying out ordinary and daily exercises of piety, the Most Holy Sacrament can be reserved only in that church.

b) If a religious or pious house does not use the attached church for ordinary and daily exercises of piety, by privilege or permission of the local Ordinary (cf. canon 1265, § 2), the Holy Eucharist can be kept in the principal oratory of the same religious or pious house, and indeed without prejudice to the

right of the church, if it has any, for example because it is attached to a house of exempt religious; in this case it can be reserved both in the church and in the oratory. But it can be kept in only one oratory, unless in the same material building there are distinct and separate families, so that they are formally distinct religious or pious houses; this obtains, for example, in the case in which in a college there is a community of sisters who devote themselves to the service of the college; likewise in the case in which in a religious house there are, besides the students living in common, religious partly devoted to education and partly to other works. It is doubtful whether the novitiate constitutes a religious house formally distinct from the other community of the house.

[1] 20 May 1923 (*A.A.S.* 1924, p. 155).

[2] 2 June 1918 (*A.A.S.* 1918, p. 346).

132 **III. The manner of reserving the Holy Eucharist.** 1. The Most Holy Eucharist cannot be kept continuously or habitually except on one altar only of the same church (canon 1268, § 1). It is said, habitually; hence nothing prevents the Holy Eucharist from sometimes being kept also on another altar for some time, for example so that Communion may be distributed more conveniently. It is to be kept in the most excellent and noble place of the church, and therefore regularly on the high altar, unless another place seems more convenient and becoming for the veneration and worship of so great a sacrament, with the prescription of liturgical laws being observed as regards the last days of Holy Week (canon 1268, § 2). But in cathedral, collegiate, or conventual churches in which choral functions must be performed at the high altar, lest an impediment be brought to ecclesiastical offices, it is fitting that the Most Holy Eucharist regularly not be kept on the high altar, but in another chapel or altar (canon 1268, § 3). Let rectors of churches take care that the altar on which the Most Holy Sacrament is reserved be adorned before all the others, so that by its very arrangement it may move the piety and devotion of the faithful more (canon 1268, § 4).

2. The Most Holy Eucharist must be kept in an immovable tabernacle placed in the middle part of the altar (canon 1269, § 1). Nevertheless, if some grave cause approved by the local Ordinary persuades it, it is not forbidden that the Most Holy Eucharist be reserved at night outside the altar, yet on a corporal, in a safer and decent place, with the prescription of canon 1271 being observed (canon 1269, § 3); the cited canon prescribes that a lamp be lit before the tabernacle (cf. p. 94). For the rest, note:

a) The tabernacle should be skillfully constructed, solidly closed on every side, decently adorned according to the norm of liturgical laws, empty of every other thing, and so carefully guarded that danger of any sacrilegious profanation is kept away (canon 1269, § 2). It is said: adorned according to the norm of liturgical laws. Now the said laws prescribe that the tabernacle be covered within with white silk, unless it is gilded;[1] that it be blessed and outwardly covered with a conopaeum or veil of a color either white or adapted to the office; for black, violet is used.[2] But if the form of the tabernacle does not allow the use of a conopaeum, at least a broad cloth hanging from above, a baldachin, is to be used, which covers the altar. Nor is it permitted to place images or relics of Saints before or above the tabernacle, even of the Holy Cross. Nevertheless a cross with an image of the Crucified can be placed above the tabernacle. It is said: empty of every other thing; hence not even the sacred oils can be kept in the tabernacle.[3]

b) The key of the tabernacle in which the Most Holy Sacrament is reserved must be guarded most diligently, the conscience of the priest who has care of the church or oratory being gravely burdened

(canon 1269, § 4). It no longer seems, as formerly, to be prescribed that the priest himself guard the key.

3. The Holy Eucharist must be kept in a pyx of solid and decent material, clean and well closed with its own lid, covered with a white silk veil and, as far as the matter allows, adorned. The consecrated particles should be of such a number as can suffice for the Communion of the sick and of other faithful (canon 1270). Now the pyx or ciborium, likewise the monstrance and lunette, can be of gilded copper, although it is more fitting that the pyx and lunette be silver. It is not prescribed that the pyx and lunette, if they are silver, be gilded. But the pyx and monstrance, or at least the lunette, are to be blessed, not consecrated, and this more probably under sin, though only venial (St. Alphonsus, VI, *Quaestiones reformatae*, 74).
4. Before the tabernacle in which the Most Holy Sacrament is reserved, at least one lamp should shine continually day and night, to be nourished with olive oil or beeswax; but where olive oil cannot be had, it is permitted to the prudence of the local Ordinary that it be changed for other oils, as far as possible vegetable oils (canon 1271). The obligation of the lamp is grave from its genus, so that neglect through an entire day or through several nights would constitute mortal sin (St. Alphonsus, VI, n. 248).
5. Consecrated Hosts, whether for the Communion of the faithful or for exposition of the Most Holy Sacrament, should both be fresh and be frequently renewed, the old ones being duly consumed, so that there be no danger of corruption, with the instructions which the local Ordinary has given concerning this matter being carefully observed (canon 1272). The Ceremonial of Bishops wills that hosts be renewed every week;[4] nevertheless it seems to suffice that this be done within two weeks. Moreover, new consecrated Hosts should not be mixed with old, but the old should first be distributed or consumed.[5]

[1] Sacred Congregation of Rites, 20 June 1899, reply to IV, n. 4035.

[2] Sacred Congregation of Rites, 20 June 1899, reply to IV, n. 4035.

[3] Roman Ritual, title IV, chapter 1, n. 6; Sacred Congregation of Rites, 12 March, reply to IV, n. 2740.

[4] Book II, chapter 6, n. 51.

[5] Roman Ritual, title IV, chapter 1, n. 7.

Scholion II. On the Worship of the Holy Eucharist

133 **I. Necessity of worship of the Holy Eucharist.** Christ in the Eucharist must be adored with the worship of latria, even external. This is of faith from the Council of Trent: "If anyone says that in the holy sacrament of the Eucharist Christ, the only-begotten Son of God, is not to be adored with the worship of latria, even external, and therefore is not to be venerated with a special festive celebration, nor solemnly carried around in processions according to the praiseworthy and universal rite and custom of holy Church, or is not to be publicly proposed to the people that He may be adored, and that His adorers are idolaters, let him be anathema."[1] Now the sacramental species, since they pertain to the sacramental Christ, are to be adored together with the body and blood of Christ. But they constitute not the motive but the term of this adoration, and therefore the adoration, insofar as it regards the species themselves, must be called relative.

[1] Session 13, canon 6.

134 **II. Zeal for the worship of the Holy Eucharist.** Those who labor in the religious instruction of the faithful should omit nothing to excite piety toward the Most Holy Eucharist in their souls, and especially exhort them that, not only on Sundays and feasts of precept, but also on weekdays within the week, they frequently, so far as can be done, assist at the sacrifice of the Mass and visit the Most Holy Sacrament (canon 1273). Specifically, the following are noted in the Code:

1. **Exposition of the Holy Eucharist.** A twofold exposition is distinguished: private, which is made with the pyx, and public, which is made with the monstrance. Now private exposition can be made for any just cause without the permission of the Ordinary in churches or oratories to which it has been given to reserve the Most Holy Eucharist. But public exposition on the feast day of Corpus Christi and within the octave can be made in all churches during the solemnities of the Masses and at Vespers; but at other times only for a just and grave cause, especially a public one, and with the permission of the local Ordinary, even if the church belongs to an exempt religious institute (canon 1274, § 1), with the prescription of canon 1171 remaining firm, as the Sacred Congregation of the Council says,[1] that is, with parochial rights, privileges, and legitimate customs being saved, and with the right of the Ordinary of predefining, for a just cause, the hours of sacred rites in churches which do not belong to an exempt religious institute being saved.

Note 1. According to the rubrics, the pyx to be exposed cannot be taken out from the tabernacle, but can only be brought forward to its entrance.[2] But where a contrary custom is legitimately sustained, this kind of exposition of the pyx on a throne is, with respect to liceity, to be equated with public exposition. Finally, the custom of exposing the Holy Eucharist without the permission of the Bishop, where this is required by law, cannot be preserved.[3]

Note 2. The minister of exposition and reposition of the Most Holy Sacrament is a priest or deacon; but the minister of Eucharistic Benediction is the priest alone, nor can a deacon impart it except in the case in which, according to the norm of canon 845, § 2, he has carried Viaticum to the sick (canon 1274, § 2).

2. **The supplication of the Forty Hours** should be held every year in all parish churches and other churches in which the Most Holy Sacrament is habitually reserved, on days established with the consent of the local Ordinary, with the greatest solemnity possible; and if somewhere, because of particular circumstances of things, it cannot be done without grave inconvenience and with the reverence due to so great a sacrament, let the local Ordinary see to it that at least for some continuous hours, on fixed days, the Most Holy Sacrament be exposed in a more solemn rite (canon 1275).

[1] 14 July 1922 (*A.A.S.* 1922, p. 529).

[2] Sacred Congregation of Rites, 23 May 1835, n. 2725, reply to IV; 16 March 1876, n. 3394, reply to I; 28 April 1902, n. 4096, reply to VII; 16 February 1906, n. 4180, reply to II.

[3] Sacred Congregation of Rites, 14 March 1861, n. 3104, reply to XIV.

Dissertation II. On the Most Holy Eucharist as It Is a Sacrament

(St. Thomas, III, qq. 73-74; qq. 78-80; St. Alphonsus, *Theologia Moralis*, book VI, nn. 189-303; *Homo Apostolicus*, tract 15, nn. 1-58.)

We shall treat first of the Most Holy Sacrament considered in itself, then of its ministration, finally of the reception of the Most Holy Sacrament.

Part I. On the Most Holy Sacrament Considered in Itself

135 The Most Holy Eucharist is usually defined: **The sacrament of the Body and Blood of the Lord for the spiritual refreshment of the soul.**

This definition having been handed down, we shall speak first, briefly, about the existence, then about the essence, then about the effects, finally about the necessity of the Eucharist.

Section I. On the Existence of the Sacrament of the Eucharist

136 **I. The Most Holy Eucharist is a true sacrament;** this proposition is of faith from the Council of Trent: "If anyone says... that the Eucharist... is not truly and properly a sacrament, let him be anathema."[1]

Note. The sacrament of the Eucharist was instituted at the Last Supper. "For thus," says the Council of Trent, "all our forefathers, as many as were in the true Church of Christ who have discussed the Most Holy Sacrament, most openly professed that our Redeemer instituted this so admirable sacrament at the Last Supper."[2]

[1] Session 7, canon 1, On the Sacraments in general.

[2] Council of Trent, Session 13, chapter 1.

137 **II. The sacrament of the Eucharist is one sacrament in species, and indeed in the lowest species,** even though it exists under the double species, namely of bread and wine. For otherwise the dogma concerning the sevenfold number of the sacraments would not stand. Now the reason is that "although each species is materially different, nevertheless morally each constitutes one sacrament, since each signifies one banquet consisting of food and drink" (St. Alphonsus, VI, 191).

"A thing is called one," says St. Thomas, "not only because it is indivisible, or because it is continuous, but also because it is perfect, as one house and one man are said to be one. Now that is one by perfection to whose integrity all things concur which are required for its end; as man is integrated from all the members necessary for the operation of the soul, and a house is integrated from all the parts which are necessary for dwelling. And thus this sacrament is called one: for it is ordered to spiritual refreshment, which is conformed to bodily refreshment. But for bodily refreshment two things are required, namely food, which is dry nourishment, and drink, which is liquid nourishment; and therefore for the integrity of this sacrament two things also concur, namely spiritual food and spiritual drink, according to that passage of John 6: My flesh is truly food, and my blood is truly drink" (III, q. 73, a. 2).

138 **III. The sacrament of the Eucharist is numerically multiple.** Thus the much more common and much more probable opinion. The reason is that the species, which constitute the sacrament in the direct order (n. 139), are numerically multiple.

But authors differ in assigning the principle of numerical distinction; in this matter three principal opinions are defended. Some seek the number from the physical unity or plurality of the species, because, they say, number follows the unity or plurality of quantity.[1] Others derive the number from the unity or plurality of refreshment, or of the proposition of the sacrament for the sake of adoration.[2] The third opinion, recognizing part of the truth in each preceding opinion, teaches that a distinction must be made between numerical unity taken physically and taken morally. For numerical unity is

derived from unity of quantity. But this quantity is either physical, or of continuous parts, or moral, or of contiguous parts joined because of some end or in some order. Therefore there is likewise a twofold numerical unity, physical and moral. Hence the physical unity of this sacrament is taken from the physical continuity of the species; moral unity from moral continuation, insofar as they are proposed or received by way of one thing. St. Alphonsus follows this opinion as the more probable. "Several consecrated species," he says, "although discontinuous, even if physically they are several sacraments, nevertheless morally they are one sacrament from the moral conjunction which they have while they are proposed or received by way of one thing" (VI, 191). "Whence," the same holy Doctor says:

1. If one species or one host is distributed to several persons or to the same person at morally distinct times, they are different sacraments numerically.
2. Conversely, if both species or several parts of the same species, or even of species consecrated at different times, are ministered to someone at the same time, there is one sacrament.
3. Thus likewise, if different consecrated species are proposed at the same time and on the same altar, there will be one sacrament; but if they are divided and proposed on different altars, they are different sacraments (VI, 191, question 2).

[1] Thus, for example, the Salmanticenses, disputation 2, doubt 4, n. 58 and following.

[2] Thus, for example, John of St. Thomas, disputation 26, article 3.

Section II. On the Essence of the Sacrament of the Eucharist

139 The Most Holy Eucharist, like the other sacraments, consists of proximate matter and form. But for the sake of completeness, a discussion must also be made about remote matter. Now the remote matter, that is, that from which the sacrament is confected, is bread and wine; the proximate matter is the species together with the body and blood of Christ; but the form is the words of consecration, insofar as they virtually persevere. Namely, the aforesaid words, insofar as they were sensibly uttered, effected or confected the sacrament; but insofar as they virtually persevere, they constitute the sacrament as confected and remaining. Hence the words of consecration, insofar as they are sensibly uttered, are called the form of the sacrament *in fieri*; insofar as they virtually endure, they are the form of the sacrament *in facto esse*. Thus commonly the Thomists and others, while others teach that the form is not the words of consecration, since these have passed away, but the sacramental signification, that is, the refreshment of the soul through the increase of grace.

With respect to the proximate matter it is disputed in what way each element concurs in constituting the proximate matter, that is, whether the proximate matter is the body and blood connoting the species, or the species connoting the body and blood, or whether each element equally must be called the proximate matter. According to St. Thomas (III, q. 77, a. 7), the proximate matter is the species alone in the direct order, connoting the body and blood in the oblique order. The principal reason for this doctrine is taken from the fact that the sacraments are in the direct order sensible signs. But in the Most Holy Sacrament the sensible sign is had only in the species, connoting the body and blood of the Lord. Thus also teaches the Catechism of Trent.[1]

With these things noted about the essence of the sacrament in general, we shall speak specifically about the remote matter and form.

[1] Part 2, chapter 4, question 8.

Chapter I. On the Remote Matter

140 The matter from which the sacrament of the Eucharist is confected, or the matter around which, as others say, is bread and wine. This doctrine, after the Third Council of Carthage, the Fourth Lateran Council, and Florence, is expressed by the Council of Trent in these words: "It was always firmly believed in the Church, and now this Synod again declares it, that through the consecration of bread and wine a conversion takes place."[1] We shall speak about each matter separately.

[1] Session 13, chapter 4; cf. canon 2.

Article I. On the Matter of Bread

141 **I. The matter required for validity** is bread, composed of wheaten flour and water, and uncorrupted with respect to substance. It does not matter for validity whether it is unleavened or leavened. I said:

1. **Bread.** Therefore invalid matter is: a) a raw or uncooked mass of flour; b) a mass which was not baked by fire but boiled after the manner of porridge or cake; c) a fried mass. The reason is that all these things do not come under the name of bread. Nevertheless it does not matter whether the bread has been baked by electric fire or by another fire.

2. **Composed of wheaten flour and water.** That wheaten bread is required is clear: 1. from the Council of Florence[1] and from various liturgies;[2] 2. from the fact that Christ used wheaten bread, and this bread alone is and was usual in Palestine.[3] Therefore invalid matter is:

a) Food confected from matter which is not grain, for example from flour of beans, potatoes, etc.

b) Bread confected from grain which is not wheat, for example from millet, barley, oats, maize, rice, or rye; the grain which in Dutch is called *emer* is doubtful matter.

By the name spelt there is sometimes designated a kind of wheat, sometimes grain which in no way or doubtfully belongs to the genus of wheat. Therefore in practice attention should be paid to the quality and to the judgment of experts. For the rest, it does not matter whether the wheat is summer or winter wheat.

3. **Composed of wheaten flour and water.** This is clear from the fact that bread thus composed was used by Christ, and was usual in Palestine.[4] Therefore invalid matter would be flour kneaded only with oil, honey, wine, butter, or milk; flour kneaded with artificial or at least non-usual water, such as rose water, is doubtful matter[5] (St. Alphonsus, VI, 199).

Admixture made with wheat certainly does not obstruct validity if the quantity of wheat notably prevails; it certainly obstructs if the quantity of wheat is notably smaller; otherwise, that is, if the suitable and unsuitable quantity is equal or differs little, the species has at least probably been changed, and therefore the matter is at least doubtfully valid (cf. St. Thomas, III, q. 74, a. 3, ad 3; St. Alphonsus, VI, 201).[6] Thus, with regard to the quantity of the admixed matter; with regard to its quality, a smaller quantity can sometimes suffice to change the wheat to which it is admixed.

4. **Uncorrupted with respect to substance.** Bread notably corrupted is in practice doubtful matter; but moldy bread, or bread only tending toward corruption, is valid matter.

5. **For validity it does not matter whether the bread is unleavened or leavened.** This is clear from the Council of Florence[7] (cf. canon 816).

[1] Denzinger-Bannwart, n. 692.

[2] Cf. Roman Missal, On Defects, title 3, n. 4.

[3] Vigouroux, *Dictionnaire de la Bible*, word *pain*, p. 1951.

[4] Vigouroux, loc. cit.

[5] Roman Missal, On Defects, title 3, n. 2.

[6] Cf. Sacred Congregation for the Discipline of the Sacraments, 16 March 1929 (*A.A.S.* 1929, p. 632).

[7] Denzinger-Bannwart, n. 692.

142 **II. The matter required for liceity** is bread:

1. Merely wheaten (canon 815, § 1), indeed altogether pure, to which, namely, matter diverse from wheat or water has not been admixed; indeed it is better that the flour have been purified by a sieve.
2. Entirely uncorrupted; hence not at all moldy. But for how much time after their baking hosts remain entirely uncorrupted depends on the circumstances of weather, place, manner of preserving them, etc.
3. Recently confected, so that there is no danger of corruption. Thus canon 815, § 1. And the Roman Ritual:[1] "But the hosts or particles to be consecrated should be fresh." Now the Sacred Congregation of Rites, in the case of Ghent,[2] reprobated the custom of consecrating hosts confected three months previously in wintertime or six months previously in summer; and the Sacred Congregation for the Discipline of the Sacraments[3] rejected the practice of procuring for oneself so many hosts as would suffice for two or three months. Now, although in the judgment of chemists the danger of corruption is commonly exaggerated, nevertheless, considering the mind of the Church, it should be urged that hosts to be consecrated not have been baked more than two weeks or a month previously.[4]
4. Of circular and thin shape in the Latin Church; square in the Greek Church. Thus from ancient practice. Besides, the host should be:
5. Whole, clean, and, according to use, larger for the priest. If the fracture or spot is enormous, or if the host begins to grow moldy, its use is prohibited under grave obligation. Hence it is not permitted to use this kind of host except for a grave cause, for example if the defect is detected after the oblation has been made, provided, however, that scandal does not arise from its use, and that the host is not so broken that the grave rites cannot be carried out[5] (St. Alphonsus, VI, 204). The use of a host simply broken or spotted, or smaller, is prohibited only under light obligation. Therefore a just cause excuses, for example if otherwise a sick person would lack Viaticum or the people would lack Mass; indeed, quite probably the devotion of the priest alone suffices (St. Alphonsus, VI, 205).
6. Unleavened in the Latin Church, leavened in the Greek;[6] for canon 816 establishes: In the celebration of Mass, a priest, according to his own rite, must use unleavened or leavened bread wherever he offers the sacred sacrifice.

Considering the cited canon, the opinion no longer seems to hold which conceded that a priest, as a traveler living in a region of another rite, might consecrate the bread of that rite if bread of his own rite was not available. For the rest, the obligation of using bread of one's own rite is considered so great that not even for ministering Viaticum to a sick person is it permitted to consecrate bread of another rite. The reason is that the common good, because of which the law was passed, that is, the necessity of preserving for each Church its own rite, in the mind of the Church prevails over the divine precept of receiving Viaticum; this necessity of the common good, of course, was once more evident than today. Nevertheless the use of bread of another rite is licit for completing the sacrifice; as if after the wine has been consecrated the bread used should be detected as corrupted, and only bread of another rite should be available (St. Alphonsus, VI, 203).

The distribution and reception of the Holy Eucharist confected in another rite will be discussed later.

[1] Title IV, chapter 1, n. 7.

[2] 16 December 1826 (*Collectanea,* n. 2650).

[3] 7 December 1918.

[4] Concerning consecrated Hosts, see n. 132.

[5] Roman Missal, On Defects, title X, n. 9.

[6] Certain Orientals, however, such as Armenians and Maronites, use unleavened bread; cf. Sacred Congregation de Propaganda Fide, 20 May 1838.

Article II. On the Matter of Wine

143 **I. The matter required for validity** is wine from the vine, whether white or red, whether mixed from each, whether strong or weak. There is required:

1. **Wine,** as is clear from what was said in n. 140 and from the things to be said under 2.
2. **Wine from the vine,** as is deduced: 1. from the fact that Christ used that matter;[1] 2. from the Decree of Eugene IV; 3. from universal Tradition; 4. from the fact that only the assigned liquid, according to common estimation, is called true wine.
3. **Whether white, etc.** The reason is that all the wines assigned are true wine.

Corollary I. Valid matter is:

a) Must, that is, recently fermented wine not yet cleared from sediment; indeed, as they deduce from chapter *Cum omne*, *De consecratione*, distinction 2, and from the Roman Missal,[2] even wine recently expressed from grapes and not yet fermented. Vermeersch,[3] however, requires that it have begun to ferment.

b) Wine from dried grapes, provided it is duly prepared, so that "from color, odor, and taste it is recognized to be true wine";[4] in which case it is also licit to use it.

c) Wine to which a small amount of another liquid has been admixed. If a notable quantity is admixed, the matter easily becomes doubtful.

Corollary II. Invalid matter is:

a) Liquid expressed from fruits other than grapes, for example from apples, cherries, currants, or from grains, even if perhaps it is called wine; likewise spirit of wine. The same seems to have to be said of wine made by chemical art, even if it consists of the same elements as ordinary wine. The reason is that it is not wine from the vine.

b) Juice not yet expressed from grapes. Likewise verjuice or *omphacium*, that is, juice from unripe grapes.[5] Likewise *lora*, that is, liquid from grapes previously pressed and, a great quantity of water having been poured over them, pressed again. But if water is poured in a smaller quantity, the matter will be valid or doubtful.[6]

c) *Sapa* or *defrutum*, because although it contains the substance of wine, nevertheless it has obtained the nature and use of food.

d) Vinegar, because it differs substantially from wine. If wine becomes sour from initial corruption, the matter will easily be doubtful; otherwise if it is from the fact that the grapes were not perfectly ripe.

e) It is disputed whether frozen wine is valid matter. Now it seems to have to be affirmed, both because by its nature it is drinkable, and because the Blood of Christ remains under the species of frozen wine;[7] this proves that wine is not corrupted by freezing.

Nor should you object: just as the water of Baptism must be liquid, so also the wine of the Most Holy Eucharist. Response: I deny the parity; for the water of Baptism must be liquid by reason of washing, that is, of the proximate matter of Baptism; but drinking, by reason of which wine would have to be liquid, is not the proximate matter of the Most Holy Eucharist.

[1] Matthew 26:29.

[2] On Defects, title IV, n. 2.

[3] *Theologia Moralis*, III, 371.

[4] Holy Office, 22 July 1706 (*Collectanea*, n. 270); 7 May 1879 (*Collectanea*, n. 1518).

[5] "Today, however, often from unripe grapes wine is made which has the appearance of true wine, sugar being added, which is lacking to the grapes. But when the quantity of sugar thus added would exceed that which is found in must, the matter would be at least illicit" (Geniot-Salsmans, *Theologia Moralis*, II, n. 121).

[6] Today, after grapes have been pressed once, a solution of sugar is commonly poured over them several times, and a quantity of wine five times greater than that which would have been obtained from the berries once pressed is obtained.

[7] Roman Missal, On Defects, title X, n. 11.

144 **II. The matter required for liceity** is wine:

1. Fermented and cleared from sediment. It would be a grave sin without grave necessity to consecrate wine not yet cleansed from sediment. Nevertheless it is permitted to use wine cleansed from sediment through evaporation and condensation, provided fermentation is not excluded.[1] Likewise it is a grave sin without grave cause to use wine notably infected with sediment. Nevertheless it is permitted to consecrate wine that is merely turbid.
2. Pure, that is, not mixed with foreign matter, for example with aromatics. Nevertheless the Holy Office[2] permitted that spirit of wine be admixed to weak wine, "provided the spirit has been extracted from the produce of the vine and the alcoholic quantity, together with that which the

wine in question naturally contains, does not exceed the proportion of 12%, and the admixture is made when it is very fresh." Indeed the same Congregation permitted[3] that the spirit of wine be increased up to 17-18 percent, if this is required for preserving very strong and extraordinarily sweet wines. The use of port wine seems illicit, because it contains too much spirit of wine, namely 18-21 percent.

3. Not becoming sour. "If the wine has begun to become sour or corrupted, or has been somewhat sharp... the sacrament is confected, but the one confecting sins gravely."[4] These words, with several authors, are to be taken thus:

a) If the wine becomes sour from initial corruption, in which case the matter becomes doubtful, that is, it becomes doubtful whether it is wine or vinegar, proceed according to what was said in n. 147.

b) If the wine becomes sour from natural sharpness, arising from the fact that the grapes were not perfectly ripe, the matter is valid but illicit; in this case these things hold:

1. If it becomes notably sour, it is permitted to use it when grave necessity urges, provided it is certainly wine (St. Alphonsus, VI, 207).

2. If it becomes only slightly sour, per se indeed, as the Roman Missal expressly declares, it is mortal to use it; but these things are not to be urged so far that it would not be permitted to use it if other wine is lacking (St. Alphonsus, loc. cit.). Finally, one who celebrates in another's church, or as a religious subject does not have care of the wine, should proceed without scruple even if the wine is a little sour, the danger being thrown back upon the rector of the church or upon the superior.

4. A very small amount of natural water should be admixed to the wine (canon 814). The admixture, however, must be made by way of ceremony, that is, at the altar and in the chalice; hence an admixture before the sacred rite, even by the priest himself, for example made in the cruet, does not suffice. If the admixture has been omitted and this is noticed before the consecration, it must be made immediately; if it is noticed after the consecration, it must be omitted.[5] For the rest, observe:

a) The admixture of water is not required for validity, as the Roman Missal has it.[6] Nevertheless it is prescribed, as is clear from the Council of Trent,[7] from canon 814, and from the rituals. Yet more probably it is not of divine law but only of ecclesiastical law; this is deduced from the fact that neither in Sacred Scripture nor in Tradition is a divine origin indicated, and ecclesiastical documents, notably the Council of Trent,[8] rather insinuate that it is an ecclesiastical precept (St. Alphonsus, VI, 208).

b) The precept obliges under grave obligation, as the Roman Missal says.[9] The reason is that its ends are grave, namely so that there may be signified: 1. the water and blood which flowed together from the side of Christ; 2. the union between Christ, who is represented by the wine, and the faithful, who are represented by the water;[10] 3. the union of the twofold nature in Christ (St. Thomas, III, q. 74, a. 6; St. Alphonsus, VI, 208). Indeed the obligation is considered so grave that scarcely ever is it permitted to consecrate without water admixed. Natural water is required, so that one would sin gravely who used, even in necessity, water which was not natural (St. Alphonsus, VI, 208, 2).

c) Only a very little or little water must be admixed.[11] One or another small drop suffices, although a somewhat greater quantity is urged. Yet it must especially be guarded against that the admixture be

made up to a third part of the quantity, since that would render the matter doubtful (St. Alphonsus, VI, 210).

d) The admixed water, according to the opinion of all, is converted into the Blood. But it is disputed whether it is converted into the Blood without first having been converted into wine, or whether it is converted first, at least according to common estimation, into wine, then into the Blood. Those who admit the first argue from the fact that the molecules of the admixed water remain numerically the same, or retain their individuation. Those who hold the second reason from the fact that the molecules of water do not remain numerically the same, but receive a new individuation from the greater quantity.

[1] Holy Office, 5 August 1896 (*Collectanea*, n. 1950); 22 May 1901 (*Collectanea*, n. 2113).

[2] 30 July 1890 (*Collectanea*, n. 1735).

[3] 5 August 1896 (*Collectanea*, n. 1950); 22 May 1901 (*Collectanea*, n. 2113).

[4] Roman Missal, On Defects, title IV, n. 2.

[5] Cf. St. Thomas, III, q. 74, a. 5, ad 2; Benedict XIV, *Institutiones*, 77, n. 2.

[6] Roman Missal, On Defects, title IV, n. 7.

[7] Session 22, chapter 7.

[8] Loc. cit.

[9] On Defects, title IV, n. 2.

[10] Council of Trent, session 22, chapter 7.

[11] Council of Florence; Roman Missal, *Ritus servandus*, title VII, n. 4.

Scholion. On a Defect of Valid or Certainly Valid Matter Detected in Mass

145 **I. If a priest in Mass notices that the host is corrupted or is not wheaten,** let him proceed thus:

1. If he notices this before the consecration, then, that host having been removed, let him place another and, the oblation having been made, at least conceived mentally, continue from the place where he left off.

2. If he notices this after the consecration, even after the consumption of that host:

a) If before the consumption of the Blood, after another host has been placed and the oblation made, at least conceived mentally, let him consecrate it, beginning from the words: **Who the day before He suffered**; then let him consume it, even if he has already consumed the former host. If he has not consumed the former host, let him consume it after the consumption of the Blood, hand it to another to be consumed, or preserve it reverently somewhere.

b) If after the consumption of the Blood, new bread and wine with water must again be placed; and the oblation first having been made as above, he consecrates each, beginning from those words: **Who the day before**; and immediately consumes each, and continues the Mass.[1]

[1] Cf. Aertnys-Damen, who set these things forth in order (vol. II, n. 114); Roman Missal, On Defects, title III, nn. 4-6.

146 **II. If a priest in Mass notices that there is not wine in the chalice, but another matter or corrupted wine,** let him proceed thus:

1. If he notices this before the consumption of the Body, then, the invalid matter having been placed in another vessel, let him again place wine with water in the chalice and, the oblation having been made, at least conceived mentally, consecrate beginning from the words: **In like manner**, etc., and continue where he left off.
2. If he notices this after the consumption of the Body or of that invalid matter,[1] it must be done thus:

a) If Mass is celebrated privately, that is, in a non-public place, let him place another host to be consecrated again, and wine with water in the chalice, let him offer each, and consecrate each, beginning from the words: **Who the day before**, and consume, although he is not fasting.

b) If Mass is celebrated in a public place, where several are present, to avoid scandal it suffices to place only wine with water and, the oblation having been made as above, to consecrate, immediately consume, and continue the rest.[2]

[1] If the priest detects the defect in the consumption of the chalice, he can swallow the draft which he has in his mouth (St. Alphonsus, VI, 288). If nevertheless he has done this, he cannot, for example on the feast of the Nativity of the Lord, celebrate other Masses.

[2] Roman Missal, On Defects, title IV, nn. 4 and 5. According to others, even in the case in which he celebrates privately, it is permitted to consecrate only wine, because there remains one sacrifice and the order of consecration is not inverted.

147 **III. If the priest after the consecration notices that the matter is doubtfully valid,** let him proceed in the same manner as was explained above. It is disputed, however, whether the other consecration must be done absolutely or under this condition: **if the prior matter was not consecrated.** Most favor conditional consecration, because otherwise, if perhaps the prior matter was consecrated, another consecration would not correspond to the new consecration (St. Alphonsus, VI, 206).

Matter doubtfully consecrated is to be consumed after the consumption of the Blood; if this cannot be done, it is to be treated as is explained in the Roman Missal.[1]

IV. If the whole Blood is spilled, so that nothing remains, let the priest again place wine and water, offer, and consecrate from that place: **In like manner**, etc.[2]

[1] On Defects, title X, nn. 6 and 7.

[2] On Defects, title X, n. 13.

Chapter II. On the Form

148 **I. The legitimate and usual form is:**

1. For the Latin Church: **For this is my body. For this is the chalice of my blood, of the New and Eternal Testament, the mystery of faith, which for you and for many shall be poured out unto the remission of sins.** "The words of consecration," says the Roman Missal,[1] "which are the form of this sacrament, are these: **For this is my body**, and: **For this is**, etc."

2. For the Greek Church: **Take and eat: this is my body, which is broken for you unto the remission of sins. Drink ye all of this: for this is my blood of the New Testament, which is poured out for you and for many unto the remission of sins.**

Now the form is to be uttered not merely recitatively or historically, that is, as uttered by Christ Himself, but also assertively or significatively, that is, with the mind of asserting that this is the body and blood of Christ (St. Alphonsus, VI, 220).

Note. The epiclesis, as it is called, does not pertain to the form. Now the epiclesis is an invocation of the Holy Spirit by which the Church prays that the bread and wine may become for us the body and blood of Christ. It occurs in the Roman Liturgy before the consecration, in the Eastern liturgies after the consecration. Now that this epiclesis is either the sole or at least the principal form of the Most Holy Sacrament, as having the sole or principal force of effecting transubstantiation, several Greek schismatics have admitted from the fourteenth century, and a few Catholics agreed with them. But this opinion is to be rejected, as is clear from the Decree for the Armenians to be cited under II; likewise from the letter of Pius VII, *Adorabile Eucharistiae*, 8 May 1822, to the Antiochian Patriarch and the bishops of the Greek Melchites. The epiclesis, as the Greeks confessed with Bessarion[2] in the Council of Florence,[3] on the one hand is a ceremony by which that which the words of consecration effect is explained, and on the other hand is a prayer by which the Church asks that the body and blood of Christ may not only simply be such, but may also become fruitfully for the faithful, by the grace of the Holy Spirit, the body and blood of Christ (cf. St. Thomas, III, q. 83, a. 4, ad 7).

[1] Roman Missal, On Defects, title V, n. 1.

[2] *De Sacr. Euch.* (Migne, *Patrologia Graeca*, 161, col. 514 and following).

[3] Session 25 (Hardouin, vol. 18, col. 512 D-536 inclusive).

149 **II. The essentials of the form** are determined in these things:

1. These are certainly essential: **This is my body**; and: **This is my blood**, or: **This is the chalice of my blood.** This is a certain opinion. "The form of this sacrament," says Eugene IV in the Decree for the Armenians, "is the words of the Savior, by which He confected this sacrament. For the priest, speaking in the person of Christ, confects this sacrament."

2. These are certainly not essential:

a) The word **for**, both in the consecration of the bread and in the consecration of the wine.

b) The words preceding the form, namely **Who the day before**, etc., and **In like manner**, etc., almost certainly do not pertain to the essence, since in the instruction of Eugene they are not reckoned among those things which pertain to the form (St. Alphonsus, VI, 222).

3. There is dispute about the words **New** through **of sins**. Some judge that they pertain to the essence, because it must be expressed that the consecration is sacrificial, or that the presence of Christ is an immolative presence. Nevertheless the contrary opinion is more common and more probable, both because St. Paul has only these words: **This chalice is the new Testament in my blood**; and because in different liturgies different words from the cited words are omitted; and because the analogy of the consecration of bread is added. Nevertheless in practice the first opinion must be followed, as is clear (St. Alphonsus, VI, 223).

Corollary I. The forms are invalid: 1. **This body is mine**; **this blood is mine**; for then before the consecration the body and blood are asserted to be present, though they are constituted present through the consecration. It is otherwise if someone only transposed the words, so that the sense would be: "This, it is my body." 2. If someone deliberately used the word **this** adverbially; otherwise if by error. 3. If someone omitted **is**, because the circumstances do not sufficiently indicate that that word is understood, or at least do not sufficiently signify that it is understood in the sense which imports production.

Corollary II. The forms are doubtful: 1. **That is my body**; **that is the chalice**, etc., because although the pronoun *that* is rather often used for *this*, nevertheless it does not certainly signify a thing present to the speaker. The forms are still more doubtful: **That over there is my body**; **that over there is the chalice**, etc. 2. **This is my flesh**, because flesh, strictly speaking, does not signify the whole body.

Corollary III. The form is valid: **This thing, this substance, is my body.** It is otherwise: **This bread is my body** (cf. St. Alphonsus, VI, 221-223).

150 **III. With respect to liceity, observe** that an omission, addition, or change knowingly made, even if it does not obstruct validity, easily constitutes grave sin. Nevertheless there can be only venial sin, for example if someone omitted only the word **for**. For the rest, the words should be uttered distinctly, reverently, and, as the Missal admonishes, secretly, not in a loud voice or with vehement expulsion of words from the mouth. In order that every danger of erring may be avoided, it is better to read the form from the altar card.

IV. With respect to errors to be corrected, note that if the form must be repeated, one must always begin from the words **Who the day before**, or **In like manner**.[1] For the rest, receive these things from the Missal: "If the celebrant does not remember that he said those things which are commonly said in the consecration, he ought not for that reason be troubled. If, however, it is certain to him that he omitted something of those things which are of the necessity of the sacrament, that is, the form of consecration, or part of it, let him resume the form itself and continue the rest in order. But if he very probably doubts that he omitted something essential, let him repeat the form at least under a tacit condition. But if the things are not of the necessity of the sacrament, let him not resume them, but proceed further."[2]

[1] Roman Missal, On Defects, title III, nn. 5, 6, 7; title IV, nn. 3, 4; title X, nn. 3, 13.

[2] Roman Missal, On Defects, title V, n. 2.

Section III. On the Effects of the Sacrament of the Eucharist

The primary effect of the Most Holy Eucharist, to which the others are reduced, is perfect union with Christ in charity and with neighbor in Christ. Specifically, the following are enumerated:

151 **I. With respect to the soul.** 1. Sanctifying grace, per se second grace, per accidens more probably first grace (St. Thomas, III, q. 79, a. 7, ad 2; St. Alphonsus, VI, 269; n. 6).

2. Sacramental grace; this consists in the fact that the sanctifying grace which the Holy Eucharist confers is both ordered to perfecting charity, or union with God and the faithful, and confers a right to actual graces to be received in order to that effect.

3. Fervor of charity, to which spiritual sweetness is attached. "But the love of God is not idle; for it does great things if it exists; and therefore through this sacrament, so far as concerns its power, not only is the habit of grace and virtue conferred, but it is also excited into act, according to that passage of 2 Corinthians 5: The charity of Christ urges us. And thence it is that by the power of this sacrament the soul is spiritually refreshed, by the fact that the soul is spiritually delighted and in a certain way intoxicated with the sweetness of the divine goodness, according to that passage of Canticles 5: Eat, friends, and drink, and be inebriated, dearly beloved" (St. Thomas, III, q. 79, a. 1, ad 2).

4. Remission of venial sins[1] (St. Thomas, III, q. 79, a. 4; St. Alphonsus, VI, 269). But it is disputed whether the Most Holy Eucharist remits venial sins both immediately, or *ex opere operato*, and mediately, or *ex opere operantis*, or only mediately, namely by exciting acts of charity by which venial sins are directly remitted; concerning this, compare what is to be said in the treatise on Penance.

5. Remission of temporal punishment (St. Thomas, III, q. 79, a. 5; St. Alphonsus, VI, 269). Again it is disputed whether both immediately, or *ex opere operato*, and mediately, *ex opere operantis*, or only mediately, by moving to acts of charity by which not only guilt but also punishment is remitted; concerning this, again compare what is to be said in the treatise on Penance.

[1] Council of Trent, Session 13, chapter 2.

152 **II. With respect to the body,** the Most Holy Eucharist especially diminishes concupiscence of the flesh (St. Alphonsus, VI, 269). But whether it effects this immediately and mediately, or only mediately, is doubtful (St. Alphonsus, VI, 269).

153 **III. With respect to body and soul.** 1. Spiritual sweetness, of itself overflowing into the body (St. Thomas, III, q. 79, a. 1, ad 2; St. Alphonsus, VI, 269).

2. The glorious resurrection of the body.[1]

[1] John 6:55.

154 **IV. With respect to others,** it is useful to note specifically a certain social effect, namely mutual union among the faithful, to which effect attention is already given more today. "For we, being many, are one bread, one body, all who partake of one bread."[1]

Question. At what time does the Eucharist confer grace?

Response 1. It certainly confers it at the time at which the species are eaten and drunk, that is, are carried into the stomach. Hence: 1. "The species are not to be retained in the mouth so long that they wholly perish, because then Christ would not be eaten, nor would the grace of the sacrament be conferred" (St. Alphonsus, VI, 227). 2. If someone had received the host indisposed, and then, disposed, received the blood, he would receive grace (St. Alphonsus, loc. cit.).

Response 2. It is disputed whether the Eucharist, with disposition increased, continues to confer grace for as long as the species remain uncorrupted. It seems it must be affirmed, because the Eucharist is rightly judged to operate after the manner of nourishing food.

[1] 1 Cor. 10:17.

Section IV. On the Necessity of the Sacrament of the Eucharist

The necessity both of means and of precept must be examined, yet only of divine precept, because the ecclesiastical precept was discussed in vol. I, n. 1108.

Chapter I. On Necessity of Means

155 I first note these words of the Council of Trent: "If anyone says that Eucharistic Communion is necessary for little children before they have arrived at the years of discretion, let him be anathema."[1] Wherefore note that here the matter concerns real reception of the Most Holy Eucharist; hence it is of faith that such reception is not necessary for little children. These things being noted, with respect to necessity of means I say:

I. It is disputed whether or not the Most Holy Eucharist is necessary by necessity of means for justification, this necessity being taken in the proper sense, namely so that it is necessary by way of efficient cause. Some affirm this because of these words of St. John: "Unless you eat the flesh of the Son of man and drink His Blood, you will not have life in you."[2] Hence in their opinion the Most Holy Eucharist, if it can conveniently be done, must be received in reality; if this cannot conveniently be done, it must be received in desire; but little children receive it in this way through the Church. In this opinion it must also be admitted that Baptism and Penance do not justify except with desire for the Most Holy Eucharist.

Others deny that the Most Holy Eucharist is necessary by necessity of means for obtaining justification, both because Sacred Scripture[3] assigns Baptism as a sufficient means for acquiring first grace, and because the Most Holy Eucharist is the sacrament of the living and therefore per se supposes grace, and because it is very difficult to admit that a sacrament which by a great part of human beings, that is, by little children per se, or by force of natural condition, cannot conveniently be received in reality, and therefore must be received in desire, that such a sacrament, I say, has been constituted necessary by necessity of means. I said: cannot conveniently be received in reality, and this indeed in such a way that it is forbidden by the Church to give the Most Holy Eucharist to little children.

Nevertheless a peculiar necessity of means is rightly admitted, namely by way of final cause, insofar, namely, as the Most Holy Eucharist is the end of all the sacraments, so that they, even Baptism and Penance, do not confer grace except by looking toward the Most Holy Eucharist (St. Alphonsus, III, 192).

II. It is disputed besides whether or not the Most Holy Eucharist is necessary by necessity of means for preserving grace. Some deny this, because there are other means also for preserving grace. Others affirm it, "because just as the life of the body cannot long be preserved without material food, so the life of the soul cannot be preserved without this spiritual food, at least in desire, and indeed explicit desire in one who notices the necessity of this sacrament" (St. Alphonsus, VI, 193). At least moral necessity seems commonly to be admitted.

With respect to the opinion of St. Thomas on the necessity of the Most Holy Eucharist, cf. III, q. 73, a. 3; III, q. 79, aa. 1 and 3; III, q. 80, aa. 2 and 11.

[1] Session 21, canon 4; cf. chapter 4.

[2] John 6:54.

[3] Mark 16:16; Gal. 3:27; Titus 3:5.

Chapter II. On Necessity of Divine Precept

156 **I. The existence of a divine precept** is clear first from Sacred Scripture. "Unless you eat the flesh of the Son of man and drink His blood, you will not have life in you";[1] these words, if they do not exhibit necessity of means, at least exhibit a precept. Then, according to the Council of Trent, the Lord "commanded us in its reception to cherish His memory and to announce His death."[2] Finally, it is insinuated from the fact that Christ, by instituting the sacrament by way of food and drink, sufficiently hinted that its reception is commanded, just as the use of bodily food is commanded. Now that the precept is grave follows both from the gravity of the matter and from the most grave punishment by which it was sanctioned by Christ (St. Alphonsus, VI, 295).

[1] John 6:54.

[2] Session 13, chapter 2.

157 **II. The subject of the divine precept** is adults who enjoy the use of reason, and indeed all of them. It is said:

1. **Adults who enjoy the use of reason.** Therefore little children are not bound, nor those who are equated with them, that is, the perpetually insane (cf. canon 88, § 3); this is clear already from the fact that the Church prohibits the Eucharist from being conceded to them (canon 854; Roman Ritual).[1]

2. **And indeed all of them,** even: 1. unbelievers, insofar, namely, as they are bound to receive Baptism and, Baptism having been received, to communicate; 2. children. With respect to children this is first proved from the words of Christ cited above, which are pronounced without restriction and therefore must be judged to regard all who are capable of the precept. Then the ecclesiastical precept also binds children. But the Church only determines divine law. Then the decree of the Sacred Congregation of the Sacraments *Quam singulari*[2] insinuates this, both by alleging reasons which militate equally for the divine precept and for the ecclesiastical, and by citing testimonies of authors who defend the divine precept. Pius X sufficiently signifies the same in his Letter to the Archbishop of Cologne.[3] Finally no reason can be assigned why the divine-positive law would not comprehend children, since they are capable of law equally as other adults are.

[1] Title IV, chapter 1, nn. 10 and 11. In the Eastern Church the Eucharist has customarily been given to infants.

[2] 8 August 1910.

[3] 31 December 1910 (*Acta Apostolicae Sedis*, vol. 3, p. 18).

158 **III. The time at which it obliges.** 1. The divine precept obliges per se: 1. several times during the course of life; 2. in danger of death. It is said:

a) **Several times during the course of life.** This is deduced from the fact that Christ, by instituting the Holy Eucharist by way of nourishment, sufficiently signifies that it must be received at least several times. Now the one who fulfills the ecclesiastical precept certainly satisfies the divine precept of communicating several times during the course of life (St. Alphonsus, VI, 295).

b) **In danger of death.** For if the Eucharist is to be received several times in life, it certainly must be received at that moment at which it is of the greatest interest, and is more difficult, to preserve and nourish the spiritual life. There are added the most ancient law and practice[1] of ministering the Eucharist to those constituted in danger of death, even with harm to the minister;[2] these introduce the suspicion that the Holy Eucharist must be received in danger of death by precept of Christ (St. Alphonsus, VI, 291).

Now grave danger of death is understood; this is present either physically, as if someone is gravely ill; or, morally speaking, as if there is imminent execution of a capital sentence, a dangerous operation, battle, shipwreck, difficult childbirth, or a journey full of danger.

Moreover, the precept of communicating in grave danger which is physically present is to be understood so that as soon as someone is gravely ill, he can fulfill the precept, but when death is more imminent, he must fulfill it.

2. The divine precept obliges per accidens when the Eucharist is held as a morally necessary means of avoiding sins, namely insofar as other means are lacking or at least are not applied; concerning this, note that for the most part those who do not approach the Holy Eucharist attend neither to prayer nor to mortification. "But in that case... a man by omitting it would not sin against its precept, but against the virtue against which he suffers temptation" (St. Alphonsus, VI, 295).

Question 1. Whether one is bound to communicate when danger of death is imminent, if he communicated a few days before when he was not yet constituted in danger.

Response. Several deny it, but with St. Alphonsus (VI, 285) it seems it must be affirmed, because according to what was said above the obligation seems attached to the danger of death itself, so that it cannot be satisfied before.

Question 2. Whether one is bound to communicate when danger of death is imminent, if he communicated the same day when he was not yet constituted in danger.

Response. Such a person certainly can communicate again on the same day; indeed this is urged for him by canon 864, § 2. For the rest, some judge that he is not bound, because the divine precept has already been satisfied, and there is no ecclesiastical precept. There is added the fact that canon 804, § 2 declares: Even if they have been refreshed by Holy Communion on the same day, nevertheless it is strongly to be urged that those brought into danger of life communicate again. But with St. Alphonsus (VI, 285, doubt 3) we judge that he is bound, because according to the things said in the response to the first question he has not yet satisfied the divine precept. As regards canon 864, § 2, I respond that the Code abstracts from the interpretation of divine law, concerning which there is dispute among doctors; and therefore by the cited canon our question is not settled, but, while the dispute stands, the legislating Church, so far as depends on her part, proceeds only by urging. Therefore one who communicated in the morning is bound to communicate again if, for example, in the course of the day he was dangerously wounded or suddenly seized by illness.

It must be said otherwise if at the time of the prior Communion, even one received from devotion alone, grave danger was already present, although afterward it grows worse. In such a case one is neither bound nor able to communicate. He is not bound because he has already satisfied the divine precept. Nor can he, because in this hypothesis there is no reason why the prohibition of communicating twice should be judged not to urge. St. Alphonsus (loc. cit.) also applies this doctrine

to the case of apoplexy or something similar, because the illness is presumed already to have pre-existed. Here, however, note that in doubt whether grave danger was present at the time of Communion, its reception can be repeated.

Note. From ecclesiastical law I add these things: Holy Viaticum is not to be deferred too much for the sick; and those who have care of souls should carefully watch that the sick be refreshed by it while fully in possession of themselves (canon 865). Likewise, "while danger of death endures, Holy Viaticum, according to the prudent counsel of the confessor, may and fittingly should be administered several times on distinct days" (canon 864, § 3).

[1] Already the First Council of Nicaea, canon 13, calls that law ancient (Hefele, *Histoire des Conciles*, Paris ed. 1907, vol. 1, p. 7, p. 593 and following).

[2] Nor does it stand in the way that Viaticum was once sometimes denied to some dying persons, for example those condemned to death; since this practice was not universal, was rather often disapproved by ecclesiastical authority, and rested on the opinion that the divine precept could not conveniently be fulfilled in such circumstances (Rath, *De Eucharistia*, n. 219). Indeed I would not even deny that such things, although pertaining to divine law, can be moderated by the Church because of the common good.

159 **IV. The manner of fulfilling the divine precept;** concerning this it suffices to note these things: there is no obligation of receiving the Eucharist under both species. This is of faith from the Council of Trent defining: "If anyone says that by the precept of God or by necessity of salvation all and each of Christ's faithful must receive each species of the Most Holy Sacrament of the Eucharist, let him be anathema." Indeed in the Latin rite it is not even permitted to minister the Eucharist under the species of wine (canon 852). But it is clear that the precept is not satisfied by sacrilegious Communion. Let the confessor see, however, whether it is expedient to warn the dying penitent about the obligation of communicating again. If Viaticum is ministered again, let this be done on another day under the pretext of Communion from devotion; indeed if otherwise the dying person would be exposed to danger of infamy, there is sufficient reason for ministering Viaticum secretly and even without the pastor's knowledge. If there is danger in delay, let it be ministered on the same day on which Communion was sacrilegiously received.

Part II. On the Ministration of the Most Holy Sacrament

By the word **ministration** we comprehend both the confection and the dispensation of the Eucharist. Hence:

Section I. On the Confection of the Most Holy Sacrament

160 **I. The minister of confection.** Only and every priest can confect the sacrament of the Eucharist; this proposition is of faith. The Fourth Lateran Council defines: "Certainly no one can confect this sacrament except a priest who has been duly ordained."[1] And the Council of Trent says: "If anyone says that by those words, **Do this in commemoration of me**, Christ did not institute the Apostles priests, or did not ordain that they and other priests should offer His body and blood, let him be anathema."[2] For the rest, note:

1. It is not permitted for several priests to concelebrate, except in the Mass of ordination of priests and in the Mass of consecration of bishops according to the Roman Pontifical (canon 803).
2. Even if several concelebrate, there is only one sacrament in number (n. 20).
3. In the case in which several concelebrate, according to some, each one confects the sacrament only when they pronounce the words at the same time. Hence if someone intended to consecrate independently of the others, and pronounced the words before the others, he alone would confect the sacrament. To guard against this, the concelebrating priests should intend to consecrate only then when they pronounce the words at the same time with the principal celebrant. According to others, the concelebrants form a college *in solidum*, which as such confects the sacrament, and therefore through the utterance of the words by each one constitutes, as it were, one form, which is completed only when all have pronounced the words. Hence all should intend a collegial consecration.[3]

In practice it suffices, and is better, to consecrate according to the mind of the Church.

[1] Denzinger-Bannwart, n. 430.

[2] Session 22, canon 2.

[3] Cf. de la Taille, *Myst. fidei*, Elucidation 28, Appendix D.

161 **II. The mode of confection.** 1. As regards valid confection, it suffices to add to, or emphasize in, those things which we have said about valid confection of the sacraments in general (n. 13), the following points: For the valid consecration of some matter it is required: 1. that the matter be present to the one consecrating; 2. that the intention of the one consecrating not be directed toward indeterminate matter; 3. that it truly be directed toward the present matter. But as regards validity it does not matter whether the quantity is great or small, provided it is perceptible by sense. It is said:

a) **That the matter be present,** namely in such a way that, according to the prudent judgment of men, it can be demonstrated by the pronouns **this** and **here**. But in order that it may be demonstrated in that way, "it is not required that the matter be seen, or touched, or struck by the sound of the words; whence the practice of those who bring their mouth very near so as to breathe their breath into the chalice and onto the bread is commonly not approved" (St. Alphonsus, VI, 212). It is required, however, that the matter: 1. not be too distant; 2. not be morally separated from the

one consecrating by an intervening body. It is said **not be too distant**, "for example a hundred paces, even if it can be seen... But how much nearness suffices is doubtful, and depends on the judgment of prudent men" (St. Alphonsus, VI, 213). A distance of thirty or even twenty paces would render the consecration doubtfully valid (St. Alphonsus, loc. cit.). It is said **not be morally separated from the one consecrating by an intervening body**. Now an intervening body does not morally separate the matter from the one consecrating if it is interposed only by way of containing, or only by way of covering; otherwise, if it is interposed by way of dividing (St. Alphonsus, VI, 213, 1).

Corollary I. Wine can be validly consecrated in a covered chalice, hosts in a closed ciborium, or in an open tabernacle.

Corollary II. "Matter placed behind a wall or behind the back, or enclosed in a tabernacle, is invalidly consecrated" (St. Alphonsus, VI, 213); yet it seems otherwise if the matter is held by the hand behind the back or is seen with the face turned.

Corollary III. A host hidden immediately under the corporal can doubtfully be consecrated; but it seems this must be denied of a host hidden under the altar cloth, in the missal, or under a cushion (cf. St. Alphonsus, VI, 212).

b) **That the intention of the one consecrating not be directed toward indeterminate matter;** "both because the pronouns **This** and **Here** require this, and because actions concern singular things, which must be certain and determinate" (St. Alphonsus, VI, 214).

Corollary. "If someone has eleven hosts before him, and intends to consecrate only ten, not determining which ten he intends, in this case he does not consecrate."[1]

c) **That the intention be truly directed toward the present matter;** this condition is clear, but it is often not so clear whether it has been fulfilled, as will become evident from what is to be said.

Corollary I. If someone "thinks that one or two or six hosts to be consecrated are present, when there are more, whether placed by himself or by another, all are consecrated; because a speculative and private error does not obstruct the practical and absolute intention of consecrating all that are present; and each one is judged to have this intention as conforming to the custom of the Church" (St. Alphonsus, VI, 216). Likewise, "if after the consecration the priest notices that there are two joined together, he will take both as consecrated" (St. Alphonsus, loc. cit.), because he is judged to have had the intention which he ought to have, namely of consecrating whatever he holds in his hands.[2] But if before the consecration, after he has offered, he notices the other, he will set it aside, and after Mass he himself or another will consume it as blessed bread.[3]

Corollary II. If someone has brought several hosts to the altar, or in a reasonable way has noticed that they were brought by another for him to consecrate, or before the sacrifice has been warned about hosts to be consecrated, all are consecrated, even if while he consecrates he does not remember them so expressly, or even if he does not uncover them at the oblation, at least if they are on the corporal; for this "opinion is safe in practice, because the preceding intention virtually perseveres with respect to them" (St. Alphonsus, VI, 216, compared with 217).

But what if a pyx has been placed outside the corporal, either by the celebrant himself, namely through error, or by another who nevertheless warned the celebrant that these hosts were to be consecrated?

Response 1. If the celebrant thought of it at the time of consecration or within the Mass, most affirm. Nevertheless, even in this hypothesis there remains a reason for doubting whether the mentioned thought involves, or at least practically carries with it, the intention of consecrating the hosts thought of absolutely, that is, even though they are placed outside the corporal. This will become clearer from what will be said presently.

Response 2. If the celebrant did not think of it at the time of consecration or within the Mass, the matter is more doubtful. Several authors, especially more recent ones, judge that the pyx is morally certainly consecrated. But with St. Alphonsus (VI, 217) we hold the matter as doubtful. That is, the whole matter depends on the intention of the celebrant, or on whether his intention regarding the said pyx is to be interpreted in this way: "I will to consecrate those hosts absolutely or in any case, that is, whether they are placed on the corporal or outside it"; or in this way: "I will to consecrate them, provided they are placed on the corporal." Now if we attend to the fact that a priest habitually knows that the consecration of matter placed outside the corporal is prohibited under grave sin, it is neither clear, nor, as we shall see, proved by any argument of the adversaries, that the intention of the celebrant must be interpreted in the former way. Add that very many authors, and very grave ones, hold the consecration of the said hosts as doubtful. Thus, for example, besides St. Alphonsus (loc. cit.), Benedict XIV,[4] Suarez,[5] the Salmanticenses,[6] Billuart,[7] Roncaglia,[8] Patuzzi,[9] Concina,[10] Ferraris,[11] Tamburini,[12] Sporer,[13] Dens,[14] Voit,[15] Marc,[16] Lehmkuhl,[17] Aertnys-Damen,[18] Tanquerey,[19] Rath,[20] etc.

Objection 1. In the case as it is posed, all things required for consecration are present, namely matter, form, and intention.

Response. As is clear from what has been said, the question is precisely whether the required intention is present, in other words, whether the intention of the celebrant must be interpreted in the sense of the adversaries.

Objection 2. If hosts placed outside the corporal are not consecrated, because it is in itself prohibited under grave sin to consecrate them, likewise wine to which a small amount of water has not been mixed is not consecrated; for such a consecration is in itself prohibited under grave sin.

Response. I deny the parity. Namely, the priest principally intends to consecrate; from this it follows that in the case opposed to us he wills the consecration of the wine, notwithstanding the defect unknown to him. But it does not follow that he wills the consecration of hosts placed outside the corporal, because a consecration can occur without their consecration.

Hosts consecrated in this doubtful way, if they are few, should be consumed after the consuming of the Blood, or at least after the ablution, that is, before the purification; if they are many, they should be consecrated again conditionally in another Mass.

Response 3. If someone once and for all elicited the intention of not consecrating hosts which remained outside the corporal, he seems never to consecrate the aforesaid hosts, because the subsequent intention, and the specifically contrary one, seems to be interpreted in conformity with, or to respond to, the prior intention.

Corollary III. Hosts placed on the corporal but outside the altar stone are consecrated; this is not prohibited even under venial sin if the altar is fixed. The same must be said of hosts in a pyx which has been left closed, since the light rubric which prohibits that does not prevent the priest from being

able, I will not say obliged, and therefore presumed, to have the intention of consecrating the pyx in any case, that is, even if through forgetfulness it was not uncovered.

Corollary IV. Hosts placed on the altar wholly without the priest's knowledge, and separated from the heap to be consecrated, are not judged consecrated, because the priest is presumed not to have the intention of consecrating them (St. Alphonsus, VI, 215).

Corollary V. Little drops of wine adhering externally to the chalice are not consecrated, because the priest is not presumed to comprehend them. But little drops adhering to the inside of the chalice, yet separated, about which the minister expressly intends nothing, are, according to some, consecrated; according to others, they are not consecrated. Others distinguish between drops near the bottom and remote ones. Others doubt. It is better to have the intention only of consecrating the wine which exists as one thing in the chalice. Similarly it is expedient to consecrate crumbs adhering to hosts, but not separated crumbs on the paten or corporal; nor is it an obstacle that, by consuming them, the fast is violated, for irreverence toward the sacrament is to be guarded against more than violation of the fast. But if the crumbs are in the ciborium, he should intend to consecrate them, since the danger of losing them is absent (St. Alphonsus, VI, 215).

Corollary VI. If it happens that consecrated and unconsecrated hosts are mixed together and cannot be distinguished, the heap, insofar as it is not consecrated, should be consecrated. Others say that it should be consecrated with the limited intention of consecrating the hosts not yet consecrated; but because some doubt whether the latter mode is sufficiently safe,[21] the former should be chosen.

d) **As regards validity, it does not matter whether the quantity is great or small, provided it is perceptible by sense.** Matter seems invalid if it is "so small that it cannot be perceived by sense; both because it cannot be demonstrated, and because a sacrament must be a sensible sign... Understand this if it is not within the whole, but outside it; because within the whole even its smallest particles are consecrated, as is clear from Trent" (St. Alphonsus, VI, 213, 3).[22]

[1] Roman Missal, *On Defects*, title VII, n. 1.

[2] Roman Missal, *On Defects*, title VII, n. 2.

[3] Roman Missal, loc. cit.

[4] *De Sacrificio Missae*, book 3, chapter 18, n. 6; in the same place he speaks of a pyx which is outside the sacred stone, but the reason is equal.

[5] *De Eucharistia*, disputation 43, section 6; in the same place he likewise speaks of hosts which are not placed upon the altar, but, as we have said, the reason is equal.

[6] *Cursus Theologiae Moralis*, tract 4, chapter 4, n. 125.

[7] *De Eucharistia*, dissertation 3, article 6.

[8] *Universa Theologia Moralis*, tract 18, chapter 2, question 8.

[9] *Theologia Moralis*, tract 10, dissertation 1, chapter 4, n. 9.

[10] Book 3, *De Eucharistia*, dissertation 1, chapter 2, n. 8.

[11] Word "Missa," article 8, n. 34.

[12] *De Sacrificio Missae*, book 2, chapter 1, section 3, case 4, nn. 11-20.

[13] *Theologia Sacramentalis*, part 2, section 2, n. 169.

[14] *De Eucharistia*, n. 11, question 4, ad 3.

[15] *De Eucharistia*, nn. 286 and 287.

[16] *Institutiones Alphonsianae*, n. 1527.

[17] *Theologia moralis*, vol. II, n. 168. Lehmkuhl (loc. cit.) doubts about the consecration, because it is doubtful whether in the proposed hypothesis the priest had the intention of consecrating the aforesaid hosts, or only the purpose of afterward taking them for the sacrifice, that is, of afterward eliciting the intention of consecrating them. But I think that there is ordinarily no place for this doubt; in other words, generally in the proposed hypothesis the intention of consecrating the hosts is already elicited beforehand. The doubt is, as we have said, in what sense the said intention is to be interpreted.

[18] *Theologia moralis*, vol. II, n. 117.

[19] *Synopsis Theologiae Dogmaticae*, 4th ed., vol. II, n. 94.

[20] *De Eucharistia*, n. 183.

[21] They doubt because in this case the matter to be consecrated seems not sufficiently determined to them.

[22] Session 13, canons 2 and 3.

162 **2. For licit consecration it is required:**

a) That the consecration of one matter not be made without the consecration of the other (canon 817). The consecration of only one matter is indeed valid, but is prohibited under grave sin. I said:

First, the consecration of only one matter is valid; this is clear: 1. from the fact that the Church adores the sacred Host before the wine has been consecrated; 2. from the fact that the form by which one matter is consecrated has a complete signification, so that it must be judged to effect what it signifies. Some, though few, except the case in which the minister would consecrate one matter with the intention of not consecrating the other, in other words, of not confecting the sacrifice. They judge, namely, that the power of consecrating in this way is lacking, because the said power has been granted in order to the sacrifice, for whose essence the consecration of both matters is more probably required (St. Alphonsus, VI, 196, doubt 3).

Second, the consecration of only one matter is prohibited under grave sin; namely, it is certainly prohibited under grave sin by ecclesiastical law (canon 817), and more probably also by divine law. This is deduced from the fact that, according to the will of Christ, consecration must at the same time be the oblation of the sacrifice, for which the consecration of both matters is more probably required. There is added the fact that Christ, after both consecrations, imposed the command of doing what He Himself had done. Hence it is commonly admitted that the consecration of only one matter is not licit even for the sake of Viaticum (St. Alphonsus, VI, 195).

b) That the consecration be made within the celebration of Mass, not outside it (canon 817).

c) That the consecration of bread precede the consecration of wine; this Christ both did, and it is commanded at least by ecclesiastical law under grave sin, except in the case in which the minister after the consecration of wine notices that he has not consecrated the bread.[1]

d) That it be consecrated: 1. on a fixed or portable altar; 2. upon a corporal. Therefore if the altar is fixed, it suffices that the matter be on the altar and upon the corporal. If the altar is portable, it is required that the matter be upon the corporal and on the consecrated stone. Moreover, it suffices that

the foot of the ciborium exist for the greater part in the assigned place; for the rest, the aforesaid things are prescribed under grave sin (St. Alphonsus, VI, 217, 219).

e) That the pyx be opened at the time of the offertory and of the consecration.[2] This rubric obliges only under venial sin.

f) That the hosts to be consecrated together with the host of the Mass be present at least by the offertory. If after the offertory, but before the Preface has begun, they are offered, they are licitly consecrated, the oblation being supplied mentally. If they are offered after the Preface has begun, but before the Canon has begun, a moderate cause is required, because the rite of consecration, which is already begun by the Preface, must be observed. A reason would be present if otherwise one or another person would have to wait a long time for Communion; nevertheless in such a case it is also permitted to give him a particle of the large host. If they are offered after the Canon has begun, a grave cause is required, for example lest a multitude have to wait a long time, or lest a sick person die without Viaticum. Nevertheless the oblation of the hosts should always be supplied mentally (cf. St. Alphonsus, VI, 217).

[1] Roman Missal, *On Defects*, title III, nn. 4, 5, 6.

[2] Roman Missal, *Order and Rite of Mass*, title VII, n. 3; title VIII, n. 5.

Section II. On the Dispensation of the Most Holy Sacrament

Chapter I. On the Person Dispensing

In order that someone legitimately dispense the Eucharist, the power of order and the power of jurisdiction are required.

163 **I. The power of order.** Considered with respect to the power of order:

1. Only a priest is the ordinary minister of the dispensation of the Holy Eucharist (canon 845, § 1), that is, by virtue of his ordination he is deputed to dispense it principally, not secondarily, as a deacon is. For: 1. to the one alone to whom it belongs to confect the Holy Eucharist, to him alone it belongs to dispense it principally; 2. Tradition is added, which the Council of Trent attests in these words: "It was always the custom in the Church of God that the laity receive Communion from priests; ... this custom, as descending from Apostolic Tradition, must with right and merit be retained"[1] (cf. St. Thomas, III, q. 82, a. 3).
2. A deacon is the extraordinary minister of the dispensation of the Holy Eucharist (canon 845, § 2), that is, by virtue of his ordination he is deputed to dispense it only secondarily, that is, dependently upon the permission of the local Ordinary or the pastor, which cannot be granted except for a grave cause (cited canon). Hence a deacon is rightly called only an extraordinary minister. That a deacon is truly an extraordinary minister is clear from Tradition[2] (cf. St. Thomas, loc. cit., ad 1). It is said:

a) **Dependently upon the permission of the local Ordinary or the pastor.** To these is equivalent a quasi-pastor, but not the rector of a church or a religious superior as such.

b) **Permission cannot be granted except for a grave cause,** for example if the priest were impeded in his ministry and, unless the deacon dispensed the Holy Eucharist, its dispensation would be

delayed longer than is fitting (St. Alphonsus, VI, 237, question 1).[3] If a grave cause is present and the pastor cannot conveniently be approached, permission is legitimately presumed (canon 845, § 2). But a deacon who illicitly dispenses the Holy Eucharist sins gravely; likewise the local Ordinary and the pastor who grant permission without a just cause, since in a grave matter they violate the hierarchical order (St. Alphonsus, VI, 234). Nevertheless the deacon does not become irregular, since, being a minister, even if only an extraordinary one, he does not entirely usurp an order not his own (cf. canon 985, 1).

[1] Session 13, chapter 8.

[2] St. Justin Martyr, *Apology* I, chapters 65, 67, Migne 6, 427-430; Fourth Council of Carthage, canon 38; it occurs among the ancient statutes of the Church, in Hefele, loc. cit., vol. 2, part 1, p. 166; *Apostolic Constitutions*, book 8, chapter 13, Funk ed. 1906, p. 519.

[3] Cf. S.R.C., 25 February 1777, n. 2504.

164 **II. The power of jurisdiction** is likewise required, and this either ordinary or delegated; delegated, I say, either by law or by him who has ordinary power. Ordinary power belongs to all who exercise a pastoral office, such as the Ordinary, the pastor, all who in law come under the name of pastor, etc. These things having been noted in general, something must be said specifically about the dispensation of the Eucharist on the occasion of Mass or outside it, about carrying Communion to the sick, and about the dispensation of Viaticum.

1. **Dispensation on the occasion of Mass or outside it.** a) Any priest can minister Holy Communion within Mass and, if he celebrates privately, also immediately before and immediately after it (canon 846, § 1).

b) Even outside Mass any priest has the same faculty. Nevertheless, if the priest is a stranger, that is, not assigned to the church, the at least presumed permission of the rector of the church is required (canon 846, § 2).

2. **Carrying Communion to the sick.** First note that a twofold carrying is distinguished, public and private. It is public if it is done manifestly, with solemnity; otherwise it is called private.[1]

a) **Public carrying.** First, public carrying is prescribed unless a just and reasonable cause suggests otherwise (canon 847).

Second, the right and office of carrying Holy Communion publicly to the sick, even non-parishioners, outside the church, belongs to the pastor within his own territory (canon 848, § 1). Other priests can do this only in a case of necessity or with the at least presumed permission of the same pastor or of the Ordinary (canon 848, § 2). It is said **only in a case of necessity**, for example if the pastor and another to whom permission perhaps has been granted are impeded for too long.

b) **Private carrying.** First, private carrying is licit only when a just and reasonable cause suggests it (canon 847). But the judge of a just and reasonable cause is only the local Ordinary.[2] If, however, he has judged that such a cause is present, and has signified this either explicitly or tacitly, for example by not contradicting custom or common opinion,[3] he cannot prevent it from being carried secretly. Now, when a just and reasonable cause has been posited and admitted by the Ordinary:

Second, any priest can carry Communion privately to the sick, with the at least presumed permission of the priest to whom custody of the Most Holy Sacrament has been committed (canon 849, § 1).

3. **Dispensation of Viaticum.** a) By the name **Viaticum** here is understood Communion which is considered, or, so to speak, is held in the external forum as fulfilling the precept of receiving the Holy Eucharist in danger of death, about which canon 864, § 1 speaks; but not that Communion which the sick person receives afterward, nor that which one constituted in danger of death previously received, although this Communion, speaking accurately, should be called fulfilling the precept.[4]

b) One who illegitimately administers Viaticum is judged to sin gravely, since he violates a grave right of the competent person.

c) As regards the persons who legitimately administer Viaticum, receive these points:

a) To carry Holy Communion by way of Viaticum, whether publicly or privately, to the sick, even non-parishioners, outside the church, belongs to the pastor within his own territory. Other priests can do this only in a case of necessity or with the at least presumed permission of the same pastor or Ordinary (canon 850 compared with 848).

b) Canons, according to the order of precedence, must minister the sacraments to a bedridden bishop (canon 397, 3).

c) Superiors in every clerical religious institute can and must, personally or through another, minister Eucharistic Viaticum and Extreme Unction to sick professed members, novices, and others dwelling day and night in the religious house for the sake of service, education, hospitality, or ill health (canon 514, § 1). These things also hold for conferring these sacraments outside the religious house, if it concerns professed religious or novices, yet with the right of the pastor preserved as regards the public carrying of the Holy Eucharist.[5]

d) In a house of nuns, the ordinary confessor, or the one who acts in his place, has the same right and office (canon 514, § 2). Under the name of nuns also come religious women whose vows by institute are solemn, but for some places by prescription of the Apostolic See are simple (canon 488, 7).

e) In another lay religious institute this right and office belongs to the local pastor or to the chaplain whom the Ordinary has substituted for the pastor (canon 514, § 3).

f) The rector of a seminary, not the pastor, or his delegate can minister Viaticum and Extreme Unction to all who are in the seminary and are gravely bedridden (canon 1368).

g) Particular law commonly permits those who have domicile or quasi-domicile in ecclesiastical colleges specially entrusted by the bishop to a director or rector, or approved by him, to be able to receive Viaticum and Extreme Unction from the rector himself or from his delegate. This right does not belong to the pastor if the particular law intends the said colleges to be withdrawn from the care of the pastor (cf. canon 464, § 2).

h) Finally, if priest and deacon are lacking, even a subdeacon, cleric, and layperson can with sufficient probability minister Viaticum, provided that scandal is absent or prevented. For the ecclesiastical prohibition is not judged to comprehend this case; all the more because in antiquity even laypeople brought the Eucharist home for the sake of communicating (St. Alphonsus, VI, 237, question 3). If the case concerns a dying priest or deacon, the layperson should only bring the ciborium, and the dying person himself, if he can, should give Viaticum to himself. Note besides that a priest is equivalently lacking if singular dexterity is required in communicating the dying person; hence at

times it can be entrusted, for example to a sister, to give Viaticum, for instance, with a spoon. I add with St. Alphonsus (loc. cit.) that in a case of supreme necessity, which can occur for example in time of plague, the bishop can commit the ministration of Viaticum to a layperson.

Corollary. Although in itself no one except the celebrating priest can minister Communion to himself, nevertheless this is permitted:

1. If the case concerns Viaticum, to a priest and deacon, if another priest and deacon are lacking; to an inferior cleric, if priest, deacon, and another inferior cleric are lacking; to a layperson, if priest, deacon, and inferior cleric are lacking. This doctrine is rightly admitted both because the divine precept of receiving Viaticum seems to prevail, and because "formerly lay faithful carried the Eucharist into their homes and communicated themselves with their own hands; and this indeed was permitted because of necessity" (St. Alphonsus, VI, 237, question 2). It is confirmed by a response of the Sacred Congregation of Propaganda Fide,[6] which declared that in time of persecution it is permitted that confessors of the faith condemned to death, and to whom the sacrament of the Most Holy Eucharist is brought in prison, may secretly receive it in their hands and secretly communicate themselves, lest the priest communicating them in the ordinary manner be known and seized, provided nevertheless that so great a sacrament is not exposed to any irreverence or other danger.[7]
2. If the case concerns Communion to be received only for the sake of devotion, a priest can with sufficient probability minister Communion to himself if another priest is lacking (St. Alphonsus, VI, 238).
3. Where the necessity of preventing profanation of the Most Holy Sacrament is urgent, even laypeople can consume the species and distribute them to one another.

[1] Cf. Sacred Congregation of the Sacraments, 23 December 1912 (*Acta Apostolicae Sedis* 1912, p. 725, ad III).

[2] Sacred Congregation for the Discipline of the Sacraments, 5 January 1928.

[3] The Ordinary should be easy in admitting a just and reasonable cause. Hence the Sacred Congregation for the Discipline of the Sacraments, in the decree of 5 January 1928, adds "with this mind, which is the following: If from common experience and opinion there is no inconvenience in the diocese or in some particular place for the private carrying of Holy Communion to the sick, Ordinaries must beware lest, by rules too strictly defined or general rules prescribing public carrying, or by a reservation made to themselves of giving permission in individual cases of carrying the sacrament of the Eucharist privately, the consolation of Communion, even daily Communion, be impeded for the sick." And in the annotations to the Decree, the *Acta Apostolicae Sedis* warns: Most Reverend local Ordinaries must carefully watch lest in a matter of such great importance the end intended by the Church be frustrated in any way. For no one is unaware that in our times Holy Communion, even daily Communion, is commended most highly to the Christian faithful. Now who, more than a sick person, is to be said to need the help and consolation of so great a sacrament for bearing the distresses of illness?

[4] This Communion is also called Viaticum by the Code (canon 864, § 3).

[5] Pontifical Commission, 16 June 1931, under I (*Acta Apostolicae Sedis* 1931, p. 353).

[6] 10 August 1841.

[7] Gaude in the cited place of St. Alphonsus.

Chapter II. On the Things to Be Observed in the Dispensation of the Holy Eucharist

Something must be said about the time, place, and mode of distributing the Holy Eucharist, and about the mode of carrying it to the sick.

Article I. On the Time of Dispensing the Holy Eucharist

165 **I. Ordinary Communion;** under this name also comes Communion of devotion to be received by a sick person.

1. Ordinary Communion can be distributed on all days (canon 867, § 1), except Friday of Holy Week, on which it is permitted only to carry Sacred Viaticum to the sick (canon 867, § 2). Viaticum is understood as it was explained above (n. 164); therefore Communion cannot be ministered on Friday of Holy Week to a sick person to whom Viaticum so understood has already previously been conferred. Nevertheless, Easter Communion could be given to one who can receive it conveniently enough only on Friday of Holy Week, for the law of communicating at Easter prevails over the liturgical law of not distributing Holy Communion on the aforesaid Friday.
2. Ordinary Communion can be distributed only at those hours at which the sacrifice of Mass can be offered, and likewise at other hours if a reasonable cause suggests it (canon 867, § 4). A reasonable cause for ministering Communion earlier or later than is permitted in itself is present, for example, if a sick person cannot observe the fast until one hour before dawn, or if someone, prevented from receiving Communion earlier, has remained fasting beyond one hour after noon. For the rest, note:

a) The faculty of distributing Communion at the hours at which Mass can be celebrated is to be taken in a broad sense, so that at whatever time, whether by common law or by privilege, it is permitted to celebrate, Communion also can be distributed. Hence it can be distributed in the oratory of a religious or pious house, where according to canon 821, § 3 Mass can already be begun at midnight; this is clear from the cited canon itself. Likewise it can be distributed in a conventual or parochial Mass (canons 821, § 1; 867, § 4; 863).

b) An indult of anticipating Mass can, with sufficient probability, also be extended to the distribution of Communion, even if in fact Mass is not anticipated.

c) On Holy Thursday the Holy Eucharist seems able to be distributed only before and during the solemn Mass; both because after the solemn Mass another Mass can no longer be celebrated, and because according to the rubric of the Missal only some species are to be reserved for the sick.

d) On Holy Saturday Holy Communion cannot be ministered to the faithful except during the solemnities of Masses or continuously and immediately after they have been completed (canon 867, § 3). Hence it is prohibited in churches where Mass is not celebrated. Moreover, considering the obvious sense of the canon, it seems to be required that the distribution of Communion be made jointly with Mass, so that it forms one thing with it. Yet this does not prevent there from being a reason excusing from the law, as if men, after having completed spiritual exercises, could not wait for the solemnities of Masses. Indeed, considering also the custom persisting in Rome, it can seem to someone that canon 867, § 3 speaks only of the place where the solemnities of Masses take place, but not, for example, of a separate chapel.[1]

e) A celebrating priest is not permitted to distribute the Eucharist within Mass to faithful so distant that he himself loses the altar from view (canon 868). Therefore the interpretation of the Sacred Congregation of Rites, 7 February 1874 (n. 3322), according to which it would suffice that the voice of the celebrant be heard, even if the altar were lost from view, seems to fall away. But the decrees of the Sacred Congregation of Rites (n. 2672), 7 December 1844 (n. 2885), 24 March 1860 (n. 3099, ad I), and 11 May 1878 (n. 3448, ad VIII), which agree with the Code, remain. Nevertheless others judge that the canon is not to be urged in this way.

3. It is not necessary that Communion be united with Mass, but it can also be distributed outside it. But if it is united with Mass, it must be done within Mass immediately after the Communion of the celebrant; and if Mass is celebrated privately, for a reasonable cause it can also be done immediately before and immediately after Mass (canon 846). These things also hold in a Mass for the dead.[2]

[1] Cf. Response of the President of the Commission for the Code, 10 July 1909 (*Il Monitore Ecclesiastico* 1922, p. 371; 1924, p. 21).

[2] Cf. Roman Ritual, title IV, chapter 2, n. 11. Cf. S.R.C., 19 December 1829, n. 2672, ad 1; 23 July 1868, n. 3177; 24 March 1860, n. 3099.

166 **II. Viaticum** can be ministered on any day, even Friday of Holy Week (canon 867, §§ 1 and 2), and at any hour of the day or night (canon 867, § 5).

Article II. On the Place of Dispensing the Holy Eucharist

167 **I. Ordinary Communion,** under which name also comes Communion of devotion to be carried to the sick. Now: Holy Communion can be distributed wherever it is permitted to celebrate Mass, even in a private oratory, unless the local Ordinary, for just causes, has prohibited this in particular cases (canon 869). These things are also to be applied to Easter Communion. It is said **wherever it is permitted to celebrate Mass**. Hence permission granted either by the local Ordinary or by a major superior according to canon 822, § 4 - that is, of celebrating outside a church and oratory, but in a decent place, never however in a bedroom; which permission can be granted by the said persons, only for a just and reasonable cause, in some extraordinary case, and by way of an act - carries with it permission to distribute Communion in the same place. This is deduced from canon 869 joined with canon 822, § 4.

Hence the Sacred Congregation for the Discipline of the Sacraments, to question I: "Whether the faithful living in mountain villages, whenever the Holy Eucharist is carried to the sick, can be refreshed by the Holy Synaxis in a sacred place, or even, since it concerns so sacred a thing, in a decent and honorable place which exists on the route, since they cannot go to church on that day"; to that question, I say, it responded: "Affirmatively according to canon 869 joined with canon 822, § 4, that is, provided the local Ordinary grants this according to the norm of the cited prescription, namely for individual cases and by way of an act."[1] And to question II: "Whether Holy Communion and the sacrament of Confession can be administered to those who are in the house of the sick person"; it responded: "As regards Communion, provision has been made in the first response." Moreover, note:

1. In the proposed hypothesis it is not required that Mass in fact be celebrated, but the faculty of celebrating in some place suffices.
2. The power of granting the permission of celebrating of which we have spoken is ordinary, and therefore can be delegated by the local Ordinary and by a major superior.

Corollary. Missionaries who enjoy the faculty of celebrating outside sacred places can minister the Eucharist in a place where in fact they do not celebrate, but where they can celebrate. Likewise pastors who enjoy a faculty received from the Ordinary of permitting Mass to be celebrated outside sacred places can permit Holy Communion to be ministered, even though Mass is not celebrated. But a just cause, some extraordinary case, and that it be done by way of an act are always required.

[1] 5 January 1928 (*Acta Apostolicae Sedis* 1928, p. 79).

168 **II. Viaticum** can be ministered in almost any place. In itself, indeed, it is unbecoming for Viaticum to be carried to a brothel; but if a penitent prostitute cannot in time be removed from such a house, it seems Viaticum can be ministered to her, provided scandal and the danger of positive irreverence are absent. Moreover, let the priest take care not to be deceived and not to suffer harm to his reputation; hence let him have as companion a safe man and indeed, if it can be done, a public minister.

Article III. On the Mode of Dispensing the Holy Eucharist

169 The mode or rite of distributing the Holy Eucharist is set forth in the Roman Missal[1] and in the Roman Ritual.[2] Specifically, note:

1. The Most Holy Eucharist is to be given under the species of bread alone (canon 852); from this, as is taught sufficiently commonly, one cannot depart even for giving Viaticum (St. Alphonsus, VI, 245).
2. A priest of the Latin rite should distribute Communion with unleavened bread; a priest of an Eastern rite, with leavened bread, even to faithful of another rite. But where necessity urges and no priest of a different rite is present, it is permitted for an Eastern priest who uses leavened bread to minister the Eucharist in unleavened bread, and conversely for a Latin or an Eastern priest who uses unleavened bread to minister in leavened bread; but each must preserve his own rite of ministering (canon 851, §§ 1 and 2). Necessity urges sufficiently if on that day the faithful person could not receive Communion without grave inconvenience unless the priest gave him the species of another rite (cf. canon 866, § 1). Therefore it is required that a priest of the other rite be lacking and unable to be approached, and that the present priest be unable to consecrate bread of his own rite.
3. Sacred vestments and a light must be used, and the prayers assigned in the Ritual must be recited.[3] Now it would be a grave sin to omit every sacred vestment. It is venial to use only a stole or only a surplice, or to minister without a light, or to omit the preceding and following prayers. Nevertheless it would be permitted to minister Communion without a sacred vestment and without a light both in a case of necessity and for another truly grave cause, for example if someone sacrilegiously received Viaticum and it must again be carried secretly and clandestinely; likewise in houses where something prevents the inhabitants from suspecting that Communion is being brought (St. Alphonsus, VI, 241).[4]

Not only one who distributes Communion within Mass, but also one who distributes it immediately before or immediately after, can do this in the vestments of Mass; this also holds of a Mass for the dead.[5]

4. The Holy Eucharist must be distributed with the thumb and index finger of the right hand. Nevertheless, it would be permitted to offer it with other fingers if otherwise the people or the dying person would be deprived of Communion. Any just cause does not seem to suffice, since the index finger and thumb are deputed by the rite of the Church for this ministry. But if danger of contagion is feared, the sacred species can be placed in a vessel or in a spoon with a little water, and thus brought to the mouth of the sick person. If the sick person, because of dryness of the mouth, cannot swallow the host, either let the species be given in the mode explained, or after Communion has been taken let a draught of wine or a very small drink of cold, fresh, and, if possible, icy water be given to the sick person (St. Alphonsus, VI, 244, 288).
5. It is not permitted to give "several Eucharistic forms or particles, nor larger ones, but the customary ones."[6] Nevertheless, if a sufficient number of consecrated hosts is lacking, it is permitted to divide small hosts,[7] but at most into two or three parts, unless there is a special reason for dividing even into more parts, for example if the priest rarely comes somewhere. Likewise, if someone otherwise would have to wait too long, it is permitted to remove a particle from the host of the Mass (St. Alphonsus, VI, 245).

[1] *Order for Celebrating Mass*, title X, n. 6.

[2] Title IV, chapter 2.

[3] The Sacred Congregation for the Discipline of the Sacraments, 16 March 1929 (*Acta Apostolicae Sedis* 1929, p. 638), prescribed that besides the linen cloth extended before those communicating, a paten made of silver or gilded metal is to be used.

[4] Cf. Sacred Congregation of Propaganda Fide, 9 December 1822 (*Collectanea*, n. 778).

[5] S.R.C., 19 December 1829, n. 2672, ad 2; 23 July 1868, n. 3177.

[6] Decree of Innocent XI, 12 February 1679.

[7] S.R.C., 16 March 1833, n. 2704, ad 1.

Article IV. On the Mode of Carrying the Holy Eucharist to the Sick

170 As we said above (n. 164), public and private carrying are distinguished. Public carrying is set forth in the Roman Ritual.[1] In private carrying, according to canon 849, § 2, "reverence and decorum owed to so great a sacrament should be carefully provided for, with the norms prescribed by the Apostolic See being observed."

The norm is presented by the Roman Ritual in these words: "When, for a just and reasonable cause, Holy Communion is privately carried to the sick, the priest should at least always have a stole covered by his own clothes; he should place the pyx in a little bag or burse, which, suspended from his neck by cords, he should put in his bosom; and he should never proceed alone, but should be accompanied by at least one faithful person, in the absence of a cleric. But when he has arrived at the room of the sick person, the priest should also put on a surplice with the stole, if he has not already put it on."[2] For the rest, observe:

1. When the Holy Eucharist is carried openly, it is in itself forbidden to walk with covered head. But the prohibition seems to regard only public carrying. Moreover Ordinaries can - as it seems, now all - permit ministers, on account of cold or inclement weather, to use a small cap outside a city or town, even one so large that it covers the ears[3] (St. Alphonsus, VI, 241). Indeed, if otherwise harm to the priest's health is to be feared, there is an excusing cause. Nothing also prevents an artificial covering from being used against rain or snow.

2. It is also permitted, scandal nevertheless being excluded, for a sufficiently grave cause, for example because of weather or distance, to carry the Eucharist on horseback,[4] in a carriage (St. Alphonsus, VI, 243), likewise in an automobile, in a tram, or by railway. Likewise it is permitted in a case of necessity, namely lest someone be deprived of Viaticum, to run (St. Alphonsus, VI, 242), and likewise to use what is called a bicycle or motorcycle.[5] Particular statutes, which here are milder and there stricter, should moreover be attended to. For the rest, local Ordinaries should take care "lest abuses creep into ecclesiastical discipline, especially concerning the administration of the sacraments" (canon 336, § 2). Moreover, note:

a) If Viaticum is ministered, it is to be said: "Receive, brother (sister), the Viaticum of the Body of our Lord Jesus Christ, who may guard you from the malignant enemy and bring you to eternal life. Amen."[6]

b) If for a just cause the priest has taken with him only one host, then, after it has been given to the sick person, the pyx or little case can be washed in the house of the sick person and the ablution given to the sick person; then the pyx should be wiped with a purificator (St. Alphonsus, VI, 251).

[1] Title IV, chapter 4.

[2] Title IV, chapter 4, n. 29. By force of a special indult of the Sacred Congregation of Propaganda Fide, 8 February 1875, which was abrogated neither by the general decree of the Sacred Congregation of the Sacraments, 23 December 1912, ad III, nor by canon 847 (cf. canon 4), private carrying is licit in the ecclesiastical province of Utrecht (*Supplementum ad Rituale Romanum pro usu cleri provinciae ecclesiasticae Ultraiectensis*, n. 22).

[3] Cf. *In Coloniensi*, S.R.C., 13 November 1862; *In Oriolensi*, 22 April 1871, n. 3246, ad I; *Supplementum ad Rituale Romanum pro usu cleri Provinciae ecclesiasticae Ultraiectensis*, n. 21.

[4] Roman Ritual, title IV, chapter 4, n. 13.

[5] Cf. Sacred Congregation of the Sacraments, 13 June 1919.

[6] Roman Ritual, title IV, chapter 4, n. 19.

Part III. On the Reception of the Most Holy Sacrament

We shall speak first about the notion and division of the reception of the Eucharist, then about the person receiving, and then about the mode of receiving it.

Section I. On the Notion and Division of Reception of the Holy Eucharist

171 The reception of the Eucharist can be distinguished as threefold, namely material, sacramental, and spiritual.[1]

I. Material reception is that by which it is so received that the sacrament is not applied to the one receiving, in other words, so that the sacrament does not become a title of grace applied to him. It is received materially: 1. by one not baptized; 2. by a baptized adult who lacks intention.

II. Sacramental reception is had when the sacrament is applied to the one receiving, or when it becomes a title of grace applied to the one receiving. Sacramental reception is twofold, namely sacramental only, and sacramental and spiritual, according as it is received with or without an obstacle to the effect, that is, to the grace to be received.

As regards the requisites for sacramental reception, receive these points:

1. For sacramental reception, eating is certainly required, whether true or equivalent. This is drawn from these words of Christ: "Unless you eat the flesh of the Son of man and drink His blood, you will not have life in you";[2] "Take and eat; this is my body";[3] "... drink ye all of this, for this is my blood of the New Testament, which shall be shed for many unto remission of sins."[4]
2. For sacramental reception, the passage of food into the stomach is certainly required. For if this is lacking, according to common estimation no one is said to eat.
3. It is disputed whether or not a vital passage into the stomach through the esophagus, whether natural or artificial, is required, or whether passage into the stomach by means of a tube inserted into the esophagus or into another part of the body suffices. Some judge that passage by means of a tube suffices, because there is at least equivalent eating. Others admit the contrary, because, considering the obvious sense of the words of Christ, there seems to be required an act which truly is, or at least according to common estimation is called, eating. Now one who is fed by means of a tube is not said to eat, but to be nourished artificially.

III. Spiritual reception is the desire or vow, conceived from faith and charity, of receiving the Eucharist really.[5] Now spiritual Communion produces *ex opere operantis* fruits very similar to those which real Communion effects *ex opere operato*. Hence the Council of Trent declares that those communicate spiritually "who, eating in desire that heavenly bread set before them, by living faith which works through love, perceive its fruit and usefulness."[6] But in order that someone may acquire the aforesaid fruits, let him elicit an act of faith, charity or perfect contrition, and desire toward Christ in the Eucharist. One who is only attrite concerning a mortal sin perhaps committed, by desiring Communion indeed performs a good work, but does not communicate spiritually, and therefore does not receive the special fruits annexed to spiritual Communion.

In the following, the discussion will be only about sacramental Communion.

[1] "As regards use, the Council of Trent speaks thus: 'Our fathers rightly and wisely distinguished three ways of receiving this holy sacrament. For they taught that some receive it sacramentally only, as sinners; others only spiritually, namely those who, eating in desire that heavenly bread set before them, by living faith which works through love, perceive its fruit and usefulness; and thirdly, others both sacramentally and spiritually; and these are those who first so prove and prepare themselves that, clothed in the wedding garment, they approach this divine table'" (Session 13, chapter 8).

[2] John 6:54.

[3] Matthew 26:26.

[4] Matthew 26:27-28.

[5] Council of Trent, session 13, chapter 8.

[6] Loc. cit.

Section II. On the Person Receiving

172 **I. In order that the Holy Eucharist can be validly ministered to someone,** it suffices that he be baptized and, if he has arrived at the years of discretion, that he have the intention of receiving the sacrament (nn. 38, 40).

173 **II. In order that the Holy Eucharist be licitly ministered to someone,** indeed, if he asks for it, that it ought to be ministered, it suffices that he be baptized and not prohibited by law. It will be clear from what is to be said about children, about the insane, about the unworthy, etc., to what extent someone is prohibited by law.

1. **Children.** As regards the Communion of children, the Code, though with certain additions, briefly repeats what is contained more fully in the decree of the Sacred Congregation for the Discipline of the Sacraments *Quam singulari*.[1] Now:

a) The Eucharist is not to be ministered to children who, because of the weakness of age, do not yet have knowledge and taste of this sacrament (canon 854).[2]

b) As regards the required knowledge, these things now hold:

First, in danger of death, in order that the Most Holy Eucharist can and ought to be ministered to children, it is enough that they know how to distinguish the Body of Christ from common food and to adore it reverently (canon 854, § 2). Although these requisites, if the family is religious, can be presumed, it is nevertheless better to make oneself more certain about them. Moreover, a child who has attained the use of reason, if his condition permits it, should commonly, at least as a precaution, be expressly taught, and indeed before Communion is ministered, the things which must be known by necessity of means.

Second, outside danger of death, a fuller knowledge of Christian doctrine and a more accurate preparation is rightly required, namely that by which they themselves, according to their capacity, perceive at least the mysteries of faith necessary by necessity of means for salvation, and approach the Most Holy Eucharist devoutly according to the measure of their age (canon 854, § 3). "Therefore, to use the words of the decree cited above, not a perfect knowledge of matters of faith is required, since certain elements only are enough, that is, some knowledge." It is enough, therefore, that the child: 1. know the things to be known by necessity of means; 2. distinguish Eucharistic bread from common bread, and therefore know that under the host Christ, or the Infant Jesus, is present and that He is united with us through Communion. But in order that he sufficiently discern Eucharistic bread from

common bread, he should moreover: 3. know that natural fasting and the state of grace are required for licit Communion. Finally, in order that he may understand what the state of grace involves and requires, 4. he should have some notion of mortal sin and of the means by which lost grace must be recovered, namely the sacrament of Penance. Observe, however, that that knowledge of the aforesaid things suffices which a child can have who enjoys some use of reason, or who begins to reason.[3] Nor is it required that he hold in memory the formulas by which the aforesaid truths are presented in the Catechism. But if the required knowledge is present, the child can also approach the Most Holy Eucharist devoutly according to the measure of his age.

c) The obligation of the precept of Confession and Communion, which burdens the child, and generally the prepubescent, falls also and especially upon those who ought to have care of him, that is, upon parents, guardians, the confessor, teachers, and the pastor (canon 860). Therefore the obligation rests upon the aforesaid persons of taking care that the child, after he has begun to reason, learn the necessary things to be known and, once knowledge has been acquired, fulfill the precepts in due time.

d) Judgment about the sufficient disposition of children for first Communion belongs to the priest hearing their confessions and to their parents or those who are in the place of parents (canon 854, § 4), for example teachers in a college.

e) But it is the office of the pastor to watch carefully, even through an examination if he has prudently judged it opportune, lest children approach the Sacred Synaxis before having attained the use of reason or without sufficient disposition; and likewise to take care that those who have attained the use of reason and are sufficiently disposed be refreshed by this divine food as soon as possible (canon 854, § 5). From these things do not deduce that the pastor can of himself subject children to an examination. He can do this if he has prudently judged it opportune; and that happens only when he has a positive reason for doubting about the requisites for Communion.

[1] 8 August 1910.

[2] Concerning the contrary custom formerly in force and even now persisting among the Greeks and Orientals, the cited decree *Quam singulari* speaks thus: The Church "from its very beginnings took care to bring little children near to Christ through Eucharistic Communion, which it was accustomed to administer to them even as infants. This, as was prescribed in almost all Rituals up to the thirteenth century, was done in Baptism, and this custom obtained longer in some places; among the Greeks and Orientals it still perseveres. But to remove the danger that especially nursing infants might spit out the consecrated bread, the custom prevailed from the beginning of ministering the Eucharist to them under the species of wine alone. Nor were infants refreshed with the divine banquet only at Baptism, but afterward more often. For it was also the custom of certain churches to give the Eucharist to little children immediately after the clergy, and elsewhere, after the Communion of adults, to give them the remaining fragments. This custom then became obsolete in the Latin Church, and infants did not begin to become sharers of the sacred table unless they had some use of dawning reason and some knowledge of the august sacrament. This new discipline, already received by several particular synods, was confirmed by the solemn sanction of the Fourth Ecumenical Lateran Council, in the year 1215, by the promulgation of the famous canon XXI, by which sacramental Confession and Holy Communion are prescribed for the faithful after they have reached the age of reason."

[3] Cf. the decree *Quam singulari*, 8 August 1910.

174 **2. The insane** are some perpetually insane, others not perpetually insane, others insane only about one or another point, and others semi-insane.

a) **The perpetually insane.** To these, since they are equated with little children, the Holy Eucharist cannot be ministered,[1] not even in danger of death. The reason for the prohibition is that they neither have, nor ever had, knowledge and taste of the Holy Eucharist.

b) **The insane, but not perpetually so, the delirious, epileptics, the possessed, and those obsessed.**

First, outside danger of death, the Eucharist cannot be ministered to the aforesaid while they are not in possession of themselves. "Nevertheless it will be permitted, if at some time they have lucid intervals and show devotion while they remain in that state, if there is no danger of unworthiness"[2] (St. Alphonsus, VI, 302).

Second, in danger of death it should not be given: 1. if it is sufficiently certain that they are constituted in sin and impenitent, for example if in the act of sin, or after a scandalous life, they have fallen into insanity, delirium, or deprivation of the senses; 2. if a danger of positive irreverence is present. In doubt whether such danger is present, that is, the danger that the sick person may expel the Sacred Host or move indecently during the ministration, it is useful to give him an unconsecrated particle before the Holy Eucharist; 3. if it is clear that they lack and have always lacked sufficient knowledge and devotion toward the Eucharist (St. Thomas, III, q. 80, a. 9; St. Alphonsus, VI, 302). Nevertheless imperfect knowledge suffices; likewise devotion broadly taken, or such that someone can be presumed to will to receive the Eucharist in danger of death. Outside the enumerated cases, according to the opinion of almost all authors, it is permitted to minister the Eucharist to them.[3]

For the rest, nothing can obstruct liceity except the defect of actual devotion in the one receiving or the prohibition of the Church. But since the sacraments are for human beings, the greatest good of the one receiving prevails over the reverence owed in itself (St. Alphonsus, loc. cit.). The Roman Ritual[4] can be understood of ordinary circumstances, that is, abstracting from danger of death. But it is disputed whether there is an obligation of giving Viaticum to the aforesaid. Now with St. Thomas (III, q. 80, a. 9), St. Alphonsus (loc. cit.), and most theologians, against some, it must be affirmed. For if it is permitted to give that greatest good to the dying person, there is also an obligation of giving it; all the more because the dying person must be said at least implicitly to ask for the sacrament, namely because his intention or profession of the Christian religion involves at least an implicit petition for Viaticum (St. Alphonsus, loc. cit.). From these things it follows that the practice of not ministering Viaticum to the persons of whom we have spoken is truly an abuse.

c) **Those insane only about one or another point** can communicate at least sometimes, provided the insanity does not regard the substance of the Holy Eucharist. The reason is that at least it is doubtful whether human beings of this kind lack the faculty of placing human acts; and in doubt, favor must be shown to them.

d) **The semi-insane and the elderly becoming childish again.** Communion is to be given to these: 1. in danger of death; 2. at Easter (St. Alphonsus, VI, 303); 3. if they enjoy greater discretion, they can also communicate more often. These things also hold of those deaf and mute from birth, unless they have been specially instructed in some institute (St. Alphonsus, loc. cit.).

[1] Cf. Roman Ritual, title IV, chapter 1, n. 10.

[2] Roman Ritual, loc. cit.

[3] Cf. Fourth Council of Carthage (cause 26, question 6, chapter *Is qui poenitentiam*); First Council of Orange (cause 26, question 6, chapter *Qui recedunt*); Decretals of Gregory IX (*De poenitentiis et remissionibus*, chapter *Quod in te*), and the Roman Catechism (*De Eucharistia*, n. 64).

[4] Title IV, chapter 1, n. 10.

175 **3. The unworthy** are either publicly or occultly unworthy. Now:

a) The publicly unworthy are to be kept away from the Eucharist, such as the excommunicated, the interdicted, and the manifestly infamous, unless their repentance and amendment are clear and they have first made satisfaction for public scandal (canon 855, § 1). Besides those enumerated, all public sinners are to be counted among the publicly unworthy. Moreover, those who are indecently dressed seem able to be repelled, even if they cannot be said to be gravely guilty; but great prudence is needed in such a case. The publicly unworthy must be repelled whether they ask publicly or secretly, unless nevertheless the minister has positively known that they are repentant, and they have first satisfied for public scandal. See these things explained in the treatise on the sacraments in general, n. 28.

b) Occult sinners are to be repelled only when they ask secretly and the minister has positively known outside confession that they have not been amended; but not if they ask publicly and he cannot pass them over without scandal (canon 855, § 2).

176 **4. Those suffering from a cough.** To these, unless the cough is constant, Communion can be given. For the phlegm which is expelled by coughing comes not from the stomach and esophagus, but from the lungs or bronchi. Only then, if the sick person is suddenly afflicted by a very violent cough, is there danger that the sacred species may be ejected by the force of the cough.

177 **5. Those suffering from frequent vomiting** cannot communicate unless it is clear, for example from the declaration of those standing by, or more advisedly of a physician, that noteworthy danger is absent. Note, however, that often a particle of the host can be given to them without danger of vomiting.

178 **6. As regards those who cannot take the species except in an artificial way,** for example through a tube inserted into the esophagus or another part of the body, receive these points:

There is no obligation of communicating or of ministering in this way, not even in danger of death; both because it is doubtful whether such taking is sacramental (n. 171), and because the Holy Office, on 27 January 1886, concerning a similar case,[1] responded: "As it is explained, it is not expedient," which, considering the style of the Curia, seems to involve a prohibition; and on 27 November 1919, to a petition in which the faculty of taking the Holy Eucharist through a tube inserted into the stomach was asked, it responded: "Negative."[2] Nevertheless, considering the probability of sacramental taking together with the lack of a general prohibition, I would not condemn one who in danger of death communicated in this way.

The fact that someone uses an artificial esophagus does not prevent him from truly absorbing food, or passing it into the stomach through a vital act. Therefore such a person without doubt receives the Holy Eucharist sacramentally, and therefore can communicate just as others can.

Note. In doubt whether a dying person can swallow the species, those standing by should be asked whether he still takes food; or an experiment should be made by giving him some food or an

unconsecrated host. In what way the Eucharist can be ministered if the dying or sick person cannot swallow the species because of dryness of the mouth, see n. 169.

[1] The case concerned a sick person for whom an opening for receiving food had been made below the chest; this case does not formally differ from the case of a tube inserted into the esophagus.

[2] In *Nederlandsche Katholieke Stemmen*, 1921, p. 16.

Section III. On the Mode of Receiving

Chapter I. On the Disposition of the Soul

179 **I. The state of grace.** That the state of grace is required is clear from Sacred Scripture,[1] and from what was said about the sacraments in general, n. 43. In the same place it was likewise proved that broad moral certitude about the state of grace is required.

1. One who is conscious to himself of mortal sin is bound per se to recover lost grace through Confession. Per accidens he sometimes satisfies by an act of contrition, as will be explained under 4. That Confession is required per se is clear from the Council of Trent: "One who wishes to communicate must recall to memory that precept of his, that is, of the Apostle: **Let a man prove himself.** But ecclesiastical custom declares that this proof is necessary, so that no one conscious to himself of mortal sin, however much he may seem to himself contrite, ought to approach the Holy Eucharist without previous sacramental Confession. This holy Synod has decreed that this must perpetually be observed by all Christians, even by those priests upon whom, by office, it is incumbent to celebrate, provided that a supply of a confessor is not lacking to them."[2] Canons 807 and 856 are added.

It is disputed, however, whether the precept of premising Confession is divine or ecclesiastical; likewise, if it is ecclesiastical, whether it was imposed by Paul or introduced by custom. Concerning this, note: 1. nothing can be deduced from the cited place of Trent, since from the history[3] and acts[4] of the Council it is clear that the Fathers adhered to different opinions and did not intend to reject any one. 2. It is difficult to admit that an obligation of this kind was imposed by Paul upon the whole Church, unless it is positively proved; but a solid argument is lacking. Hence the said precept seems either to be divine or to have been introduced by ecclesiastical custom; which is to be preferred, I do not know.

Nor should you object: According to Trent, ecclesiastical custom declares that the proof of which Paul speaks is placed in Confession; therefore custom did not introduce the obligation of confessing. Response: According to Trent, ecclesiastical custom does not declare that the proof of which Paul speaks is placed in Confession, but that proof through Confession is necessary; by this it is left undecided whether such proof was introduced by Christ, by Paul, or by ancient custom.

2. One who, all things considered, doubts whether after his last Confession he sinned gravely, is not bound to confess, but satisfies by an act of contrition. For the Council of Trent speaks only of one who is conscious of mortal sin; this cannot be said of one who doubts (St. Alphonsus, VI, 473). Nevertheless, if he does not confess, that he is bound to an act of contrition was proved in the treatise on the sacraments in general (n. 43). I said **all things considered**, because Confession is prescribed if from the circumstances it must be presumed that a grave sin was committed (*De Sacramentis in genere*, loc. cit.).

It is disputed whether before Communion one must confess again who, all things considered, doubts whether he has worthily confessed the sin committed. But according to the principles of St. Alphonsus it must be affirmed, because he doubtfully satisfied the law of worthy Confession. Nevertheless I again said **all things considered**; for if the doubt arises from doubt about the mode in which the Confession was made, for example whether it was instituted with true attrition or not, it can be presumed that it was rightly made (vol. I, n. 229).

3. One who confessed worthily, but forgot a mortal sin, with sufficient probability is not bound to confess again before he communicates. Most older theologians reject this doctrine, because the Council of Trent, which binds one who is conscious to himself of mortal sin to previous Confession, in the obvious sense speaks of the Confession of all mortal sins of which he is conscious to himself before Communion. But St. Alphonsus (VI, 257), and after him almost all more recent authors, hold as sufficiently probable that only a worthy previous Confession is prescribed, in other words, that it suffices that someone has been justified through Confession, or that sins have been remitted through Confession, whether directly, or, as in the case of a sin omitted through forgetfulness, indirectly. Considering the not-to-be-despised explanation of the Council of Trent and the authority of the authors, we hold this opinion as safe in practice.
4. One who per se is bound to Confession, per accidens is not bound to it, but satisfies by an act of perfect contrition, if both there is a necessity of communicating or celebrating, and the supply of a confessor is lacking (canons 807, 856).

a) The necessity of celebrating or communicating is understood as grave or urgent, as the Council of Trent, loc. cit., and the Code (cited canons) have it. Necessity is present:

First, if Communion or Mass cannot be omitted without infamy or scandal, as if a layperson has already approached the Communion rail; if a priest has already begun Mass, or has arrived at the altar, or is eagerly awaited by the faithful (St. Alphonsus, VI, 260). Necessity also seems to be present if someone, for example, goes to church with his family intending to communicate and is not absolved. As regards those who in colleges, etc., communicate daily, infamy does not seem to be a sufficient reason, nor one to be admitted by the confessor, because either they rarely sin, and then they can more easily allege another motive, for example a broken fast; or they sin more often, and then they are bound to arrange their Communions so that they are no longer known to communicate daily. Therefore the obligation of Confession is also to be urged more, especially in younger persons, lest the reverence due to the Eucharist be diminished, the horror of sin be lost, and the efforts to root out a depraved habit be lessened.[5]

Second, if Mass must be continued; namely: 1. if the consecration has already begun, the priest should not interrupt Mass in order to confess, but, having elicited an act of contrition, should continue it. 2. If the consecration has not yet begun, the same seems to be said of a priest who remembers a grave sin or becomes guilty of one, since the Missal states without distinction: "If in the very celebration of Mass the priest remembers that he is in mortal sin, let him be contrite with the purpose of confessing and satisfying."[6] But the priest who "remembers that he is excommunicated or suspended, or that the place is interdicted... if scandal is not feared, ought to leave the Mass already begun."[7] The reason of scandal, or infamy, will commonly excuse from leaving Mass, so that Mass should rather be continued, after an act of contrition has been elicited.

Third, if Viaticum must be consecrated for a dying person and another who may celebrate is lacking. Likewise if there is danger that the sacrament may be profaned and that danger cannot be averted in another equally safe way (St. Alphonsus, VI, 260).

Fourth, if there is, whether for a pastor or for an assistant, an obligation of celebrating by office, for example on a feast day so that the people may hear Mass, for funerals, or for blessing nuptials, and another who may celebrate in his place is lacking (St. Alphonsus, VI, 261). But there is not a necessity of celebrating or communicating which of itself is sufficiently grave if the priest suffers from the omission of Mass only the privation of the stipend; likewise if he must celebrate only from a vow, or from the precept of a superior, or so that he himself may hear Mass of precept, or so that another may satisfy the precept of Easter Communion. But with sufficient probability a necessity of celebrating per se sufficiently grave is present if otherwise the priest himself cannot satisfy the precept of Easter Communion; likewise, for a layperson, a necessity of communicating per se sufficiently grave is had if otherwise he cannot fulfill the precept of Easter Communion. The reason is that annual Communion obliges in some way from divine law (St. Alphonsus, VI, 261).

b) The supply of a confessor is lacking:

First, if no one is present who can, and licitly can, and wills to hear Confession, and another cannot be approached without grave difficulty. But the difficulty which arises from the journey to be made can be increased on the one hand by infirmity, by the imminent time of celebrating, etc., and on the other hand lessened by the fact that the journey can be made by carriage, railway, etc. Abstracting from the aforesaid special circumstances, according to St. Alphonsus a journey of one and a half leagues excuses (VI, 264). Therefore the supply of a confessor is not lacking because the ordinary confessor cannot be had.

It is disputed whether or not the supply of a confessor is lacking if only a confessor is present, or can be approached, to whom someone cannot confess without extraordinary shame arising from an extraordinary circumstance; for example, if an uncle would have to confess a very shameful sin to his nephew. Some affirm, but it seems it must be entirely denied. For: 1. an intrinsic inconvenience does not excuse from law (*De Legibus*, vol. I, n. 169). But that extraordinary circumstance only causes the intrinsic inconvenience, namely shame, to become greater, not to become extrinsic. There is added that the more benign opinion gives occasion to laxity and weakens the law, since limits cannot be assigned. Finally, the aforesaid opinion was formerly commonly rejected, either explicitly or implicitly.

Objection. The law of premising Confession to Communion is probably only ecclesiastical. Hence it is permitted, at least by epikeia, to regard extraordinary shame as an excusing cause.

Response. Passing over the antecedent, I observe that the two latter arguments adduced by us also exclude epikeia.

Second, if no one is present except one ignorant of the language, or lacking jurisdiction, or an excommunicated person to be avoided. Concerning the case in which someone has fallen into a reserved sin and the priest present per se lacks jurisdiction over it, see the treatise on Penance.

Third, if someone cannot confess to a confessor who is present or can be approached without grave harm extrinsic to Confession; harm, I say, whether to himself, to the confessor, or to a third party, as is more fully explained in the treatise on Penance (St. Alphonsus, VI, 264).

[1] 1 Cor. 11:29.

[2] Session 13, chapter 7.

[3] Pallavicini, cited work, book 12, chapter 2.

[4] Theiner, cited work, vol. I, p. 488 and following.

[5] Cf. Vermeersch, *Epitome*, 3rd ed., vol. II, n. 120.

[6] *On Defects*, VIII, n. 4.

[7] Roman Missal, loc. cit., n. 5.

180 **II. Actual devotion.** Although a voluntary defect of this devotion does not simply prevent the fruit of Communion, it nevertheless causes one to receive much slighter fruits. Moreover, one who at the time of Communion is voluntarily distracted commits a venial sin of irreverence. Likewise he also seems to commit a venial sin of irreverence who communicates either from a venially evil motive, for example from vainglory, or with an actual or virtual affection for venial sin. In such a case there seems to be a certain positive irreverence. It must be said otherwise of one who communicates with habitual venial sin, because there is rather a defect of perfect reverence than positive irreverence (St. Alphonsus, VI, 270).

Corollary I. Nocturnal pollution, in relation to Communion to be received on the following day, is to be judged thus: It never prohibits it under grave sin, provided the grave sin perhaps committed has been removed by Confession. For the rest:

1. If it occurred with grave sin, although remitted by Confession, "one should abstain from Communion and celebration unless something else seems good to the confessor."[1]
2. If it occurred with venial sin or without sin, Communion is prohibited under venial sin by reason of the effects, namely if because of dishonorable fantasies it obstructs the required devotion. Yet it is prohibited only insofar as either one must abstain from Communion, or effort must be applied to removing the impediment[2] (St. Alphonsus, VI, 272).

Corollary II. Conjugal intercourse practically does not impede Communion; nor, for the most part, should spouses be positively advised to abstain from intercourse on the night before the day of Communion. To those asking, let it be said that it is licit, and at most let it be added that abstinence is a thing of greater perfection.

[1] Missal, *On Defects*, title IX, n. 5.

[2] Cf. Missal, loc. cit.

181 **III. Preparation and thanksgiving.** In order that one may receive richer fruits, he should not omit remote and proximate preparation, and thanksgiving.

1. Preparation can be distinguished as twofold: remote and proximate. Remote preparation consists especially in purity of heart; proximate preparation, in acts of faith, hope, charity, etc., and "let it be made according to the powers, conditions, and offices of each one."[1]
2. Thanksgiving should likewise be carried out carefully, and not be finished in a few minutes. For the rest, it too, as the cited Decree has it, "should be made according to the powers, conditions, and offices of each one" (cf. St. Alphonsus, *Praxis Confessarii*, n. 155).

Corollary. To eat or drink immediately after Communion is venial, unless a reasonable cause excuses (St. Alphonsus, VI, 283). To spit immediately after it has been cast into the stomach is unbecoming; if it were done with danger of ejecting a particle, it would be a sin.

[1] Decree of the Sacred Congregation of the Council *Sacra Tridentina Synodus*, 20 December 1905.

Scholion. On Frequent and Daily Communion

Canon 863 admonishes that the faithful are to be stirred up to be refreshed frequently, even daily, with the Eucharistic bread, according to the norms handed down in decrees of the Apostolic See. But the norms of which the cited canon speaks are contained in the Decree of the Sacred Congregation of the Council *Sacra Tridentina Synodus*,[1] and in other documents to be cited insofar as needed.

[1] 20 December 1905.

182 **I. Requisites for daily Communion.** "Frequent and daily Communion, as being most desired by Christ the Lord and by the Catholic Church, should be open to all Christ's faithful of whatever order or condition; so that no one who is in the state of grace and approaches the sacred table with a right and pious mind can be prohibited from it" (cited Decree, n. 1). "But a right mind consists in this, that one who approaches the sacred table does not indulge custom, vanity, or human reasons, but wills to satisfy God's good pleasure, to be united to Him more closely by charity, and by that divine medicine to meet his infirmities and defects" (n. 2). Now:

1. An intention which is predominantly supernatural suffices to this extent, that one who approaches with such an intention cannot be kept away from Communion.
2. It suffices that the good ends assigned be intended implicitly.
3. Custom, whether one's own or that of others, will in practice rather often be more the occasion than the principal reason. Vanity will be the principal reason if someone becomes conceited because of frequency of Communion and willingly speaks about it to others in the manner of little devotees.[1]

[1] Instruction to the Bishops of Prussia, 8 December 1906.

183 **II. The office of the confessor.** 1. "In order that frequent and daily Communion may be done with greater prudence and be increased by richer merit, it is fitting that the counsel of the confessor intervene" (n. 5). Therefore the confessor, especially if he is asked, enjoys the right of judging about the state and disposition of the penitent; indeed it is entirely fitting that his counsel be sought. I said **it is fitting**, because it is disputed whether the word **it is fitting** in this case involves a true obligation. With sufficient probability it is denied, and the counsel of the confessor is declared necessary only insofar as, by seeking it, one proceeds with greater prudence and greater merit can be hoped for. In a word: the word **it is fitting** probably signifies only the necessity of greater prudence and greater merit. Moreover, the confessor does not grant permission to communicate daily, but only declares that the requisites for permission are present; the permission itself, or the right, is conferred by the Church or by Christ. Finally, a penitent who is certain about the required disposition is not bound to acquiesce in a confessor turning him away from daily Communion, but can use the right granted to him. But these things are merely theoretical.

2. "Let confessors nevertheless beware lest they turn anyone away from frequent or daily Communion who is found in the state of grace and approaches with a right mind" (n. 5).

Question. Whether the practice of daily Communion can finally be forbidden to one who permanently, without any amendment, falls back into venial sins.

Response. Some deny, because according to number 3 of the decree, it suffices "that those using frequent and daily Communion be free from mortal sins, with the purpose of never sinning in the future," certainly gravely. Others affirm, because the decree itself in n. 3 declares that it cannot happen "that those communicating daily should not little by little free themselves from even venial sins and from their effect." Therefore a permanent defect of amendment is a sign of a defect of right intention in the past, and it introduces a vehement prejudice for the future,[1] unless special circumstances or signs remove the said prejudice. Hence the practice of daily Communion is finally to be forbidden unless there is now hope that the penitent will approach with a right intention. To the argument of the adversaries they respond that the words opposed from number 3 of the decree regard only the required state of grace, but by no means exclude the obligation of bringing a right intention in approaching Holy Communion. Yet one who adheres to this opinion should take care not to bring it into practice too hastily; moreover, let him stir the penitent to greater fervor, and as soon as a founded hope of bringing a right intention is present, let him cease from turning him away from daily Communion.

[1] This argument, however, is weakened somewhat by responding that the quoted words, which are not judged to pertain to the doctrinal part, are not to be urged too much.

184 **III. The office of others.** 1. The faithful are to be stirred up to be refreshed frequently, even daily, with the Eucharistic bread, according to the norms handed down in the decrees of the Apostolic See; and those assisting at Mass, being duly disposed, should communicate not only by spiritual affection, but also by sacramental reception of the Most Holy Eucharist (canon 863). The cited Decree, n. 6, inculcates the same upon pastors, confessors, and preachers. Add the response of the Sacred Congregation of the Council,[1] by which it is declared that "the frequency of Holy Communion is commended according to the first article of the Decree even to children, who, once admitted to the sacred table... must not be prohibited from frequent participation in it, but rather are to be exhorted to it; with the contrary practice in force in some places being reproved."

2. Frequent and daily Communion is also to be promoted as much as possible in seminaries of clerics, whose students long for service of the altar; likewise in other Christian schools of every kind[2] (cited Decree, n. 7). Religious superiors should promote among their subjects the frequent, even daily, reception of the Most Holy Body of Christ; and frequent, indeed even daily, access to the Most Holy Eucharist should be freely open to religious who are rightly disposed (canon 595, § 2). As regards religious, observe besides:

a) If there are religious institutes of either solemn or simple vows in whose rules or constitutions, or even calendars, Communions are found to be assigned or ordered on certain days, these norms have only directive force (canon 595, § 4).

b) But if after the last sacramental Confession a religious has been a grave scandal to the community, or has committed a grave and external fault, the superior can prohibit him from approaching Holy Communion until he has again approached the sacrament of Penance (canon 595, § 3). The words **scandal**, and **grave and external fault**, are now to be taken at least in the theological sense. The prohibition falls away as soon as the subject has confessed.

Note. The law of reading the Decree *Sacra Tridentina Synodus* annually in religious houses is no longer in force (cf. canon 6, 6).

[1] 15 September 1906 (*Monitore Ecclesiastico*, vol. 18, p. 346).

[2] Under the name of schools are comprehended "all pious institutes in which boys or girls are instructed and educated" (*Acta Sanctae Sedis*, vol. XXI, p. 506).

185 **IV. Daily Communion is commended to all** by: 1. the desire of Christ and the Church, as is more fully explained in the prior part of the cited Decree; 2. the end and fruit of Communion. Concerning this observe that its end consists especially in this, "that Christ's faithful, united to God through the sacrament, may thence take strength to restrain lust, to wash away the slight faults which occur daily, and to prevent the graver sins to which human frailty is liable; but not principally that the honor and veneration of the Lord be consulted, nor that it be, as it were, wages or a reward of their virtues for those receiving" (cited Decree).

Corollary. The practice of persuading either the faithful or the members of some community to abstain from Communion on one or another day each week must be disapproved. For this practice cannot be reconciled with the cited decree and other ecclesiastical documents, which exhort daily Communion to be brought into practice and promoted, and prohibit the confessor "from turning anyone away from frequent or daily Communion who is found in the state of grace and approaches with a right mind" (n. 5). Nor should members of a community be persuaded to abstain from daily Communion on the occasion of spiritual exercises.

Chapter II. On the Disposition of the Body

186 The disposition of the body comprehends cleanliness of body, decency of dress, and the natural fast.

As regards cleanliness of body, it suffices to note these things:

1. Dirt adhering to the body and appearing should be washed away before the reception of the Eucharist.
2. Stains inherent in the body are commonly not attended to, unless they are apparent, notable, and removable. If there is hope that they will soon be removed, and Communion can conveniently be deferred, it is fitting to defer it. Nevertheless, a priest infected with a disease that brings horror should not celebrate publicly; he can celebrate secretly (St. Alphonsus, VI, 275).

As regards decency of dress, observe that it depends much on the custom of places and the condition of persons. For the rest:

1. So far as can be done, one should not approach in torn and dirty clothes.
2. Women should avoid superfluous ornament and especially immodest or indecent dress. One who approached too immodestly would have to be kept away from Communion; but one must proceed with the greatest prudence.
3. It is fitting that soldiers approach with arms laid aside.
4. "If Communion is to be given to priests or others from the clergy, let it be given to them kneeling at the steps of the altar, or, if it can conveniently be done, let them be distinguished from the laity

within the altar rail. But let priests communicate with a stole."[1] Deacons, if they approach Holy Communion privately, do so with a stole worn transversely over the cotta.[2] Those who acted otherwise would sin venially (St. Alphonsus, VI, 275-276).

As regards the natural fast, several things must be noted:

[1] Roman Ritual, title IV, chapter 2, n. 4.

[2] Sacred Congregation of Rites, 4 July 1879, n. 3499, ad II.

187 **I. The existence of the precept.** The precept of the natural fast, introduced formerly by custom and confirmed by several councils,[1] was established by canon 858, § 1, in these words: "One who has not observed the natural fast from midnight cannot be admitted to the Most Holy Eucharist, unless danger of death urges, or there is necessity of preventing irreverence toward the sacrament." It is a precept only of ecclesiastical law (St. Alphonsus, VI, 278).

[1] Council of Hippo, year 393, canon 28; Council in Trullo, canon 29; Council of Constance, year 1415, session 13.

188 **II. The object of the precept** consists in this, that from midnight the communicant has transmitted nothing digestible and coming from outside into the stomach or another organ serving the digestion of foods, and retained it there. Therefore, in order that the natural fast be violated, it is required:

1. That something be taken after midnight. Now:

a) Midnight, according to canon 33, § 1, can be computed according to: 1. usual time; 2. local time, both true and mean; 3. legal time, both regional and other extraordinary time (vol. I, n. 167).

b) Midnight must be taken physically, not morally; but the completed hour is commonly indicated by the first stroke of the clock (St. Alphonsus, VI, 282), and sometimes by the last stroke.

Here it is customary to ask what one can do who, while eating or drinking, hears the first stroke of the clock; namely, whether someone can communicate even if he does not spit out what he has in his mouth. Several more recent authors affirm, because, they say, the Church is not judged to oblige one to such rusticity. But the Church does not oblige one to that, even if it commands: "If you swallow, it is not permitted for you to communicate." Hence if, considering the circumstances, you cannot spit out without rusticity, swallow it and abstain from Communion. Thus theoretically; for in practice it will scarcely be clear that the fast has been violated, because approved clocks will scarcely be lacking which indicate midnight somewhat later and which it is permitted to follow (St. Alphonsus, loc. cit.).

What if someone passes from one place to another, in which a different time prevails; for example, someone eats at Maastricht at 11:30, then departs for Aachen and communicates there, although 11:30 at Maastricht is 12:30 at Aachen? I think he acts illicitly, because the time of the fast seems to be computed in order to the time at which Communion is received; but the time of Communion must be computed according to the time of the place in which someone communicates.

2. That something be taken which comes from outside. Hence the swallowing of saliva, or blood from the gums, or fluid flowing from a pustule which exists in the mouth, does not obstruct the fast; nor the skin of the lips, for these pertain to the interior parts of the mouth, whose extremities and curvature they are. It is otherwise if someone, for example, sucks blood from a wound on the finger, or tears flowing from the eyes. Nevertheless, it is not required that

something be put into the mouth from outside after midnight, but it suffices that after midnight it be swallowed. Hence the fast is violated if someone at night puts sugar into his mouth to be dissolved and swallowed after midnight, even partly (St. Alphonsus, VI, 279).

3. That something be taken which has the character of food or drink. Certainly that which is not digestible does not pertain here (St. Alphonsus, VI, 281). Nor does that seem to pertain here which can only in some way be altered in the stomach and, according to common estimation, does not have the character of food, such as fingernails. For the rest, "it does not matter," says St. Thomas (III, q. 80, a. 8, ad 4), "whether something nourishes or does not nourish"; nor does it matter at all that the thing is taken by way of medicine.[1] Considering all these things, the following do not violate the fast, although some of the things to be enumerated, according to chemists, are not excluded from every alteration in the stomach: glass, hair, silk, wool, linen, a pebble of metal, little fruit-stones wholly cleansed, wood, straw, fingernails. The following violate it: bones, wax, chalk, metal dust, artificial silk.

4. That what is taken not be retained in the mouth, but transmitted into the stomach. If the thing taken is not passed into the stomach, there is neither eating nor drinking nor, as we suppose, nutrition. It is the same, however, whether food or drink is introduced into the stomach in a natural or artificial manner (n. 171). Considering this condition, one is not bound, unless perhaps by reason of danger, to abstain from Communion who vomits whole the food taken,[2] or washes the stomach by means of a tube and ejects the water. Nevertheless one should abstain from using a tube anointed with oil, because some oil will almost certainly remain. Moreover, he who is nourished by a clyster seems to violate the fast, because although foods are not received in the stomach, nevertheless nutrition takes place, so that Christ is no longer the first food of those communicating. The Holy Office,[3] indeed, responded, when a priest sought the faculty of proceeding in this way: "The Most Holy Father is to be petitioned for the grace, according to the prayers"; and this grace was afterward granted by the Supreme Pontiff. But it seems to be a dispensation rather than a declaration.

[1] Roman Missal, *On Defects*, title IX, n. 1.

[2] But these things are merely theoretical, because it will not be sufficiently clear that everything has been vomited.

[3] 23 April 1890.

189 **III. Further determination of the object.** Lest the ecclesiastical law smell of pharisaical superstition, certain, so to speak, exceptions are admitted. Namely, the following do not violate the fast:

1. One who by chance swallows remains of foods adhering to the teeth; this is clear from the Roman Missal.[1] The same is said with sufficient probability of one who does this voluntarily (St. Alphonsus, VI, 279).[2]

2. One who by chance or voluntarily inhales the smoke of foods, tobacco, incense, etc. (St. Alphonsus, VI, 280, doubt 2); likewise one who uses a medicine which sends the medicine into the bronchi under the form of vapor.

3. One who by chance or voluntarily swallows a very small quantity wholly joined with saliva, for example of water after someone has washed his mouth and spat out the water, or of the juice or very small particle of tobacco which remains inseparably mixed with the saliva when someone

crushes tobacco with his teeth and spits out the phlegm. Nevertheless chewing of this kind is prohibited under venial sin because of irreverence, unless a just cause is present (St. Alphonsus, VI, 280, doubt 3).

4. One who by chance swallows a sufficiently small quantity, for example a fly, dust, snow, rain, or a little drop of blood flowing from the nose (St. Alphonsus, VI, 280, doubt 1). The fact that passage into the stomach is merely noticed does not impede Communion.

5. One who uses nasal tobacco and by chance passes something into the stomach (St. Alphonsus, VI, 280, doubt 1). For the rest, it should be advised that the use of tobacco, both nasal and smoking, be omitted before Communion, although it is not prohibited.

The reason for all these things is that the law is to be taken in a human way, lest, as we have hinted, it smell of pharisaical superstition. There is added that otherwise it would give occasion to continual anxieties.

6. Finally, sometimes an exception is had from the disposition of the liturgy, namely if an adult is baptized, "with the salt," says the Sacred Congregation of Propaganda Fide,[3] "tasted beforehand by catechumens in the conferral of Baptism, even if it seems to break the fast, nevertheless there is still no doubt that after Baptism has been received they, the adults, can be admitted to Holy Communion, indeed ought to be." Finally, the law does not regard the case in which the ablution is given to one licitly communicating, or together with the host a little water or wine, although something is swallowed before the sacred species (St. Alphonsus, VI, 288).

Corollary I. One who doubts whether he has violated the fast, in other words whether he has taken something, whether he took it after midnight, whether that which he took obstructs the fast, can communicate, because in a doubt of fact founding the law the condition of liberty is better. But in all the cases mentioned, the fact founding the law is doubtful (St. Alphonsus, VI, 282; I, 38, 39).

Corollary II. One who at night does not know what hour it is, and, without asking the hour, eats with the intention of afterward communicating, sins, because he rashly admits the danger of violating the law. Nevertheless after the fact, if the truth can no longer be investigated, it is permitted to him, the things to be posited being posited, to communicate.

[1] *On Defects*, title IX, n. 3.

[2] The Roman Missal, loc. cit., says thus: "If the remains of food remaining in the mouth are swallowed, they do not impede Communion, since they are swallowed not by way of food, but by way of saliva."

[3] 13 February 1906.

190 **IV. The gravity of the precept.** The precept is grave from its whole genus, both as regards the time and as regards the thing to be taken. This is clear both from the consensus of all authors and from the ends of the precept.

"One end is mystical, namely that it may be signified that Christ is the first food of man. Other ends are that those communicating may be more disposed to devotion, and that every danger of the sacrament being vomited may be avoided; which danger indeed sometimes arises from the disordered use of food or drink. But the said ends are not obtained with sufficient certainty unless every use of food or drink before Communion is absolutely prohibited" (St. Thomas, III, q. 80, a. 8; St. Alphonsus, VI, 278).

191 **V. The causes because of which it is permitted to communicate not fasting** are:

1. Urgent danger of death (canon 858, § 1), namely such that Communion can be given by way of Viaticum; this was explained in n. 158. But danger of death exempts from the law of fasting, even if someone could observe it without inconvenience, since the cited canon speaks absolutely. And this holds as regards all, both as regards those for whom danger of death threatens from outside, for example from imminent battle or from the sentence of a judge, and as regards the gravely sick; for the canon does not distinguish.

Corollary I. A sick person constituted in danger, as long as the danger endures, can communicate as often as desired, or daily, not fasting, and this even if when healthy he had been accustomed to communicate rarely. The reason is that one constituted in danger of death is absolutely exempted from the law (St. Alphonsus, VI, 285; cf. canon 864, § 3).

Corollary II. Just as it is permitted for one constituted in danger to communicate not fasting, so also a priest can celebrate not fasting in order to give Viaticum to himself, because to celebrate is not more than to communicate. The same is permitted with sufficient probability in order to give Viaticum to another, because by divine precept, to which ecclesiastical law yields, he is bound to receive Viaticum; but the case is of little practical importance, because the Eucharist is usually reserved (St. Alphonsus, VI, 286).

2. Long infirmity. The sick, however, who have already been bedridden for a month without certain hope that they will recover soon, can, by the prudent counsel of the confessor, receive the Most Holy Eucharist once or twice a week, even if they have previously taken some medicine or something by way of drink (canon 858, § 2).[1] As regards the interpretation of this canon, observe that it seems one must incline toward the more benign side, because it concerns a favor, and one universal and granted by way of derogation from the law, not by way of dispensation. These things having been noted, I explain briefly the faculty granted. Therefore, in order that someone may enjoy the privilege, it is required:

a) That he be sick, or affected by some illness. Nevertheless it suffices that someone be worn out by old age, because old age itself is judged to be a certain infirmity.

b) That he be bedridden. Yet this must be understood so that the privilege also belongs to the sick who, as the Sacred Congregation of the Council[2] responded, "cannot lie in bed, or can rise from it for some hours of the day." The same seems to be said of those who, suffering from a chronic disease, according to the different condition of the disease, now lie in bed, now perform some domestic tasks, yet cannot go out without notable inconvenience. But those are excluded who can attend to domestic cares and go out conveniently enough. For the word **bedridden** cannot sufficiently be applied to the aforesaid. Then the more benign interpretation can give occasion to scandal and to a looser application; namely, there is fear lest gradually several persons, with necessity as a pretext, will wish to communicate not fasting.

c) That he has been bedridden for a month. Therefore the sick person cannot use the privilege before he has lain ill for a month.

d) That, after he has lain ill for a month, there is absent certain hope, that is, moral certitude, of recovery to be attained soon, for example after three or four days.

e) That one proceed by the prudent counsel of the confessor. Nevertheless, the request for counsel and the approval of the confessor are not judged to be a condition which, if neglected, would cause the sick person to sin gravely by communicating not fasting. Indeed, I think that per se there is not even an obligation of seeking counsel, although it is especially fitting, and per accidens can even be necessary, namely so that there may be sufficient certainty about the required conditions. The confessor can give counsel both within and outside Confession; for no restriction occurs in the concession of the privilege. Yet let him proceed prudently, namely by seriously inquiring whether the required conditions are present. For the rest, observe:

First, when the explained conditions have been fulfilled, the sick can use the indult even if they would be able to observe the fast, since the canon requires nothing besides the explained conditions. There is added that the stricter opinion would give occasion to anxieties. They can communicate both at home and in church; yet the latter commonly cannot be done by the bedridden.

Second, by force of the concession "they can receive the Most Holy Eucharist once or twice a week, even if they have previously taken some medicine or something by way of drink" (canon 858, § 2). Medicine can be taken even if it is solid, such as, for example, a pill. But it is required that the matter to be taken directly serve the curing of the illness, so that solid foods used to recover strength are excluded. Besides medicine it is permitted to take something by way of drink. Yet it is not required that what is taken have the character of drink, but it suffices that it be taken by way of drink, like liquid food. Therefore the response of the Holy Office[3] can be applied, by which it is permitted "to take broth, coffee, milk, or another liquid food, even if some substance has been mixed into it, for example light little pills of flour (*semolino*), grated bread reduced to crumbs (*pangratto*), a diluted egg, etc., provided the mixture does not lose the nature of liquid food." Chocolate can be added, but not sugar or solid chocolate, not even when they are not swallowed except after they have been dissolved in the mouth; for it is clear that the taking which occurs by mouth must be considered. Moreover, the sick person can also take some medicine or something by way of drink several times before Communion.

Third, nothing prevents one who can use the explained privilege and therefore communicates not fasting twice in a week from receiving Communion also on other days, after accepting the burden of the fast.

Question. Whether Easter Communion to be received excuses from the law of fasting in the case in which someone otherwise would be deprived of it, because on the one hand he cannot observe the fast without very grave inconvenience even if Communion were given very early, and on the other hand he cannot use the indult of which we have spoken.

Now several think this must be denied, because canon 858, § 1 declares that the fast must be observed unless danger of death urges, or the necessity of preventing irreverence toward the sacrament. But the cited canon cannot be so urged that other cases, for example infamy and scandal to be avoided, are excluded.[4] Whether our case truly ought to be excluded is theoretically doubtful to me; but, with the doubt posited, in practice one can stand for the spiritual good of the person about to communicate and for the somewhat divine law of annual Communion, while the ecclesiastical law of the natural fast is set aside. Nevertheless scandal and abuses must be guarded against. Moreover, if the difficulty would vanish by deferring Communion, let the delay be made. Finally, in the proposed case it would also be permitted to minister the Holy Eucharist at night (canon 867, § 4).

3. Scandal, that is, the sin of one's neighbor, to be avoided; for example if Mass cannot be omitted without the danger of rash judgments or backbiting; likewise without the danger that several persons will omit, with grave sin, to assist at another Mass. Observe, however, that the sole reason that the people on a feast day would lack Mass does not suffice. Nevertheless it suffices with sufficient probability that otherwise a dying person could not receive Viaticum (St. Alphonsus, VI, 286, 287). To avoiding scandal there is often added:

4. Infamy to be avoided. This reason is present if the priest is already at the altar, unless he is of known probity (St. Alphonsus, VI, 287); likewise if a layperson is already sitting at the Communion rail.

5. Irreverence toward the Most Holy Sacrament to be guarded against (canon 858, § 1), as if there is danger that the species may perish or be profaned.

6. The sacrifice to be completed. This reason can be present in three cases, namely: 1. if after the consecration the priest remembers that he is not fasting, he must continue Mass. 2. If after the consuming of the host or chalice he notices that the matter is invalid, he must consecrate and communicate again.[5] 3. If after the consecration, even of bread alone, the priest dies or faints, and no fasting priest is present, a priest who is not fasting must complete the Mass from the place where the prior one stopped.[6]

Finally, partly because of moral union with the completed sacrifice, partly because of irreverence toward the sacrament to be avoided, it is permitted for one not fasting to consume particles of the consecrated species, as is explained in n. 274.

[1] Cf. Decree of the Sacred Congregation of the Council, 7 December 1906.

[2] 6 March 1907.

[3] 7 September 1897.

[4] The same once had to be said about ecclesiastical documents brought forward by adversaries, namely the Council of Constance, session 13, and the Constitution of Benedict XIV *Quadam de more*, 24 March 1756.

[5] Roman Missal, *On Defects*, title III, n. 5 and title IV, n. 5.

[6] Roman Missal, *On Defects*, title X, n. 3.

192 **VI. Dispensation,** which can be obtained from the Holy See, and is granted through the Sacred Congregation for the Discipline of the Sacraments if it concerns seculars, and through the Sacred Congregation of Religious if it concerns religious.[1] Moreover, Nuncios, Internuncios, and Apostolic Delegates can concede to the bedridden of whom canon 858, § 2 speaks that even before the end of the month they may communicate once a week, without observing the fast according to the norm of the cited canon. They can grant the same to sick persons not bedridden who labor under such a disease that, in the judgment of a physician, they cannot observe the fast without danger. Finally, the faculties of the Sacred Congregation of Propaganda Fide grant to bishops, vicars, and prefects apostolic the power "of granting to bedridden sick persons about whom there is no certain hope that they will recover soon, even before the end of the month from which they have been bedridden, that they may receive Holy Communion two or three times a week, and, if it concerns priests or religious, even daily, without observing the fast, that is, even if they have previously taken some medicine or something by way of drink."[2]

[1] Thus the meeting of Cardinals, 7 December 1922 (cf. *Acta Apostolicae Sedis* 1929, p. 39).

[2] Vermeersch, *Commentarius de Formulis faciendis*, n. 57.

193 **VII. Epikeia** is also admitted in this matter, but with the greatest difficulty, so that scarcely a case occurs in which Communion can be received by one not fasting from epikeia alone. It is disputed whether the case would be present if a newly ordained priest about to celebrate his first Mass had broken the fast, and very grave inconveniences would follow, considering the circumstances, if the Mass were not celebrated. In such a case, the reason of avoiding infamy will not easily be present, because such a man will rather be ridiculous than infamous. Sometimes the reason of scandal will not be entirely lacking. Observe, however, "that scandal is then said to exist when an occasion is given for detracting or judging rashly, but not when an occasion of mere wonder is given" (St. Alphonsus, VI, 257).

Dissertation III. On the Most Holy Eucharist as Sacrifice

(St. Thomas, II-II, q. 85; q. 86, a. 1; q. 100, a. 2, ad 2; III, q. 22; q. 79, a. 7, ad 2; q. 82; q. 83; q. 85; q. 86, a. 1; q. 100, a. 2, ad 2; St. Alphonsus, *Theologia Moralis*, book VI, nn. 304-424; *Homo Apostolicus*, tract 15, nn. 59-88.)

194 **I. The notion of sacrifice.** Sacrifice is the offering of a sensible thing, through some change of it, made to God, and that legitimately, to testify to His supreme dominion and our subjection (St. Alphonsus, VI, 304).

1. The sensible thing itself is the remote matter; the offering of the sensible thing through some change of it is the proximate matter of sacrifice. The end of professing the supreme dominion of God and our subjection is the form of the sacrifice, which, namely, informs the whole act.
2. All admit that some change is required. But it is disputed whether a change for the worse, or destructive change, is required, or a change for the better, insofar, namely, as the thing offered through its sacrification becomes morally more perfect and more pleasing to God.
3. Of those who require a destructive change, some demand a real change, whether physical, as in the killing of an animal, or moral, by which, namely, the thing becomes unfit for common use, as in the pouring out of oil. Others judge that a mystical change suffices.

195 **II. The division of sacrifice.** Sacrifices are distinguished:

1. By reason of matter, into victims or hosts, oblations, and libations, according as an animal, or an inanimate solid thing, or an inanimate liquid thing is offered.
2. By reason of mode, into bloody and unbloody.
3. By reason of end, into latreutic, eucharistic, propitiatory or expiatory, and impetratory, according as they are principally offered in homage to God, or in thanksgiving, or for remission of guilt or punishment, or for obtaining goods (St. Alphonsus, VI, 304).

196 **III. The principal sacrifices of the Old Testament** were:

1. Holocausts, which were principally offered in homage to God. In these the whole thing was consumed by fire.
2. Peace offerings, which were chiefly offered in thanksgiving or for obtaining benefits. In these one part was consumed by fire, another fell to the use of the priests, who ate it in the court of the temple.
3. Offerings for sin, which were principally offered for the remission of guilt or punishment. In these one part was consumed by fire, another fell to the use of the priests, and a third to the use of those offering, who consumed it as a sign of union with God.

Now all the sacrifices of the Old Testament prefigured:

197 **IV. The sacrifice of Christ on the cross,** by which Christ offered Himself on the cross, and by which He perfected the redemption of the human race, that is, so consummated satisfaction for sins and merit for obtaining all graces that satisfaction and merit cannot be further increased, according to that saying of the Apostle: "For by one oblation He has perfected forever those who are sanctified."[1]

Nevertheless the sacrifice of the cross does not exclude the sacrifice by which the satisfaction and merit completed on the cross are continually applied, that is:

[1] Heb. 10:14.

198 **V. The Eucharistic sacrifice, or the Mass,** about which something must be said specifically. We shall treat first of the sacrifice of the Mass considered in itself, then of the celebration of the sacrifice of the Mass.

Part I. On the Sacrifice of the Mass Considered in Itself

199 The sacrifice of the Mass is aptly defined: **the unbloody sacrifice of the New Testament, in which Christ, through the priest, offers Himself under the species of bread and wine to His Father.**[1]

This definition having been given, something must be said briefly first about the existence and essence, then about the efficacy and effects of the sacrifice of the Mass.

[1] Cf. Council of Trent, session 22, chapter 1.

Section I. On the Existence and Essence of the Sacrifice of the Mass

200 **I. The existence of the sacrifice of the Mass.** In the Mass a true and properly so-called sacrifice is offered; this proposition is of faith from these words of the Council of Trent: "If anyone says that in the Mass a true and proper sacrifice is not offered to God, or that to be offered is nothing other than Christ being given to us to be eaten, let him be anathema."[1]

[1] Session 22, canon 1.

201 **II. The essence of the sacrifice of the Mass.** It suffices to note briefly the principal things which pertain here:

1. The victim to be sacrificed is Christ as existing under the species. It is said:

a) **Christ;** this the Council of Trent teaches in these words: "In this divine sacrifice which is performed in the Mass, that same Christ is contained and immolated unbloodily who once offered Himself bloodily on the altar of the cross."[1]

b) **As existing under the species.** For the Mass is a true and properly so-called sacrifice, and therefore the offering of a visible victim, namely a visible sacrifice. But Christ is not visible to us, nor can He be visibly sacrificed by us, except insofar as He exists under the species. Hence the Council of Trent says: "Our Lord... at the Last Supper, on the night on which He was betrayed, in order that He might leave to His beloved spouse the Church a visible sacrifice, as the nature of human beings requires,... offered His body and blood under the species of bread and wine to God the Father, and under the symbols of those same things commanded the Apostles... and their successors in the priesthood to offer them."[2]

Note. Bread and wine are only the matter from which the victim is confected. But the species of bread and wine are not constitutive or essential parts of the victim, but are the condition without which the victim is not given.

2. The principal offerer is Christ Himself; the secondary offerer is the priest.[3] Co-offerers are added, that is, the Church or the whole faithful people, the minister, and those assisting (St. Alphonsus, VI, 307).

3. What the sacrificial action is, or the constitutive act, or the properly so-called essence of the sacrifice of the Mass, is not one opinion among authors. Now:

a) According to the opinion of all today, consecration pertains to the sacrificial action; and according to the more common opinion, the consecration of both species. It is disputed whether Communion also pertains to the essence. Those who deny this admit that it is an integral part of the sacrifice.

b) Of those who judge that the essence of the sacrifice of the Mass is constituted by consecration alone, some formally place the sacrificial action in consecration insofar as it places Christ in the more abased state of food and drink; others place it in consecration insofar as in it there is a mystical destruction, either because the words of themselves tend toward the real separation of body and blood, or because the sacramental species exhibit a sacramental representation of that separation.

[1] Session 22, chapter 2.

[2] Session 22, chapter 1.

[3] Session 22, chapter 2.

202 **III. The character of the sacrifice of the Mass.** The sacrifice of the Mass is both an absolute and a relative sacrifice: absolute, insofar as considered in itself it has all the elements of a true sacrifice; relative, insofar as it essentially says relation to the sacrifice of the cross, or insofar as it is essentially representative and commemorative of the sacrifice of the cross[1] (St. Thomas, III, q. 79, a. 7; q. 83, a. 1).

[1] Council of Trent, session 22, chapter 1.

203 **IV. The agreement of the Mass with the sacrifice of the cross, and its difference from it.**

1. Both sacrifices agree as regards substance, namely as regards the victim and the principal offerer. Therefore the Mass, by reason of substance, is identified with the sacrifice of the cross, so that this sacrifice is truly repeated as often as Mass is celebrated.

2. They differ:

a) In the fact that the sacrifice of the cross was absolute, as it is called, while the Mass is essentially also relative, or is referred to the sacrifice of the cross.

b) By reason of the secondary offerer, namely, on the cross there was only the principal offerer, namely Christ; in the Mass there are the principal offerer, namely Christ, and the secondary offerer, namely the priest.

c) By reason of the mode of offering, which was bloody on the cross, but is unbloody in the Mass.

d) By reason of the end and effects, insofar as the sacrifice of the cross perfected satisfaction and merits, whereas the Mass applies them to us.

Section II. On the Efficacy and Effects of the Sacrifice of the Mass

204 By the efficacy of the sacrifice of the Mass is understood the very power of effecting which it has by reason of the thing offered and of the principal offerer. Now it is clear that this efficacy is infinite. But if it is asked whether the effects produced are themselves also infinite, one must distinguish. The effects which directly regard God, namely the latreutic and eucharistic effects, are infinite; in other words, the sacrifice of the Mass exhibits to God infinite or condign adoration, praise, and thanksgiving. But the effects which directly regard man, namely the propitiatory and impetratory, are limited.

As regards the effects of the Mass, we shall investigate further what the effects of this sacrifice are, in what way they are produced, in what measure different effects come to different persons, and what is required so that a special fruit may come to someone.

205 **I. The effects of the Mass correspond to its ends.** Hence, just as the end is fourfold, so also the effect is fourfold, namely latreutic, eucharistic, propitiatory, and impetratory; in other words: 1. it renders adoration and praise to God; 2. it gives thanks to God for benefits received; 3. it placates offended divine justice and obtains remission of guilt and punishment; and 4. it obtains other spiritual and temporal goods.

Of the said effects, those which directly tend to our utility, namely the propitiatory and impetratory, are customarily indicated by the name **fruits**.

206 **II. The mode by which the effects are produced.** The effects of the Mass can be understood to be produced in three ways:

1. *Ex opere operato* and *ex opere operantis*, according as the effect proceeds by reason of the sacrifice itself, that is, by reason of the victim offered and the principal offerer, or by reason of the work of the co-offerers, that is, of the Church, the minister, and the faithful.
2. Immediately and mediately, according as the effect proceeds not through an intermediate effect, or through an effect of this kind.
3. Infallibly and fallibly. Now:

1. The latreutic and eucharistic effects are produced:

a) *Ex opere operato*, and indeed immediately and infallibly.

b) *Ex opere operantis*, and indeed immediately, and: 1. certainly and infallibly from the work of the Church co-offering; 2. whether or not, and how much, from the work of the other co-offerers depends on their disposition.

2. The propitiatory and impetratory effects are produced:

a) *Ex opere operato*; moreover *ex opere operantis*, namely of the Church co-offering, which moves God in a special way; likewise of the other co-offerers, the priest and the faithful, who can contribute to the aforesaid effects according to greater or lesser disposition.

b) Immediately are produced the placation of divine justice, relaxation of temporal punishment after guilt has been remitted, actual graces, and other spiritual and temporal goods. Mediately are produced remission of guilt, namely through the grace of repentance, and increase of habitual grace, namely through actual graces.

c) Some remission of temporal punishment after guilt has been remitted is produced infallibly, if the Mass is offered for the just. Other fruits are produced fallibly, because something can stand in the way either on the part of Christ, or on the part of the subject placing an obstacle. Nevertheless, it can be said that all fruits are produced infallibly in first act, insofar as the impetration of Christ is of itself always heard.

207 **III. The measure according to which the effects come to those for whom Mass is offered.**

Preliminary note I. Here the discussion concerns the effects which directly regard our utility, in other words, the propitiatory and impetratory effects, which effects, as we have already noted, are called fruits.

Preliminary note II. By reason of those to whom the fruits of the Mass come, a threefold fruit is distinguished, namely general, special or middle or ministerial, and most special or personal. The general fruit is that which comes to the whole Church; namely, since the priest always offers in the name of Christ and of the Church for the whole Church, it cannot happen that every sacrifice does not produce a fruit coming to the whole Church. The special fruit is that which comes to the one or ones to whom the priest specially applies the Mass. The most special fruit is that which comes to the celebrant. Namely, it cannot happen that a peculiar fruit does not come *ex opere operato* to the one offering worthily. But more commonly they judge that the priest cannot yield this fruit. To this fruit is referred that which comes to those contributing to the sacrifice (St. Alphonsus, VI, 312, 318). These things having been noted beforehand, I say:

1. The measure according to which the general fruit is distributed seems to be judged from the greater or lesser dignity and holiness of the members of the Church, and from the special commemoration made by the priest.

2. The measure of the most special fruit, insofar as it comes to the celebrant, is greater to the degree that the disposition and devotion of the priest are more perfect. Insofar as this fruit comes to the co-offerers, it will be greater or lesser according to the measure of cooperation in the sacrifice, disposition, and devotion. Nor is this fruit diminished by the greater number of co-offerers.

3. The measure of the special fruit is determined by these things:

a) It will be more abundant to the degree that the disposition of the one for whom Mass is offered is more perfect. Since this disposition can be increased indefinitely, the special fruit, equally with the general and most special fruit, is therefore called intensively indefinite.

b) It is disputed whether the special fruit is extensively infinite; in other words, whether the same measure comes to each one, whether Mass is offered for one or for several. Now some simply affirm. Others affirm with respect to the impetratory fruit, and deny with respect to the propitiatory. Others simply deny;[1] and we agree with them. For the Church approves and commends the practice of celebrating for a determined person. But if the opinion of the adversaries were true, a determination of this kind would be useless, because in it, with respect to the determined person, it would not matter whether the celebration were made for one or for all. Indeed it would be altogether better always to celebrate for all, because by the application of a determined person the rest would lack the fruit, without utility for that determined person.

[1] As regards St. Alphonsus, in the moral work, n. 312, he says both opinions are probable, but the first seems to him more probable. But in two later works, namely in the work *In Tridentinum*, session 22, n. 22, and in the little work on Mass stipends, whose title is *De abusibus in acceptandis Missis*, nn. 26-28, he teaches the second opinion absolutely and calls it common. Whence he seems to have changed his opinion (Aertnys-Damen, *Theologia Moralis*, vol. II, n. 185).

208 **IV. The application of the special fruit.** I said **of the special fruit**; for the general and most special fruits do not need application. The former, by the very fact that the sacrifice is offered, comes to the whole Church; the latter, by the very fact that he offers worthily, comes to the priest offering. But the special fruit needs the application of the priest; hence something must be said about it.

1. **The notion and division of application.** Application is the intention of the priest of specially offering Mass for some cause or causes, or for some person or persons. Application can be distinguished as twofold, public and private. Public application is had when the faithful are

publicly advised of the Mass to be offered for such a one, or when someone's name is inserted into the prayers. Private application is had when neither are the faithful publicly advised nor is a name inserted into the prayers.

2. **The power of applying.** The priest can apply the special fruit; this is clear both from universal practice and from the condemned doctrine of the Synod of Pistoia.[1] If the application is positively excluded, the special fruit remains in the treasury of the Church. If it is applied expressly to no one, or to one incapable, according to some the fruit remains in the treasury of the Church; according to others, it comes to the priest himself or to those for whom he is specially bound to offer, because they judge that the priest implicitly intended this (St. Alphonsus, VI, 336).

3. **The persons for whom application can be made.** It is permitted to apply Mass for any of the living, and also for the dead expiating their sins in the fire of purgatory, with the prescription of canon 2262, § 2, n. 2 saved (canon 809). Therefore:

a) As regards the living, Mass can be applied for all. Nevertheless: 1. it is permitted only privately, and scandal being removed, to apply it for the excommunicated; heretics and schismatics are regarded as such by the external judgment of the Church, but not unbelievers. Hence, if scandal is absent, it can also be applied publicly for these;[2] a fortiori catechumens are not excluded from it. 2. For an excommunicated person to be avoided, it is permitted to apply it only privately and for his conversion alone (canon 2262, § 2, 2).

b) As regards the dead, the damned being excluded, Mass can likewise be applied for all. Nevertheless for those excluded from ecclesiastical burial (canon 1240), it is permitted to apply it only privately; for any funeral Mass, even anniversary, and other public funeral offices must be denied to these (canon 1241).

Note 1. Let the priest take care that there is not something of evil, error, or superstition in unbelievers offering alms.[3]

Note 2. Even if someone were excluded by the Church from application, nevertheless the priest could pray for him by private intention in the Memento of the living; likewise he could apply to him the fruits coming to the priest *ex opere operantis*, insofar as this is of the priest, but not the fruits *ex opere operato*, or *ex opere operantis* insofar as this is done in the name of the Church.

Note 3. Masses can also be offered or applied in honor of the Saints; this is clear from these words of the Council of Trent: "If anyone says that it is an imposture to celebrate Masses in honor of the Saints and for obtaining their intercession before God, as the Church intends, let him be anathema."[4] In what sense, or for what end, this is done, the same Council teaches in these words: "And although the Church has sometimes been accustomed to celebrate certain Masses in honor and memory of the Saints, nevertheless she does not teach that sacrifice is offered to them, but to God alone, who crowned them. Hence neither is the priest accustomed to say: I offer sacrifice to you, Peter or Paul; but giving thanks to God for their victories, he implores their patronage, so that they may deign to intercede for us in heaven, whose memory we make on earth."[5]

4. **The requisites for valid application** are:

a) That it be made by the celebrant himself, who cannot leave it to be made by anyone, not even Christ. Namely, Christ, who conferred upon the priest the power of applying, is judged to have

committed its exercise to the priest alone. Hence the application would be invalid: "I apply the Mass to him to whom Christ applies it." It must be said otherwise of this application: "I apply the Mass to him to whom Christ is more pleased that it be applied" (St. Alphonsus, VI, 334).

b) That it be made before the sacrifice is perfected as regards its essence; hence according to some, before the consecration of the blood; according to others, before every consecration. In practice, so that every danger of frustration may be guarded against, let it be made before the consecration. Indeed, it is better to make it before the Offertory, or rather before Mass, so that both the Offertory and the other liturgical prayers and actions may benefit the one giving the stipend.

c) That it be made through at least a habitual intention, that is, one made and not retracted. A habitual intention suffices, because application is made by way of donation, which obtains its effect even if time or acts intervene between the conceived intention and the execution given to it (St. Alphonsus, VI, 335). Nevertheless, it is advised that application not be extended for too long a time, and that at least sometimes, for example at the beginning of the month for the whole month, it be determined. An interpretative intention, since it does not truly exist, does not suffice.

d) That it be determined as regards the person or cause. Hence if someone has received a stipend from five persons, or five stipends for different deceased persons, the intention of applying for one of the five does not suffice if no one has been determined explicitly or implicitly. Nevertheless an implicit determination suffices, for example the intention: 1. of applying for him who offered the stipend, or who has been assigned by the celebrant in the booklet for this day; 2. of applying according to the mind of him who transmitted the stipend, provided that he formed the intention; 3. of applying according to the order established by another, for example by a superior or by the rector of the church. It is no obstacle that the celebrant perhaps does not know the intention or errs about it. Likewise a disjunctive determination suffices, as if someone says: "I say Mass for the intention of the pastor, if he has established one for me; otherwise for that intention" (St. Alphonsus, VI, 335).

If a priest has collected a heap of stipends and does not know in what order they were given, the intention of celebrating according to the order in which they were in fact given or accepted suffices; or, with respect to several stipends given at the same time for different persons, according to the order in which they were destined by the one giving, if the designation occurred; otherwise, in proportion to the right of each one comprehended in the number. All these things are at least known to God. Likewise the intention of applying all and each Masses, in proportion to the right, to all for whom they were given suffices. Namely, since the fruit of the Mass is divisible, after all the Masses have been celebrated each one has obtained his own.

If the priest himself did not collect the Masses but received a heap from another, for example from a bishop or from the administrator of a pious place, it is per se the part of the distributor to set the order beforehand, and of the celebrant to apply according to the order set beforehand. But if the distributor did not set the order beforehand, the priest can celebrate according to either order explained above (St. Alphonsus, VI, 335).

e) That it not be made under a suspensive condition, for example for the intention of him who will first offer the stipend. For an application made in this way regards a future intention, and therefore would involve suspension of the effect. Hence canon 825, 1: "It is never permitted to apply Mass to the intention of one who, after an alms has been offered, is going to ask for the application, but has

not yet asked, and to retain the alms given afterward for a Mass previously applied." Nevertheless this does not prevent a Mass from being celebrated, for example, for a deceased person for whom it is foreseen that a Mass will be requested; and afterward, if a Mass is requested, from signifying that some Mass has been said, and from accepting the stipend if it pleases the one asking. Such an application does not depend on a future intention, and therefore does not suspend the effect (St. Alphonsus, VI, 337), nor does it depend on the intention of the one who will ask for the application. For the rest, an intention under a condition about the past or present is always valid, except in the case about which we are now going to speak.

f) That it not be made under a condition not naturally knowable; since God, who has disposed things conformably to a human mode of acting, is not judged to have conferred upon the priest the faculty of applying dependently upon such a condition. Hence the application seems invalid: "I apply the Mass for you, if you are predestined."

What if someone has elicited two contrary intentions?

Response 1. The later prevails, if he conceived it while mindful of the prior intention.

Response 2. If he conceived the later while forgetful of the prior intention, the later likewise prevails, unless, as it seems must be said, he made the prior intention in such a way that he willed it to prevail even if through forgetfulness he were going to elicit another. For the rest, in doubt which intention prevails, afterward let Mass be celebrated for the intention which did not prevail, and thus all things are safe.

[1] Denzinger-Bannwart, n. 1530.

[2] Sacred Congregation of Propaganda Fide, 11 March 1848 (*Collectanea*, n. 1028); Holy Office, 12 July 1848 (*Collectanea*, n. 1274).

[3] Holy Office, 12 July 1865 (*Collectanea*, n. 1274).

[4] Session 22, canon 5.

[5] Session 22, chapter 3.

Part II. On the Oblation of the Sacrifice of the Mass

(St. Thomas, II-II, q. 100, a. 2, ad 2; III, q. 82; St. Alphonsus, *Theologia Moralis*, book VI, nn. 307, 313-333; *Homo Apostolicus*, tract 15, nn. 59-88.)

Section I. On the Person Offering

209 **I. The principal minister is Christ the Lord.** "It is the same one," says the Council of Trent, "now offering through the ministry of priests, who then offered Himself on the cross."[1]

II. The secondary minister is every and only priest. "If anyone says," the same Council of Trent says, "that by those words: **Do this in commemoration of me**, Christ did not institute the Apostles priests, or did not ordain that they and other priests should offer His body and blood, let him be anathema."[2]

III. In some sense all the faithful can be called ministers of the sacrifice of the Mass, namely insofar as they contribute something to the sacrifice. They do this insofar as they are members of the Church, in whose name the priest celebrates; insofar as they assist at the sacrifice and conform themselves to the intention of the principal and secondary minister; and insofar as they causally concur in the sacrifice, for example by giving a stipend or by serving the priest celebrating (St. Alphonsus, VI, 307).

Corollary I. Several priests can indeed offer the sacrifice of the Mass together, but this is illicit except in the Mass of the ordination of priests, and in the Mass of the consecration of bishops according to the Roman Pontifical (canon 803; n. 20).

Corollary II. A priest who is a stranger to a church, that is, not assigned to the church in which he asks to celebrate, can be admitted as follows:

1. If he shows authentic and still valid commendatory letters from his Ordinary if he is secular, or from his superior if he is religious, or from the Sacred Congregation for the Oriental Church if he is of an Oriental rite, he is to be admitted to the celebration of Mass, unless meanwhile it is clear that he has committed something on account of which he ought to be repelled from the celebration of Mass (canon 804, § 1).
2. If he lacks those letters, but his probity is very well known to the rector of the church, he can be admitted. But if he is unknown to the rector, he can still be admitted once or twice, provided that, clothed in ecclesiastical dress, he receives nothing, under any title, from the celebration from the church in which he sacrifices, and signs his name, office, and diocese in a special book (canon 804, § 2). It is said **provided that he is clothed in ecclesiastical dress**, that is, provided that the stranger, by the form of his dress, manifests that he is a priest.
3. Special norms concerning this matter, given by the local Ordinary, with the prescriptions of this canon saved, must be observed by all, even exempt religious, unless it concerns admitting religious to celebrate in a church of their own religious institute (canon 804, § 3).

[1] Session 22, chapter 2.

[2] Session 22, canon 2.

Section II. On the Obligation of Offering

The obligation of offering can arise from order received, from office, from the precept of a superior, from promise, and from stipend. Hence:

Chapter I. On the Obligation by Reason of Order Received

210 **I. Christ imposed upon the college of the Apostles and of priests the precept of celebrating repeatedly.** This is of faith from the Council of Trent,[1] which declared: "If anyone says that by those words: **Do this in commemoration of me**, Christ did not institute the Apostles priests, or did not ordain that they and other priests should offer His body and blood, let him be anathema."

II. Individual priests also are bound to celebrate repeatedly, according to canon 805: All priests are bound by the obligation of sacrificing several times a year; but let the bishop or religious superior take care that they do this sacred work at least on each Sunday and on other feasts of precept. It is said **several times a year**, that is, three or four times per year.

It is disputed whether the obligation of individuals to celebrate repeatedly is of divine law or only ecclesiastical law. Now most authors with St. Thomas (III, q. 82, a. 10) maintain divine law, because a true disorder seems to exist in the fact that one ordained for rendering so great honor to God and for providing so great utility to human beings frustrates such an end (St. Alphonsus, VI, 313; *Examen Ordinandorum*, n. 111).

III. One who can conveniently celebrate and does not celebrate because of sloth, according to several authors sins lightly, because a venial disorder is had in the fact that one ordained for celebrating neglects so great a good of God and human beings, which he can provide with such ease (St. Alphonsus, VI, 359). For the rest, the same things which commend daily Communion to the faithful persuade priests to daily celebration.

[1] Session 22, canon 2.

Chapter II. On the Obligation by Reason of Office

Those who have care of souls are bound by office either to celebrate or to take care that Mass be celebrated on those days on which the people committed to them are bound to hear Mass. Hence the Council of Trent says: "Let the bishop take care that those... who have had care of souls celebrate Mass as frequently as is sufficient to satisfy their office."[1]

[1] Session 23, chapter 14, on reform.

211 **I. The source of the obligation is divine right or law,** as the Council of Trent expressly teaches.[1] Now bishops are bound by absolute or immediate divine law; namely, the Holy Spirit Himself placed them to rule the Church of God, so that they cannot be lacking in the organism of the Church. But to the office of ruling and feeding is annexed the obligation of applying. Pastors are bound by hypothetical or mediate divine law; namely, on the hypothesis that by the Supreme Pontiff or by the bishops they are called into a share of pastoral solicitude, or for ruling a part of the flock. Thus from the Constitution of Leo XIII *In suprema*.[2] From these things it is also explained why pastors obtain some moderation of the obligation more easily than bishops (St. Alphonsus, VI, 324, question 2).

[1] Session 23, chapter 1, on reform.

[2] 10 June 1882.

212 **II. The subject and object of the obligation.** 1. Bishops, after having taken possession of the see, with every excuse from scantiness of revenues or any other exception removed, must apply Mass for the people committed to them on all Sundays and other feast days of precept, even suppressed ones (canon 339, § 1).

a) The feast days on which application is prescribed, according to the declaration of the Pontifical Commission,[1] are to be taken according to the catalogue established by Urban VIII in the Constitution *Universa*,[2] and again promulgated by the Sacred Congregation of the Council,[3] with the feast of the Immaculate Conception of the Blessed Virgin Mary added from the Constitution of Clement XI *Commissi nobis*,[4] and by force of the cited canon. They are therefore: the Nativity of the Lord, Circumcision, Epiphany, Easter with the two following days, Ascension, Pentecost with the two following days, Trinity, Corpus Christi, Invention of the Holy Cross, Purification, Annunciation, Assumption, Nativity of the Blessed Virgin, Immaculate Conception, Dedication of St. Michael, Nativity of St. John the Baptist, all the Holy Apostles, St. Stephen, Holy Innocents, St. Lawrence, St. Sylvester, St. Joseph, St. Anne, All Saints, and the feast of one of the principal patrons in any kingdom or province, and likewise of another principal patron in any city, town, or village where it happens that these patrons are had and venerated. Moreover, if somewhere by concession of the Holy See a particular feast of precept is celebrated, on this feast too there is the obligation of applying for the people (canon 339, § 1).

There is dispute about the obligation on feast days which previously were of precept from particular law, but now have been suppressed by force of the Code. Now the obligation seems to be maintained, both because of a particular response issued,[5] and because canon 466, § 1 generally declares that on feast days of precept, even suppressed ones, the obligation persists.

b) Although a bishop governs two or more dioceses equally principally united, or besides his own diocese has another or others in administration, nevertheless he satisfies the obligation by the celebration and application of one Mass for the whole people committed to him (canon 339, § 5).

As regards titular bishops, canon 348, § 2 states: It is fitting from charity, yet without obligation, that they sometimes apply the sacrifice of the Mass for their diocese.

2. A capitular vicar is bound in the same way as a bishop to apply Mass for the people (canon 440).

3. Vicars and prefects apostolic must apply the sacrifice of the Mass for the peoples committed to them at least on the solemnities of the Nativity of the Lord, Epiphany, Easter, Ascension, Pentecost, the Most Holy Body of Christ, the Immaculate Conception and Assumption of the Blessed Virgin Mary, St. Joseph her spouse, the holy Apostles Peter and Paul, and All Saints (canon 306).

4. An apostolic administrator, if he has been constituted permanently, is bound to apply as a bishop; if he has been given for a time, he is not bound by the obligation, which burdens a bishop, of applying Mass for the people (canon 315).

5. Pastors,[6] after having taken possession of the parish, are bound on the same days and by the same obligation as bishops to apply Mass for the people committed to them (canon 466, § 1).

Nevertheless:

a) A pastor who perhaps governs several parishes equally principally united, or besides his own parish has another or others in administration, must apply only one Mass for the peoples committed to him on the prescribed days (canon 466, § 2). The same holds of a vicar-economus who governs several parishes during a vacancy.[7] If, however, the matter concerns the feast of the patron of the place, the pastor who, besides his own parish, has another or several others in administration, is bound to apply Mass for the people not only on the feast day of the patron of his own parish, but also on the feasts of the patrons of the other parish or parishes, unless the patrons occur as to be honored on the same day, either because the same one is the patron, or because the feast of the patrons is celebrated on the same day from liturgical laws.[8]

b) The local Ordinary can for a just cause permit the pastor to apply Mass for the people on another day than the one on which he is bound by law (canon 466, § 3); this permission can also be granted habitually.

c) The pastor should celebrate the Mass to be applied for the people in the parish church, unless circumstances of things require or suggest that Mass be celebrated elsewhere (canon 466, § 4); for example if because of a special feast there is a concourse of the people in some chapel or succursal church within the limits of the parish. Likewise one who applies through another must per se take care that the other celebrate in the parish church.[9]

d) A solemn or sung Mass is not prescribed, but a private Mass suffices.[10]

6. Quasi-pastors are bound on the same days as vicars and prefects apostolic, under 3, to apply Mass for the people committed to them (canon 466, § 1).

7. A vicar-economus, constituted while the parish is vacant, is bound as a pastor (canon 473, § 1).

[1] 17 February 1918, ad II (*Acta Apostolicae Sedis* 1918, p. 170).

[2] 13 September 1642.

[3] 28 December 1919 (*Acta Apostolicae Sedis* 1920, p. 42).

[4] 6 December 1708.

[5] In *Il Monitore Ecclesiastico* 1920, p. 72.

[6] Who come under the name of pastor and quasi-pastor, see in the treatise on Matrimony.

[7] Pontifical Commission, 14 July 1922, ad VI (*Acta Apostolicae Sedis*, p. 528).

[8] Sacred Congregation of the Council, 12 November 1927 (*Acta Apostolicae Sedis* 1928, p. 84).

[9] Sacred Congregation of the Council, 23 December 1872.

[10] Sacred Congregation of Rites, 27 February 1847, n. 2939, ad IV; 22 July 1848, n. 2967.

213 **III. A fuller explanation of the object of the obligation.** 1. On the feast of the Nativity of the Lord, and if some feast of precept falls on a Sunday, it suffices that they apply one Mass for the people (canon 339, § 2). If a feast is transferred in such a way that on the day to which it is transferred not only is the office with the Mass of the transferred feast performed, but also the obligations of hearing Mass and abstaining from servile works are observed, the Mass for the people must be applied on the day to which it is transferred; otherwise on the day from which it is transferred (canon 339, § 3).

2. One who is bound by the obligation of applying must himself apply Mass personally (canon 339, § 4, compared with canons 306 and 466, § 1). Nevertheless, a legitimately absent pastor can apply Mass for the people either personally in the place where he is staying, or through the priest who takes his place in the parish (canon 466, § 5). If someone on the same day is urged by the burden of both Masses, namely for the people and conventual, let him celebrate and apply the latter personally, and the former through another or personally on the following day (canon 419, § 2).

3. A pastor legitimately absent, if he does not apply personally, and likewise one legitimately impeded from personally applying Mass for the people, should apply through another on the appointed days.

Legitimately impeding causes are: 1. physical or moral inability; 2. the obligation of celebrating conventual Mass, if the pastor is also a canon (canon 419, § 2). But the following do not legitimately impede: 1. the mere custom of applying through another;[1] 2. the custom of applying now personally, now through another, for example through a chaplain, if the latter celebrates solemn Mass;[2] 3. the liturgical precept which wills that the Mass for the people be conformed to the office. Hence if the external solemnity of some feast is transferred, and in the transfer a votive Mass is sung, the pastor cannot, so that he himself may celebrate that votive Mass, leave the application for the people to the chaplain or another; 4. the celebration of a funeral Mass, even with the corpse present.[3]

4. One who can apply neither personally nor through another on the appointed days should apply as soon as possible, either personally or through another, on another day (cited canon).

5. The real obligation, that is, either of applying for the people or of taking care that it be applied for them, is grave. The obligation of applying personally, at the fixed time, and, if the matter concerns a pastor, in the parish church, is grave from its genus, so that he would sin gravely who frequently neglected these things.

6. One who has not satisfied the obligation should as soon as possible apply for the people as many Masses as he omitted (canon 339, § 6, compared with canons 306 and 466, § 1).

7. One who applies Mass for the people in place of the pastor can receive a stipend for that Mass; but an impeded pastor is bound at his own expense to take care that it be applied for the people.

[1] Sacred Congregation of the Council, 22 September 1847.

[2] Sacred Congregation of the Council, 9 April 1881.

[3] Sacred Congregation of the Council, 26 January 1771.

Chapter III. On the Obligation by Reason of Precept or Promise

214 **I. The celebration of Mass can be commanded by a competent superior.** This is clear from what was said about the object of law and precept (vol. I, n. 117).

II. The application of Mass can be commanded as follows:

1. The Supreme Pontiff can certainly do this, insofar as he determines divine law, as if he prescribes that those having care of souls should sometimes celebrate for the people.

2. Religious superiors can do the same, at least by force of dominative power, with respect to their subjects, provided that the vow emitted in religion is so understood;[1] they can transfer to subjects

the obligation of justice annexed to a stipend received (St. Alphonsus, VI, 317, question 4).

3. It is disputed whether ecclesiastical superiors who enjoy only the power of jurisdiction can do the same; likewise whether the superior of a religious institute can do the same by force of the same power. The Sacred Congregation of the Council, in the Vigevano case,[2] admits the affirmative opinion (cf. vol. I, n. 117).

III. One who has promised a Mass gratuitously is bound under venial sin, namely from fidelity, to stand by what was promised, unless he intended to bind himself under grave sin, or from justice (St. Alphonsus, VI, 317, question 4; vol. I, n. 864).

[1] Sacred Congregation of Religious, 3 May 1914.

[2] 8 May 1920 (*Acta Apostolicae Sedis* 1920, p. 536).

Chapter IV. On the Obligation by Reason of Stipend

Article I. On the Stipend Considered in Itself

215 **I. Notion and origin.** A stipend is an offering, that is, money or a thing estimable by price, which someone offers to a priest under this burden: that the priest apply the special fruit of the Mass to his, that is, the offerer's, intention. Hence the contract constituted once the stipend has been accepted takes on the nature of the contract: I give that you may do (cf. canon 1544, § 2).

The most remote origin is found in the offerings which the faithful in antiquity, when they came together for performing sacred rites, brought to the altar within the Mass itself (at the Offertory), both as a sign of communion with the Church and of participation in the Sacrifice itself, and also to provide for the necessary expenses of divine worship and for the support of the clergy (who were leading a common life) and of the poor.

In the first centuries of the Church, indeed, offerings of this kind were made only in bread and wine, then also in produce, oil, and incense. But already long before the eighth century the custom prevailed that, in place of the aforesaid offerings, or at least together with them, money was contributed as an offering for the sacrifice, destined for the common chest or treasury of the church. Then, as the common life of clerics gradually ceased, and especially as the private Masses of individual priests multiplied, the faithful began also to bestow an offering in money specifically upon individual priests for a sacrifice to be specifically applied for them. Traces of this practice are already found in documents of the eighth century; its universal use already came down in the twelfth century.[1]

[1] Vlaming, *Institutiones Iuris Ecclesiastici*, n. 349.

216 **II. Division.** Stipends are divided into manual stipends, stipends after the manner of manual stipends, and founded stipends. Manual stipends are those which are offered by the faithful for Masses, either from their own devotion, as it were into the hand, or from an obligation, even perpetual, imposed by a testator upon his own heirs (canon 826, § 1). The latter burden the patrimony of some family. Stipends for founded Masses are called "after the manner of manual stipends" when they cannot be applied in their own place, or by those who ought to apply them according to the tables of the foundation, and therefore by law or by indult of the Holy See must be

handed over to other priests so that satisfaction may be made for them (canon 826, § 2). Thus stipends of founded Masses become after the manner of manual stipends when they are transmitted to others who satisfy them. Founded stipends are those which are received from the revenues of foundations (canon 826, § 3; n. 233).

217 **III. Lawfulness.** According to the received and approved custom and institution of the Church, it is lawful for any priest celebrating and applying Mass to receive an alms or stipend (canon 824, § 1). The reason is that the stipend is not given and accepted after the manner of a price, that is, as a thing with which the Mass is exchanged - which would be simoniacal - but as a thing which is owed to the priest insofar as it is just that one who must serve the utility of others be supported by those others, according to these words of Sacred Scripture: "The laborer is worthy of his food";[1] "Who ever serves as a soldier at his own expense?"[2] (St. Thomas, II-II, q. 100, a. 2; St. Alphonsus, VI, 316, 320, doubt 4).

Thus it is lawful, even for a wealthy priest, to accept a stipend for a Mass. Nevertheless it would be little praiseworthy to celebrate principally on account of the stipend. Indeed, St. Alphonsus judges that one who acts thus is not easily excused from venial sin, "since it is a certain disorder to direct spiritual things to temporal things" (VI, 317; III, 55, question 6).

Note 1. It is also lawful, as Benedict XIV teaches,[3] for priests celebrating with the bishop, for example in the Mass of ordination, to accept a stipend. Likewise it is permitted for newly ordained priests to receive an alms for the three Masses imposed upon them by the bishop (St. Alphonsus, VI, 829).

Note 2. One who celebrates several times in a day, if on one occasion he applies from a title of justice, cannot, except on the day of the Nativity of the Lord, receive an alms for another Mass, apart from some remuneration from an extrinsic title (canon 824, § 2). It is said:

1. **From a title of justice,** for example because of a stipend received, or if a pastor from office applies for the people; in this case, therefore, the pastor cannot receive a stipend for either Mass. For the rest, it is the same whether the Mass which has a stipend annexed is said in the first place or in the second place.
2. **He cannot receive an alms for another Mass.** Nevertheless nothing prevents him - provided that he does not receive an alms - from saying another Mass from a title of fidelity or charity; or even of justice, provided that the title of justice is not founded in stipend or in office.[4]
3. **From an extrinsic title,** for example of chant, hour, or place.[5]

Note 3. From canon 825 it is never lawful:

1. To apply a Mass to the intention of one who is going to request the application with an alms offered, but has not yet requested it, and to retain the alms afterward given for the Mass previously applied (n. 1; cf. n. 208).
2. To receive an alms for a Mass which is owed and applied by another title (n. 2). By another title, whether of justice, fidelity, obedience, etc. The reasons are: both because in the case the one who gave the stipend is more probably deprived of some fruit to which he has a right (n. 207); and because the one giving the stipend, according to received usage, judges that the Mass is applied for himself alone, while the priest accepting the stipend tacitly binds himself to that.

3. To accept a double alms for the application of the same Mass (n. 3; cf. n. 207).

4. To receive one alms for the celebration alone and another for the application, unless it is certain that one offering was made for celebration without application.

[1] Matthew 10:10.

[2] 1 Corinthians 9:7.

[3] *De sacrificio Missae*, book III, chapter 11.

[4] Cf. Sacred Congregation of the Council, 14 September 1878 (*Collectio*, n. 1500).

[5] By these words the prohibition of the Sacred Congregation of the Council (15 October 1915), which existed on 2 November, was removed (Pontifical Commission, 13 December 1923, *Acta Apostolicae Sedis* 1924, p. 116). Moreover, Pius IX, by decree of the Sacred Congregation of Propaganda Fide, 15 October 1863, granted to Ordinaries of missions the faculty of allowing, when a just and grave cause intervenes, that priests subject to them may receive a stipend even for a second Mass to be celebrated on the same day. Even outside mission territory such indults are sometimes granted, but only conditionally, namely under the condition that the Masses be applied according to the mind of the bishop, who will receive the alms so that he may expend them for pious causes. If these pious causes are not further indicated, it is also lawful, indeed preferable, that the bishop expend them "in favor of poor priests, not excluding those who repeat the Sacred rite, insofar as they need assistance" (Decree of the Sacred Congregation of the Council, 7 August 1909, *Acta Apostolicae Sedis* I, pp. 767-771; cf. especially the report of the consultor prefixed to this decision). In the case, however, the whole alms is to be sent to the bishop (Sacred Congregation of the Council, 27 February 1905; *N. K. St.*, p. 134). Thus Aertnys-Damen, vol. II, n. 202.

218 **IV. The just stipend.** It belongs to the local Ordinary to define the manual stipend for Masses in his diocese by decree, issued as far as possible in diocesan synod; nor is it lawful for a priest to demand more than this (canon 831, § 1). Where a decree of the Ordinary is lacking, the custom of the diocese is to be observed (canon 831, § 2). Even religious, although exempt, must stand, concerning the manual stipend, by the decree of the local Ordinary or by the custom of the diocese (canon 831, § 3). Moreover:

1. A larger stipend than the local Ordinary or the custom of the diocese has established cannot be demanded. Nevertheless, when more ample stipends are generally provided, it does not seem illicit to say: "I cannot personally discharge your stipends unless you give as much as others have given."[1] Besides, it is not per se prohibited to require compensation for extraordinary labor or inconvenience, for example if a sung Mass is requested, or one to be said at a certain time or place, or if a journey must be made (St. Alphonsus, III, 55).

Corollary. One who demands a stipend larger than the statute permits sins against religion, for the law obliges from this virtue; likewise he sins against justice if he demands more than is fitting. He is not, however, guilty of simony unless he sells something spiritual, for example by demanding a larger stipend because of an indulgence annexed to an altar.

2. A larger stipend freely offered can be accepted (canon 832); nor can the bishop prohibit a larger one from being offered.[2]

3. Likewise a smaller stipend can be accepted, unless the local Ordinary has prohibited it (canon 832). If a prohibition has been made, it is not judged prohibited to accept a smaller stipend if a reason of mercy requires it.

4. If someone has offered a sum of money for the application of Masses, without indicating their number, this number is to be computed according to the alms of the place in which the offerer was staying, unless it ought legitimately to be presumed that his intention was otherwise (canon 830). These things are also to be applied to a testator.

[1] Aertnys-Damen, II, n. 207.

[2] Sacred Congregation of the Council, 16 January 1649.

Article II. On the Acceptance of Stipends and on the Obligation Arising from It

219 **I. Acceptance of stipends.** 1. It is lawful for no one to receive so many burdens of Masses to be celebrated by himself that he cannot satisfy them within a year - understand: from the day the obligation was undertaken - (canon 835), whether because the number offered exceeds the days of the year, or because the priest has already undertaken so many burdens that he cannot fulfill new ones within a year. The decree *Ut debita* contained the same disposition, with this addition: "yet always preserving the contrary will of those offering"; since this addition has been omitted in the Code, the liberty seems more restricted. Nor, however, should the new law be taken in such a way that, for example, it would be considered illicit to receive a stipend for twelve anniversary Masses.

2. In churches in which, on account of the peculiar devotion of the faithful, alms for Masses flow in such abundance that all the Masses cannot be celebrated there in due time, the faithful are to be warned, by a notice placed in a conspicuous and obvious place, that the Masses offered will be celebrated either there, when this can conveniently be done, or elsewhere (canon 836).

220 **II. The obligation arising from a stipend** regards both the celebration and application according to the intention of the one giving the stipend, and the circumstances intended by him, and the time determined either by him or by the Church. It is, moreover, an obligation of justice; nor does it stand in the way of this obligation that the one giving the stipend is ignorant of the norms established by the Church concerning time. It suffices that he intends the Mass as it is to be said according to the Church; but the priest, by accepting the stipend, tacitly binds himself to the norms established by the Church.

221 **1. Celebration and application according to the intention of the one giving the stipend is imposed principally,** and indeed for each individual stipend. Hence canon 828: "There are to be celebrated and applied as many Masses as there have been stipends, even small ones, given and accepted." Moreover, the omission of even only one Mass is certainly grave if the matter of the stipend with respect to the giver is grave, and there is not question of a large number of Masses to be celebrated for the same intention.

It is disputed, first, whether the omission of one Mass to be celebrated because of a stipend whose matter is light is grave. Several deny it; but with St. Alphonsus (VI, 317, q. 3) and others we affirm it. For an obligation owed from justice is grave if there is question of a grave thing, such as a Mass is. But that he who is deprived of the good of the Mass can obtain another Mass with a small stipend in no way prevents the one who is bound from justice to furnish a grave good from being bound under grave sin to do this.

It is disputed, second, whether the omission of one Mass is grave if there is question of a large number of Masses to be celebrated for the same intention. But the argument alleged above seems also

to support the opinion which teaches that the omission is grave in this case too.

It is disputed, third, whether one who has received a small stipend is bound under grave sin to restore it in the case in which he can neither say the Mass himself nor take care that it be said by another, for he is bound to these things. Now this seems altogether to be denied, since it does not appear that the obligation of restoring a light thing is grave.

222 **2. Due circumstances.** On this point, first let canon 833 be noted: The offerer is presumed to have asked only for the application of the Mass; if, however, the offerer expressly determined that certain circumstances were to be observed in the celebration of the Mass, the priest, accepting the alms, must stand by his will. These points are especially to be noted:

a) **The circumstance of place.** Founded Masses must be celebrated in the place designated by the founder. It would be a grave sin often and without just cause to depart from this rule (St. Alphonsus, VI, 329). Nevertheless the beneficiary is not bound personally to celebrate the Masses, unless the founder expressly established this (St. Alphonsus, VI, 330). Moreover, the bishop can, by interpreting the will of the founder, permit by way of dispensation that for a just cause the Mass be celebrated in another place (St. Alphonsus, VI, 329).

As regards manual Masses, the circumstance of place must be observed under grave sin if, considering the circumstances, the place must be judged to pertain to the substance of the obligation, as easily happens if there is question of a nuptial Mass, a funeral Mass, or a Mass to be celebrated before a miraculous image. If the assigned place does not pertain to the substance of the obligation, neglect of it is light, and for a just cause not foreseen it becomes lawful.

b) **The circumstance of a privileged altar.** Concerning this, note:

alpha) One who is bound to celebrate at a privileged altar does not satisfy by applying another plenary indulgence to the deceased.[1]

beta) A priest having the personal privilege of a privileged altar satisfies, even though he celebrates at an altar that is not privileged.[2]

gamma) The quality of a Requiem Mass, feria, or vigil, and likewise the addition of the prayer for the deceased, is no longer required for the value of the indulgence.[3]

delta) One who has not satisfied the circumstance of a privileged altar is bound to compensation, for example to applying another plenary indulgence to the soul of the deceased; he can accomplish this, for example, by saying the prayer *En ego*, etc. (St. Alphonsus, VI, 329).

c) **The circumstance of the quality of the Mass** - for example, of a Requiem or votive Mass - if it is expressly determined,[4] must be observed under venial sin, but not under grave sin, because there is no question of the substance, but only of an accessory of the contract. But if the rubrics prohibit the quality of the Mass from being observed, generally, from the presumed consent of the one giving the stipend, the obligation is satisfied by another Mass. It is more advisable, however, that if it can conveniently be done, the requested Mass be said on another day.[5] If the priest foresees that the requested quality of the Mass cannot be observed on the assigned day, the offerer should be forewarned.

d) **The circumstance of Gregorian Masses** entails that thirty Masses be celebrated for the same deceased person (by one priest or by several priests), and this through thirty uninterrupted days. Moreover, one who voluntarily interrupted the series is bound to begin it anew; if someone did this involuntarily, it suffices that he complete the number and in some way compensate the detriment, for example by applying a plenary indulgence.

[1] Sacred Congregation of Indulgences, 2 May 1852; 24 July 1885 (*Acta Sanctae Sedis*, vol. 18, p. 94).

[2] Sacred Congregation of Indulgences, 15 March 1852.

[3] Holy Office, 19 February 1913 (*Acta Apostolicae Sedis* 1913, p. 122).

[4] The quality of the Mass is expressly determined if a Mass **of Requiem** or a votive Mass, for example of St. Gerard, is requested; but not if it is requested for a certain intention. It is disputed whether or not it is sufficiently determined if a Mass is requested for a deceased person, or in honor of St. Gerard, or for a living person. Most deny it; indeed they rightly judge that generally only the application is intended, and in no way the quality of the Mass. Others say otherwise, but the response of the Sacred Congregation of Rites (3 March 1761, n. 2461, ad VII), on which they rely, does not settle our question when rightly posed. For the Sacred Congregation responded: "On days on which private votive Masses or Masses of the dead can be said, a priest bound to them by reason of a foundation or an accepted manual stipend does not satisfy his own obligation by saying the Mass of the occurring day; for the expressed will of testators or petitioners, provided it is reasonable, must be fulfilled." But we ask when he is bound to the quality of the Mass.

[5] Cf. Sacred Congregation of Rites, 30 June 1896, n. 3922, General Decree, § IV, n. 3; 13 June 1899, n. 4031, ad IV.

223 **3. Due time.** Founded Masses and Masses after the manner of manual Masses must be celebrated on the day and at the hour designated by the founder. It would be a grave sin often and without just cause to depart from this rule (St. Alphonsus, VI, 329). Nevertheless the bishop can, by interpreting the will of the founder, permit by way of dispensation that for a just cause the Mass be celebrated on another day or at another hour (St. Alphonsus, VI, 329).

As regards manual Masses, receive these points:

a) If the offerer has expressly assigned a time, the Masses must absolutely be celebrated at that time (canon 834, § 1). A lengthy delay is a grave sin; likewise a slight delay is grave if it is such that a Mass requested for an instant necessity is not said in good time, according to what is to be said under c.

b) If the offerer has expressly left the time to the judgment of the priest, the priest will be able to celebrate them at the time which is more pleasing to himself, with the prescription of canon 835 remaining firm (canon 834, § 3); compare that canon with n. 219.

c) If the offerer has expressly assigned no time for the celebration of manual Masses:

alpha) Masses offered for an urgent cause must be celebrated as soon as possible within the useful time (canon 834, § 2, 1). Neglect of the useful time is gravely illicit and carries with it the obligation of restoring the stipend.

beta) In other cases the Masses must be celebrated within a moderate time, according to the greater or smaller number of Masses (canon 834, § 2, 2). In this matter, the decree *Ut debita* can be taken as a norm; it established that "the useful time for fulfilling obligations of manual Masses is one month for one Mass, six months for one hundred Masses, and another longer or shorter space of time more or less, according to the greater or smaller number of Masses" (n. 2).[1] Besides, the Sacred Congregation of the Council responded that the prescribed terms are to be understood separately with regard to

each one who offers a stipend, not cumulatively with regard to all who offer. For the rest, a delay greater than is just, such as by force of natural law seems to be one which exceeds the time assigned above, is gravely or lightly illicit, according as it is notable or light. Moreover, a delay longer than a month beyond the legitimate time, and indeed even a shorter delay if there is question of the recently deceased, seems notable. Finally, it is equitable that some number from the Masses for the recently deceased be celebrated as quickly as possible (St. Alphonsus, VI, 317, question 2).

[1] As regards intermediate numbers, the Sacred Congregation of the Council responded on 27 February 1905: "the matter is left to the discreet judgment and conscience of priests according to the decree and the rules handed down by approved doctors." Hence these can be established:

Time	Number of Masses
2 months	20
3 months	40
4 months	60
5 months	80
6 months	100
12 months	200

Moreover, a further delay can be granted by the Holy See. 27 February 1905, ad XI.

224 **III. Cessation of the obligation.** Although the alms for Masses already received have perished without the fault of the one who is burdened with celebrating, the obligation does not cease (canon 829). The reason is clear: for the fact that the priest is deprived of his own thing, that is, of the stipend received, does not deprive another of the right, received and perfected through the handing over of the stipend, that Mass be applied to his intention. Nevertheless, one who has lost the alms, for example, can take care that another celebrate the Mass for a smaller stipend.

Article III. On the Distribution and Transmission of Masses

225 **I. To what extent someone must or can distribute or transmit Masses** you may gather from these points:

1. One who has Masses to be celebrated by others should distribute them as soon as possible, with the prescription of canon 841 remaining firm; but the legitimate time for their celebration begins from the day on which the priest who is going to celebrate them received them, unless something else is clear (canon 837). There is question, for example, of the administrator of a pious cause, of an executor of a testament, of an heir. Let them distribute the Masses as soon as possible, lest the celebration be delayed too much.
2. Those who have a number of Masses of which they may freely dispose can give them to priests acceptable to themselves, provided they know well that these priests are above every exception or are recommended by the testimony of their own Ordinary (canon 838).[1] It is said **to priests**; hence it is not lawful to hand them over, for example, to booksellers, etc. Nevertheless nothing prevents their being handed over to a priest who distributes them among other priests. They can

also be handed over to priests who live or are staying in another diocese,[2] since the Code does not distinguish and requires only that the priest be above every exception, that is, truly trustworthy, or recommended by his own Ordinary, that is, the Ordinary of the one accepting, although perhaps he is living in another diocese. Moreover, the disposition of some provincial councils, by which it is forbidden for stipends to be sent to another diocese without the permission of the Ordinary, is sustained only - unless a privilege is added[3] - with respect to founded Masses, Masses after the manner of manual Masses, or manual Masses given with regard to a pious cause.[4] From these things you may deduce what the local Ordinary can do in this matter.

3. All and individual administrators of pious causes, or persons bound in any way to fulfill Mass burdens, whether clerics or laypersons, at the end of each year should hand over to their Ordinaries, according to the manner to be defined by these Ordinaries, the Mass burdens for which satisfaction has not yet been made. This time, however, is to be taken in such a way that in Masses after the manner of manual Masses the obligation of depositing them runs from the end of that year within which the burdens ought to have been fulfilled; but in manual Masses, after a year from the day the burden was undertaken, with the different will of those offering preserved (canon 841, §§ 1 and 2). Namely, those offering manual stipends can grant that the Masses be delayed more than a year.

[1] Cf. Sacred Congregation of the Council, 17 July 1655.

[2] By these provisions the decree of the Sacred Congregation of the Council (22 May 1897, *Acta Sanctae Sedis*, vol. 40, p. 344), by which stipends could not be transmitted to priests residing outside the diocese except through their Ordinary, or at least after he had been heard and had consented, was removed. Likewise the decrees which prohibited the direct transmission of Masses to Oriental priests seem to have been removed.

[3] A privilege of this kind was granted for a time to the bishops of Holland.

[4] Sacred Congregation of the Council, 19 February 1921.

226 **II. Those who hand over to others for celebration Masses received from the faithful or in any way committed to their trust** are held by the obligation until they have obtained testimony from them of the obligation accepted and of the stipend received (canon 839). Thus positive law does not extend itself more broadly; but with natural law considered, one would not be immune from obligation if he transmitted a Mass whose obligation of celebration he himself had undertaken, and afterward learned that the celebration of the Mass was being neglected (cf. n. 224).

227 **III. One who transmits Masses is bound to transmit the stipend,** as follows:

1. One who transmits manual Mass stipends to others must transmit what has been accepted in full, unless either the offerer expressly permits something to be retained, or it is certainly clear that the excess above the diocesan tax was given in consideration of the person (canon 840, § 1). Thus, per se, the celebrant has the right to receive the whole stipend, and indeed either in its own species, or, if the priest who is going to celebrate consents, in an equivalent,[1] for example in books. Likewise, even without the consent of the celebrant, if there is question of vicars living in the pastor's house, the excess of the common stipend can be given to them in board and service.[2] Finally, as regards the same vicars, the custom can be sustained that they always celebrate according to the intention of the pastor, who grants them board and service, while they receive a determined pension from the treasury of the church or from the pastor.[3]

One who transmits a manual offering can retain something: 1. when the offerer expressly permits it; 2. when it is certain that the excess above the diocesan tax was given in consideration of the person, for example because the one to whom the Mass was offered is poor, or a relative, friend, or even pastor of the offerer;[4] 3. if the excess of the customary tax pertains to stole fees, as if there is question of a nuptial or funeral Mass.[5] In other cases the one who is going to celebrate has the right to the whole stipend. Nothing, however, prevents him, by yielding his right altogether spontaneously, from leaving the offering or part of it to the one transmitting. But now, just as before, it seems illicit to ask the one who is going to celebrate to yield the stipend or part of it. For, considering the Constitution of Benedict XIV *Quanta cura*,[6] where a request of this kind is called an execrable abuse, and canon 827, it must be doubted whether the old law has been changed. In doubt, however, one must not depart from the old law (canon 6, 4).

2. In Masses after the manner of manual Masses, unless the mind of the founder stands in the way, the excess is legitimately retained, and it suffices to remit only the manual alms of the diocese in which the Mass is celebrated, if the ample alms takes the place in part of the endowment of the benefice or pious cause (canon 840, § 2). Whether or not the added condition has place is to be gathered: 1. from the tables of the foundation themselves, when they expressly testify that the whole annual fruit of the foundation was designated as stipend; 2. from the nature of the benefice to which the foundation is annexed, namely if all or the greatest part of the revenues of the benefice consist in these stipends; 3. from custom, when more ample stipends have always been held as a part of the revenues; and 4. from an authentic declaration of the Ordinary.[7]

[1] The decree *Ut debita* prescribed that stipends were to be handed over in full and in their own species (article 9).

[2] Sacred Congregation of the Council, 25 February 1905, in the Breda case, ad I (*Acta Sanctae Sedis*, vol. 38, p. 15); 25 February 1910, in the Luxembourg case (*Acta Apostolicae Sedis* 1910, p. 203).

[3] Sacred Congregation of the Council, in the Breda case, ad III (*Acta Sanctae Sedis*, loc. cit.); 10 January, in the Montesson case (*Acta Apostolicae Sedis* 1920, p. 70).

[4] Cf. Sacred Penitentiary, 6 April 1742 (*Collectio*, n. 336); Sacred Congregation of the Council, 31 January 1880.

[5] Cf. Sacred Congregation of the Council, 25 July 1874 (*Collectio*, n. 1422); 11 May 1888.

[6] 30 June 1741.

[7] *N. K. Stemmen*, 1918, p. 9; Aertnys-Damen, II, n. 212.

228 **Corollary I.** At the request of either party it is lawful to exchange intentions, while the unequal stipend is retained, if this is done so that offices are exchanged;[1] otherwise, if it is done principally for the sake of taking profit.[2] The reason for the former is that every base gain is absent. The reason for the latter is that illicit gain does not seem to be absent; cf. canon 827 (St. Alphonsus, VI, 322, doubt 4).

Corollary II. One who by office has care of distributing stipends can demand a moderate payment from those to whom the Masses are distributed (St. Alphonsus, VI, 322, doubt 8). And generally, one who transmits Masses can deduct expenses of administration and transfer.[3] Administrators of churches, however, cannot retain part of the stipend for the expenses of altars, servers, light, wine, hosts, etc., unless the church is pressed by poverty[4] (St. Alphonsus, 322, doubt 5). Nor is it lawful to subtract anything from the manual alms which the faithful are accustomed to hand over to more celebrated shrines, in order to provide for their dignity and ornament.[5]

Corollary III. One who unduly retains part of a stipend sins against strict justice, and therefore is bound to restitution from the same virtue, as follows:

1. An executor of a testament who retains part of the sum to be expended in Mass stipends certainly violates strict justice. The same, according to the Constitution of Benedict XIV *Quanta cura*, § 1 sq., must be said of those who collect stipends for this end: that Masses be celebrated elsewhere, where stipends are smaller.

2. There is dispute about others; but with St. Alphonsus (VI, 322, doubt 1) it seems altogether to be affirmed. For ownership of the stipend is not acquired except according to the intention of the giver. But the intention of the giver seems to be that the one who fulfills the burden also receive the stipend. **Objection.** Nothing prevents the recipient of the stipend from fulfilling the burden through another. **Response.** Granted; but from the intention of the one giving the stipend, in other words, by force of this contract, that other person who fulfills the burden seems to receive a right in the stipend given. From what has been said, against some authors it is also deduced that the stipend must be restored to the celebrant, not to the one giving the alms (St. Alphonsus, VI, loc. cit.).

[1] For example, a missionary occupied with spiritual exercises takes upon himself the Mass and intention announced for the sixth hour, so that a chaplain, a sufficiently sick old man, may be able to celebrate; and he hands over to this chaplain his own intention to be discharged, without any discussion about exchanging stipends.

[2] For example, someone has a Mass with an ample stipend to be celebrated today. But, hindered unexpectedly from celebrating, he summons another priest and proposes to him, who has a smaller stipend, that the Masses be exchanged, namely so that he himself takes upon himself the other priest's intention to be discharged on the following day.

[3] Sacred Congregation of the Council, in the Breda case, 25 February 1905, *Mens est*.

[4] Constitution of Innocent XII, *Nuper*, ad VII.

[5] Decree of the Sacred Congregation of the Council *Ut debita* (article 11).

Article IV. On Abuses to Be Avoided in Accepting Stipends

229 From Mass stipends, thus canon 827, every kind even of negotiation or commerce is altogether to be kept away. This canon is neglected: 1. by those who of their own accord retain part of the stipend (n. 227); 2. by those who ask others that, when Masses have been transferred, they may retain part of the stipend (n. 227); 3. by booksellers or merchants who collect stipends and, in place of them, give books, periodicals, or other merchandise to priests who are going to celebrate the Masses,[1] whether with profit (commerce) or without profit (a species of commerce). The author of the stipend, however, can offer other things to the one who is going to celebrate, in place of money.

[1] Decree *Ut debita* of the Sacred Congregation of the Council, 11 May 1904 (article 8); cf. Sacred Congregation of the Council, 9 September 1874; decree *Vigilanti studio*, 23 May 1893.

Article V. On the Safeguards of the Law

230 **I. Supervision.** The right and duty of watching so that Mass burdens are fulfilled belongs, in churches of seculars, to the local Ordinary; in churches of religious, to their superiors (canon 842).

231 **II. Notation of Masses.** 1. Rectors of churches and of other pious places, whether secular or religious, in which alms for Masses are customarily received, should have a special book in which

they accurately note the number, intention, alms, and celebration of the Masses received (canon 843, § 1). Ordinaries are held by the obligation of examining books of this kind, either personally or through others, at least once each year (canon 843, § 2). Ordinaries, that is, local Ordinaries or major superiors in exempt clerical religious institutes (canon 198, § 1).

2. Likewise local Ordinaries and religious superiors who entrust Masses to be celebrated to their own subjects or to others should quickly enter in order into a book the Masses which they have received with their alms, and should take care according to their powers that they be celebrated as soon as possible. Indeed, all priests, whether secular or religious, must accurately note which Mass intentions each one has received and which he has satisfied (canon 844). It suffices, however, that one note the Masses through another.

232 **III. Penalties.** Those who have offended against the prescription of canon 827, 828, or 840, § 1 are to be punished by the Ordinary according to the gravity of the fault, not excluding, if the matter bears it, suspension or privation of an ecclesiastical benefice or office, or, if there is question of laypersons, excommunication (canon 2324). The penalties of *latae sententiae* previously established have been abrogated.

Scholion I. On Pious Foundations

233 **I. Notion and nature.** By the name of pious foundations are signified temporal goods given in any way to some moral person in the Church, with the burden, in perpetuity or for a long time, of celebrating some Masses from the annual revenues, or of fulfilling other predefined ecclesiastical functions, or of performing some works of piety and charity (canon 1544, § 1). A foundation, once legitimately accepted, takes on the nature of a synallagmatic contract: I give that you may do (canon 1544, § 2).

Note. It belongs to the local Ordinary (or, if there is question of pious foundations in churches, even parochial ones, of exempt religious, to the major superior) to prescribe norms concerning the amount of endowment below which a pious foundation cannot be admitted, and concerning the proper distribution of its fruits (canon 1545, compared with canon 1550).

234 **II. Acceptance of a foundation.** 1. In order that foundations of this kind can be accepted by a moral person, the consent of the local Ordinary is required, given in writing (or, if there is question of exempt religious, the consent of the major superior), who should not furnish it before he has legitimately ascertained that the moral person is able to satisfy both the new burden to be undertaken and the old burdens already undertaken. Above all, he should take care that the revenues correspond altogether to the burdens annexed, according to the custom of each diocese. In the acceptance, constitution, and administration of a foundation, the patron of the church has no right (canon 1546).

2. Foundations, even those made orally, are to be committed to writing. One copy of the records is to be kept safely in the archive of the Curia (or of the major superior), and the other in the archive of the moral person to which the foundation pertains (canon 1548).

Note 1. Money and movable goods assigned under the name of donation are immediately to be deposited in a safe place, designated by the same Ordinary (or major superior), for this end: that the same money or the value of the movable goods be preserved and, as soon as possible, be invested cautiously and usefully according to the prudent judgment of the same Ordinary, after those whose

interest is involved and the diocesan council of administration (or the council of the major superior) have been heard, for the benefit of the same foundation, with express and individual mention of the burden (canon 1547).

Note 2. With the prescriptions of canons 1514-1517 and canon 1525 observed, in any church there is to be drawn up a table of the burdens incumbent from pious foundations, which is to be kept by the rector in a safe place (canon 1549, § 1). Likewise, besides the book of which canon 843, § 1 speaks, another book is to be kept and preserved by the rector, in which the individual perpetual and temporary burdens, their fulfillment, and the alms are noted, so that an exact account of all these things may be rendered to the local Ordinary (or major superior) (canon 1549, § 2).

Note 3. If there is question of churches, even parochial ones, of exempt religious, all the things set forth above must be observed, but in such a way that the assigned rights and duties belong exclusively to the major superior (canon 1550). But if there is question of churches of non-exempt religious, the rights set forth are reserved to the local Ordinary, even if the parish has been united to the religious house with full right (cited canon, compared with the response of the Pontifical Commission).[1]

[1] 25 July 1926, ad IV (*Acta Apostolicae Sedis* 1926, p. 393).

235 **III. The obligation of a foundation, as regards Masses,** is both to celebrate as many Masses as have been established, and to fulfill the other things imposed by the founder, for example as to the quality of the Mass, place, altar, hour, etc. (n. 220). The obligation of celebrating as many times as is expressed in the foundation is grave. How great the obligation of the other adjuncts is must be gathered from what has been said generally about the obligation arising from a stipend (n. 222). Neglect of the adjuncts does not induce the obligation of celebrating another Mass, or of restoring the stipend or part of it, unless the priest accepted an excess of stipend in consideration of a greater inconvenience; for example, if he accepted a larger stipend for a sung Mass and did not sing it. For the rest, note:

1. Unless it is otherwise expressed, someone can fulfill the burden either personally or through another (St. Alphonsus, VI, 330).
2. If it is not determined for whom the Masses are to be applied, the obligation of applying them to the founder himself is presumed;[1] and all things are safeguarded if the application is made according to the intention of the founder.
3. If the founder did not order all the Masses to be celebrated for himself, but ordered a certain number from them to be celebrated for himself or according to his intention, he is presumed to have left free the application of the remaining Masses (St. Alphonsus, loc. cit.).
4. To a benefice there is sometimes annexed the burden either of celebrating daily or of celebrating and applying daily. Moreover:

a) One who is bound personally to celebrate can sometimes omit Mass for a just cause. Nevertheless he is bound to supply through another if the burden immediately falls upon the church or community; otherwise, if it immediately falls upon the beneficiary. Just causes for sometimes omitting Mass are:

alpha) Religion; namely, the beneficiary can, for the sake of reverence, according to some authors abstain from celebrating once a week, according to others once a month.

beta) A reasonable impediment, such as a journey to be made, spiritual exercises to be performed, etc. To this also belongs:

gamma) Illness. If this is brief, the beneficiary is not bound to supply through another; if it is more lasting, he is bound to supply through another. Illness is judged brief, according to some, if it is of fifteen days; according to others, of one month; according to others, of two months. This last opinion is held by St. Alphonsus as sufficiently probable[2] (VI, 333).

b) One who is bound personally to celebrate and apply can, just as one who is bound only to celebrate, sometimes omit the sacred rite for a just cause. He can also sometimes - for example six times a year - offer for himself or for others, but he cannot accept a stipend.[3] If he does not personally apply, he is bound, as was said of one who must personally celebrate daily, to supply through another if the burden was imposed immediately upon the church, etc.; otherwise, if it was imposed directly upon the beneficiary.

[1] Sacred Congregation of the Council, 18 March 1668; 26 March 1718.

[2] The declarations of the Sacred Congregation of the Council, 4 June 1689 and 17 November 1695, do not seem to settle the question.

[3] Sacred Congregation of the Council, 18 September 1683 (*Collectio*, n. 228); Pontifical Commission, 14 July 1922 (*Acta Apostolicae Sedis* 1922, p. 529).

236 **IV. Cessation or change of the obligation.** The causes of cessation are assigned as reduction, total defect of revenues, and condonation. Reduction is the concession of diminishing the works, for example the number of Masses, established by a pious foundation. Condonation is the concession of omitting works, for example Masses, which ought to have been celebrated in past time. That the Holy See enjoys the faculty of condoning and reducing Masses is clear from c. 2, Clem., *de religiosis domibus* (III, 11), and from the practice of the Church. For the rest, the Holy See can compensate the loss arising to founders, both by supplying from the treasury of the Church and by enjoining other works. Moreover:

1. The reduction of burdens which weigh upon pious foundations is reserved to the Apostolic See alone, unless something else is expressly provided in the tables of the foundation (canon 1551, § 1). Nevertheless, with the reduction of Masses excepted, these words of canon 1517, § 2 hold: "If, however, the execution of the imposed burdens, because of diminished revenues or another cause, without any fault of the administrators, has become impossible, then the Ordinary too, after those whose interest is involved have been heard, and with the will of the founder preserved in the better way possible, will be able equitably to diminish the same burdens." Moreover, an accidental change made for a time and for a just cause, for example the transfer of a Mass from one hour to another, does not seem to exceed the faculty of the bishop, unless there was a special reason for assigning a certain hour.

"The causes, moreover, on account of which the Apostolic See is accustomed to reduce Masses are: scarcity of priests, slenderness of the stipend or increase of the current stipend, diminution of the revenues of a monastery, or greater necessary expenses for sustenance, etc.; finally, if the necessity of

the brethren, or of the fabric of the church or monastery, should press" (St. Alphonsus, VI, 331). For reduction recourse should be had to the Sacred Congregation of the Council.

Note 1. An indult of reducing founded Masses is not extended either to other Masses owed from contract or to other burdens of the pious foundation. But a general indult of reducing the burdens of pious foundations is to be understood, unless something else is clear, in such a way that the holder of the indult should reduce other burdens rather than Masses (canon 1551, §§ 2 and 3).

Note 2. It is advised that the founder insert into the document of foundation the faculty of diminishing the number of Masses if the revenues do not furnish an equitable stipend for the individual Masses.

2. Total defect of revenues; for when these fail, the title on which the burdens rest falls.[1] That the revenues are diminished, or for another reason no longer constitute an equitable stipend, does not per se suffice for the burdens to be diminished; this follows from what was said above. But if the founder assigned a stipend for individual Masses, or did not determine the number of Masses, the number can indeed be diminished proportionately according to the stipend determined for the individual Masses or according to the diocesan tax.

3. Condonation of burdens[2] is altogether reserved to the Apostolic See. Recourse is to be had for the external forum to the Sacred Congregation of the Council; for the internal forum to the Sacred Penitentiary.

[1] Cf. Sacred Congregation of the Council, 7 July 1686; 18 August 1705.

[2] Note from canon 1509, 5, that burdens of Masses are not extinguished by prescription.

Scholion II. On Several Masses to Be Offered on the Same Day

237 **I. Except on the day of the Nativity of the Lord and on the day of the Commemoration of All the Faithful Departed,** on which there is the faculty of offering the Eucharistic Sacrifice three times, it is not lawful for a priest to celebrate several Masses in a day, unless by apostolic indult or by power granted by the local Ordinary (canon 806, § 1). Note, however:

1. **As regards the day of the Nativity of the Lord:** a) One who says only one Mass should take that Mass which corresponds to the hour of celebration, that is, at night the first, at dawn the second, during the day the third.[1] One who - as is lawful[2] - celebrates only two Masses, if he separates them and does not say both during the day, should proceed in such a way that the Masses correspond to the hour of celebration; if he does not separate them and reads both at night, he should take the first and the other; if at dawn or during the day, he should celebrate the other and the third.

b) One who by apostolic indult can celebrate daily a votive Mass or a Mass of the dead can, even on the day of the Nativity of the Lord, say the same Mass three times,[3] that is, either the votive Mass, or, as it seems, one of the three Masses of the Nativity.[4]

2. **As regards the day of the Commemoration of All the Faithful Departed:**

a) One who says three Masses must apply one gratuitously for all the faithful departed, another gratuitously according to the intention of the Supreme Pontiff; he can celebrate the third for a stipend. It is also illicit, with the Masses for the departed and according to the intention of the

Supreme Pontiff transferred to another day, to say three Masses for a stipend on the day of the Commemoration. But it does not matter which of the three Masses is celebrated for the departed, according to the intention of the Supreme Pontiff, or for a stipend.[5]

b) One who reads only one Mass should take the first Mass of the day, and he can apply it for a stipend. "Let him use the same Mass, that is, the first Mass, who is going to celebrate Mass with chant, with the power granted him of anticipating the second and third."[6] One who celebrates only two Masses should take the first two Masses of the day; he can apply one for a stipend, and is bound to say one of the two for the departed.[7]

c) One who by apostolic indult can daily celebrate a votive Mass or a Mass of the dead can, even on the day of the Commemoration of All the Faithful Departed, say the same Mass three times.[8]

[1] Sacred Congregation of Rites, 19 June 1875, n. 3354; 13 February 1892, n. 3767, ad 21.

[2] Sacred Congregation of Rites, 19 June 1875, n. 3355.

[3] Sacred Congregation of Rites, 26 January 1920, n. 4356.

[4] Sacred Congregation of the Council, 15 October 1915, ad 1, 2, and 3.

[5] Sacred Congregation of Rites, n. 4331.

[6] Sacred Congregation of Rites, 28 February 1917, n. 4342.

[7] Sacred Congregation of Rites, 29 January 1920, n. 4356.

[8] Sacred Congregation of Propaganda Fide, 28 September 1837.

238 **II. The Ordinary cannot impart the faculty of celebrating several times in a day** unless, in his prudent judgment, because of a scarcity of priests, a notable part of the faithful cannot assist at Mass on a feast day of precept; nor is it in his power to permit more than two Masses to the same priest (canon 806, § 2). Thus:

1. The power of the Ordinary regards only feast days of precept, that is, days on which the faithful are in fact bound to hear Mass; therefore suppressed feast days are excluded.[1]
2. The power of the Ordinary regards circumstances in which, if bination is excluded, a notable part of the faithful could not hear the sacred rite. The case is present: 1. if a pastor has two parishes so distant from one another that the people of both cannot conveniently come together in the same church, and there is no priest who may celebrate in the other parish; 2. if a pastor has two groups of people in the same parish distant in the aforesaid way, and there is no priest who may celebrate the other Mass; 3. if a notable part of the parishioners - for example twenty persons[2] - cannot come together to hear one and the same Mass, whether because of domestic circumstances or because of the narrowness of the church, and no other priest is present who may say the other Mass. But the Ordinary cannot grant bination in favor of those who wish to satisfy the precept in their own private oratories;[3] nor does mere custom suffice,[4] unless it is centenary and the Ordinary judges that it cannot prudently be removed (canon 5). Moreover, since the faculty of binating has been granted in order that necessity may be met, it cannot be exercised if by chance another priest arrives who can and wishes to say the other Mass. For the rest, note:

a) A faculty granted that in a determinate church Mass may be celebrated twice by the same priest is local, so that it is communicated to another who takes his place. Otherwise one must speak of a

faculty granted to someone that he may use it, because of an occurring case, now here, now there; this faculty is personal and cannot be communicated to another, unless the faculty of subdelegating has been added.

b) In a case of sudden necessity, for example if another priest suddenly falls ill and no other can be summoned, the license of the bishop can be presumed,[5] unless the statutes require that the judgment of the vicar forane intervene.

[1] Cf. Instruction of the Sacred Congregation of Propaganda Fide, where it is said that the concession is to be interpreted rather benignly.

[2] Instruction of the Sacred Congregation of Propaganda Fide, 24 May 1870, n. 6 (*Collectio*, n. 792).

[3] Benedict XIV, Constitution *Declarasti nobis*.

[4] Cf. Instruction of the Sacred Congregation of Propaganda Fide, 24 May 1870, nn. 13-17 (*Collectio*, n. 792).

[5] Cf. Instruction of the Sacred Congregation of Propaganda Fide, 24 May 1870, nn. 13-17 (*Collectio*, n. 792).

239 **III. Finally, it is sufficiently probable that it is lawful to binate if otherwise a dying person would be deprived of Viaticum.**

240 **IV. Whenever someone celebrates several times in a day,** if he applies one Mass from a title of justice, the priest, except on the day of the Nativity of the Lord, cannot receive an alms for another Mass, apart from some remuneration from an extrinsic title (canon 824, § 2); see these things explained in n. 217.

Chapter II. On the Place of Offering

244 **I. Notion of sacred places.** The sacred places which come to be considered here are churches and oratories.

1. By the name of church is understood a sacred building dedicated to divine worship, chiefly for this end: that it may serve all the Christian faithful for publicly exercising divine worship (canon 1161).
2. An oratory is a place destined for divine worship, yet not chiefly for this end: that it may serve the whole faithful people for publicly cultivating religion (canon 1188, § 1). An oratory is distinguished as threefold: public, semi-public, and private.

a) It is public if it has been erected principally for the benefit of some college or even of private persons, yet in such a way that all the faithful have a legitimately established right of approaching it, at least during the time of divine offices (canon 1188, § 2, 1).

b) It is semi-public if it has been erected for the benefit of some community or group of the faithful assembling there, and it is not free for everyone to approach it (canon 1188, § 2, 2).

c) It is private or domestic if it has been erected in private homes for the benefit only of some family or private person (canon 1188, § 2, 3).

245 **II. Consecration and blessing of sacred places.** 1. The consecration of a church, although it belongs to regulars, belongs to the Ordinary of the territory in which the place itself is found, provided the Ordinary is marked with the episcopal character, but not to the vicar general without a special mandate, with the right of Cardinals of the Holy Roman Church to consecrate the church and

altars of their title remaining firm (canon 1155, § 1). Cardinals, even non-bishops, can consecrate churches everywhere with the consent of the Ordinary (canon 239, § 1, 20); abbots and prelates nullius can do the same (canon 323, § 2).

b) The right of blessing a sacred place, if it belongs to the secular clergy or to a non-exempt religious institute, or to a lay institute, belongs to the Ordinary of the territory in which the place is found; if it belongs to an exempt clerical religious institute, to the major superior. Each, however, can delegate another priest for this (canon 1156).

Note. Notwithstanding any privilege whatever, no one can consecrate or bless a sacred place without the consent of the Ordinary, whether territorial or religious, according as the circumstances bear (canon 1157); and this also holds for Cardinals, if there is question of a church other than the church of their own title.

246 **III. Places in which Mass can be celebrated.** Mass can be celebrated:

1. In consecrated or solemnly blessed churches and public oratories (canons 822, § 1; 1165, § 1; 1191).
2. In legitimately erected semi-public oratories, all divine offices or ecclesiastical functions can be celebrated, unless the rubrics stand in the way or the Ordinary has excepted something (canon 1193). The oratories of Cardinals of the Holy Roman Church and of bishops, whether residential or titular, although private, nevertheless enjoy all the rights and privileges by which semi-public oratories rejoice (canon 1189).
3. In legitimately erected private oratories,[1] as follows:

a) If they have been erected from an indult of the Apostolic See, unless something else is expressly provided in the same indult, after the Ordinary has visited the oratory personally or through another and found it decently furnished, one Mass can be celebrated, and that a read Mass, on individual days, except the more solemn feasts; but other ecclesiastical functions are not to be performed there (canon 1195, § 1). The Ordinary, however, provided just and reasonable causes are present, different from those on account of which the indult was granted, can permit the celebration of Mass by way of an act even on the more solemn feasts (canon 1195, § 2).

b) Even if they have not been erected from an indult of the Holy See but by the authority of the Ordinary, the Ordinary can, in some extraordinary case, for a just and reasonable cause, permit one Mass by way of an act, even repeatedly, but not habitually (canon 1194).

c) In private cemetery chapels, of which canon 1190 speaks, the local Ordinary can permit habitually even the celebration of several Masses (canon 1194).

d) Nuncios, internuncios, and apostolic delegates, from the faculties granted to them, can grant to sick priests, during infirm health, and likewise to priests advanced in age, an indult of a private oratory in which they may celebrate Mass, with the canonical rules observed. Several bishops can do the same.

e) Regulars, by force of the communication of privileges, enjoy the privilege which Gregory XIII granted to the Society of Jesus, that Provincials can, personally and without the permission of the bishop, erect oratories in houses and colleges and in other places where some of the Society will

reside; in these oratories several Masses can be celebrated on the same day even by outsiders, and those assisting can fulfill the precept.[2] Finally, Regulars, by force of the communication of privileges, have the faculty granted to several institutes of erecting private oratories in granges or rural houses; everyone who assists at Mass there can satisfy the precept.

4. Outside a church and oratories, it is lawful to celebrate as follows:

a) The privilege of a portable altar imports the faculty of celebrating everywhere upon a sacred stone, yet in an honorable and decent place, but not at sea (canon 822, § 3).

This privilege is conceded either by law or by indult of the Apostolic See alone (canon 822, § 2). By law it has been conceded to Cardinals and bishops, who can also permit another Mass to be celebrated while they are present (canon 239, § 1, 7; 349, § 1, 1).

b) The local Ordinary, or, if there is question of a house of an exempt religious institute, the major superior, can grant permission of celebrating outside a church and oratory upon a sacred stone and in a decent place, but never in a bedroom, only for a just and reasonable cause, in some extraordinary case and by way of an act (canon 822, § 4). It is said, however, **never in a bedroom**, that is, in a bedroom in which someone is actually lying sick.[3] For the rest, the said faculty must be interpreted restrictively.[4]

c) In order that Mass can be said at sea or on a river, a special indult of the Holy See is required, so that the privilege of an altar does not suffice (canon 822, § 3). The special indult belongs to Cardinals of the Holy Roman Church and to bishops (canon 239, § 1, 8; canon 349, § 1, 1).

The indult is customarily granted under this law: that the sea be so calm that no danger is present of spilling the sacred species from the chalice; that another priest, if present, assist; and that, if on the ship there is not a proper chapel or fixed altar, nevertheless the chosen place bear nothing indecent or unbecoming. Nor is celebration in cabins prohibited when all the circumstances remove dangers of irreverence.[5]

d) If necessity urges, and recourse cannot be had to the Ordinary, it is lawful by epikeia to celebrate anywhere, even in the open air, provided the place has nothing unbecoming. Necessity urges, for example, if a church has collapsed and a Sunday or feast still in force as a day of precept is at hand; if an army is in camp and Mass must be heard from precept; if otherwise Viaticum cannot be administered, etc. (St. Alphonsus, VI, 356, 359).

[1] Oratories, both semi-public and private, must be reserved for divine worship alone and free from all domestic uses (canon 1196, § 2).

[2] Constitution *Decet Romanum Pontificem*, 3 May 1575.

[3] Sacred Congregation for the Discipline of the Sacraments, 23 December 1912.

[4] Pontifical Commission, 16 October 1919, ad 12 (*Acta Apostolicae Sedis* 1919, p. 478). Then the Sacred Congregation for the Discipline of the Sacraments, in its letters to the Ordinaries of Italy, 26 July 1924, declared that this just and reasonable cause must be taken from the good of divine worship and the spiritual good of souls (*Acta Apostolicae Sedis* 1924, p. 370). From the response of the same Sacred Congregation, 3 May 1926, the Ordinary also cannot permit celebration at home, with the corpse present in a place commonly called *camera ardente*, except in some extraordinary case, when a just and reasonable cause exists. Such an extraordinary case together with a just and reasonable cause, according to the response of the same Sacred Congregation, is had on the occasion of the death of the local Ordinary or of a person from a princely family, or otherwise distinguished because of merits and good deeds toward the Church or

the state, or because of most munificent largesses to the poor and needy. In this case, provided that the due obsequies are always fulfilled in the church, the Ordinary can permit the celebration of one or another Mass, but not more than three Masses, the indult of the Sacred Congregation of Rites of 29 April 1894 having been abrogated (*Acta Apostolicae Sedis* 1926, p. 388). Thus Aertnys-Damen, II, n. 232.

[5] Cf. Sacred Congregation of Propaganda Fide, 1 March 1902, compared with 13 March 1902.

247 **IV. Places in which Mass cannot be celebrated.** Mass cannot be celebrated in the temple of heretics or schismatics, even if it was formerly rightly consecrated or blessed (canon 823, § 1); nor in an execrated, violated, or interdicted church or public oratory, until it has again been consecrated or blessed or reconciled, or the interdict has ceased (canons 822; 1170; 1173, § 1; and 2270, § 1, compared with canon 1191, § 1).

1. **Execration** is had when the holiness of a church or public oratory, inhering in it from dedication, is lost. This, with canon 1170 considered and explained, happens: 1. when the whole building is simultaneously destroyed or collapses; 2. when the greater part of the walls is simultaneously destroyed or collapses; 3. when the building is reduced by the local Ordinary to profane uses. But it does not happen: 1. when the plaster partly or entirely falls from the walls or is removed;[1] 2. when a part which is not the greater part collapses, for example only the roof or only the facade of the church; 3. when walls fall or are destroyed and restored at intervals, even if the whole church becomes new, provided, however, that the greater part does not fall or be destroyed at once (St. Alphonsus, VI, 367, 368).

Note. Once a church has been execrated, the title perishes, as does the recitation of the office and commemoration of the titular patron. An execrated church must again be consecrated or blessed as new.

2. **Violation** consists in this: that the holiness inhering in a church or public oratory is not indeed lost, but nevertheless is contaminated. This happens through certain criminal or at least very indecent acts. Moreover, "a church is violated only by the acts listed below, provided that they are certain, notorious, and placed in the church itself: 1. the crime of homicide; 2. injurious and grave shedding of blood; 3. impious or sordid uses to which the church has been assigned; 4. the burial of an infidel or of an excommunicated person after a declaratory or condemnatory sentence" (canon 1172, § 1). See these things set forth in vol. I, n. 616. Now:

a) In a violated church, before it is reconciled, it is forbidden to celebrate divine offices (canon 1173, § 1); moreover, a violated church must be reconciled as quickly as possible (canon 1174, § 1).

b) The rector of the same church or any priest with at least the presumed consent of the rector can reconcile a blessed church (canon 1176, § 1). The valid reconciliation of a consecrated church belongs to the bishop or, if it belongs to an exempt clerical religious institute, to the major superior; each can delegate another priest for this (canon 1176, § 2, compared with canon 1156). In a case of grave and urgent necessity, if the Ordinary cannot be approached, it is permitted to the rector of a consecrated church to reconcile the same church, after the Ordinary has afterward been informed (canon 1176, § 3).

c) The reconciliation of a blessed church can be done with common holy water; but the reconciliation of a consecrated church should be done with water blessed for this according to liturgical laws, which nevertheless not only bishops but also the priests who reconcile the church can bless (canon 1177).

3. An interdict of a church, insofar as it prevents the celebration of Mass, is explained in the treatise on ecclesiastical penalties.

[1] Once the plaster has been renewed, the crosses made in testimony of consecration should again be painted or applied (Sacred Congregation of Rites, 4 May 1882, n. 3545).

Chapter III. On the Time of Offering

248 **I. Days of oblation.** The sacrifice of the Mass can be celebrated on all days, except those which are excluded by the priest's own rite (canon 820). Now, with the Latin rite considered:

1. On Thursday in the Supper of the Lord and on Holy Saturday, one Mass is permitted, and indeed only a solemn one. But:

a) If some feast of precept falls on Thursday in the Supper of the Lord, "it must be accurately provided by the local Ordinaries that on that day some private Masses, to be celebrated before the celebration of the customary conventual Mass, are not lacking for the fulfillment of the precept; but nevertheless for this reason the ancient custom of the Communion of the clergy in the solemn Mass of that day, on which the Church recalls the institution and memorial of the sacrament of the Most Holy Eucharist, retained until now with the greatest religious care, is in no way omitted."[1] If the feast is no longer of precept, it is not lawful to celebrate several Masses.[2]

b) Cardinals and, provided they are not bound to celebrate in the cathedral, bishops enjoy the privilege of celebrating, or of permitting another to celebrate before them, one Mass on Thursday of the greater week (canons 239, § 1, 4; 349, § 1, 1).

c) Among Regulars, if the solemn functions of the Greater Week are not performed, the superior can personally or through another celebrate a solemn or private Mass to administer Communion to the subjects, but in a domestic chapel or in a church with closed doors.[3] "Indeed," says Vermeersch, "although the solemn functions are held, writers concede that on the same day one Mass may be read in the oratory or in the church with closed doors, for the convenience of the sick. And it is clear from the privilege which Gregory XVI granted to the Province of the Society of Jesus which was then called Upper Germany, 4 December 1841."[4]

d) It is fitting that on Thursday of the greater week all clerics, even priests who abstain from offering the sacred rite on that day, be refreshed with the Most Holy Body of Christ in the solemn or conventual Mass (canon 862).

2. On the day of Parasceve, Mass cannot be celebrated unless it would be necessary for confecting Viaticum; in that case the Mass of the Passion of the Lord should be taken. But the Mass which is called the Mass of the Presanctified is not a sacrifice.

[1] Sacred Congregation of Rites, 13 September 1692, n. 1883; 10 January 1693, ad VI, n. 1890.

[2] Sacred Congregation of Rites, 26 September 1868, n. 3179.

[3] Sacred Congregation of Rites, 31 August 1839, n. 2799.

[4] *De religiosis institutis et personis*, vol. I, n. 467.

249 **II. Hour of oblation.** 1. **Object of the precept.** The beginning of a Mass to be celebrated should not take place earlier than one hour before dawn or later than one hour after noon (canon 821, § 1).

Dawn, or morning twilight, begins generally when the sun enters the eighteenth degree below the horizon. It differs according to different regions, insofar as they approach the pole more or less; generally it begins two hours before sunrise, but more than two hours before sunrise in northern regions, for there dawn is prolonged for a longer time. For the rest, tables inserted into calendars are accustomed to indicate the hour of dawn. Where dawn does not appear through some time of the year, it is lawful during that time to begin Mass from the beginning of civil, moral, and usual life, that is, at the time when people are accustomed to rise in the morning for work.[1] The same seems to be applicable to the time when dawn is very late in some regions. Finally, where dawn endures through the whole night during some part of the year, it seems lawful to begin at midnight. Nevertheless, it is not becoming to begin before the second morning hour, because the Church scarcely ever grants the faculty of beginning earlier. Exceptions from the ordinary rule are:

a) On the night of the Nativity of the Lord, only the conventual or parochial Mass can be begun at midnight, but not another without apostolic indult (canon 821, § 2).

b) Nevertheless, in all religious or pious houses having an oratory with the faculty of habitually reserving the Most Holy Eucharist, on the night of the Nativity of the Lord, one priest can celebrate the three ritual Masses, or, with the things to be observed being observed, only one Mass which may also avail for satisfaction of the precept for all those present, and can administer Holy Communion to those requesting it (canon 821, § 3). Moreover, the Holy Office, 26 November 1908, declared that the said Masses cannot be celebrated with the doors of the oratories open, nor in churches which serve the public use of the faithful people.

c) Cardinals and, provided they are not bound to celebrate in the cathedral, bishops enjoy the privilege of celebrating, or of permitting another to celebrate before them, three Masses on the night of the Nativity of the Lord (canons 239, § 1, n. 4; 349, § 1, n. 1).

d) It is disputed whether privileges granted to Regulars before the Council of Trent have been revoked. But the dispute is merely theoretical, since "today, from a privilege granted to the Congregation of the Purity erected at Naples, Regulars can always and everywhere celebrate two hours before dawn and after noon."[2] Likewise Gregory XVI, by his rescript of 13 May 1838, granted that the Superior General of the Society of Jesus could give the faculty to missionaries that, whether for the sake of a journey or for the sake of devotion, "for themselves or for the people, or for the sake of giving Communion to the faithful waiting, they may celebrate at the second hour after midnight."[3]

2. **Gravity of the precept.** The obligation of the precept is grave from its genus, as is gathered both from the Council of Trent[4] and from the Constitution of St. Pius V *In Christo Pater*.[5] Moreover, it would be a grave sin, without proportionate reason, to begin Mass one hour earlier or later than is lawful by law or privilege.

3. **Causes for anticipating or deferring Mass are:**

a) That Viaticum may be given to a dying person; in this case no hour is excepted.

b) An existing reasonable custom, for example that workers and servants may be able to hear the sacred rite very early in the morning; likewise, if on a feast day a solemn Mass is extended an hour and more beyond noon, it is lawful, if there is a custom, to celebrate a private Mass after the solemn sacred rite, lest a part of the people be without Mass.

c) A reasonable cause, for example a journey to be made, excuses if there is question of anticipating or deferring Mass briefly, for example by half an hour.

d) Finally, a bishop and the major superior of exempt clerical religious can dispense themselves and their subjects in an urgent case (canon 81; St. Alphonsus, VI, 343 and 344), indeed, as it seems, also from a just cause.[6]

[1] Sacred Congregation of Rites, 2 November 1634, n. 614.

[2] *Compendium Privilegiorum Piorum Operariorum*, part 2, chapter 5, § 7.

[3] Thus Gaude, *Opera Moralia S. Alphonsi*, book VI, n. 342, note.

[4] Session 22, Decree concerning the things to be observed and avoided.

[5] 29 March 1566.

[6] Sacred Congregation of Rites, 7 July 1899, n. 4044, ad IV.

Chapter IV. On the Rite of Offering

Article I. On the Altar and its Ornament

In order that Mass be celebrated according to the prescribed rite, the following are required:

250 **I. An altar, and that consecrated** (canon 822, § 1). Now either the whole altar must be consecrated, if there is question of an immovable altar, or only the portable altar-stone, if there is question of a movable altar (canon 1199, § 1). Moreover, per se Mass must be celebrated on an altar of the proper rite; but when such an altar is lacking, it is lawful for a priest to celebrate according to his own rite on an altar consecrated for another Catholic rite, but not upon the antimensions of the Greeks (canon 823, § 2).[1] Finally, on papal altars no one may celebrate without apostolic indult (canon 823, § 3). With these things summarily noted, several things about the altar must be noted.

1. **Notion of an altar.** In the liturgical sense it is understood: 1. by the name of an immovable or fixed altar, the upper table together with the supports consecrated with it as one thing; 2. by the name of a movable or portable altar, a stone, usually small, which alone is consecrated and which is also called a portable altar-stone or sacred stone; or the same stone together with a support which nevertheless was not consecrated together with it (canon 1197, § 1).

In a consecrated church at least one altar, especially the major altar, must be immovable; but in a blessed church all altars can be movable (canon 1197, § 2).

2. **Construction of an altar.** a) Both the immovable table and the sacred stone should consist of one natural stone, whole and not friable (canon 1198, § 1).

b) In an immovable altar the stone slab or table must extend to the whole altar and suitably cohere with the support; the support should be of stone, or at least the sides or little columns by which the table is supported should be of stone (canon 1198, § 2).

c) The sacred stone should be so large that it holds at least the host and the greater part of the chalice (canon 1198, § 3).

d) Both in an immovable altar and in a sacred stone there should be, according to the norm of liturgical laws, a sepulcher containing relics of Saints, closed with stone (canon 1198, § 4).

Concerning this, observe that for due consecration it is required that relics from the bodies of at least two martyrs be deposited in the sepulcher, and that these be enclosed with a stone cover. Nevertheless, for the validity of consecration the relics of only one martyr suffice.[2] For the rest, relics of other Saints can be added.

3. **Consecration of an altar.** Portable altar-stones can be consecrated validly and licitly by Cardinals (canon 239, § 1, 20), all bishops (canon 1199, § 2), vicars and prefects apostolic within the limits of their territory and while their office endures (canon 294, § 2), and abbots and prelates nullius (canon 323, § 2). Immovable altars can be validly consecrated by the same persons who validly consecrate portable altar-stones, excepting, however, vicars and prefects apostolic who lack the episcopal character. In order that they act licitly, the Ordinary of the territory must grant permission, with the right of Cardinals to consecrate altars of their own title remaining firm (canons 1155; 1199, § 2). The consecration of an immovable altar, which is done without the dedication of a church, although it can be done on any day, is nevertheless more fittingly done on a Sunday or another feast of precept (canon 1199, § 3).

4. **Execration of an altar.** a) An immovable altar loses consecration if the slab or table is separated from the support even for a moment of time; in this case the Ordinary can permit a presbyter to perform the consecration of the altar again with the shorter rite and formula (canon 1200, § 1). It is not execrated if the table, not separated from the support, is transferred to another church or to another place of the same church.[3]

b) Both an immovable altar and a sacred stone lose consecration: 1. if they are broken enormously, whether by reason of the quantity of the fracture or by reason of the place of anointing (canon 1200, § 2, 1), but not if they are merely scraped; 2. if the relics are removed or the cover of the sepulcher is broken or removed, except in the case in which the bishop himself or his delegate removes the cover in order to secure, repair, or replace it, or to inspect the relics. But a slight fracture of the cover does not induce execration, and any priest can secure a little crack with cement (canon 1200, § 2, 2 and 3).

c) The execration of a church does not carry with it the execration of altars, whether immovable or movable; and conversely (canon 1200, § 4).

5. **The title of an altar.** a) Just as a church, so any altar of a church, at least an immovable one, should have its own title. The primary title of the major altar must be the same as the title of the church (canon 1201, §§ 1 and 2).

b) Altars cannot be dedicated to Blessed persons, even in churches and oratories to which their office and Mass have been granted, without an indult of the Apostolic See (canon 1201, § 4).

c) With the permission of the Ordinary, the title of a movable altar can indeed be changed, but not the title of an immovable altar (canon 1201, § 3).

6. **Necessity of an altar.** The precept of consecrating on a consecrated and not execrated altar is grave.[4] Moreover, according to some it is never lawful to celebrate outside an altar; according to others this is lawful in a most grave necessity, for example for confecting Viaticum, because, they say, the precept of receiving Viaticum is divine, while the prohibition of celebrating outside an altar is ecclesiastical.

7. **Things to be noted.** a) The altar-stone, that is, the portable altar-stone or sacred stone, must be inserted in an altar made of wood or of another material.[5]

b) Both an immovable and a movable altar must be reserved only for divine offices and especially for the celebration of Mass, any profane use being altogether excluded (canon 1202, § 1).

c) No corpse should be hidden under the altar; but corpses which perhaps are buried near the altar should be distant from it by a space of at least one meter. Otherwise it is not lawful to celebrate Mass on the altar until the corpse is removed (canon 1202, § 2).

[1] An antimension is a consecrated cloth in which there are relics, and which, spread upon any table, can be used for saying Mass.

[2] Sacred Congregation of Rites, 16 February 1906, n. 4180, ad III.

[3] The decree of the Sacred Congregation of Rites, 3 September 1879, n. 3504, ad I, which is opposed, seems to speak of the transfer of the table alone, separated from the support.

[4] Roman Missal, General Rubrics, title XX; *De defectibus*, title X, n. 1.

[5] Roman Missal, loc. cit.

251 **II. Three altar cloths** - or two, one of which is doubled - blessed by the bishop or by another having the faculty; this faculty belongs to the same persons who enjoy the faculty of blessing sacred vestments (n. 266). The altar cloths must be made of linen or hemp.[1] The upper cloth should be long, descending to the floor on both sides; the custom of using a shorter cloth cannot be observed.[2]

It is a grave sin to celebrate without any altar cloth; nevertheless this is lawful in grave necessity. The other things oblige under venial sin, for example the precept of using several cloths, of using blessed cloths, etc. Hence a respectively just cause excuses from every sin (St. Alphonsus, VI, 375).

[1] Sacred Congregation of Rites, 18 May 1819, n. 2600.

[2] Sacred Congregation of Rites, 9 June 1899, n. 4029, ad I.

252 **III. A cross with the image of the Crucified,** placed between the candlesticks and projecting in such a way "that the celebrating priest and the people assisting at the Sacrifice can easily and conveniently look upon the same Crucifix; which cannot happen if only a small cross is displayed."[1] Another cross is not required if there is a large statue of the Crucified on the altar, or if the image of the Crucified is painted on the altar panel as holding the first place;[2] nor is a blessed cross prescribed.[3] If the Most Holy Sacrament is exposed, a cross can be used or not used, according as custom bears.[4] Finally, the use of placing the cross on the throne which serves for the public exposition of the Most Holy Sacrament cannot be tolerated.[5]

The obligation of using a cross is light.

[1] Constitution of Benedict XIV *Accepimus*, 16 July 1746; Sacred Congregation of Rites, 16 June 1663, n. 1270, and 17 September 1822, n. 2621.

[2] Constitution of Benedict XIV, cited.

[3] Sacred Congregation of Rites, 12 July 1704, n. 2143.

[4] Sacred Congregation of Rites, 2 September 1741, n. 2365.

[5] Sacred Congregation of Rites, 2 June 1883, n. 3576, ad III; 11 June 1904, n. 4136, ad II.

253 **IV. Two lighted candles.**[1] Besides this, according to the rubric,[2] near the altar a candle is to be prepared, to be lighted at the elevation of the sacrament; but a contrary custom can be observed. The candles must be made of wax.[3]

Nevertheless, to the question: "Whether, considering even the great difficulty either of having true beeswax or of eliminating improper mixtures with other wax, the candles to be placed upon altars must be wholly and entirely of beeswax; or whether they can be mixed with other material, whether vegetable or animal?" the Sacred Congregation of Rites[4] responded: "Considering the asserted difficulty, Negative to the first part; Affirmative to the second and according to the mind. The mind is that bishops should, according to their powers, take care that the paschal candle, the candle to be immersed in the baptismal water, and the two candles to be lighted at Masses be of beeswax, at least in the greatest part; but it is necessary that the material of the other candles which are to be placed upon altars be of the same wax in a greater or notable quantity. In this matter pastors and other rectors of churches and oratories will be able safely to stand by the norms handed down by their respective Ordinaries, nor are private priests who are going to celebrate Mass bound to inquire anxiously about the quality of the candles." Besides, the Sacred Congregation of Rites[5] granted to missionaries in Oceania that they might use candles made and formed from whale fat, which in those regions are called *bougies a l'etoile*.

The candles must be placed upon the altar, not fixed to a wall almost touching the altar.[6] For the rest, note:

a) Apart from an indult, by reason of some personal distinction it is not lawful for priests below a bishop - not even for the vicar general - to use more than two candles; by reason of some greater solemnity of a feast or Mass, it is lawful.[7]

b) It is a grave sin to celebrate without any light; this is lawful only by reason of administering Viaticum or by special permission. Likewise, it is more probably mortal to celebrate without any wax light, or with only lights from tallow or oil. Nevertheless this is lawful in a case of necessity, for example so that Viaticum may be administered or so that the people may hear Mass on a Sunday (St. Alphonsus, VI, 394, doubt 1). The other things oblige under venial sin; hence, for example, if two wax candles are lacking, it is lawful for a reasonable cause, even by reason only of devotion, to celebrate with one wax candle (St. Alphonsus, VI, 394).

c) If either light goes out during the celebration, the priest can continue while it is lighted again. If every light fails and no other can be had, if this happens after the consecration the Mass must be continued; but if before it, more probably it must be interrupted (St. Alphonsus, VI, 394).

d) It is illicit above or within the altar, besides wax candles, to use stearin candles,[8] gas illumination, or electric light.[9] Moreover, "electric light is forbidden not only together with wax candles upon altars, but also in place of candles or lamps"[10] which are prescribed before the Most Holy Sacrament or relics of Saints.[11] For other places of the church and other cases, electric illumination is permitted according to the prudent judgment of the Ordinary, provided that in all things the gravity which the holiness of the place and the dignity of the sacred liturgy demand is preserved. Nor is it lawful, during private or public exposition, to illuminate the interior part of the ciborium with electric lamps placed in that very interior part, so that the Most Holy Eucharist can be better seen by the faithful;[12] these things are also to be applied to stearin candles and gas illumination.

[1] Roman Missal, General Rubrics, title XX.

[2] Sacred Congregation of Rites, 9 June 1899, n. 4029, ad II.

[3] Roman Missal, *De defectibus*, title X, n. 1.

[4] 14 December 1904, n. 4147.

[5] 7 September 1850, n. 2985.

[6] Sacred Congregation of Rites, 16 September 1865, n. 3137.

[7] Sacred Congregation of Rites, 12 September 1857, ad IX, n. 3059.

[8] Sacred Congregation of Rites, 4 September 1875, n. 3376.

[9] Sacred Congregation of Rites, 4 June 1895, n. 3859; 16 May 1902, n. 4097; 22 November 1907, n. 4206; 17 January 1908, n. 4210, ad I; Secretariat of State to the bishops of Italy, 3 October 1923.

[10] Namely, so that it is substituted in their place.

[11] Namely, on the occasion of their solemn exposition.

[12] Sacred Congregation of Rites, 24 June 1914, n. 4322.

254 **V. An antependium;** namely, from the rubric:[1] "The altar is also to be adorned with a frontal of the color, as far as possible, corresponding to the feast day or office." It is required more probably under venial sin, unless the altar is of marble or another precious material, or has the form of a tomb (St. Alphonsus, VI, 395). No determinate material is prescribed, nor is it required that it be blessed. There are also those who judge that, from custom, celebration can take place without an antependium.

[1] General Rubrics, title XX.

Article II. On Sacred Vessels with Accessories

255 The following are required:

I. Chalice and paten; both of which must be consecrated.[1]

1. **Matter.** The chalice must be gold or silver, at least as regards the cup;[2] by reason of poverty one made of tin is permitted,[3] and, under certain conditions, one made of aluminum mixed with other metals;[4] but not one of bronze, glass, or wood. The cup, unless it is gold, must be gilded under grave obligation (canon 1305, § 2). As regards the form of the chalice, the Sacred Congregation of Rites[5] prescribed: "let them not differ from the traditional forms, because of the danger of spilling the sacred species and of exciting astonishment."

The paten should be of the same material as the chalice,[6] and unless it is gold, it must be gilded under grave obligation (canon 1305, § 2).

2. **Consecration.** Chalices and patens can be consecrated by: 1. Cardinals (canon 239, § 1, 20); 2. bishops (canon 1147, § 1); 3. vicars and prefects apostolic, but if they lack the episcopal character, only within the limits of their territory and while their office endures (canon 294, § 2); 4. abbots and prelates nullius, but if they are not adorned with the episcopal character, only for their churches (canon 323, § 2).

a) They lose consecration: 1. if they have undergone such injuries or changes that they have lost their former form and are no longer held suitable for their uses (canon 1305, § 1, 1), for example when a chalice is pierced in the bottom or near the bottom; when the cup is separated from the foot, unless the chalice is turnable; when it is broken or struck in such a way that it can no longer decently serve the sacrifice. They lose consecration, 2. if they have been used for indecorous uses or exposed to public sale (canon 1305, § 1, 2).

b) They do not lose consecration because of the wearing away or renewal of the gilding, with the grave obligation of gilding them again remaining safe, however, in the former case (canon 1305, § 2).

3. It is a grave sin to celebrate without a chalice or paten, likewise without consecrated ones, likewise with a chalice or paten made from prohibited material or not gilded (cf. canon 1305, § 2).

4. It is an abuse to execrate sacred vessels before they are handed over to an artisan to be repaired or recast.[7]

[1] Roman Missal, Rite to be observed, title I, n. 1.

[2] Roman Missal, loc. cit.

[3] Roman Missal, *De defectibus*, title X, n. 1.

[4] Sacred Congregation of Rites, 9 December 1866 (*Acta Sanctae Sedis* VI, p. 590).

[5] Sacred Congregation of Rites, 30 June 1922 (*Acta Apostolicae Sedis* 1922, p. 437).

[6] Roman Missal, Rite to be observed, title I, n. 1; *De defectibus*, title X, n. 1.

[7] Sacred Congregation of Rites, 20 April 1822, n. 2620.

256 **II. A blessed corporal.**[1] It must be made of linen or hemp.[2] It is a grave sin to celebrate: 1. without a corporal; 2. without a blessed corporal; 3. with an enormously unclean corporal (St. Alphonsus, VI, 387). Grave necessity of celebrating excuses, for example so that the people may hear a Mass of precept. If it is not very unclean, strange priests are excused.

[1] Roman Missal, Rite to be observed, title I, n. 1.

[2] Sacred Congregation of Rites, 18 May 1819, n. 2600. From this decree it is clear that linen and hemp are equated.

257 **III. A blessed pall,**[1] made of linen or hemp; nevertheless it is lawful to use a pall covered on the upper part with silk, or with gold or silver interwoven and embroidered, provided the upper material is not black and does not represent signs of death.[2]

To the question: "From the decree of the Sacred Congregation of Rites n. 3832, *Resolution of Doubts*, 17 July 1894, ad IV, it is permitted that the chalice pall on the upper part be covered with silk cloth, or with gold or silver, and embroidered, provided that the linen pall joined beneath covers the chalice and that the upper part is not black nor with any sign of death. It is asked: Can this pall joined beneath be a linen cloth furnished with a cross and sewn beneath, after the manner of a pall, and not removable?" the Sacred Congregation of Rites responded: "Negative, and the pall joined beneath, properly so called, should be linen, clean, and easily removable."[3]

The pall, and likewise its blessing, are sufficiently probably prescribed only under light obligation. If it is lacking, the chalice should be covered with the purificator, burse, or corporal (St. Alphonsus, VI, 388).

[1] Roman Missal, Rite to be observed, title I, n. 1.

[2] Roman Missal, Rite to be observed, loc. cit., compared with Sacred Congregation of Rites, 17 July 1894, ad 4, n. 3832.

[3] 24 November 1905, n. 4174.

258 **IV. A purificator;** this can be blessed, but need not be.[1] If a purificator cannot easily be had, in its place a small towel can be used, which afterward is not to be used for another use (St. Alphonsus, VI, 389).

[1] Sacred Congregation of Rites, 7 September 1816, n. 2572, ad XII.

259 **V. The chalice veil** is required under venial sin; it can be blessed, but need not be.[1] If it is not had, it is lawful to celebrate without it (St. Alphonsus, VI, 395).

[1] Roman Missal, General Rubrics, title 20.

260 **VI. The burse and hand towel,** which likewise can be blessed, but need not be.[1] It is fitting to use these (St. Alphonsus, VI, 390).

[1] Sacred Congregation of Rites, 28 April 1866, n. 3149.

261 **VII. A small spoon,** by which water is placed into the chalice, can be used. It does not need a blessing, and can be made from any material.

262 **VIII. Cruets** per se must be glass,[1] but by legitimate custom gold and silver ones are permitted;[2] it is fitting to bless them.

[1] Roman Missal, Rite to be observed, title I, n. 1.

[2] Roman Missal, loc. cit.

263 **IX. A little bell,** by which a sign is given, is prescribed under venial sin.

264 **Note 1.** The blessings about which there was mention above can be imparted by the same persons who enjoy the faculty of blessing sacred vestments (n. 266).

Note 2. Some have erroneously judged that vessels and other things do not need consecration or blessing if they have been used in the celebration of the sacrifice before they were consecrated or blessed (St. Alphonsus, VI, 380).

265 **Question 1. To whom is it lawful to touch sacred vessels and sacred linens?**

Response 1. While they contain the Holy Eucharist, they are licitly touched only by priests and deacons. To others this is prohibited under grave sin, except in a case of necessity.

Response 2. While they do not actually contain the Holy Eucharist, canon 1306, § 1 should be considered: "Care should be taken that the chalice with the paten, and before washing the purificators, palls, and corporals which have been used in the sacrifice of the Mass, not be touched except by clerics or by those who have custody of them."

The canon regards: 1. chalices and patens, as soon as they have been consecrated; 2. purificators, palls, and corporals that have been used and not afterward washed; 3. by parity of reason, ciboria and lunules that have been used, that is, after they have in fact touched the Holy Eucharist; but not ostensories, since they do not immediately touch the Holy Eucharist.

The canon permits touching: 1. to clerics; 2. to those who have custody of these things, such as sacristans, both men and women. Nevertheless, to others it is prohibited at most under venial sin;

and a just cause excuses (St. Alphonsus, VI, 382).

Question 2. What things are to be observed as regards the washing of linens used in Mass?

Response. Three washings are prescribed. The first cannot be done except by a cleric constituted in major orders. The second and third, however, can also be done by laypersons. The water of the first washing should be put into the sacrarium or, if this is lacking, into the fire (canon 1306, § 2). For the rest, the first washing is prohibited at most under venial sin, so that a reasonable cause excuses (St. Alphonsus, VI, 387).

Article III. On Sacred Vestments, Etc

266 **I. Sacred vestments,** considered according to their importance, are distinguished into greater and lesser. The greater are the alb, chasuble, and more probably also the stole and maniple. The lesser are the amice and cincture (St. Alphonsus, VI, 377). The following things are to be explained:

1. **The existence and object of the precept.** "A priest about to celebrate Mass," says canon 811, § 1, "shall wear a becoming garment reaching to the ankles and the sacred ornaments prescribed by the rubrics of his rite." If such a garment cannot be had, for example by an outsider, there is an excusing reason. As regards the sacred ornaments, the amice, alb, cincture, stole, maniple, and chasuble are prescribed. Therefore the sacred vestments should be:

a) **Made of the due material; likewise entire, becoming, clean, and beautiful.**[1] As regards the material, the amice and alb should be of linen or hemp.[2] The cincture, without another material being reprobated, can be woolen,[3] also silken, but more fittingly[4] linen; it should not be a band but a cord.[5] The stole, maniple, and chasuble, although they need not be made of silk, should nevertheless be made of precious material, not of cotton, linen, or wool; a semi-silk or silk-threaded material suffices.[6]

b) **Made according to the customary form.** The Sacred Congregation of Rites declared that "it is not lawful, in making and using vestments for the sacrifice of the Mass and sacred functions, to depart from the usage received in the Church, and to introduce another mode and form, even an ancient one."

c) **Blessed.**[7] The blessing can be imparted by: 1. all Cardinals of the Holy Roman Church and all bishops; 2. local Ordinaries lacking episcopal character, for the churches and oratories of their own territory; 3. the pastor for churches and oratories situated in the territory of his parish, and rectors of churches for their own churches; 4. priests delegated by the local Ordinary, within the limits of the delegation and of the jurisdiction of the one delegating; 5. religious superiors - and therefore even non-exempt superiors - and priests of the same religion delegated by them, for their own churches and oratories and for the churches of nuns subject to them (canon 1304).

A sacred vestment loses its blessing: 1. if it has undergone such injuries or changes that it has lost its former form, and is no longer held suitable for its uses (canon 1305, § 1, 1); and this is valid even if one vestment is made from another. Therefore the blessing is lost if the cincture is so broken that neither part suffices for girding the minister, if the alb loses a sleeve, if a maniple is made from a stole, etc. A sacred vestment loses its blessing, 2. if it has been used for indecorous uses or exposed to public sale (canon 1305, § 1, 2).

2. **The gravity of the precept.** a) It is mortal to celebrate without any sacred vestment; indeed, not even the ministering of Viaticum is held to be an excusing cause. It is disputed whether fear of death excuses, scandal and contempt being excluded (St. Alphonsus, VI, 377).[8] Likewise it is grave to celebrate without any blessed sacred vestment.

b) It is also mortal to celebrate without an alb or chasuble, or with them unblessed; likewise to celebrate without a stole and without a maniple, or with them unblessed. A most grave cause would excuse, for example lest a dying person lack Viaticum (St. Alphonsus, loc. cit.).

c) More probably it is mortal to celebrate without a stole or without a maniple, or with either one unblessed. The reason is that the aforesaid vestments seem, according to the mind of the Church, to be numbered among the greater; and this mind of the Church is evident both from the doctrine of the ancient theologians, who rather commonly hold the aforesaid vestments as greater, and from the fact that, just like the chasuble, they must be made from precious material. Nevertheless a grave cause excuses, for example that the people may hear the prescribed Mass (St. Alphonsus, loc. cit.).

d) It is light to celebrate without an amice or cincture. A just cause excuses, for example "fervor of devotion or the opportunity of alms for a priest who is not wealthy" (St. Alphonsus, loc. cit.).

e) The color assigned by the rubrics is of precept, as is clear both from what is to be said about rubrics in general (n. 270), and from responses of the Sacred Congregation of Rites.[9] The obligation, however, apart from grave scandal, is light, so that a just cause excuses; indeed, as St. Alphonsus (VI, 378, doubt 5) teaches with Sporer, it is better "on any day whatever to say Mass in any color whatever than to omit it."

3. **Things to be noted.** a) Besides sacred vestments, it is prescribed that the priest about to celebrate Mass wear a becoming garment reaching to the ankles (canon 811, § 1). Moreover, he should be shod.[10] The shoes should be such as approved clerics of the diocese commonly use in public.[11] "For this, however, it suffices that he be dressed in slippers commonly called *pianelle* or *pantofele*" (St. Alphonsus, VI, 402).

b) He should abstain from the skullcap and ring, unless he is a Cardinal of the Holy Roman Church, a bishop, or a blessed abbot, or unless an apostolic indult permits him to use them in celebrating Mass (canon 811, § 2).

Moreover, it would be mortal to use the skullcap throughout the whole Mass; outside the Canon, however, it is venial, scandal nevertheless being excluded. Hence it is not "illicit to celebrate without a dispensation with the skullcap (except during the Canon and with scandal set aside) for a reasonable cause, if it is evident to those standing by the celebration, for example because of the priest's old age or the coldness of the place, so that one could not celebrate with head uncovered without notable inconvenience" (St. Alphonsus, VI, 397, doubt 1).

c) The use of artificial hair is illicit.[12] Authors note, however, that this prohibition has become obsolete in many regions.

d) To no celebrating priest, except bishops and other prelates enjoying the use of pontificals, is it lawful, solely for the sake of honor or solemnity, to have an assisting priest (canon 812).

[1] Roman Missal, Rite to be observed, title II, n. 1.

[2] Linen and hemp are equated (n. 257).

[3] Sacred Congregation of Rites, 23 December 1862, n. 3118.

[4] Sacred Congregation of Rites, 22 January 1701, n. 2067.

[5] Sacred Congregation of Rites, 24 November 1899, n. 4048.

[6] Cf. *Ephemerides liturgicae* I, 24, 32; 9 December 1925 (*Acta Apostolicae Sedis* 1926, p. 58).

[7] Roman Missal, Rite of Mass, title II, n. 2; *De defectibus*, title X, n. 1.

[8] Cf. Constitution of Benedict XIV, *Aestas anni*, 11 October 1828†.

[9] Sacred Congregation of Rites, 10 December 1829, n. 2675; 12 November 1831, ad 5, n. 2682.

[10] Roman Missal, Rite to be observed, title I, n. 2.

[11] Sacred Congregation of Rites, 31 August 1872, n. 3268, ad 3.

[12] Sacred Congregation of Rites, 4 April 1699, n. 2027, ad 5; indeed it was prohibited by Innocent XI under pain of suspension (in St. Alphonsus, VI, 388).

267 **II. The Missal is required,** although the priest should know by memory the Mass which he intends to say;[1] indeed, considering the danger of erring gravely, it is commonly prescribed under grave obligation. Nevertheless, rather probably one celebrating without a Missal does not sin gravely "if he could not easily have one and, because of past experience, the moral danger of erring were absent. Hence they probably infer that a priest celebrates licitly who, because of weakness of sight, recites the Mass from memory, provided that, to avoid notice, he has the Missal on the altar, or another book in its place" (St. Alphonsus, VI, 390).

[1] Roman Missal, *De defectibus*, title X, n. 1.

268 **III. A cushion or small lectern for the Missal, and the altar cards of the secrets,** are not of precept; nevertheless they are fittingly used.

269 **IV. A server assisting at Mass is required, and indeed a male.** If a man is lacking, a woman can be employed for a just cause, under this law, however, that she answer from a distance and in no way approach the altar (canon 813). Even devotion alone involves a just cause for employing a woman. When the case occurs, however, everything required for the sacrifice should first be conveniently arranged (St. Alphonsus, VI, 392, doubt 2).[1] Moreover:

1. It is mortal to celebrate without any server; nevertheless a grave cause excuses, for example the necessity of ministering Viaticum; likewise, more probably, that the people may hear a Mass of precept. Besides this, rather probably, "once Mass has begun, especially if the oblation has been made, the celebrant is permitted to proceed without a server if the latter has gone away and is not going to return shortly" (St. Alphonsus, VI, 391, doubt 1). Indeed, since nowadays celebration without a server is easily conceded if no one can be found, and this even on a weekday and without a woman answering from afar, therefore, if unexpectedly a priest in a particular case lacks a server, it seems that permission can be presumed even by reason of devotion alone.
2. It is also mortal to employ a woman who ministers immediately; nor does grave necessity excuse, because it is preferable to celebrate without a server than with a woman immediately ministering.
3. It is more easily lawful to celebrate with a server who does not know how to answer than without a server; not, however, so easily as with a woman answering from afar. For the rest, "let the celebrant not make a scruple if the server pronounces badly, nor easily correct errors, lest he

disturb himself or those standing around or the order of the Mass, although Croix with Gobat admonishes that the celebrant should supply what has been omitted by the server" (St. Alphonsus, VI, 391).

[1] Cf. Sacred Congregation of Rites, 27 August 1836, n. 2745, ad 8; 18 March 1899, n. 4015, ad 6.

Article IV. On Rubrics to Be Observed

Canon 818 states: "Any contrary custom being reprobated, the celebrating priest shall accurately and devoutly observe the rubrics of his ritual books, and shall take care not to add other ceremonies or prayers at his own discretion." And canon 819: "The sacrifice of the Mass is to be celebrated in the liturgical language of each one's rite approved by the Church." Therefore Mass in general is to be celebrated according to the rite or rubrics assigned by the Church in the Roman Missal. But authors disagree somewhat about the solution of the question, which rite or which rubrics are in fact prescribed. Hence the matter must be explained more fully:

I. The object of the precept; concerning which the following points seem to be established.

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1. **The rubrics to be observed within Mass are preceptive.** This assertion, which more recent authors commonly admit, is clear from the Council of Trent;[1] likewise from the Bull *Quo primum tempore* of St. Pius V,[2] placed at the beginning of the Roman Missal: "commanding and strictly enjoining upon all... in virtue of holy obedience, that they sing and read Mass according to the rite, manner, and norm which are now handed down by Us through this Missal, and that in the celebration of Mass they not presume to add or recite other ceremonies or prayers than those which are contained in this Missal." Canon 818 is added to this. The opinion which excepts certain lesser things is scarcely reconcilable with the words cited (St. Alphonsus, VI, 399).
2. **It is disputed whether the rubrics to be observed outside Mass,** that is, before or after Mass, are preceptive or merely directive. Moreover, with St. Alphonsus (VI, 399) and most more recent authors, it seems that one must say that they are generally merely directive, unless they present those things which are obligatory from the nature of the matter. The reason is that the Bull cited speaks only of rubrics to be observed in the celebration of Mass, and canon 818 speaks only of the celebrating priest.
3. **In particular it is disputed** - even among those who admit the assertions under 1 and 2 - whether the following are truly prescribed or not:[3]

a) **The prayers assigned before Mass in the Roman Missal.** Rather commonly, and rightly, it is denied that they are truly prescribed, because they are said to be "to be said according to the opportunity of the priest" (St. Alphonsus, VI, 410, doubt 2). The same must be said of the prayers assigned after Mass.

b) **The washing of hands before Mass.** This seems truly to be prescribed, namely by reason of reverence toward the sacrifice, and in view both of its spiritual signification (namely, of spiritual cleanness) and of the precept given in the Old Law. It obliges under venial sin; but from the nature of the matter under grave sin, if the hands are very unclean. After Mass, however, it can be omitted, since it is not prescribed (St. Alphonsus, VI, 409).

c) **The prayers to be recited while the vestments are being put on.** More commonly they teach that these are truly prescribed, because they seem morally to pertain to Mass (St. Alphonsus, VI, 410, doubt 2).

d) **The canticle *Benedicite*.** Some affirm that it is imposed, because in the Order of Mass it is said: "The priest says"; but rather probably it is not truly prescribed, because by the rubric of the Roman Missal[4] it is equated with the other prayers assigned after Mass (cf. St. Alphonsus, VI, 410, doubt 2).

4. **The Ceremonial of Bishops obliges just as the Roman Missal does.** This is clear both from the three Bulls prefixed to it and from the declaration of the Sacred Congregation of Rites[5] (St. Alphonsus, *Examen ordinandorum*, n. 112).

5. **Responses of the Sacred Congregation of Rites present obligation** if they regard rubrics to be observed within Mass; otherwise they are merely directive, unless the contrary is to be drawn from the tenor.

6. **As regards custom against the rubrics, note:**

a) Any custom contrary to the rubrics is reprobated (canon 818), and therefore is not reasonable (canon 27, § 2); nevertheless, when circumstances have changed, more probably it can become reasonable (vol. I, n. 194).

b) Custom cannot derogate from rubrics contained in liturgical books by way of prescription; but it can by way of connivance, or by force of the legislator's personal consent (vol. I, n. 193). Besides this, a usage contrary to the rubrics can be tolerated until it can conveniently be removed by the bishop (vol. I, n. 193). If a decree of the Sacred Congregation of Rites contrary to the custom is added, the custom is of itself abrogated;[6] if it cannot conveniently be removed, the Ordinary should propose the matter to the Sacred Congregation and await the response.

[1] Session 6, canon 13; session 22, decree on what is to be observed and avoided.

[2] 12 July 1570.

[3] On the recitation of Matins with Lauds before Mass, see the treatise on the duties of clerics, n. 2.

[4] Rite to be observed, title XII, n. 6.

[5] Sacred Congregation of Rites, 8 January 1904 (*Acta Sanctae Sedis* XXXVI, p. 428).

[6] Sacred Congregation of Rites, 17 August 1894, n. 3839.

Article IV. On Rubrics to Be Observed

271 **II. The gravity of the precept.** The precept or obligation of rubrics that are truly preceptive is grave from its genus. But the gravity of the matter must be judged not only from the quantity but also from the quality of the rites, as will be clearer from the corollaries. Moreover, one can sin against the precept by omission, addition, change, breaking off, and interruption.

1. **Omission.** Concerning this, notice with St. Alphonsus (VI, 404 sq.): 1. that the ordinary parts, that is, those which occur in every Mass (such as the principal prayers, Epistle, Gospel, etc.), oblige more gravely than the extraordinary parts (such as the Gloria, Creed, Commemorations); 2. that among the ordinary parts, those oblige more gravely which must be said or performed within

the Canon, especially from the Consecration to Communion. With these points noted, with the Doctor mentioned we resolve:

a) It is grave to omit an essential or integral part; the Confession with the other prayers to be said at the foot of the altar; the Epistle; the Gospel; the principal prayers; the mixing of water in the chalice; the oblation of the bread and wine; the Preface; the *Pater noster*; the *Libera nos*; the breaking of the host and the mixing of it with the Blood; the purification of the chalice after Communion. Likewise in the Canon it is grave to omit any prayer whatever; or to change its words so that the sense is varied; or to omit some word such that, once it is removed, the remaining words do not make sense; or to omit, for example, ten names of Saints; or finally to omit several extraordinary parts together (St. Alphonsus, VI, 404, 405).

b) It is light to omit the washing of hands before Mass with the accompanying prayers; the prayers to be said while the priest clothes himself in the sacred vestments; the Psalm *Judica*; Kyrie; Gloria; Creed; Commemorations; or, in place of the proper Preface, *Communicantes*, or *Hanc igitur*, to take the said prayers as they occur in the common (St. Alphonsus, VI, 409).

c) An omitted part must always be supplied when it belongs to the essence or integrity of the Mass; likewise the mixing of water in the chalice, if it is noticed before the Consecration. For the rest, one who by error or forgetfulness has omitted something: if indeed it is light, should proceed; if it is grave and the error is noticed shortly afterward, that is, after a few words, he should resume what was omitted. Hence the Gloria or Creed are not to be resumed if the following prayers have already been begun; nor the Epistle, Gospel, Preface, or *Communicantes*, if he has taken one for another, unless, for example, he detects the error from the beginning of the false Epistle (St. Alphonsus, VI, 403).

2. **Addition.** a) It is a grave sin to add anything with the intention of introducing a new rite; likewise - even without the aforesaid intention - to add something notable (St. Alphonsus, VI, 411).

b) It is light to add: 1. a collect,[1] Gloria, Creed, *Pater*, *Ave*, or something similar; 2. at the elevation, even in a low voice, certain pious words;[2] otherwise, if it is done only mentally; 3. while the Gloria and Creed are being sung in Mass, to recite a canonical Hour from a book[3] (St. Alphonsus, loc. cit.).

3. **Change.** It is light: 1. scandal being excluded, to change the office, that is, to celebrate a Mass which cannot be celebrated on that day; 2. not to sing in solemn Mass the things which are prescribed to be sung; 3. to pronounce the words in a voice other than that prescribed. This, however, is grave: a) when someone pronounces a notable part, especially of the Canon, or the words of Consecration alone, in so loud a voice that they can be heard at a great distance, for example forty paces; b) when the priest forms the words of Consecration so secretly that he cannot even hear himself, unless perhaps deafness or noise prevents hearing. The reason is that he exposes the sacrament to the danger of nullity (n. 24; St. Alphonsus, VI, 413-416). According to the Roman Missal:[4] 1. those things which are to be said in a clear voice must be pronounced "neither... in a voice too loud, lest he disturb others who perhaps are then celebrating in the same church, nor so low that he cannot be heard by those standing around." 2. "But those things which are to be said secretly he should pronounce in such a way that he himself hears himself, and is not heard by those standing around."

4. **Breaking off** consists in this, that Mass begun is not continued but is dismissed. Moreover, breaking off can and must take place:

a) **Before the Consecration:** 1. if the priest before the Consecration notices that he is not fasting, and can withdraw without infamy or scandal; 2. if the church is polluted before the Canon; 3. if before the Canon it is known that a vitandus excommunicate is present and cannot be expelled (St. Alphonsus, VI, 353).

b) **Before and after the Consecration:** 1. if danger threatens, for example because of an attack by enemies, danger of death, or profanation; in which case the priest, according to the circumstances, should at once consume the sacrament or carry it with him while fleeing; 2. if, once the Consecration has certainly or doubtfully been performed, the priest fails; in which case the following should be observed: If the priest who fails is foreseen after some time - even after taking food or drink - to recover his strength, he should be awaited, so that he may complete the sacrifice. If he cannot complete the sacrifice, another should be sought - even one not fasting, if one fasting is lacking[5] - who may complete the sacrifice, beginning where the other left off; if the other still lives and can communicate, and another consecrated Host is not available, the priest who supplies the Mass should divide the Host, and give one part to the sick man, and take the other himself[6] (St. Alphonsus, VI, 355). If, however, Mass cannot be continued within an hour, it need not be completed, because the required unity is probably lacking; nevertheless it can - even after a longer time - be completed, because the said unity is also probably present (St. Alphonsus, loc. cit.). If the sacrifice is not completed, the Host and chalice should be placed in the tabernacle, and on the next day they should be consumed by the celebrant before the purification.

5. **Interruption is lawful:** 1. if an instruction or sermon must be given, or certain things must be announced to the people, which is customarily done after the Gospel; 2. if a religious profession is made within Mass,[7] or if it is permitted by liturgical law for another reason; 3. if necessity befalls the priest; 4. if one's neighbor falls into danger of death. But if this takes place before the Consecration, the priest can minister Baptism or Penance, Viaticum, and Extreme Unction to the dying person. If it occurs after the Consecration, he can confer Baptism or Penance upon him; he must defer the conferral of Viaticum and Extreme Unction until he has finished Mass, or at least has taken the Most Holy Blood; nevertheless Viaticum can be ministered if the dying person is so near that it is not necessary to take off the sacred vestments[8] (St. Alphonsus, VI, 353, 354). Besides this, if the necessity of one's neighbor urges after the Consecration, "let the priest take care that the Sacrament meanwhile be guarded, or let him enclose it in the tabernacle; and after he has returned, let him continue Mass from the point where he interrupted it. If the Consecration has not been made, and a short delay has intervened, for example within an hour, let him proceed where he left off; but if the delay is longer, let him begin from the beginning."[9]

[1] Sacred Congregation of Rites, 27 March 1779, ad VI, n. 2514.

[2] Cf. Sacred Congregation of Rites, 6 November 1925, ad I (*Acta Apostolicae Sedis* 1926, p. 21).

[3] Sacred Congregation of Rites, 20 March 1869, ad IX, n. 3201.

[4] General Rubrics, title XVI, n. 2.

[5] Indeed, if no other is available, even an excommunicate, who in the case must, after grace has been recovered, complete the sacrifice.

[6] Roman Missal, *De defectibus*, title X, n. 3.

[7] Sacred Congregation of Rites, 27 August 1894, n. 3836; 5 June 1896, n. 3912.

[8] Sacred Congregation of Rites, 19 December 1829, n. 2672, ad 1.

[9] Aertnys-Damen, *Theologia moralis*, n. 259.

272 **III. The excusing cause.** One who because of illness or another cause cannot observe all the rubrics can nevertheless celebrate both privately and publicly, if he must omit or change only certain things that are of lesser importance, for example deep inclinations, genuflections down to the ground. If the matter is of greater importance, for example if the priest cannot approach the altar without a cane, or cannot celebrate except with both arms placed on the altar, privately indeed it is lawful to celebrate; publicly, provided the people are warned (St. Alphonsus, VI, 402). Finally, if the matter is wholly extraordinary, for example if the priest cannot celebrate except sitting or by briefly interrupting Mass or while continuously supported by another, a dispensation must be sought from the Holy See, or, for a transitory case, from the bishop.

273 **Corollary I.** In view of the things explained above, St. Alphonsus and most authors rightly teach with Benedict XIV[1] that "Mass should not be shorter than a third of an hour, nor longer than half an hour, because in a shorter space everything cannot be performed with due decorum, and in a longer space it would be tedious to those standing by. Hence we say that a priest who would finish Mass in under a quarter of an hour could with difficulty be excused from mortal sin, even if the Mass is among the shorter ones, or of St. Mary on Saturday; because in so brief a time he must necessarily commit two grave defects, one of grave irreverence toward the Sacrament, the other of grave scandal toward the people... But it is impossible for Mass to be completed in under a quarter of an hour without either words or ceremonies being omitted; or at least without the decency and gravity due to so great a Sacrifice being notably diminished. This must be carefully noticed; for someone perhaps will say that he pronounces the complete words of the Missal well and fulfills all the ceremonies of the Mass well. But although there may be someone so expeditious in tongue and movement that within such a time he would satisfy all the words and ceremonies of the Missal, nevertheless it is at least morally impossible that he celebrate without notably detracting, on the one hand, from the reverence to be offered by him toward the Sacrifice, and, on the other, without himself being the cause that the people assisting fail in the veneration which is owed to that same Sacrifice" (St. Alphonsus, VI, 400).

Corollary II. In conformity with the doctrine stated, St. Alphonsus (loc. cit.) notes with others that "bishops and prelates of regulars are bound under grave obligation to root out disgraceful and scandalous speed."

[1] *De Sacrificio Missae*, section 2, n. 217.

Scholion. On Defects to Be Corrected Both in the Dispensation of the Holy Eucharist and in the Oblation of Mass

274 **I.** "If a consecrated host, or some particle of it, falls to the ground, it should be reverently taken up, and the place where it fell should be cleaned and somewhat scraped, and the dust or scraping of this kind should be put into the sacrarium. If it falls outside the corporal onto the altar cloth, or in any other way onto some linen, the altar cloth or linen of this kind should be diligently washed, and the washing itself poured into the sacrarium."[1] The prescribed washing does not oblige under grave sin. Hence it should rather be omitted whenever it would excite wonder, for example if the host should fall into the beard or clothing of the communicant. If it has slipped into a woman's bosom, she

herself should look for it and hand it to the priest, or herself put it into her mouth with her own hands (St. Alphonsus, VI, 250). If the host has fallen inside the enclosure of nuns, the priest should enter the enclosure.

II. If through negligence something of the Blood of Christ has fallen, one must proceed as follows:

1. If indeed it has fallen upon the ground or upon a board, it should be licked with the tongue, and the place itself scraped as much as is enough, and the scraping burned; the ashes, however, should be stored in the sacrarium.
2. But if it has fallen upon the altar stone, let the priest absorb the drop, and let the place be well washed, and let the washing be cast into the sacrarium.
3. If it has fallen upon the altar linen, and the drop has reached another linen; if even to the third, the linens are to be washed three times where the drop fell, with the chalice placed underneath, and the water of the washing is to be cast into the sacrarium.
4. But if it has fallen only on the corporal itself or on the priestly vestments themselves, it should similarly be washed, and the washing cast into the sacrarium. If it has fallen on the cloth spread under the feet, or on a carpet, it should be well washed, as above.[2]

Moreover, in the spilling of the Blood, at least some washing must be done under grave obligation.

III. If in winter the Blood freezes in the chalice, the chalice should be wrapped in warmed cloths; if this does not help, it should be placed in boiling water near the altar, provided the water does not enter the chalice, until it liquefies.[3]

IV. If the priest "discovers after the consumption of the Body and Blood, or even after the ablution, that some consecrated remnants have been left behind, let him consume them, whether they are small or large, because they pertain to the same sacrifice."[4] Let him do this also if the priest is already in the sacristy, with the vestments not yet removed. If he has removed the vestments, let him place the fragments in the tabernacle or reserve them for a priest who is to celebrate that same morning; and let him proceed in the same way if the fragments are remnants of another sacrifice, because the Rubric permits him to consume only remnants which pertain to the same sacrifice (St. Alphonsus, VI, 251, question 3). But if an entire consecrated Host has been left, "let him put it in the tabernacle with the others; if this cannot be done, let him leave it for the following priest who is to celebrate there, decently covered on the altar over the corporal, to be consumed together with the other which he is going to consecrate; or if neither of these can be done, let him preserve it decently in the chalice itself or on the paten until either it is put into the tabernacle or consumed by another; but if he has no way in which it can be preserved honorably, he can consume it himself."[5]

V. If a ciborium which another priest needs must be purified, and the server through forgetfulness took the purification of the chalice before it had been purified, it is lawful - although the natural fast has ceased - to consume the small remnants found in the ciborium, because the consumption can be counted as by way of one act with Communion. It is more difficult to say that it is lawful to consume an entire host, since it can be kept for the following day.[6]

VI. If a sick person, or "a priest, vomits the Eucharist, if the species appear whole, they should be reverently consumed, unless nausea occurs; for then the consecrated species should be carefully separated and placed in some sacred place until they are corrupted, and afterward they should be cast

into the sacrarium. But if the species do not appear, the vomit should be burned, and the ashes put into the sacrarium."[7] If the sick person cannot swallow the host, or, after receiving Viaticum, immediately dies, the host, if it still appears in the mouth, should be extracted and preserved until it is corrupted.

[1] Roman Missal, *De defectibus*, title X, n. 10.

[2] Roman Missal, *De defectibus*, title X, n. 12.

[3] Roman Missal, *De defectibus*, title X, n. 11.

[4] Roman Missal, *De defectibus*, title VII, n. 2.

[5] Roman Missal, *De defectibus*, title VII, n. 3.

[6] Tamburini, *De methodo communicandi*, chapter 2, n. 37.

[7] Roman Missal, *De defectibus*, title X, n. 14.

Article V. On Confession of the Dying

475 I. A dying person can be absolved who gives a sign of confession to the priest present, for example by a nod of the head, pressure of the hands, the eyes, etc. For all things required for validity, namely intention, manifested contrition, and confession, are present, or at least by law are presumed to be present.[1]

II. Likewise a dying person deprived of the senses can be absolved who showed a desire of confession before the priest approached.[2]

It is disputed whether in this case the dying person is to be absolved absolutely or under condition. Several think that he is to be absolved absolutely, because the Roman Ritual, in the cited place, seems to equate this case with the prior case and makes no mention of a condition. Others teach that absolution must be given under condition, because the accusation required for the validity of the sacrament is not certainly present, and consequently one can also doubt about the disposition (St. Alphonsus, VI, 481).

III. A dying person deprived of the senses, who neither gives a manifest sign of confession to the priest present, nor showed a desire of confession before the arrival of the priest, can be absolved under condition, whenever it is somewhat probable that the things required for validity are present. For in extremities, extreme things are to be tried. Now commonly the intention of receiving the sacrament is not certainly lacking, and perhaps some sign of confession and sorrow is exhibited by the dying person, for example a sigh, although the priest does not notice it. Added to this is that the doctrine is not certainly false which teaches that internal contrition alone, or internal attrition alone, is the necessary condition for the validity of the sacrament. Hence the following can be absolved: 1. a Catholic, whether he lived in a Christian manner or did not live in a Christian manner; 2. a Catholic who is deprived of the senses in the very act of sin, for example drunkenness or suicide; 3. an apostate who before his defection did not reject the priest, because, placed in extreme danger, he perhaps came to his senses; 4. one concerning whom it is doubted whether or not he is Catholic (St. Alphonsus, VI, 482, 483).

Observe that hearing commonly persists longer than the other senses; hence let the priest address the dying person in a loud voice, and suggest to him a general accusation and an act of contrition.

[1] Council of Orange I, chapter 12 (in Labbe, vol. 4, col. 703 sq.); Council of Carthage IV, chapter 76 (in Labbe, cited place, col. 1443; cf. canon *Is qui* 8, cause 26, question 6); St. Leo the Pope, Epistle 108 (otherwise 83) to Theodore, chapter 5 (in Migne, *Patrologia Latina*, vol. 54, col. 1013 sq.); Roman Ritual, title III, chapter 1, n. 25.

[2] Council of Orange I, chapter 12 (in Labbe, vol. 4, col. 703 sq.); Council of Carthage IV, chapter 76 (in Labbe, cited place, col. 1443; cf. canon *Is qui* 8, cause 26, question 6); St. Leo the Pope, Epistle 108 (otherwise 83) to Theodore, chapter 5 (in Migne, *Patrologia Latina*, vol. 54, col. 1013 sq.); Roman Ritual, title III, chapter 1, n. 25.

476 **Question 1.** Whether one can be absolved who, before he was deprived of the senses, rejected the priest.

Response. Having regard to the reverence due to the sacrament, it is better, as it seems, not to absolve him, unless the privation of the senses lasts rather long, or the dying person gives a sign which with some probability can be held as a declaration of a changed will.

Question 2. How often a dying person can be absolved.

Response 1. "While the sick person is still vigorous in his senses, it will help for absolution to be conferred on him several times after a brief reconciliation.

Response 2. "If the sick person now lacks the senses, it is not expedient that absolution be imparted to him more often within the same day. But in this matter the priest ought to direct himself by the conscience which they know of the sick person; for if he was habituated in evil thoughts, if he is dying from some wound, or is ensnared by some passion of hatred or impure love; if the illness is exceedingly bitter and he does not suffer with a willing spirit, then absolution can be given more often; but otherwise it suffices that a space of three or four hours intervene; more frequently, however, if he is already now about to die" (St. Alphonsus, *Praxis Confessarii*, n. 276).

Note. "It will not be beside the point to warn the sick person, while he is in possession of his mind, that, if he cannot speak, he should give some determinate sign while he seeks absolution, or while the priest wishes to confer it on him: for example, let him close or open his eyes, raise his hand, incline his head, and the like" (St. Alphonsus, *Praxis Confessarii*, n. 276).

477 IV. **The apparently dead.**[1] The instant of death, or of the separation of the soul from the body, can be determined by no one. As regards signs that death has followed, not even cadaveric rigidity, but only advanced putrefaction, is held as a certain sign of death. There have been and there are physicians who think that not only in a case of asphyxia, but also in other cases, life persists latently for some time after the ordinary signs of life have ceased; and this both in sudden cases and when disease has had its ordinary outcome.[2] As regards sudden cases, it is reported that several apparently dead persons have returned to the activity of life. As regards ordinary disease, they rely especially on experiments in higher animals. Therefore, having regard to those things which are asserted by some physicians, and which are not to be held as certainly false, it seems one must speak as follows:

1. In a case in which someone has died, apparently, whether from a sudden accident or from a disease which lasted for a brief time, it is strongly to be advised that the necessary sacraments - more safely first Extreme Unction, then Absolution - be administered under condition, and this even two or more hours after someone seems to have died.
2. In a case in which someone seems to have died in the ordinary way, they say that latent life commonly persists for a shorter time, say for a quarter hour or a half hour; hence during that time it is licit to administer the necessary sacraments.

3. Where there is suspicion that a case of asphyxia is present, a still longer time is admitted for administering the sacraments. Such a case can occur after uremia, epilepsy, and other diseases, concerning which Antonelli[3] and Capellmann-Bergmann[4] speak.

[1] Cf. Ferreres-Geniesse, *La mort réelle et la mort apparente, et leurs rapports avec l'administration des Sacrements*; *Revue de Lille*, 1905-1906, p. 442 sq., 481 sq.; *Nouv. Rev. Théol.*, 1906, p. 606 sq.; 1907, p. 497 sq.

[2] Cf. Lacroix, *De Poenitentia*, VI, n. 1104.

[3] Antonelli, *Medicina pastoralis*, II, n. 612 sq.

[4] Capellmann-Bergmann, *Pastoral-Medizin*, p. 358 sq.

Article VI. On Confession of Baptized Non-Catholics

478 We are speaking of baptized non-Catholics who are in good faith, or at least are not certainly in bad faith. Now:

I. Outside danger of death, baptized non-Catholics cannot licitly be absolved. "It is forbidden," thus canon 731, § 2, "to minister the Sacraments of the Church to heretics or schismatics, even those erring in good faith and asking for them, unless first, having rejected their errors, they have been reconciled to the Church."

II. **In danger of death.** We distinguish between non-Catholics who admit confession and those who reject it.

1. Those who admit confession, as for example schismatics, can be absolved as follows:

a) If they are already deprived of the senses, they can be absolved, according to this response of the Holy Office:[1] "Whether absolution and extreme unction can be conferred on schismatics at the point of death when deprived of the senses? Response: under condition, affirmatively, especially if from the circumstances it may be lawful to conjecture that they at least implicitly reject their errors, scandal nevertheless being effectively removed, namely by making manifest to those standing by that the Church supposes that they returned to unity at the last moment."

b) If they are not deprived of the senses, of themselves they cannot be absolved, because of themselves they must first be taught revealed doctrine and fulfill the obligation of embracing it. Added to this is canon 731, § 2, cited above. They seem, however, scandal being removed, to be able to be absolved as if incidentally, whether, after warning has been given, they are judged to persevere in error in good faith, or whether they are not warned, lest perhaps they be deprived of good faith. For first, it is in no way clear what from the nature of the matter stands in the way of the defended opinion. But a merely positive prohibition, where the salvation of a person placed in danger of death is at issue, should not easily be admitted. Then the Holy Office[2], to the question "Whether material schismatics who are in good faith can ever be absolved," the Holy Office, I say, responded to that question: "Since scandal cannot be avoided: negatively; except in danger of death; and then, scandal having been effectively removed."

Objection 1. Canon 731, § 2 absolutely forbids administering the sacraments to schismatics unless first, having rejected their errors, they have been reconciled to the Church; therefore neither in danger of death is it licit.

Response. A priori it is difficult to admit that the canon cannot be combined with the response of the Holy Office. And in fact the canon can well be understood in such a way that it establishes what ought of itself to be done, which does not prevent departure from the rule on account of a very grave cause; and such a cause is certainly present in the case posited.

Objection 2. The Holy Office, on May 17, 1916, to question II, "Whether the sacraments of either absolution or extreme unction can be conferred on material schismatics placed at the point of death, asking for them in good faith, without abjuration of errors," responded: "Negatively, but it is required that, in the best manner possible, they reject their errors and make a profession of faith."[3] Therefore schismatics, at least before they are deprived of the senses, cannot be absolved.

Response. Again, a priori it is difficult to admit that this response cannot be combined with the response of July 20, 1898. And indeed the response can be understood in such a way that schismatics of themselves cannot be absolved unless they reject their errors and make a profession of faith. Indeed the Holy Office, by adding that these things are to be performed "in the best manner possible," perhaps hints that an explicit rejection of errors and profession of faith is not always to be urged.

2. Those who reject confession should not be absolved. Nevertheless, I would not condemn one who conditionally absolves them after they have been incited to penance, according to what was said in n. 41; yet proceed prudently, and especially endeavor to bring them to perfect contrition.

Corollary I. In doubt whether a dying non-Catholic, deprived of the senses, admits confession, he can be absolved under condition.

Corollary II. One who assists a dying non-Catholic should not omit to bring him to perfect contrition and to an act of charity with the other preliminary acts, so that he may be saved more securely.

[1] May 17, 1916, to 2 (in *Theol.-prakt. Quartalschrift*, 1916, p. 692-695).

[2] July 20, 1898 (*Collectanea*, n. 2012).

[3] In *Theol.-prakt. Quartalschrift*, 1916, p. 692-695.

Section III. On the Things to Be Observed in the Oblation of Mass

We must speak of the disposition of the one offering, of the place, time, and rite of offering.

On the Disposition of the One Offering

The priest who is going to celebrate should be fasting from midnight, in the state of grace, and duly prepared.

241 **I. The natural fast.** It is not lawful for a priest to celebrate unless the natural fast from midnight has been observed (canon 808). See the things which regard the natural fast set forth in n. 187 sq. Add canon 247, § 5: "It, that is, the Congregation of the Holy Office, alone is competent concerning all those things which regard the Eucharistic fast for priests celebrating Mass." Finally, the Holy Office declared[1] that priests dispensed from the Eucharistic fast can, before the second Mass, take the ablution in the first.

[1] 16 November 1923 (*Acta Apostolicae Sedis* 1923, p. 584).

242 **II. The state of grace** is required both for carrying out the consecration worthily (n. 26), and for receiving Communion (n. 179).

1. One who has lost the state of grace is bound per se to recover it through sacramental confession (canon 807); per accidens an act of perfect contrition suffices, namely if necessity urges and availability of a confessor is lacking (cited canon). See each of these things more fully explained in n. 179.

2. But if a priest conscious to himself of mortal sin has celebrated, availability of a confessor being lacking and necessity urging, yet after eliciting an act of perfect contrition, let him confess as soon as possible (canon 807).[1] It is said:

a) **A priest**; and so the law does not bind a layperson or a cleric not yet initiated into the priesthood (St. Alphonsus, VI, 268).

b) **Availability of a confessor being lacking and necessity urging, yet after eliciting an act of perfect contrition**; hence the law does not regard a priest who has celebrated without confession when either availability of a confessor was not lacking, or necessity was not urging, or the act of contrition was neglected. Those who celebrate thus commit sacrilege; but the reason why the law does not include sacrilegious persons is that it would become useless and an occasion of a new transgression (St. Alphonsus, VI, 260).

c) **Without sacramental confession having been made beforehand**; and so a priest is not held by the law if he celebrated after a confession in which he inculpably forgot a mortal sin, because he did not celebrate without a previous confession (St. Alphonsus, VI, 267).

d) **Has celebrated**; therefore a priest who has merely communicated is excepted. It is disputed, however, whether the law includes a priest who, while celebrating, remembers a grave sin or becomes guilty of one. Several deny this, because in the rubric[2] it is said that a priest who before Mass remembers a sin and celebrates from necessity, not having availability of a confessor, is bound afterward to confess at the first opportunity. But speaking of one who remembers a sin in the celebration itself, the rubric[3] says: Let him be contrite with the purpose of confessing, without adding: at the first opportunity (cf. St. Alphonsus, VI, 267).

e) **Let him confess as soon as possible.** Moreover:

alpha) Here there is a true precept; hence Alexander VII condemned the proposition: "The mandate of Trent made to a priest sacrificing from necessity with mortal sin, to confess as soon as possible, is counsel, not a precept."[4] Moreover, that precept by the consent of all obliges under grave sin.

beta) This "as soon as possible," according to the common opinion, is understood as within three days, or in such a way that it is not lawful to wait beyond three days.[5] The obligation of confessing exists even if someone is not going to celebrate except after a longer time. Moreover, meanwhile the priest cannot again celebrate without previous confession unless both necessity of celebrating is present and availability of a confessor is lacking. Finally, if someone can confess now and foresees that afterward the occasion of confessing will be lacking, he is bound to confess now, for example already on the first day (St. Alphonsus, VI, 266).

[1] Council of Trent, session 13, chapter 7.

[2] *De defectibus*, title VIII, n. 3.

[3] *De defectibus*, title VII, n. 4.

[4] Denzinger-Bannwart, n. 1138.

[5] Alexander VII condemned the proposition: "That particle 'as soon as possible' is understood as, when the priest will confess in his own time" (Denzinger-Bannwart, n. 1139).

243 **III. Preparation and thanksgiving.** Let the priest not omit to dispose himself by pious prayers for the oblation of the Eucharistic sacrifice, and, once it has been completed, to give thanks to God for so great a benefit (canon 810).

Treatise V. On Penance

(St. Thomas, part 3, questions 84-90; Supplement, questions 1-28; St. Alphonsus, *Theologia moralis*, book VI, nn. 425-705; *Homo Apostolicus*, treatise 16.)

Before we discuss the sacrament of Penance, we shall undertake a discourse on the act itself of doing penance: both because the act of doing penance and the sacrament are intimately connected, indeed in such a way that the act of doing penance constitutes a part of the sacrament; and because, once the very act of doing penance has been explained, many things to be said about the sacrament are perceived better. Hence:

Dissertation I. On the Act of Doing Penance

(St. Thomas, part 3, question 85; St. Alphonsus, *Theologia moralis*, book VI, nn. 433-442.)

We shall speak of the notion, necessity, and effects of the act of doing penance; namely, of the salutary act, with which alone we are concerned.

Part I. On the Notion of the Act of Doing Penance

275 The act of doing penance consists essentially in detestation and sorrow concerning a committed sin, insofar as it is an offense against God, with the purpose of no longer sinning, or, in other words, in contrition.[1] Therefore the act of doing penance requires:

I. Detestation and sorrow. This is laid down against Luther, who taught that penance consists in recognition of one's former error and a change of purpose, with detestation and sorrow excluded. But the doctrine stated is clear:

1. From Sacred Scripture, which, besides amendment of life, requires detestation and sorrow concerning sin: "Be converted to me with all your heart, in fasting and in weeping and in mourning, and rend your hearts."[2] Again: "Now I rejoice, not because you were made sorrowful, but because you were made sorrowful unto penance."[3]
2. From the testimonies of the Fathers. Thus Tertullian,[4] St. Cyprian,[5] St. Augustine,[6] St. Ambrose.[7]
3. From reason. By sinning, a man has inflicted injury upon God. But one who has inflicted injury upon God cannot expect pardon unless he repairs the injury, at least by detesting it and sorrowing over it.

II. Concerning the sin committed, insofar as it is an offense against God, or, in other words, concerning sin taken formally, so that the offense against God is the object which the sinner detests. And indeed, in order that penance be salutary, that is, that it help to reconcile man with God, the sinner must detest his very aversion from God, or sin taken formally.

III. The purpose of no longer sinning. That this is required is clear both from Sacred Scripture,[8] and from the fact that no one can be reconciled with God unless the will is simply opposed to offense against God. But such a will involves the purpose, at least implicit, of no longer sinning.

Corollary I. The act of doing penance can proceed from the motive both of the virtue of penance and of another virtue to which sin is opposed. Moreover, to some virtues, for example charity, religion, gratitude toward God - which are called universal - all sins are opposed; hence from the motive of these virtues we can repent of all sins. But to others, which are called particular, only particular sins are opposed, for example lust to chastity; hence from the motive of those virtues an act of doing penance cannot be elicited except concerning a particular sin.

Corollary II. The act of doing penance concerning sin considered under the aspect of an offense against God is simply an act of the virtue of penance. But if the said act is elicited under the influence of the motive of another virtue, there is an act elicited by the virtue of penance, but commanded by that virtue whose motive is specifically proper. The reason for the former is that an act is specified from the formal object *which*; but in this case sin is considered under the aspect of offense against God, which is the formal object *which* of the virtue of penance. The latter is set forth by St. Thomas in these words: "This is the difference between eliciting an act and commanding: that a habit or power elicits that act which it produces with no intermediary; but it commands an act which is produced by means of an inferior power or habit concerning the object of that power" (3, distinction 27, question 2, article 4, solution 3).

[1] Cf. Council of Trent, session 14, chapter 4.

[2] Joel 2:12.

[3] 2 Corinthians 7:9.

[4] *De Poenitentia*, chapter 9.

[5] *De lapsis*, n. 35 (Migne, *Patrologia Latina*, vol. 4, col. 492).

[6] Sermon 351, chapter 5, n. 12 (ed. Gaume, vol. 5, col. 2019).

[7] *De Poenitentia*, book II, chapter 10.

[8] Cf. Ezekiel 18:31 sq.

Scholion. On the Virtue of Penance

276 The virtue of penance is a habit inclining man to the destruction of his own past sin, insofar as it is an offense against God (St. Thomas, part 3, question 85, article 2). Moreover:

The remote material object is every personal sin, even one remitted. The proximate material object is its acts, whether elicited or commanded. The chief elicited acts are detestation, sorrow, and the purpose of not sinning further; the commanded acts are all those acts of other virtues which the penitent performs from the motive of penance, or which he directs to expiating the offense.

The remote formal object is the violated divine right as to be repaired by satisfaction; but the proximate formal object is the special moral goodness shining forth in repairing, by satisfaction, the violated divine right.

Corollary I. Penance is a special virtue. "The species of habits," says Aquinas, "are distinguished according to the species of acts; and therefore, where a special praiseworthy act occurs, there it is necessary to posit a special habit of virtue. But it is manifest that in penance there is found a special aspect of a praiseworthy act, namely, to work for the destruction of past sin, insofar as it is an offense against God, which does not belong to the aspect of another virtue. Hence it is necessary to posit that penance is a special virtue" (part 3, question 85, article 2).

Corollary II. The special virtue of penance is a potential part of the cardinal virtue of justice; or, in other words, it participates in the nature of justice, yet is not perfect justice. The former is clear from the fact that justice regards those things which are owed to another (vol. I, n. 755). But penance regards the reparation of an offense owed to another, that is, to God. The latter follows from the fact that perfect justice renders what is owed according to equality (vol. I, n. 755). But man cannot render according to equality the reparation of the offense owed to God.

Part II. On the Necessity of the Act of Doing Penance

The act of doing penance is necessary by necessity both of means and of precept.

277 **I. Necessity of means.** We are not asking whether God, absolutely speaking, can remit sin to one who does not repent - concerning which there is dispute - but we are asking whether, in the present order of Providence, penance is necessary for the sinner. Now then: some penance[1] is necessary by necessity of means for those fallen into mortal sin. This is clear:

1. From Sacred Scripture, which presents penance as a necessary condition for obtaining remission.[2]
2. From the Council of Trent: "Penance was indeed necessary at all times for all men who had defiled themselves by some mortal sin, in order to obtain grace and justice, even for those who had sought to be washed by the sacrament of Baptism, so that, perversity having been cast off and amended, they might detest so great an offense of God with hatred of sin and pious sorrow of soul."[3]
3. From the holy Fathers. Thus teach, for example, St. Ambrose,[4] St. Augustine,[5] St. Jerome.[6]
4. From the reason of fittingness. For it is not fitting that sin, that is, an injury inflicted upon God, be remitted unless the sinner repairs it - which is done by detesting it - and now wills not to afflict God with a new injury (St. Thomas, 3, question 86, article 2).

In what way the proposition proved can be reconciled with the certain doctrine which teaches that an act of charity justifies is explained in n. 282.

[1] Namely, perfect contrition, or imperfect contrition together with the sacrament, or - as others add - together with martyrdom.

[2] Cf. Sirach 2:22; Ezekiel 18:21-32; Luke 13:5; Matthew 3:7; Acts 3:19.

[3] Session 14, chapter 1.

[4] Letter 51, n. 11 (Migne, *Patrologia Latina*, vol. 16, col. 1162).

[5] Letter 93, chapter 13, n. 53 (ed. Gaume, vol. 2, col. 377).

[6] Commentary on Ecclesiastes 8:12 (Migne, *Patrologia Latina*, vol. 23, col. 1077 C).

278 **II. Necessity of precept.** This brings it about that he who neglects the act of doing penance not only does not obtain justification, but also commits a new sin.

1. **The existence of the precept** is clear from the fact that penance is prescribed in the Scriptures by imperative words.[1] Next, every act necessary by necessity of means is also prescribed. Finally, reason dictates that an injury inflicted upon God must be repaired.
2. **The object of the precept.** The precept obliges either to an act of perfect contrition in the absence of the sacrament, or at least to attrition with the sacrament of Penance (or of Baptism as regards an unbeliever); likewise to undergoing the punishments inflicted by God because of sin. It seems that, in itself, no special precept is given of taking away or lessening the debts of temporal punishment, so that in itself the sinner does not sin who defers the expiation of the temporal punishment owed into the other life. I said in itself, because often from elsewhere there is an obligation of doing works which in fact diminish temporal punishment.

3. **The time of the obligation.** The precept of doing penance obliges the sinner:

a) **In itself,** that is, by reason of penance itself: 1. in danger of death or madness, because one who then neglects penance is judged in no way to will it. 2. It is disputed whether, in itself, there is an obligation not to defer penance for a long time after sin has been committed. St. Alphonsus rightly holds the negative opinion as sufficiently probable (VI, 437); for if a long delay of reparation owed to God is injurious, it seems that the same, by the same right, must be said of every delay. But no one admits that.

b) **By accident,** that is, by reason of another virtue: 1. when someone must or wishes to confect a sacrament; 2. when someone must or wishes to receive a sacrament of the living; 3. when someone would suffer grave temptations which he believed he could not resist unless he elicits an act of contrition; likewise, 4. when generally the delay of penance would expose someone to grave danger of sinning gravely. Concerning this, note these words of St. Thomas: without sanctifying grace, "that one remain for a long time without mortal sin is not possible" (1-2, question 109, article 8); likewise these words of St. Gregory: "Sin... which penance does not quickly wash away... by its own weight soon draws one to another";[2] 5. when the precept of charity toward God urges, and the memory of sin occurs to the sinner (St. Alphonsus, VI, 437). "Nevertheless, I do not deny that sinners, especially the rude, can for the most part, indeed almost always, be excused from this sin of delayed penance by reason of lack of advertence" (St. Alphonsus, loc. cit., doubt 1).

[1] Matthew 4:17; Acts 2:38.

[2] *Moralia*, book 25, chapter 9, n. 22; in Migne, *Patrologia Latina*, vol. 76, col. 334. St. Alphonsus, having considered this cause, judges a delay for the space of one year excessive (VI, 437, doubt 1).

279 **Corollary I.** One who neglects penance obligatory from the virtue of penance commits the sin of impenitence; one who omits penance prescribed from another source sins against that virtue from which penance is prescribed.

Corollary II. The faithful can indeed be taught the obligation of not deferring penance for a long time; nevertheless no statement should be made about a span of time which would constitute grave sin. Besides this, they should be stirred up to elicit perfect contrition every morning and evening, and also soon after committing a grave sin.

Part III. On the Effects of the Act of Doing Penance

After we have explained that the act of doing penance is necessary for the remission of any sin whatever, or, in other words, that sins are not remitted without penance, it must be seen whether and to what extent the very act of doing penance remits sins, both mortal and venial; likewise whether and to what extent it produces other effects, for example the remission of remaining temporal punishment, etc. For the sake of completeness and clarity, we shall treat the individual effects in distinct sections, and we shall explain all the things which regard each effect.

Section I. On the Remission of Mortal Sins

280 **I. Mortal sins can be remitted without the remission of venial sins.** The reason is that one can detest mortal sins without detesting venial sins, and the formal cause of the remission of mortal sin, which is sanctifying grace, is not opposed to venial sin.

281 **II. One mortal sin cannot be remitted without another.** For a mortal sin is formally remitted through the infusion of grace, or at least in this order of Providence it is not remitted without that infusion. But sanctifying grace does not exist with any mortal sin.

282 **III. The following proximately dispose for the infusion of sanctifying grace, and in this sense remit mortal sins:**

1. **Formal contrition, perfected by charity.** This is clear: 1. from Sacred Scripture;[1] 2. from the Council of Trent;[2] 3. from the condemned proposition 71 of Baius.[3] But the arguments proposed also prove that no certain degree of intensity is required in order that perfect contrition proximately dispose for justification. For the documents adduced teach absolutely, with no mention made of a degree of intensity, that perfect contrition justifies.
2. **An act of charity, even without formal detestation of sin.** This is proved: 1. from Sacred Scripture;[4] 2. from the condemned propositions 31, 32, and 70 of Baius;[5] 3. by theological reason. For an act of charity explicitly contains that whole motive on which the dignity of perfect contrition depends, which, as was said under 1, proximately disposes for justification.

It is disputed in what way the efficacy of perfect charity must be reconciled with the necessity of penance. Moreover, some say that charity does not justify except dependently on formal penance, or except insofar as it contains the desire of formal penance. That this desire is contained at least implicitly in the act of charity is clear from the fact that one who loves God wills the things which God wills. But God wills or commands formal penance. Others judge that charity justifies because it is virtually formal penance. For it is the perfect conversion of the soul to God loved above all things, and therefore a true detestation of sin, though virtual, from the most perfect motive. Whatever the case may be, it is certain that a baptized sinner is not justified, either by perfect contrition or by charity, except dependently on the sacrament of Penance, or except insofar as these involve the reception of the sacrament in desire; but reception of the sacrament does not take place without formal penance.

3. **Imperfect contrition together with the sacrament,** whether of Baptism (n. 61), or of Penance (n. 357),[6] or, as others add, together with martyrdom (vol. I, n. 418).

[1] Ezekiel 18:21; 33:14 sq.

[2] Session 14, chapter 4.

[3] Denzinger-Bannwart, n. 1071.

[4] 1 John 4:7.

[5] Denzinger-Bannwart, nn. 1031, 1032, 1070.

[6] As regards the sacraments of the living, cf. the treatise on the sacraments in general (n. 6).

Section II. On the Conferral of Sanctifying Grace

283 That sanctifying grace is conferred upon the penitent follows from the fact that the remission of mortal sins formally takes place through the infusion of grace, or at least in this order does not take place without that infusion.

But supernatural virtues and the gifts of the Holy Spirit accompany sanctifying grace.

Section III. On the Remission of Venial Sins

284 **I. No venial sin is remitted while mortal sin remains.** For one who remains in divine enmity and does not offer fitting compensation for the grave injury inflicted upon God is unworthy for pardon of a lighter injury to be granted to him (St. Thomas, 3, question 87, article 4).

II. One venial sin can be remitted without another being remitted. The reason is that one can detest one venial sin, namely because of its greater malice or from its own proper motive, without detesting another.

III. Venial sins are remitted by:

1. **An act of perfect contrition,** according to some, remits the venial sins to which it extends formally or virtually. But others say better that perfect contrition concerning one venial sin necessarily extends itself to all, and therefore remits all. For just as in relation to mortal sins contrition is detestation and sorrow concerning sin insofar as it is an offense against God loved above all things, and therefore necessarily extends itself to all mortal sins, so also in relation to venial sins, which are offenses against God in a qualified sense, contrition is detestation and sorrow concerning venial sin insofar as it is an offense in a qualified sense against God loved above all things, and therefore necessarily extends itself to all venial sins.[1]
2. **An act of perfect charity** remits venial sins, of which it involves virtual penance. Hence all venial sins are pardoned by charity "when someone is borne in affection toward God and divine things in such a way that whatever should occur to him which would hinder him from this movement would displease him, and he would sorrow that he had committed it, even if he is not actually thinking about it" (St. Thomas, part 3, question 87, article 1).
3. **Any attrition, whether formal or virtual,**[2] seems to suffice for the remission of certain venial sins (St. Thomas, 3, question 87, article 2 and ad 3, and article 3): both because the light offenses of friends are more easily pardoned than the grave injuries of enemies, so that perfect contrition does not seem to be required for the remission of venial sins as it is - at least in the absence of the sacrament - for the remission of mortal sins; and because this attrition, as a meritorious act of a friend and son, has a greater proportion to pardon than the act of an unjust man attrite concerning mortal sins. Nevertheless, it is disputed whether any attrition suffices to destroy all

venial sins to which it extends formally or virtually, or whether a more perfect attrition is required if the matter concerns a graver venial sin.[3]

4. **The sacraments.** Concerning these, note:

a) It is certain that Baptism, Extreme Unction, Penance, and the Holy Eucharist, at least in some sense, remit venial sins. For Baptism is a perfect washing; absolution extends itself to all things which are subjected to the keys; and the form of Extreme Unction is universal. As regards the Holy Eucharist, this is established from Trent.[4] The same is taught rather commonly concerning the three other sacraments (St. Thomas, part 3, question 87, article 2).

b) The sacraments certainly remit venial sins insofar as they move one to the acts explained under 1, 2, and 3, that is, to perfect contrition, to perfect charity, and to attrition.

It is disputed whether, besides this, the sacraments remit venial sins in another way. Moreover, some who deny that outside the sacrament any attrition suffices for destroying the venial sins to which it extends judge that in the sacrament any attrition suffices for the sacraments directly to remit the venial sins to which the attrition extends. Others - such as Suarez and many of those who teach that any attrition of itself alone suffices for the remission of venial sins - think that in the sacraments, at least in the Holy Eucharist, it is enough that "a man approach without actual complacency in venial sin and with the desire of receiving the sacrament and its fruit."[5] Finally, others teach that venial sins are never remitted immediately through the sacraments, but only by means of pious movements which are opposed to venial sin either explicitly or implicitly; concerning these see pp. 209-210, under 1, 2, and 3.

5. **Sacramentals.** Of these, some remit venial sins because and insofar as they have joined to them an act remissive of venial sins, for example attrition, as the striking of the breast, the *Confiteor*. Others conduce to their remission insofar as, from the impetration of the Church, God often - not infallibly - confers some pious movement upon those using them, for example blessed water.

Note. It is disputed in what way venial sins are remitted in those who have departed this life with the guilt of venial fault. St. Thomas, to whom St. Alphonsus adheres (*Opera dogmatica*, vol. I, p. 675), says as follows: "Venial sins are remitted in them after this life even as regards guilt by an act of charity toward God, repugnant to the venial sins committed in this life. Yet because after this life there is not the state of meriting, that movement of love in them indeed removes the impediment of venial fault, but does not merit absolution or diminution of punishment, as in this life" (*De Malo*, question 7, article 11).

IV. Venial sins are formally remitted by a contrary act, not by the infusion of grace, although this remission does not take place without a concomitant infusion or increase of grace, or at least without a right to this increase. The reason for the former is that no degree of sanctifying grace is incompatible with venial sin; this is clear from the fact that a man having however much grace can sin venially without losing anything of sanctifying grace. Therefore no degree of grace formally expels venial sins. The latter is clear from the fact that no venial sin is remitted without some penance, and therefore without a work meritorious of an increase of grace, or of a right to this increase.

[1] Cf. the Salmanticenses, Commentary on part 3, question 87, article 1, nn. 3-4, and *De sacramentis in communi*, disputation 10, doubt 2, n. 11.

[2] Virtual attrition is involved, for example, by a petition for pardon from God, the purpose of not committing such a sin again, an act of the opposite virtue, and any meritorious act referred to obtaining pardon (cf. St. Thomas, part 3, question 87, article 3).

[3] There are also some, though few, who require an act of formal penance for the remission of venial sins. Thus, for example, Durandus (IV Sentences, distinction 16, question 2).

[4] Session 13, on the Eucharist, chapter 2.

[5] Suarez, disputation 12, section 1, n. 9.

Section IV. On the Remission of Punishment

285 **I. By sinning, man contracts:** 1. the guilt of fault, by which he is formally constituted a sinner; 2. the guilt of punishment, by which, because of the guilt of fault, he becomes liable to punishments to be undergone. Moreover, while the fault remains, the punishment which follows the fault cannot be taken away. But when the fault has been removed, the guilt of eternal punishment is necessarily taken away, but not the guilt of temporal punishment. For the former cannot consist with the friendship of God and a right to eternal beatitude; but the latter must be spoken of otherwise. Indeed:

II. In fact, the whole temporal punishment is not always remitted with the fault. This is of faith from the Council of Trent.[1] It is also clear from Sacred Scripture.[2]

III. The punishment remaining after the remission of fault is remitted, or at least diminished, by:

1. **Ex opere operato:** the sacraments, the sacrifice, indulgences, and sacramental satisfaction, each of which applies the satisfaction of Christ.
2. **Ex opere operantis:** satispassion and satisfaction. Satispassion consists in this, that someone suffers the punishments which God of himself has appointed for sin. Satisfaction is situated in this, that someone performs a penal work or works which God accepts in compensation for the punishment appointed of itself. Satisfaction, however, can be offered through all good works, because all are penal to some extent. Besides this, one just person can satisfy for another just person,[3] as is deduced: 1. from the fact that we can satisfy for the souls in purgatory; 2. from the communion of Saints, by which it comes about that the members of the Church can aid one another. Nevertheless, it is not altogether certain that God always accepts satisfaction of this kind for others.
3. It is disputed whether the remission of temporal punishment can also be obtained by impetration. It seems that it must be answered affirmatively, because the Church herself in the office of the dead asks God that through the intercession of the Blessed Virgin Mary and of the other Saints he free the souls from purgatory; but it is clear that the works of those Saints are not penal.

Corollary. Sins are remitted through penance in such a way that they do not return in any way on account of a subsequent sin, neither as regards the guilt of fault nor as regards the guilt of punishment. The guilt of fault does not return; this is clear: 1. from Sacred Scripture;[4] 2. from the fact that through justification sin is truly remitted and destroyed; but what has truly been destroyed cannot be imputed again. Nor does the guilt of punishment return; for this cannot return unless the guilt of fault returns.

[1] Session 14, on Penance, canon 12.

[2] Numbers 12:14 sq.; 20:1 sq.; 27:12 sq.; Deuteronomy 34:1 sq.; 2 Samuel 12:13 sq.

[3] It is required that each be in the state of grace: the one satisfying, so that his work may be satisfactory; the one for whom satisfaction is made, so that the punishment can be remitted.

[4] Isaiah 1:18; Ezekiel 33:12, 16; Micah 7:19.

Section V. On the Reviviscence of Merits

286 **I. Works are distinguished into living, death-bearing, dead, and mortified.** Living works are those which are done in the state of grace, and therefore proceed from a living principle, and merit eternal life. Those are called death-bearing which deprive man of the life of grace and of the right to eternal life, or, in other words, mortal sins; likewise - others add - venial sins, since they lead to mortal sins. Dead works are called good works which are done in the state of sin, and therefore do not proceed from a living principle, nor merit eternal life. Mortified works are those which were done in the state of grace, and therefore proceeded from a living principle and merited eternal life, but because of a supervening sin have been deprived of vital force, or of value for eternal life. Moreover:

II. Mortified works, once sin has been remitted through penance, revive, or recover the value for eternal life which they had lost. This is deduced: 1. from Sacred Scripture;[1] 2. from the Council of Trent;[2] and it is affirmed by St. Thomas (3, question 89, article 5), who teaches that mortified merits remain so far as they are in themselves, and in fact do not efficaciously lead to eternal life because of the impediment of supervening sin; but this impediment is supposed to be set aside through penance.

III. As regards the mode or degree of reviviscence, it must be said that the justified person immediately receives a right to all grace previously possessed and to the total essential reward. It is disputed, however, whether the grace previously possessed is immediately infused into the soul - and indeed either all of it, or, as others wish, according to the measure of the present disposition - or only in the first instant after death. Moreover, the preferred opinion is that which teaches that all the grace possessed is immediately infused. For this alone sufficiently preserves the reviviscence of merits such as seems to be deduced from the arguments, and this alone agrees with the proper notion of reviviscence, according to which penance seems to have itself toward reviviscence as removing what prohibits, not by way of disposition.

[1] Ezekiel 33:12.

[2] Session 6, on Justification, canon 32.

[3] Other opinions seem less probable.

Dissertation II. On the Sacrament of Penance

(St. Thomas, part 3, questions 84-90; Supplement, questions 1-28; St. Alphonsus, *Theologia moralis*, book VI, nn. 425-705; *Homo Apostolicus*, treatise 16.)

287 Before we speak of the sacrament of Penance, it is pleasing to premise certain things concerning the power of the Church to remit sins. And we do this both for the sake of completeness, and so that the connection of the whole theological doctrine on this matter may be clear; since the very use of the power to be explained constitutes the form of the sacrament, so that, once that power has been explained, we shall pass by a natural path to explaining the sacrament of Penance itself. Therefore let these points be set down:

I. Christ granted to the Apostles the power of remitting sins. This is of faith from these words of the Council of Trent: "If anyone says that those words of the Lord Savior, 'Receive the Holy Spirit; whose sins you shall forgive, they are forgiven them; and whose sins you shall retain, they are retained,' are not to be understood of the power of forgiving and retaining sins in the sacrament of Penance, as the Catholic Church has always understood from the beginning, but twists them, contrary to the institution of this sacrament, to the authority of preaching the Gospel: let him be anathema."[1]

II. The power of remitting and retaining sins differs from the power of baptizing. For the former, as we shall immediately say, is judicial, and therefore does not regard any except subjects, that is, the baptized, or those upon whom the power of baptizing has already been exercised. It is added that the power of baptizing cannot be exercised again upon the same person; otherwise than the power of remitting sins.

III. The power of remitting sins is judicial. This is of faith from the Council of Trent: "If anyone says that the sacramental absolution of the priest is not a judicial act, but a bare ministry of pronouncing and declaring that sins have been forgiven to the one confessing... let him be anathema."[2] And indeed three things are required for judicial power: 1. that the power be instituted by the supreme prince of the society; 2. that through it the application of law to a particular case be made; 3. that the application be made according to the merit of the cause. And all these things concur in the power of remitting and retaining sins. For: 1. the said power was instituted by Christ, the Prince of the Church (n. I); 2. through it the application of the divine law to a particular case is made, by which God has established that through his ministers he at one time remits, at another time retains, the sins of the baptized; 3. this application is made according to the merit of the cause, namely in such a way that the ministers remit or retain sins not according to their own whim, but according to the conditions required by Christ.

IV. The power of remitting sins extends itself to all sins of the baptized. This is clear from the breadth of Christ's words which were cited above. I said, however, of the baptized, because this power, as judicial, can be exercised upon subjects alone, that is, the baptized. For the rest, it is clear from elsewhere that sins committed before Baptism are remitted through Baptism (n. 61).

V. The power of remitting and retaining sins is perpetual in the Church. This is clear: 1. from the immutability with which Christ willed his Church to be furnished; 2. from the fact that until the end of the world there will exist sinners to be reconciled in the Church.

VI. The Church is bound to use the power explained, so that it is not lawful arbitrarily to repel anyone rightly disposed from the benefit of pardon to be obtained through the power of the keys. Theologians dispute concerning the right, for the public good, of repelling certain sinners in determinate cases; just as there also exists a controversy among dogmatic-historical writers concerning the existence of a universal discipline of excluding certain kinds of sin from pardon to be obtained through the ministry of the keys.[3]

With these points premised, we shall speak first of the sacrament of Penance considered in itself, then of the ministration, and then of the reception of the sacrament of Penance.

[1] Session 14, canon 3.

[2] Session 14, canon 9.

[3] *Ned. Kath. Stemmen*, 1909, p. 304 sq.

Part I. On the Sacrament of Penance Considered in Itself

288 Penance is the sacrament in which, through judicial absolution imparted by a legitimate minister, sins committed after Baptism are remitted to a rightly disposed member of the faithful (canon 870).

Once this definition has been handed down, we must treat first of the existence, then of the essence, then of the effects, and finally of the necessity of the sacrament of Penance.

Section I. On the Existence of the Sacrament of Penance

289 **I. Penance is a true sacrament of the New Law;** this proposition is of faith from the Council of Trent: "If anyone says that in the Catholic Church Penance is not truly and properly a sacrament... instituted by Christ our Lord, let him be anathema."[1]

Note. As regards the time of institution of this sacrament, the Council of Trent teaches:[2] "But the Lord instituted the sacrament of Penance especially[3] then, when, raised from the dead, he breathed upon his disciples, saying: 'Receive the Holy Spirit; whose sins you shall forgive...' By so signal a deed and by words so clear, the consensus of all the Fathers has always understood that the power of remitting and retaining sins, for reconciling the faithful fallen after Baptism, was communicated to the Apostles and to their legitimate successors."

II. Penance is a sacrament really distinct from the sacrament of Baptism; this proposition likewise is of faith from the Council of Trent: "If anyone, confounding the sacraments, says that Baptism itself is the sacrament of Penance... let him be anathema."[4]

[1] Session 14, canon 1.

[2] Session 14, chapter 1.

[3] It is said "especially" because Christ had already promised the sacrament earlier (Matthew 16:19 and 18:18).

[4] Session 14, canon 2.

Section II. On the Essence of the Sacrament of Penance

The sacrament of Penance supposes remote matter; and once that has been posited, it is integrally constituted by proximate matter, form, and an integrating part. Now then:

290 **I. The remote matter of Penance,** that is, that around which the sacramental action can be concerned, is all sins committed after Baptism (n. 293; canon 902).[1]

[1] Roman Ritual, title III, chapter 1, n. 1.

291 **II. Proximate matter.**

1. **Proximate matter strictly so called** - that is, that which with absolution constitutes the essence of the sacrament - is the contrition and confession of the penitent. Thus St. Thomas (part 3, question 84, article 2), St. Bonaventure,[1] St. Alphonsus (VI, 425), the Thomists, some Scotists, and most more recent authors. But Scotus[2] and most Scotists teach that contrition and confession, externally manifested nevertheless, are only conditions required for the validity of the sacrament. Finally, some[3] hold as probable that internal contrition or attrition alone is the condition necessary for the validity of the sacrament; for the rest, that the essence of the sacrament is completed by the form alone, which, insofar as it is an external ceremony, constitutes

the matter, and insofar as it has the power of signifying, constitutes the form. This opinion is almost commonly rejected. Of the opinions explained, the first is much more common and more probable; and the Roman Ritual[4] and the Roman Catechism[5] favor it. For the rest, note:

a) Contrition and confession become the matter of the sacrament insofar as by the minister, through absolution, they are assumed or elevated into parts or matter. But it is disputed whether and to what extent the aforesaid acts must be referred to the sacrament by the penitent himself; concerning this dispute there will be discussion later.

b) Contrition, which in itself is internal and spiritual, is not an essential part of the sacrament, that is, of the external sign, except insofar as it becomes sensible through confession or through the petition for or expectation of absolution (St. Alphonsus, VI, 445, 459).

c) It is disputed whether satisfaction in purpose, or the will of fulfilling the imposed satisfaction, is an essential element, or, in other words, whether it pertains to proximate matter strictly so called. Many affirm this, because the Council of Florence and the Council of Trent speak in the same way about satisfaction as about contrition and confession, so that satisfaction must be called, at least in some sense, an essential element. But satisfaction actually performed certainly is not an essential element. It remains, therefore, that we say it is essential at least in purpose. Others deny this, because ecclesiastical documents - besides the fact that they do not settle the controversy about the proximate matter of Penance[6] - understand by the word satisfaction, in the obvious sense, satisfaction actually performed, just as by the words contrition and confession they designate contrition and confession actually exhibited. Therefore from the aforesaid documents nothing can be drawn as regards satisfaction in desire.

2. **Proximate matter taken more broadly** - that is, that which, informed by absolution, constitutes the complete sacrament - is satisfaction actually performed. The said satisfaction is not an essential part of the sacrament of Penance, because it is not ordered to its primary effect, that is, to the remission of fault; nevertheless, it is an integrating part of it, insofar as it brings it about that the sacrament can fully attain its effect, which is the remission not only of fault, but also of punishment.

Corollary I. Contrition, confession, and satisfaction are not only the proximate matter of the sacrament of Penance, but also, together with absolution, produce the effect of the sacrament. The contrary is taught not only by many Scotists, but also by some of those who hold the acts of the penitent to be essential parts of the sacrament; and St. Thomas also at one time taught that (distinction 22, question 2, article 1, solution 1, ad 2 and 3); afterward, however, he expressly corrected that opinion (part 3, question 86, article 6). The proposition is especially supported by the fact that according to the Council of Trent[7] the force of the sacrament is situated in absolution as the form "principally" (therefore not totally, as the adversaries wish). It is added that, just as in physical things, so also in moral things, the effect must be attributed not to the form alone, but also to the matter, or, in other words, to the whole.

Corollary II. Practically it does not matter whether the acts of the penitent are called parts of the sacrament or merely conditions required for validity;[8] nor whether the effect of the sacrament is ascribed also to the aforesaid acts or to absolution alone. But it does matter somewhat, as will be

clear from what is to be said later, whether or not internal contrition or attrition alone is the condition required for validity, as Ballerini teaches.

[1] IV Sentences, distinction 17, part 2, article 1, conclusion 3; distinction 22, article 2, question 1, conclusion.

[2] Disputation XVI, question 1, n. 5 sq.

[3] For example, Ballerini, *Opus theologicum de Poenitentia*, n. 4 sq.

[4] Title III, chapter 1, n. 1.

[5] Part 2, chapter 5, question 12.

[6] Pallavicini, *Historia Concilii Tridentini*, book 12, chapter 16.

[7] Session 14, chapter 3.

[8] Many Scotists indeed do not require of itself that contrition be external; but because they also hold confession as a necessary condition, and confession in fact manifests contrition, practically the matter comes back to the same thing.

292 **III. The form of Penance is the words of absolution,** as the Decree of Eugene IV for the Armenians and the Council of Trent expressly teach.[1]

And thus, once the summary notion of the sacrament of Penance has been handed down, we shall explain the essence of this sacrament more fully, speaking distinctly first of remote matter, then of proximate matter, then of form, and finally of the integrating part, or satisfaction. Hence:

[1] Session 14, chapter 3; Roman Ritual, title III, chapter 1, n. 1.

Chapter I. On Remote Matter

293 **I. Object.** Remote matter, or that around which the sacramental action is concerned, is sins committed after Baptism, and these alone and all of them (n. 287).

Question 1. Whether the sacrilegious reception of Baptism is remote matter of Penance.

Response. Most affirm it, because the reception is sacrilegious insofar as it places an obstacle to the infusion of grace. But what here and now prevents the sacrament from infusing grace seems to be posterior to the sacrament. Others deny or doubt, because the argument adduced does not convince them (St. Alphonsus, VI, 427). The same seems to have to be said of other sins, such as hatred or lust, if perhaps they are committed in the very reception. For the rest, it is certain that both sacrilegious reception and other sins are matter of penance insofar as, as usually happens, after Baptism has been received the will actually continues to adhere to them. If you posit that sacrilegious reception or other sins are at least by nature prior to Baptism itself, it must be said that they are remitted by the force of Baptism afterward reviving.

Question 2. Whether sins committed after doubtfully valid Baptism, but before the sacrament has been repeated under condition, are remote matter of Penance.

Response. They are or are not remote matter according as Baptism was in fact valid or not valid. But it is another question whether there is an obligation of confessing such sins; concerning this, later.

294 **II. Division.** Remote matter is chiefly distinguished into necessary and free.

1. **Necessary matter** is called that which must be confessed by divine precept. This is constituted by mortal sins committed after Baptism, but not yet duly submitted to the keys, or not yet directly

remitted by absolution.

Moreover, a sin directly remitted is called that which - whether completely or not completely[1] - has been subjected to the keys and remitted by absolution. A sin indirectly remitted is one which was not subjected to the keys, but nevertheless was remitted by absolution insofar as the infusion of grace also carries with it the expulsion of mortal sins which are not subject to the power of the keys.

Therefore necessary matter is:

1. Mortal sins not yet submitted to the keys; and it is the same whether they have been omitted culpably or inculpably,[2] and likewise whether they have already been remitted (namely through perfect contrition or through attrition together with a sacrament of the living) or have not been remitted.
2. Mortal sins submitted to the keys, but not completely declared, as can happen, for example, in a case of necessity.
3. Mortal sins submitted to the keys, and indeed completely, but not remitted by the judge, for example because of omission of absolution, or because of defect of contrition (St. Alphonsus, VI, 425, 480).

2. **Free matter** is that which can, but need not, be subjected to the keys. This is constituted by:

a) Mortal sins committed after Baptism, and both duly submitted to the keys and remitted by absolution. That these can again be remitted by absolution is clear both from tradition, from the consensus of theologians and the practice of the faithful, and from canon 902. Some deduce this from the fact that the total remission of punishment is not established, and therefore the sin can again be subjected to the keys; others from the fact that one can again and again remit an injury inflicted (St. Alphonsus, VI, 425, 427, doubt 2); these things will be explained more fully in their own place.

b) Any venial sins whatever, whether already declared and remitted, or not yet declared or not yet remitted. That venial sins also are matter of Penance is clear: 1. from the Council of Trent[3] and from canon 902; 2. from the consensus of theologians and the practice of the faithful (St. Alphonsus, VI, 425).

Corollary I. Sufficient matter is any sin whatever committed after Baptism, whether remitted or not yet remitted (canon 902).

Corollary II. Not sufficient matter are moral defects which lack the nature of sin. Nevertheless, "confessors should not be rebuked because they do not hinder penitents in saying these things; both because many of those things which seem mere imperfections are not done without some venial fault, and also because it is not necessary that all the things which the penitent says in confession be determinately and absolutely matter of absolution. For many things are said because it belongs more to the confessor to discern what is and what is not matter of absolution, and so that the confessor may have a clearer view of the penitent's conscience and be able to judge better concerning his whole state, in order to apply the due remedy."[4]

[1] For example, if some sin (for instance, in a case of necessity) is declared only generically. Nevertheless, according to some authors, in that case absolution falls directly upon the generic aspect, but not upon the specific aspect of the sin, and therefore it is not called directly remitted by them.

[2] The following proposition was condemned by Alexander VII: "Sins omitted in confession or forgotten because of imminent danger of life or because of another cause, we are not bound in the following confession to subject to the absolution of the priest" (Denzinger-Bannwart, n. 1111).

[3] Session 14, chapter 5 and chapter 7.

[4] De Lugo, Disputation XVI, Section II, n. 103.

Chapter II. On Proximate Matter

Proximate matter is constituted by contrition and confession or accusation of the penitent (n. 291). Hence:

Article I. On Contrition

Contrition taken integrally comprises detestation, sorrow concerning sin, and purpose. We shall treat first of contrition taken integrally, then of purpose specifically.

§ I. On Contrition Taken Integrally

295 **I. Notion.** Contrition is "sorrow of soul and detestation concerning a committed sin, with the purpose of not sinning for the future."[1] It is said concerning a committed sin, so that sorrow over the fact that one does not sorrow over sin does not suffice; in which case not sin, but the defect of sorrow, is the object of sorrow. Nevertheless, one who sorrows over the defect of sorrow is commonly to be judged also to sorrow over the sin itself. Contrition comprises three things, namely detestation, sorrow, and purpose. Moreover:

1. **Detestation** is the act by which the will abhors the committed sin, turns itself away from the committed sin, and expels every affection for sin; this act of the will is expressed in this way: I would wish not to have sinned; it displeases me that I committed sin. Detestation pertains to the essence of contrition. For contrition must formally be opposed to sin; this happens through detestation, by which the sinner now does not will what he previously willed (St. Alphonsus, VI, 435).
2. **Sorrow** is a certain sadness of the will arising from the fact that the evil of sin is apprehended as present (St. Thomas, 1-2, question 35, article 8; question 36, article 1). In man as wayfarer sorrow necessarily follows detestation, so that it must at least be called a necessary element of contrition. But it is disputed whether sorrow pertains to the very essence of contrition. Whatever the case may be, at least this must be admitted: contrition consists principally in detestation, which is the cause of sorrow and specifies sorrow, which of itself is indifferent, and renders it morally good (St. Alphonsus, VI, 435).

The acts of detestation and sorrow, although they are distinguished from one another, nevertheless are morally so conjoined in man as wayfarer that they are regarded after the manner of one.

3. What purpose is will be explained in n. 301.

[1] Council of Trent, session 14, chapter 4.

296 **II. Division.** Contrition is distinguished into perfect and imperfect.

1. **Perfect contrition** is that which is conceived from the motive of charity. Moreover:

a) It is certainly conceived from the motive of charity if it is elicited from love of God loved above all things because of the divine goodness or perfection, insofar as this comprises the essence of God with all the attributes. But note that from love of this kind there is also elicited contrition which is conceived from the desire of possessing God, not insofar as this possession is good for the penitent, but insofar as it is pleasing to God, who is most perfectly loved in possession (St. Alphonsus, II, 24, doubt 1).

b) It is not conceived from the motive of charity if it is elicited from love of God loved because of some relative attribute, for example beneficence, as such, or insofar as it is not considered as a divine perfection pertaining to God.

c) It is disputed whether it is conceived from the motive of charity if it is elicited from love of God loved because of some divine attribute, whether absolute or relative, provided this is considered as a divine perfection pertaining to God, considered separately through formal abstraction. Many affirm this: 1. because Sacred Scripture stirs us up to charity by the motive of God's goodness toward us: "Let us therefore love God, because God first loved us";[1] therefore because of an attribute of God, a relative one; 2. because the divine attributes are not really distinguished from his essence, nor can they be conceived by us with objective precision from the other perfections and the essence of God; 3. because preachers commonly exhort the faithful to charity by unfolding the relative attribute, namely God's goodness toward us. Others, whose opinion St. Alphonsus holds as more probable, teach that some divine attribute taken separately is not sufficient for eliciting an act of perfect contrition from love of God, but that the formal object of love is constituted from the essence of God together with all his attributes. For in order that someone love God as the supreme good - which is required for an act of charity - he must antecedently conceive God thus by an act of the intellect, according to the familiar saying: nothing is willed unless known. Moreover, in the concept of one attribute taken separately, for example wisdom, God as the supreme good is contained only virtually and implicitly; but what is known only virtually and implicitly is not yet known in relation to reducing the will to act. It is added that, according to the truer opinion, the act of charity of the homeland and of the way is specifically the same; but it is established that the act of charity of the homeland subjectively has the whole divine goodness as its formal motive. Therefore it follows that this whole goodness is also subjectively required for the formal object of the act of charity of the way (St. Alphonsus, VI, 436). Nevertheless, the controversy is not practical, because commonly the case supposed does not occur except in appearance; in other words, God sometimes seems to be loved because of an attribute considered separately, but in reality he is loved because of the supreme goodness. Hence preachers do not take account of this controversy.

Corollary I. It was formerly disputed whether perfect contrition is that which is elicited from the motive of some moral virtue which has an order to God, for example gratitude, religion, obedience, penance. But this opinion is now very commonly denied, and it is taught that contrition elicited from the motives of those virtues is not that which proximately disposes for justification, that is, perfect contrition.[2]

Corollary II. Someone can elicit perfect contrition even if he does not explicitly add that he loves God for God's sake or because of his infinite perfection; in other words, even if he does not say, for example: My God, I detest my sins because I love Thee because of Thy infinite goodness; but only: I detest my sins, the offenses against Thee, because Thou art supreme goodness. Nor is it required for

an act of perfect contrition that one attend to the meaning of the individual words of the formula; it suffices that he grasp with the intellect and will in the soul the general sense of the formula.

Corollary III. Besides this, for perfect contrition it is not required that one detest sin from fear of hell or another inferior motive.

2. **Imperfect contrition, which commonly is called attrition,** is that which is conceived from an honorable motive distinct from the motive of charity, for example from the motive of hope, gratitude, penance, etc.

[1] 1 John 4:19.

[2] Council of Trent, session 14, chapter 4.

297 **III. Required contrition.** Not only perfect contrition, concerning which there is no doubt, but also imperfect contrition or attrition suffices for rightly receiving the sacrament of Penance. This opinion, which today is almost commonly admitted,[1] is proved by these arguments:

1. The Council of Trent calls contrition taken generically a part and quasi-matter of the sacrament,[2] and thus sufficiently indicates that it - whether or not it is called proximate matter - suffices for the sacrament of Penance. But imperfect contrition also is contained as a species under generic contrition as circumscribed by the Council.

2. The same Council says this about imperfect contrition: "Although without the sacrament of Penance it cannot of itself lead the sinner to justification, nevertheless it disposes him to obtain the grace of God in the sacrament of Penance."[3] Therefore, according to these words of the Council, attrition disposes to justification in one way within the sacrament and in another way outside the sacrament. Now outside the sacrament it disposes remotely to justification. It remains, therefore, that we say that within the sacrament it disposes proximately to it.

3. Then it is wholly improbable that the power of remitting sins is in act never exercised upon sin not yet remitted. But this would happen if in the sacrament of Penance attrition did not suffice, but perfect contrition were required, that is, a disposition which of itself would already bring with it the remission of sin before absolution.

4. Finally, since the more benign opinion has now for many centuries been almost common, it is hard to understand why it has not been reprobated by the Church, if it were not safe; especially since this sacrament is of such frequent use.

Objection. The Council of Trent, among those things which are required for receiving justification in Baptism, lists: "and they begin to love Him as the font of all justice";[4] these words you may deservedly apply also to the sacrament of Penance.

Response 1. It cannot be admitted that an act of true charity is required by the Council for receiving justification in Baptism; for the contrary opinion as regards Baptism was almost common both before the Council (cf. St. Thomas, 4 Distinction 6, question 1, article 3) and after the Council.

Response 2. Initial love can well be understood of some good affection toward God, who is the font of our justice; one who is affected by this good affection toward God is deservedly said to begin to love God, according to these words of St. Thomas, whose doctrine the Council of Trent so greatly attended to: "Insofar as hope regards him through whom something becomes possible for us, love is

caused by hope, and not conversely. For from the fact that through someone we hope goods can come to us, we are moved toward him as toward our good; and thus we begin to love him" (1-2, question 40, article 7; St. Alphonsus, VI, 442). Others explain the words of the Council differently.

[1] Otherwise Périnelle, O.P., *L'attrition d'après le Concile de Trente et S. Thomas d'Aquin*.

[2] Session 14, chapter 3 and canon 4.

[3] Session 14, chapter 4.

[4] Session 6, chapter 6.

298 **Corollary I.** From what has been said, it is gathered in what sense the solemn expression is true: the attrite, by the power of the keys, becomes contrite. Namely, he becomes equivalently contrite, insofar as the attrite person with the sacrament passes from the state of the attrite to the state of the contrite, that is, he is justified equally as one perfectly contrite. Others explain it otherwise.

Corollary II.

It is useful, in order that what has been said about imperfect contrition may be unfolded more fully, to assign the diverse motives from which it can be elicited. Moreover, the Council of Trent teaches that "attrition is commonly conceived from consideration of the baseness of sin, or from fear of hell and of punishments."[1] Now, by adding "commonly," it sufficiently indicates that, besides the motives enumerated, others are given; or it can also be said that all motives are implicitly contained in the motives assigned by the Council. Namely, the motive of the baseness of sin contains all motives of the virtues distinct from charity. Besides, the motive of hope is contained in the motive of fear of punishments, because it is equivalent whether someone detests sin from hope of eternal life or from fear of hell, that is, of losing eternal life. All these things will be clearer from what is to be said. Therefore contrition conceived, for example, from the following motives suffices:

1. From the motive of obedience: "I detest my sins because by sinning I have transgressed Thy law."
2. From the motive of special penance: "because by sinning I have injured Thy right"; "that I may compensate Thy injured right."
3. From the motive of religion: "because by sinning I denied Thee the worship owed."
4. From the motive of gratitude: "because by sinning I have shown myself so ungrateful toward Thee"; "because Thou hast heaped benefits upon me."
5. From the motive of hope, for example:

a) From hope of eternal beatitude: "I grieve concerning my sins because by sinning I have lost the right to eternal beatitude"; "that I may recover the right to eternal beatitude."

b) From hope of justification: "because by sinning I have lost sanctifying grace"; "that I may recover sanctifying grace."

c) From hope of a temporal supernatural good: "that I may embrace a salutary state of life."

Here also belongs contrition conceived:

6. From fear, simply servile,[2] of punishments. Namely:

a) From fear of hell, for example: "because by sinning I have deserved eternal punishments"; or: "lest I be eternally damned." That this motive suffices is expressly taught by the Council of Trent in the place cited. The same must be said of fear of purgatory.

b) From fear of temporal punishments of this life, as the same Council seems to signify by saying "from fear of hell and of punishments"; for these words seem to be taken not in a composite sense, as some wish, but in a divided sense, because the Council, in the place cited, adduces the example of the Ninevites, who were being struck by a temporal punishment, namely the destruction of the city. For the rest, temporal punishments must be viewed as inflicted by God, and insofar as they in some way begin the divine punishment, unless we amend ourselves. Otherwise they cannot ground contrition that is estimatively highest (n. 299). Nor then is the matter outside every controversy (St. Alphonsus, VI, 443).

7. From the motive precisely of that virtue to which the committed sin is opposed, for example: "I detest the sin of lust because chastity is so beautiful." Here also belongs attrition conceived:
8. From the special baseness of the sin committed, for example: I detest the sin of lust because lust is so foul. Likewise attrition elicited from the general baseness of sin suffices, for example: "I detest sin because it has deprived me of supernatural brightness; because my soul has been so greatly defiled through it."

Corollary III. Salutary attrition is not so difficultly resolved into perfect contrition. For the attrite person is already tending toward God; hence he easily apprehends sin as an evil to God, or as injurious to infinite Goodness, and detests it also under this respect. These things especially hold for attrition conceived from the motive of a virtue which is referred to God, namely religion, obedience, penance, and gratitude. But they hold most of all for the motive of gratitude; since one who is grateful easily wills good to his benefactor, and consequently grieves over sin insofar as it is an evil to God. But since gratitude is especially stirred up by considering the incarnation, passion, and death of Christ, and his presence in the Holy Eucharist, he who is also himself God, therefore meditation on those mysteries is the easiest way of arriving at perfect contrition.

Corollary IV. Let confessors indeed commonly exhort penitents who are not sufficiently disposed to attrition, for motives of this kind especially move such men. Nevertheless, generally let them not omit at the end, and in some way, to propose to them and also to others the motives of perfect contrition.

[1] Session 14, chapter 4.

[2] Attrition from fear or dread is twofold: attrition from filial fear and attrition from servile fear. Attrition from filial fear is had when someone detests sin because it is an offense against God, the best Father; from servile fear, when someone detests sin because of fear of punishment. Attrition from servile fear is likewise twofold: attrition from fear simply servile, and attrition from fear servilely servile. The former is detestation of sin because of fear of punishment, born from ordered love of one's own good, that is, from love subordinated, or at least subordinable, to the divine good or to our last end. The latter is detestation of sin because of fear of punishment, born from disordered love of one's own good, that is, born from love not subordinated to the divine good or to our last end; in other words, born from love of one's own good as the last end. The former is honorable; the latter is dishonorable.

299 **IV. Properties of contrition.** The summary of the doctrine is this: 1. For the sacrament of Penance to be received validly and fruitfully there is required contrition: a) true, b) internal, c) formal, d) supernatural, e) estimatively highest, f) universal as regards mortal sins, g) external; 2. for the

sacrament of Penance to be received validly there is likewise required contrition: a) true, b) internal, c) formal, d) supernatural, e) external; but it is disputed whether, considering only validity, contrition estimatively highest and universal is required. We shall weigh the individual points.

1. **True,** or not merely thought to exist. Several of the ancients taught that contrition merely thought to exist, but in good faith, suffices for the validity - though not for the fruit - of the sacrament. But that opinion today is commonly and deservedly rejected. For the Council of Trent teaches that contrition is required for the essence of the sacrament (n. 297). But doctrine of this kind must manifestly be understood of true contrition, not of that which is present merely putatively (St. Alphonsus, VI, 433, 2). Note, however, that most of those who think they grieve over sins also truly grieve over them.
2. **Internal;** for contrition, which by Trent is called a part and quasi-matter of the sacrament, is defined by the same Council as "sorrow of soul."
3. **Formal,** so that virtual contrition does not suffice, that is, that which is contained especially in an act of charity. Several older authors judged that virtual contrition sufficed for the validity and fruit of the sacrament. But: 1. this opinion is now almost commonly rejected; 2. the Council of Trent teaches that contrition is a part and quasi-matter of the sacrament. Moreover, that word in its obvious sense signifies formal contrition, not virtual contrition (St. Alphonsus, VI, 449).

Note, however: 1. Formal contrition can well be conceived in the very recollection or confession of sins; hence it is not required that someone has used a formula of contrition. 2. It will scarcely happen that someone about to receive the sacrament of Penance, and therefore thinking about his sins, elicits an act of perfect charity without formally grieving over his offenses against God.

4. **Supernatural.** Now:

a) Certainly it must be supernatural by reason of the eliciting principle; in other words, it must be elicited through the help of grace, which elevates the act above the order of nature. This is clear: 1. from the Council of Trent;[1] 2. it is established that no salutary act can be done by man, that is, one positively conducive to salvation, without the help of grace. Therefore neither can man salutarily repent without the help of grace.

b) It is disputed whether contrition must be supernatural by reason of the motive; in other words, whether it must be conceived from a motive apprehended through faith. For the rest, the controversy is less practical; since it is certain that for the genesis of contrition which prepares for justification, faith and hope are required,[2] although it is not required that someone reflexively elicit an act of faith and hope, but it suffices that he perform it in act exercised, as they say (St. Alphonsus, VI, 439). Moreover, it can scarcely happen that one who believes and hopes, and fulfills the other conditions required for salutary contrition, does not grieve from a motive apprehended through faith.

5. **Estimatively highest.** Contrition estimatively or appreciatively highest consists in this: that the penitent detests sin from a motive which, while it persists, he cannot be induced to sin; or - as others state the doctrine - in this: that the penitent detests sin more than any evil by fear of which he can be induced to sin. Moreover:

a) By the consent of all, it is required for the fruit of the sacrament. For in order that the sinner be reconciled with God, there is required a will which perfectly efficaciously, or absolutely, or with

respect to every possible hypothesis, turns away from sin. But a will of this kind is lacking in one who lacks contrition estimatively highest. For the will extends itself no further than the motive on which it rests. Now one who lacks contrition estimatively highest lacks a motive which, while it persists, he cannot be induced to sin. Therefore he lacks a will which absolutely turns away from sin.

b) It is disputed whether it is required for the validity of the sacrament. Many authors deny this, or at least hold the negative opinion as probable; but the affirmative seems to be held. For: 1. the Council of Trent defines contrition, which it proposes as necessary for the existence or validity of the sacrament,[3] in this way: "sorrow of soul and detestation concerning a committed sin, with the purpose of not sinning for the future."[4] But these words in their obvious sense signify a will which absolutely detests the committed sin and absolutely purposes to abstain from sin; in other words, contrition estimatively highest. Therefore this is required for validity. 2. Contrition which is presented by the Council of Trent as necessary for validity, from the same Council, suffices with the sacrament[5] for justification or for the fruit of the sacrament. But only contrition estimatively highest suffices for justification or for the fruit of the sacrament. Therefore it is also required for validity (cf. St. Thomas, Supplement, question 29, article 8).[6] 3. True contrition is certainly required for the validity of the sacrament. But contrition which is not appreciatively highest is not true contrition. The minor is proved from the fact that true contrition consists in the act of turning oneself away from every habitual attachment to mortal sin. But contrition which is not appreciatively highest does not involve aversion from every habitual attachment to mortal sin except conditionally, or aversion under some respect.

For the will turns itself away from something insofar as the motive by which it is moved objectively excludes turning toward that thing. Hence, if the motive is only of such objective power that, while it stands, the will can still be joined with mortal sin, there is no aversion except conditionally, or aversion under some respect. But contrition not appreciatively highest has a motive which is only of such objective power that, while it stands, the will can still be joined with sin. Therefore the will in contrition not appreciatively highest is not properly an aversion from mortal sin, or is not true contrition, but only aversion or contrition conditionally or under some respect (St. Alphonsus, VI, 433, 7).

Objection 1. Contrition is matter of the sacrament only insofar as it is sensible or is manifested. But contrition is not manifested insofar as it is estimatively highest. Therefore as such it is not matter of the sacrament.

Response. I distinguish the major: contrition is matter of the sacrament only insofar as it is sensible or manifested, according to itself, I concede; according to its qualities, I deny; otherwise it would also have to be manifested as supernatural.

Objection 2. Only that penance is the object of judgment in the sacramental forum which can be known sufficiently certainly through an external act of the penitent. But this cannot be said of contrition estimatively highest.

Response. I deny the minor; for of itself confession suffices so that the contrition required for receiving the sacrament rightly may be sufficiently certainly admitted. But for receiving the sacrament rightly, contrition estimatively highest is demanded.

Corollary I. From the fact that contrition estimatively highest is required, do not infer that contrition highest intensively, that is, highest in degree of vehemence, is also required. For this does not pertain to the substance of contrition, which it is established from the Council of Trent suffices.

Corollary II. Nor is it required that a comparison be instituted between sin and temporal evils; indeed, commonly this is not even expedient, and it is dangerous (St. Thomas, Quodlibet 1, article 9; St. Alphonsus, VI, at the cited place).

6. **Universal.** The universality of contrition consists in this: that it extends itself to all committed sins. This takes place: 1. when someone grieves from a universal motive, even if the penitent does not recall individual sins; 2. when he grieves from particular motives which comprehend all committed sins. Now the universality of contrition:

a) As regards committed mortal sins, is certainly required for the fruit of the sacrament, since one mortal sin is not remitted without another. Hence, if contrition is lacking as regards one mortal sin, none would be remitted.

It is disputed whether universality is required for the validity of the sacrament. Some affirm this, and their principal reason seems to us to be that which we have already alleged on p. 226: "Contrition which by the Council of Trent is called the quasi-matter of the sacrament, and therefore is required for validity and suffices for it, from the same Council seems also to suffice, at least with the sacrament, for justification."[7] But particular contrition does not suffice for justification. Therefore neither does it seem to suffice for validity. St. Alphonsus (VI, 444) and most other authors deny this, and judge that particular sorrow - that is, sorrow which does not extend itself to other mortal sins, but to one only or to certain sins from those committed - suffices for the validity of the sacrament. The reason alleged is that in the case there is true contrition, so that all things required for validity seem to be present. The case would be if someone, in good faith, grieved solely from the special baseness of some sin; but this will happen very rarely, because commonly penitents grieve either from a universal motive alone, or also from one.

Finally note: if a penitent, questioned by the confessor, states sins about which he did not previously think, it is indeed useful, but not necessary, to stir him up to a new act of sorrow, because an act elicited from a universal motive is presumed to have been conceived.

b) As regards venial sins, universal contrition is required only insofar as a venial sin is not remitted to which sorrow does not extend itself. For the rest, cf. the Scholion on contrition and purpose as regards venial sins.

Corollary. From what has been said it is gathered how far the sacrament of Penance can be *informe*, that is, valid but not fruitful. Many deny this, but St. Alphonsus (VI, 444) and most more recent authors affirm it, namely in the case in which someone grieves solely from a particular motive concerning one or some mortal sins.[8] Others add the case in which the sinner lacks contrition estimatively highest (p. 226). But the sacrament of Penance, though *informe*, probably revives when the obstacle has been removed (n. 11).

7. **External,** that is, manifested or sensible in some way. For contrition more probably is an essential part of the sacramental sign itself; but it cannot be this unless in some way it is externally disclosed or manifested. It can be manifested, for example, by oral recitation of contrition, by

confession either actually instituted or - if it has followed confession - morally enduring, or by expectation of absolution.

[1] Session 14, chapter 4; session 6, canon 3.

[2] Council of Trent, session 6, chapter 6.

[3] Session 14, chapter 3.

[4] Session 14, chapter 4.

[5] Session 14, chapter 4.

[6] On the opinion of St. Thomas, see Ter Haar, *De occasionariis et recidivis*, n. 237 sq.

[7] Session 14, chapters 3 and 4.

[8] Some judge that the sacrament, even in this case, is valid and fruitful, because, when the sinner grieves in order that he may receive grace, his sorrow, although in appearance particular, in reality virtually extends itself to all sins. They add that particular sorrow does not suffice without a universal purpose. But a universal purpose will scarcely be present without universal sorrow.

300 **V. Relation between contrition and the other parts of the sacrament.** Here note:

1. Contrition or detestation of sins must, as is clear, precede absolution from them; but it makes no difference whether it precedes or follows the act of confessing, although it is better to elicit it before confession and repeat it after confession (St. Alphonsus, VI, 445).[1]

2. It is disputed whether contrition must be referred by the penitent to absolution. Some deny this, both because it belongs to the minister, not the penitent, to refer the matter of the sacrament to the form; and because from Trent[2] attrition, which excludes the will to sin, suffices in the sacrament for justification, without there being any mention of some relation to be made by the penitent. Others affirm it, because the minister cannot assume the acts of the penitent as matter unless they have been referred by the penitent to the sacrament. Others add that, just as one receiving, for example, Orders must order the touching of the matter to the sacrament, so also one receiving the sacrament of Penance must refer contrition to it. Nor should it be objected that sometimes those can be absolved who are ignorant of the sacrament, and therefore do not refer contrition to absolution. For they can, with the necessary conditions posited, be absolved conditionally, because the opinion of which we are speaking is not certain. St. Thomas seems to adhere to the affirmative opinion (3 p., question 86, article 6). Whatever the case may be, in practice you should follow the safer part (St. Alphonsus, VI, 447); but the question itself does not seem practical, because contrition, by the very fact that someone wishes to be absolved, seems sufficiently ordered to absolution.

3. It is not required that contrition actually or virtually endure until absolution, but it suffices that it persist habitually, that is, that it has not been retracted, with the things to be observed nevertheless observed, that is, those to be set forth under 4. The reason is that the penitent - although his acts are the matter of the sacrament - nevertheless is not the minister of the sacrament. Many indeed seem to require that contrition persevere actually or virtually, that is, in some effect; but in reality - many of them at least - do not speak of virtual perseverance properly so called (cf. St. Alphonsus, VI, 446). For the rest, it is difficult to determine how long contrition virtually endures. St. Alphonsus says this: "I, however... do not hesitate to assert that whenever confession derives from sorrow for sins, sorrow always virtually perseveres at least for one or

another day, while that confession is the effect of sorrow. It is otherwise, however, if someone should confess from mere devotion, or to fulfill a vow, or a penance" (*Homo Apostolicus*, tract 16, n. 20).

4. As regards the space of time which can intervene between contrition actually elicited, likewise between confession, and absolution, some judge that only so much can intervene as can intervene between the parts of a civil judgment, because the sacrament of Penance was instituted after the manner of a judgment. But most reject that, nor does the reason alleged settle the question, because from elsewhere it is clear that a sacramental judgment is a judgment of its own kind (St. Alphonsus, VI, 446); for the rest, the space of time of which we are speaking cannot be determined. In practice, however, there will be no difficulty, since one who is absolved a rather long time after contrition has been elicited and confession instituted will commonly repeat both contrition and, at least in some way, confession before absolution.

Question. Whether a new absolution requires a new act of contrition, so that one who, after receiving absolution, declares a sin inculpably omitted, or again confesses sins already declared, must, I say, in order to be absolved again, elicit a new act of sorrow.

Response. Most more recent authors, against St. Alphonsus (VI, 448) and others, hold the negative opinion as morally certain; but undeservedly. The reason for doubting is this: just as a new act of confessing is required for a new judgment, so also, at least probably, a new act of contrition is required. Nevertheless, commonly there is no obligation of imposing a new penance; but it suffices that the imposed penance, insofar as it regards sins previously declared, be commuted, and insofar as it ought to regard the sins now declared, be left unchanged.

Objection. Even if a new act of contrition is not elicited, all things necessary for the sacrament are had, namely absolution, confession, and contrition morally persevering.

Response. It is doubtful whether contrition morally persevering suffices; since probably, as we have proved, a new act of contrition is required.

For the rest, the controversy seems less practical, because the penitent, by confessing the omitted sin or by again confessing sins already declared, commonly, at least in act exercised, will elicit a new act of contrition.

[1] Some older authors taught the contrary, relying on nearly these reasons:

1. Contrition must be manifested through confession, and therefore must be prior to it. Response: contrition can also be manifested in other ways, for instance by oral recitation. Besides, contrition elicited after confession is well manifested through confession, insofar as this morally perseveres, or at least through the petition or expectation of absolution.
2. Confession must not be a mere narration of sins, but a sacramental accusation; hence let it be informed by sorrow. Response: besides the fact that confession, insofar as it morally perseveres after contrition has been elicited, is informed by sorrow, it becomes sacramental by the fact that it is instituted in order to absolution.

[2] Session 14, on Penance, chapter 4.

§ II. On Purpose Specifically

301 **I. Notion.** Purpose here is understood as the deliberate will of not sinning in the future. Purpose differs: 1. from a promise strictly so called, by which we intend to contract an obligation of furnishing the promised thing at its proper time, while by purpose we show only the present disposition of the soul for doing or omitting something; 2. from a vow, which is a promise strictly so called made to God. Yet this does not prevent both confessor and penitent from using the words promising and promise, namely in a broad sense, without a new obligation arising from a promise of this kind. Hence also the sinner is said only in a broad sense to have broken or violated his promises.

302 **II. Division.** Purpose is twofold, explicit and implicit. Implicit purpose is that which is contained in detestation and sorrow concerning committed sins. For one who truly detests the sin committed implicitly wills to abstain from sin in the future.

303 **III. Necessity of some purpose** for receiving the sacrament of Penance is clear from the fact that without purpose there is no contrition, since contrition is defined by the Council of Trent as "sorrow of soul and detestation concerning a committed sin, with the purpose of not sinning for the future."[1]

[1] Session 14, on Penance, chapter 4.

304 **IV. Required purpose.** An explicit purpose seems to be required[1] in the case in which the sinner grieves only from a particular motive; otherwise there is no universal purpose, not even implicit, for sorrow from a particular motive implicitly contains only a purpose of abstaining from those sins concerning which one grieves. Authors add the case in which the penitent thinks about future life, since in this case it can scarcely happen that one who truly grieves does not elicit an explicit purpose, so that the defect of a formal purpose would show a defect of true sorrow.

Besides the cases alleged, it is disputed what sort of purpose is required. Moreover, most authors hold as morally certain that explicit purpose is not demanded, but that implicit purpose suffices. But St. Alphonsus (VI, 450, question 1) and others deservedly teach that the opinion which teaches that explicit purpose is required is not lacking in probability. To prove this, we first note these things: 1. The question is not settled by an *a priori* argument, since the whole matter at last depends upon the positive institution of Christ; 2. the Council of Trent - which certainly does not intend to impose an end on this controversy - uses terms which are sufficiently explained in either opinion, so that a strict argument cannot be deduced from it. With these things posited, we reason thus: contrition consists of three elements, namely detestation, sorrow, and purpose, of which the first two regard past life and the third regards future life. Moreover, the first two must be explicit, and implicit ones do not suffice. This admitted, I do not see by what right it is said: the third, which touches future life, certainly does not have to be explicit, but an implicit one suffices. Thus, besides St. Alphonsus, among older authors especially Suarez[2] and St. Bellarmine,[3] and among more recent authors Haine[4] and Augustinis.[5]

Objection. The Council of Trent teaches that attrition disposes for justification in the sacrament when it "excludes the will of sinning."[6] But detestation of committed sin, conceived from a universal motive, does this even without an explicit purpose.

Response. The words of Trent certainly signify the same thing as those which occur in its description of contrition: "with the purpose of not sinning for the future."[7] But by these words the Council - which does not intend to settle the controversy - leaves in the middle whether or not an explicit or implicit purpose or will is required.

For the rest, let confessors commonly stir up penitents to explicit purpose, at least that they may perceive richer fruit from confession; but after the fact, in doubt they rightly presume that a sufficiently explicit purpose was not lacking.

[1] I say "seems" on account of what was said on p. 228, note 1.

[2] Disputation 20, section 4, nn. 32 and 33.

[3] *De Poenitentia,* book 2, chapters 6 and 7.

[4] *Theologia Moralis,* III, p. 242.

[5] *De re sacramentaria,* II, p. 253 sq.

[6] Session 14, on Penance, chapter 4.

[7] Session 14, on Penance, chapter 4.

305 **V. Properties of purpose.** Purpose must be:

1. **Firm,** that is, of such a kind that the penitent wills not to sin in the future, at least not mortally, for the sake of obtaining any advantage or avoiding any evil. Moreover, firmness of purpose is not opposed by: 1. the fact that someone is not certain that he will not sin any more; 2. the fact that someone gravely fears that he is going to relapse; indeed, 3. of itself and speaking speculatively, even the fact that someone judges certainly that he will sin again is not opposed to it. Namely, the present will of not sinning can be combined not only with fear but even with certainty of relapse or of a change of will. Nevertheless, if the penitent is certain of relapse, in practice it must be feared that he lacks firm purpose, and his will must be strengthened. I said if he is certain, because these and similar expressions commonly signify fear rather than true certainty. Hence if the penitent, otherwise of good will, says: "I do not wish to sin any more, but I foresee that I am going to relapse," the confessor, after strengthening the faint-hearted person's spirit, should commonly impart absolution. But true despair is opposed to firmness of purpose; one who despairs must be disposed so that he may hope (St. Alphonsus, VI, 451).
2. **Efficacious,** that is, of such a kind that the penitent also wills to employ the means necessary for avoiding sins, for example to remove voluntary proximate occasions.
3. **Universal,** namely as regards mortal sins, not only as regards those which have been committed, but as regards all. For the Council of Trent demands a purpose "of not sinning for the future"; likewise contrition which "excludes the will of sinning."[1]

[1] Session 14, on Penance, chapter 4.

Scholion. Sorrow and Purpose Regarding Venial Sins

306 **I.** If someone confesses venial sins together with a mortal sin, he receives the sacrament validly and fruitfully, even if sorrow and purpose comprehend only the mortal sin.

II. If someone confesses only venial sins, sorrow and purpose must enjoy the same properties as sorrow and purpose concerning mortal sins, except the property of universality (St. Thomas, 3 p., question 87, article 1, ad 1; St. Alphonsus, VI, 449, 451). This is not required, because one venial sin can be remitted without another. Therefore sorrow and purpose suffice:

1. Concerning all the venial sins which someone confesses.

2. Concerning some or one of those which he confesses, as follows:

a) Concerning only those fully deliberate, because someone can detest the greater malice without detesting the lesser (St. Thomas, at the cited place; St. Alphonsus, at the cited place).

b) Concerning only venial sins of a determined species, because we can detest one baseness without detesting another different from it (St. Thomas, at the cited place; St. Alphonsus, at the cited place).

3. Concerning the multitude or frequency of venial sins. Some teach absolutely that this suffices, but they suppose that then one grieves concerning determined sins, namely at least concerning the later ones, which constitute the multitude. Finally, others admit this as regards semi-deliberate sins, but not as regards fully deliberate sins (cf. St. Alphonsus, VI, at the cited place, and *Praxis Confessarii*, n. 71). St. Thomas declares that the purpose "of preparing oneself for diminishing venial sins" suffices (3 p., question 87, article 1, ad 1).

III. Sorrow - which I note for the sake of completeness - which according to what has just been explained does not extend itself to all venial sins, cannot be perfect contrition concerning some venial sin, because perfect contrition concerning one venial sin necessarily extends itself to all venial sins, as was explained in n. 284.

Corollary I. One who confesses only venial sins concerning which he does not grieve sins gravely, because the sacrament is rendered invalid. But one who, with the value of the sacrament preserved, confesses venial sins without sorrow sins only venially; for grave irreverence is not found in this (St. Alphonsus, VI, 449, doubt 1).

Corollary II. Penitents who are accustomed to commit only venial sins should be advised to add a mortal sin, if they have committed one before, or a more serious venial sin of their past life (St. Alphonsus, *Praxis Confessarii*, nn. 71, 99, 188).

Article II. On Confession

We shall speak first of confession considered in itself, then of the qualities of confession generally, and then of the quality of integrity specifically.

§ I. On Confession Considered in Itself

307 **I. Notion.** Confession, insofar as it pertains to the sacrament, can be defined: The accusation of one's sins committed after Baptism, made to a priest having jurisdiction and - most add - in order to sacramental absolution. I said insofar as it pertains to the sacrament, for something slightly different must be said if the matter concerns confession insofar as it obliges to the seal; what things are required and suffice for confession considered in that way will be said later.

308 **II. Division.** Confession is distinguished:

1. By reason of mode, into secret or auricular and public, insofar as it is made to the priest alone or before a multitude.

2. By reason of object, into distinct and generic, insofar as someone confesses sin according to its lowest species, or only the genus of sins. Generic confession can be subdivided three ways, namely: 1. into confession of the proximate genus, that is, of the genus which has the lowest species under itself, for example, "I accuse myself of sins of lust against nature." To this is almost

equivalent confession of the less proximate genus, that is, of that which contains several proximate genera, for example, "I accuse myself of sins of lust"; 2. into confession of the remote genus, that is, of that which contains proximate and less proximate genera, for example, "I accuse myself of mortal sins"; 3. into confession of the highest genus, that is, of that which contains all sins, for example, "I accuse myself of my sins." Confession of this kind, which is also called wholly generic, can also be made by a sign, for instance by sighs, striking of the breast, inclination of the head, etc.

309 **III. Necessity of confession** is clear first from the Council of Trent, which expressly teaches the necessity of confession.[1] Next, it is elicited from the fact that the sacrament of Penance was instituted after the manner of a judgment, and therefore, in order that it be rightly exercised, it requires in the judge knowledge of the matter with which it is concerned, that is, of sins. But this knowledge must be supplied by the penitent himself, since he alone is a suitable witness, namely of internal acts, of many external acts, and at least of culpability.

Corollary. Confession is necessary by necessity of means. For it is necessary, as follows from what has been said, from the fact that the sacrament of Penance was instituted by Christ after the manner of a judgment. But what is required because of the nature of the sacrament is necessary by necessity of means, because the sacrament itself is required by necessity of means (n. 358).

[1] Session 14, chapter 5 and canon 7.

310 **Question.** How far generic confession suffices.

Response 1. Confession, even wholly generic confession, suffices both for validity and for liceity: 1. in a case of necessity, that is, when someone cannot confess otherwise, whether because of defect in the use of the senses, for instance in one dying, or because of lack of time, for instance when shipwreck or battle is imminent;[1] 2. when someone knows that he has sinned gravely, but remembers neither the species nor the proximate or less proximate genus; 3. when someone is so uneducated that no distinct accusation can be drawn out.

As regards one dying, this is clear from the Roman Ritual,[2] from the First Council of Orange,[3] from the Third[4] and Fourth[5] Councils of Carthage; namely, the cited documents declare that one deprived of the senses is to be absolved, although in the case there can be question only of wholly generic confession (St. Thomas, Opusculum 65, § on the Sacrament of Anointing; St. Alphonsus, VI, 481).

As regards the other cases enumerated, the same reason holds as in one dying, namely inability to confess distinctly.

Response 2. Outside the cases just assigned, confession, even wholly generic confession, suffices for validity if someone does not have necessary matter, but only, for example, venial sins or mortal sins already distinctly confessed and remitted.[6] For: 1. that which in a case of necessity suffices for the essence of the sacrament, with the necessary conditions posited,[7] is deservedly presumed also to suffice outside a case of necessity; 2. by the consent of all, a confession generic in some degree, that is, of the proximate and even the remote genus, suffices for validity, so that formally distinct confession is not required. But if we posit that formally distinct confession is not required, but a generic confession in some degree suffices, it is no longer apparent why a more generic confession does not suffice, especially because the arguments which are brought against wholly generic

confession seem also to militate against generic confession in some degree, that is, of the proximate and less proximate genus, and therefore to prove less (cf. St. Alphonsus, VI, 502, doubt 3).

It is disputed whether wholly generic confession in the case of which we are speaking is also licit. Those who deny this argue from the nature of a judgment, which of itself must be instituted concerning determined matter; likewise from the practice of the faithful; likewise from the inconveniences that would follow from admitted liceity. The sacrament would be exposed to danger of nullity because of defect of sorrow; penitents would lack admonitions and counsels, etc. But since all admit that confession of the lowest species, or even of the proximate genus, is not prescribed if the matter is free, it is no longer clear that wholly generic knowledge does not suffice. Next, the practice of the faithful proves an obligation in this matter no more than, for example, as regards the accusation of doubtful sins. Finally, the confessor must watch lest the assigned danger persist; and the admonitions and counsels of which there is question here pertain to perfection, not to necessity. Nevertheless, because of the reasons alleged, it is better to accuse oneself more determinately, and that custom should be promoted.

Objection 1. From the fact that wholly generic confession is valid in a case of necessity, it does not necessarily follow that it is also valid outside a case of necessity; this is clear from the fact that confession made through a messenger in the article of death is valid, but otherwise is not valid.

Response. I deny that confession made through a messenger in the article of death is valid; you may see that it is not valid proved in n. 312.

Objection 2. The sacrament of Penance is a moral institution, namely it has itself after the manner of a judgment. But a moral institution accommodates itself to the condition of things and persons, or according to circumstances now requires these things, now those, for validity. Hence from the fact that wholly generic confession sometimes suffices for validity, it is undeservedly deduced that it always suffices.

Response. The sacrament of Penance certainly was instituted after the manner of a judgment; nevertheless, of a judgment which is of its own kind, that is, primarily reconciliatory. Moreover, I concede that even from such a moral institution, from such a judgment, now these things and now those are required so that it may be exercised prudently. But that for validity also now these things and now those are required needs proof; until it is proved, it is permitted to presume the contrary. It is added that the contrary can also be demonstrated positively. Namely, from the fact that confession of the proximate and even of the remote genus, in other words quasi-generic confession, suffices for validity even when the circumstances bear a more determined confession, from this, I say, it is rightly deduced that by no means, according to the circumstances, now these things and now those are required for the validity of this moral institution.

Objection 3. More distinct knowledge is required for the validity of a judgment; therefore also for the validity of Penance, which was instituted after the manner of a judgment.

Response. I distinguish the major: more distinct knowledge is required for the validity of a secular judgment, I concede; for the validity of a sacramental judgment, which is primarily reconciliatory, more distinct knowledge is required, I deny, because of the arguments alleged.

Objection 4. According to the Council of Trent,[8] a sacramental judgment cannot be instituted when the case is unknown.

Response. The Council treats of the prudent institution of this judgment, not of its valid institution. For it speaks of wholly distinct knowledge, that is, knowledge of sins according to their lowest species; but no one admits that this is required for validity.

[1] In circumstances of this kind let the confessor stir all to elicit a brief act of contrition and to repeat mentally what he himself is about to say; 2. to signify by a sign, for example by inclination of the head, the will of receiving absolution. Then let him say: I absolve you from all your censures and sins; in the name of the Father, and of the Son, and of the Holy Spirit. Amen.

[2] Title 3, chapter 1, n. 24.

[3] Chapter 12, in Labbe, t. 4, col. 703 and following; cf. Decretum Gratiani, canon *Qui recedunt* 7, cause 26, question 6.

[4] Chapter 34, in Labbe, t. 2, col. 1404.

[5] Chapter 76, in Labbe, at the cited place, col. 1443; cf. canon *Is qui* 8, cause 26, question 6.

[6] If someone has necessary matter, he is bound under grave obligation to confess distinctly, and therefore, if he confessed only generically, he would receive the sacrament invalidly because of defect of disposition. Except if he proceeded in good faith.

[7] With the necessary conditions posited, namely that the penitent has sufficient sorrow and purpose.

[8] Session 14, on Penance, chapter 5.

§ II. On the Qualities of Confession Generally

Confession must be made: 1. to a priest as judge; 2. to a present priest; 3. secretly; and 4. vocally. Let it be made, I say:

311 **I. To a priest as judge,** so that, for example, confession, or rather a narration of sins, made to a priest as friend does not suffice. For the word "confession," which the Council of Trent uses, considering both its obvious sense and the very matter treated there,[1] signifies the exposition of sins made in sacramental judgment. Nevertheless, it suffices for validity if someone, after a friendly narration has been made, says: "I accuse myself of the sins just narrated."

Question. Whether an accusation of this kind also suffices for liceity.

Response 1. Affirmatively, if the confessor has retained a distinct memory of the sins narrated. The reason is that then the subsequent accusation, although in appearance indistinct, is in reality distinct (St. Alphonsus, *Homo Apostolicus*, tract 16, n. 44).

Response 2. Otherwise it is disputed. Now with St. Alphonsus (VI, 502, doubt 1) it seems it must be said that this manner of acting does not suffice for liceity. For the Council of Trent declares that confession is required,[2] and that, in order that judgment be exercised prudently, it is required according to species and number.[3] But in the hypothesis posited there is no confession according to species and number: the prior narration is not such, since it was not confession; nor is the general accusation that follows such, since it was not confession according to species and number. It is added that the confessor, before he gives sentence, must have had distinct judicial knowledge. But this is not had in our case: neither by force of the prior narration, since it was made before the confessor could exercise the office of judge in relation to this person; nor by force of the subsequent confession, since it was not distinct and therefore did not supply distinct judicial knowledge. Some indeed judge that judicial knowledge is present if the priest, as friend receiving the narration of sins, already suspected in some degree that he could lead the man, who then was thinking nothing of confession,

to sacramental confession. But a suspicion, or even persuasion, of this kind does not suffice for the confessor to be constituted here and now as the judge of this man.

[1] Session 14, on Penance, chapters 3 and 5.

[2] Session 14, on Penance, chapter 3.

[3] Session 14, on Penance, chapter 5.

312 **II. To a present priest.** For Clement VIII[1] condemned the proposition: "that it is licit, by letters or by an intermediary, to confess sins sacramentally to an absent confessor and to obtain absolution from the same while absent"; and at the same time he prohibited that "it ever be defended as probable in any case, printed, or in any way brought into practice." Moreover, from the fact that this opinion can never be brought into practice, not even in a case of necessity, it is deservedly deduced that confession of this kind is invalid; for no other reason can be assigned for that absolute prohibition. Nor should it be said that the particle "and" in the condemned proposition is to be taken in a copulative sense, not in a disjunctive one; since the Holy Office[2] declared: "The Most Holy One, namely Paul V, decreed that the said interpretation does not stand and therefore must be removed from his [Suarez's] books" (St. Alphonsus, VI, 428).

Nor from the fact that one dying, deprived of the senses, who before deprivation of the senses manifested a desire of confessing while the priest was absent, can afterward be absolved by a present priest, nor, I say, from that fact should you deduce that confession made to an absent priest in the article of death is valid. For one dying in this way can be absolved either because the testimony of the said desire, brought forward by a witness, is judged to be the confession of the dying person himself; or because the confession of the dying person, made while the priest was absent, morally perseveres when the priest is present, and as such is made here and now to the present priest; or because the dying person, with the priest present, perhaps expresses by some sign the desire of absolution. This suspicion suffices so that absolution may at least be granted conditionally (St. Alphonsus, VI, 481). From these things it is clear that our case is not comprehended by the condemnation of Clement VIII, namely because there is not, or at least probably there is not, confession made to an absent priest.

[1] July 20, 1602 (Denzinger-Bannwart, n. 1088).

[2] July 14, 1605; likewise June 7, 1603 and January 24, 1632 (Denzinger-Bannwart, n. 1089).

313 **III. Secretly,** that is, let confession be made to the priest alone, considering a usage which is not destitute of force.[1] Nevertheless, those who cannot confess otherwise are not prohibited, if they wish, from confessing through an interpreter, with abuses and scandals guarded against (canon 903). For the rest, confession through an interpreter can be made in such a way that the interpreter does not know the responses given by the penitent; for instance, if the confessor questions the penitent, the interpreter repeats the questions in the language of the penitent, and the penitent responds to them by signs perceived by the confessor alone.

[1] Cf. Council of Trent, session 14, on Penance, canon 6; response of the Sacred Congregation of the Council, January 10, 1920 (*A.A.S.* 1920, p. 43); likewise Lateran Council, chapter *Omnis utriusque sexus*.

314 **IV. Vocally.** The precept of confessing vocally was introduced by custom beyond the law,[1] and therefore is judged to persist.[2] It is also more commonly taught that the precept obliges at least under grave obligation insofar as one who, without an excusing cause, does not make the whole confession vocally sins mortally. A moderate cause suffices so that it is licit to confess by nods, signs, or writing,

for example if someone because of shame cannot express a sin by mouth, or because of an impediment of the tongue confesses with difficulty by mouth; if the confessor is somewhat deaf, so that confession made by mouth could be heard by others (St. Alphonsus, VI, 493). Indeed, a just cause seems to suffice so that someone, after handing over a written confession and after it has been read by the confessor, may add: "I accuse myself of the sins read by you." Nor in practice should those who confess in writing be disturbed, nor should the confessor inquire why they proceed in that way.

[1] "Unless," as in the Extravagant *Inter cunctas*, on privileges, "an article of necessity occurs, oral confession is to be made to a priest."

[2] Cf. response of the Sacred Congregation of the Council, January 10, 1920 (*A.A.S.* 1920, p. 43).

§ III. On the Quality of Integrity Specifically

We shall treat first of the notion, division, and necessity of integrity; then of the scope of material integrity; then of the causes excusing from material integrity; finally of the means of procuring integrity, or of the examination of conscience.

Point I. On the Notion, Division, and Necessity of Integrity

315 **I. Notion.** Integrity consists in this: that in confession someone declares those things which must be declared by him.

316 **II. Division.** Integrity is distinguished as twofold, material and formal. Material integrity is had when someone declares those things which of themselves must be declared; in other words, all mortal sins committed after Baptism and not yet duly declared and directly remitted (n. 294). Formal integrity is when someone declares those things which he is bound to declare here and now.

317 **III. Necessity.** 1. Material integrity is required of itself. This is clear first from these words of the Council of Trent: "From the already explained institution of the sacrament of Penance, the universal Church has always understood that the complete confession of sins was also instituted by the Lord, and that it exists as necessary by divine right for all who have fallen after Baptism"[1] (cf. canon 901). Next, it is deduced from the fact that the sacrament of Penance was instituted after the manner of a judgment. But it belongs to a judge to have distinct knowledge of the matter - in the case, of sins - concerning which sentence is to be given; both lest he be constituted a blind instrument, and so that he can impose an equitable punishment.

Corollary. Material integrity is necessary by necessity of means. For, to apply to integral confession what we said of confession as such, it is necessary, as follows from what has been said, from the fact that the sacrament of Penance was instituted by Christ after the manner of a judgment. But what is required because of the nature of a sacrament instituted by Christ is necessary by necessity of means, because the sacrament itself is required by necessity of means.

2. Accidentally, material integrity sometimes is not required in reality, namely if it is physically or morally impossible; in that case material integrity in desire, or formal integrity, suffices. This is deduced from the fact that otherwise the sacrament of Penance would have been instituted unfittingly. Hence the Council of Trent: "For it is established that nothing else is required in the Church from penitents than that, after each one has examined himself more diligently and has explored all the folds and hidden places of his conscience, he confess those sins by which he remembers that he mortally offended his Lord and God; but the remaining sins which do not

occur to one thinking diligently are understood to be included universally in the same confession."[2] And again: "If anyone shall say that in the sacrament of Penance for the remission of sins it is not necessary by divine right to confess all and individual mortal sins, of which memory is had with due and diligent premeditation... let him be anathema."[3]

[1] Session 14, chapter 5.

[2] Session 14, chapter 5.

[3] Session 14, canon 7.

Point II. On the Scope of Material Integrity

318 We set forth first the principal ecclesiastical documents which pertain here. Moreover, the Council of Trent says this: "For it is established that priests could not have exercised this judgment with the case unknown, nor indeed could they have preserved equity in imposing punishments, if they had declared their sins only in genus and not rather in species and individually. From these things it is gathered that all mortal sins must be recounted by penitents in confession... even if they are most hidden, and committed only against the last two precepts." Besides: "It is further gathered that those circumstances must also be explained in confession which change the species of sin, because without them the sins themselves are neither integrally exposed by penitents nor made known to the judges, and it cannot happen that they can judge rightly concerning the gravity of the crimes and impose on those penitents the punishment which is fitting."[1] Finally: "If anyone shall say that in the sacrament of Penance for the remission of sins it is not necessary by divine right to confess all and individual mortal sins... even hidden ones, and those which are against the last two precepts of the Decalogue, and circumstances which change the species of sin... let him be anathema."[2] Canon 901 teaches the same: one who after Baptism has perpetrated mortal sins which have not yet been directly remitted through the keys of the Church must confess all of which, after diligent discussion of himself, he has consciousness, and explain in confession the circumstances which change the species of sin.

With these things set forth, we conclude:

[1] Session 14, chapter 5.

[2] At the cited place; session 14, chapter 5, canon 7.

319 **I. Mortal sins committed after Baptism and not yet directly remitted must be confessed.** This follows from the cited documents.

Disputation 1. Whether a sin must be confessed: a) in doubt whether it was committed; b) in doubt whether it was grave.

Response 1. One who opines either that a sin was committed or that the sin which was committed was grave is bound to confess it. For according to the Council of Trent[1] and canon 901 penitents must confess mortal sins "of which, after diligent discussion of themselves, they have consciousness." But one who opines that he sinned has in some way consciousness or knowledge of the sin committed (t. I, n. 215). It is added that each person is bound to observe a law if he opines that the fact founding the law has taken place (t. I, nn. 232 and 233 at the end). But one who opines that he has sinned gravely opines that the fact, that is, sin, founding the law, namely of confessing, has taken place. Finally, one who opines that he has sinned gravely opines that he is liable to the ordinary means for

obtaining remission of sin, that is, to the sacrament of Penance. But one who opines in this way seems to be bound to apply that means, with liberty excluded of using only the supplying means, that is, perfect contrition or charity.

Response 2. One who strictly doubts is bound in this way:

1. If he strictly doubts about the commission of sin, he is not bound to confess it. For, as we just noted, the Council of Trent and canon 901 teach that mortal sins of which consciousness is had must be confessed, so that a further obligation should at least practically be excluded. But in strict doubt there is not consciousness or knowledge of a committed sin. The reason seems to be this: one who strictly doubts about a committed sin is only doubtfully liable to the ordinary means for obtaining remission of sin, in the case, to Penance; indeed he is only doubtfully capable of that means in relation to that sin. But such a one, sufficiently probably, is not bound to apply that means, but enjoys liberty of using either the ordinary means or the extraordinary or supplying means, that is, perfect contrition or charity. In the case, if the sin truly took place, it is not remitted independently of the sacrament of Penance.
2. If he strictly doubts about the gravity of the committed sin, these things hold:

a) One who doubts about the gravity of the matter is bound to expose his doubt to the confessor, unless he himself is versed in moral matters.

b) One who doubts about full consent in a grave sin must confess it if he has been accustomed to consent fully, because he is presumed to have consented fully. Otherwise it must be said of the fearful and scrupulous. The former are only to be exhorted to expose doubts of this kind; the latter are to be prohibited from doing so (St. Alphonsus, VI, 473-476; *Istruzione e Pratica*, chapter 16, n. 30).

Disputation 2. Whether grave sins committed after Baptism doubtfully validly conferred must be confessed.

Response. It seems that this must be affirmed. For first the Holy Office, to the question whether Carolus Wippermann, doubtfully validly baptized, "is to be rebaptized; and insofar as affirmatively, whether confession is to be placed before or after Baptism to be conferred under condition," to that question, I say, responded:[2] "The Most Holy One, after the votes of the Most Eminent Fathers had been heard, said: Carolus Ferdinandus is to be rebaptized under condition, and, after Baptism has been conferred, let him confess the sins of his past life, and let him be absolved from them under condition." Besides, the same Congregation, to the request of the bishops of England, "whether sacramental confession must be required from neo-converts in England, and whether it must be integral," responded:[3] "Affirmatively, and let the decree of June 14, 1715 be given." Moreover, the Holy Office seems to signify that obligation to be universal not only by responding the same thing, but also by referring to the first response. This is confirmed by the fact that the Prefect of the Sacred Congregation of Propaganda Fide, in a response to the Archbishop of Quebec,[4] declared that the decree of the year 1868 contains a universal law, and therefore obliges not only in England but also in other regions. Nor is it an obstacle that that response lacked explicit promulgation; for according to jurisprudence, especially that in force before the Code, it sufficed that such decisions were known.[5] Besides, the Holy Office, in assigning the norm for reconciling heretics, seems to suppose the affirmative opinion.[6] Next, one who certainly sinned gravely - which we now suppose to have been done by one doubtfully validly baptized after doubtful Baptism - is bound, if he can, to use at least

with moral certainty some ordinary means for obtaining remission of that sin. But by receiving Baptism conditionally he uses only probably the ordinary means for obtaining remission of that sin, because that sin was probably committed after valid Baptism, and therefore probably must be remitted by Penance. Therefore it remains that he receive not only Baptism conditionally, but also conditionally Penance in relation to that sin.

Corollary I. The law explained is divine, as is clear from the intrinsic reason alleged; besides, *a priori* it is hard to admit that the Church has made a law of confessing sins to the confession of which Christ does not oblige.

Corollary II. What has been said about those doubtfully validly baptized must also be applied to those doubtfully baptized, since the same formal reason subsists.

Corollary III. Sins committed before the first doubtfully valid Baptism are not to be confessed; for if Baptism truly was valid, the aforesaid sins were remitted by the first Baptism; but if it was invalid, they are remitted by the second Baptism. Nor must sins committed and sacramentally declared after the first doubtfully valid Baptism be confessed again; for if the first Baptism was valid, the aforesaid sins were remitted through absolution; but if it was invalid, they will be remitted through the second Baptism.

[1] Session 14, on Penance, chapter 5.

[2] June 14, 1715 (*Collectanea*, n. 286).

[3] December 17, 1868 (*Collectanea*, n. 1338).

[4] July 12, 1869 (*Collectanea*, n. 1338, in note).

[5] The Cardinal Secretary of the Holy Office indeed in 1898, in the customary conference of cases of conscience at St. Apollinaris, declared that the response of December 17, 1868 was not general. But the authority of the said Secretary - since he was another than the one who was secretary in 1868, and since he put forth his opinion 30 years after the decree had been issued - is not greater than another private authority. The same must be said of D'Annibale, who was Assessor of the Holy Office after the decree had been issued, and who holds the more benign opinion as probable.

[6] July 20, 1859 (*Collectanea*, n. 1178); December 2, 1874 (*Collectanea*, n. 1426).

320 **II. Sins to be confessed must be declared according to:** 1. the lowest moral species, at least known confusedly; 2. number; 3. certain circumstances; 4. the external act; 5. the effect, as will be explained.

1. **The lowest moral species, at least known confusedly.** This follows from the Council of Trent,[1] which declares that sins must be declared "in species," which words in their obvious sense signify the lowest moral species. The reason is clear from what has been said about the necessity of integrity (n. 317). It is said:

a) **Moral species;** since it is not necessary to declare the physical species, so that one who has stolen, for example, 100 florins and a cow satisfies by confessing that he committed two grave thefts.

b) **Lowest species,** so that it does not suffice to confess, for example, the proximate genus of the sin, for instance by declaring: "I committed a sin of lust" or "of lust against nature."

c) **At least known confusedly;** for a species wholly unknown is not contracted.

Question. What must one confess who knows that he has sinned gravely but does not remember the lowest species?

Response. He is bound to confess the sin according to its generic aspect; for one who cannot integrally satisfy the precept is bound to satisfy it insofar as he can do that, unless the reason of the precept is not found in the defective fulfillment (St. Alphonsus, VI, 480).

2. **Number.** For the Council of Trent[2] declares that sins must be confessed "individually." For the rest, this is elicited also from the fact that all mortal sins must be confessed (n. 319; canon 901), which does not take place if the number is not assigned. Moreover:

a) If the true number is established, this must be declared.

b) If the true number is not established, but some number is established, for example, if someone certainly sinned eight times but doubts whether he sinned more often, say twelve times, let him either confess only the certain number or declare a truly approximate number, adding "about" or "more or less," saying, for example, in the case alleged, "about ten times I committed this or that sin." Now by an approximate number a moderate excess is comprehended, but not a notable one. And the greater the number expressed, the greater the excess comprehended. Thus, for example, by saying "three times more or less," up to 4 can be understood; by saying "ten times more or less," up to 12; by saying "thirty times more or less," up to 33; by saying "a hundred times more or less," up to 105 (St. Alphonsus, VI, 466).

c) If not even an approximate number can be assigned, let the habit of sinning be declared, the time through which it persevered, and, as far as possible, the frequency of falls in a day, week, or month (St. Alphonsus, VI, 466). But if not even that can be done at all, or not without great danger of erring, it suffices, after the time of the habit has been declared, to add that he sinned "as often as the occasion was given" or "as often as that desire occurred" (St. Alphonsus, VI, 466). Hence a prostitute commonly satisfies by declaring that she was given over to prostitution for such a time, and that as often as there was occasion she afforded the use of her body both to married and unmarried men. Nevertheless, she should determine more exactly the number of less usual species, if they occurred, for instance sins committed with clerics. Indeed, if she can, she must manifest the number more accurately. One who is accustomed to desire any women he meets satisfies by declaring that habit and the time through which he persists in it; let him add whether often married women, whether sometimes relatives, or sacred persons. One who is accustomed on any occasion to speak about shameful matters likewise satisfies by manifesting the time of a habit of this kind.

Corollary. One who has confessed an approximate number, adding "more or less" or "about," is not bound to supplement if afterward he certainly learns of a moderate excess above the number expressed. The reason is that the sacrament of Penance was instituted after the manner of a judgment to be exercised in a human way. But, considering the human manner of proceeding, in the case posited the case to be judged seems to have been so declared and judged that, if the penitent proceeded in good faith, the obligation of supplementing seems to be denied (St. Alphonsus, VI, 466). For the same reason the same seems to be said of one who, having confessed more generally and confusedly, afterward remembers the number more distinctly, unless afterward so great a multitude of sins comes to mind that they were not comprehended in the general and confused

confession. Finally, it is clear that one who in good faith manifested too great a number is not bound to confess again, since the true number was included in the greater.

Question. Whether one who by one physical act committed several sins numerically, for instance by killing three men by one act, can confess thus: "I killed three men."

Response. It seems this must be affirmed, because he truly confesses the number of sins.

Objection. In the case posited the confessor is led into error as regards the number of acts; which is opposed to integrity.

Response. The confessor is led into error as regards the number of physical acts, let that pass; as regards the number of sins or malices, I deny it; namely, that act, physically one, is morally threefold. But an error induced as regards the number of physical acts is not opposed to integrity.

3. **Circumstances of sin.** The following must be declared:

a) A circumstance changing the theological species, as it is called, that is, one which makes a venial sin mortal or conversely; at least insofar as this is required lest the confessor take as light what was grave, or as grave what was light. Hence, for example, the circumstance of grave matter in theft must be declared, and the circumstance of half-full consent in an act gravely evil, if the penitent - to which in the case he is not bound - wishes to confess the consent.

b) A circumstance adding a new species of grave sin, or, to use the terminology of the Council of Trent[3] and of the Code (canon 901), changing the species of sin, as if someone were to kill a sacred person. Thus the Council of Trent at the cited place and the cited canon of the Code; and it follows from what has been said about the obligation of confessing sins according to the lowest species.

Question. Whether one who by one physical act committed several sins in species, for instance if one bound by a vow of chastity pollutes himself, can confess thus: "I gravely transgressed a vow and perpetrated pollution."

Response. It seems this must be affirmed, provided he truly declares the lowest species, as in the example alleged; for nothing seems lacking to integrity. But if it is objected that the circumstance of the sin must be declared which changes its species or which adds a new species to it, whereas in the case the sin against the vow is not declared as a circumstance of the sin of lust, I respond that by objecting in this way one insists too much, as it seems, on the letter of the law.

c) Circumstances about which the confessor asks, so that he may judge better concerning the disposition and obligations of the penitent, and which especially regard habit, relapse, and proximate occasions. Hence Innocent XI condemned proposition 58: "We are not bound, when the confessor asks, to confess the habit of some sin."[4]

d) Accidentally, the circumstances must be declared on which a censure or reservation of sin depends.

Question. Whether a circumstance which notably aggravates a grave sin in the same species must be declared. I said notably, because no one teaches that a lightly aggravating circumstance must be manifested.

Response. Some affirm simply; others affirm as regards the circumstance "what," or of the object, or which regards the quantity of the thing, as in excessive theft, in incest in a very near degree. Others deny absolutely; with St. Alphonsus (VI, 468) we hold this opinion as sufficiently probable. For: 1.

the Council of Trent,[5] as also canon 901, speaks only of circumstances changing the species, so that a further obligation seems at least practically to be excluded; 2. a further obligation would impose a nearly intolerable burden and would be a source of scruples and difficulties. St. Antoninus,[6] St. Bonaventure,[7] St. Thomas, as it seems (4, distinction 16, question 3, article 2, solution 5; opusculum 12 to the reader of Besancon), and all more recent authors also adhere to the more benign opinion.

Corollary. Let the confessor generally not inquire into aggravating circumstances, but let him permit the faithful, for the tranquility of conscience, to manifest them. I said generally; for: 1. as regards sins against chastity, not only should he not inquire into circumstances not to be exposed, but generally he should also advise penitents not to expose anything besides that which must be exposed; 2. as regards sins of injustice, he should for the most part inquire into the gravity of the thing taken or of the damage inflicted, both because the faithful often do not know what matter is grave, and so that he can judge about the obligation of restoring and can teach the faithful about it.

4. **External act,** whether committed, as fornication, or omitted, as omission of Mass. Moreover, an external act which completes the internal act in the character of sin must be declared; for it comes under the name of sin and in reality is contrary to the law. But of itself an external act which is merely the manifestation of a sin that is properly internal, for example of heresy, need not be declared. Except if it introduces a new species, for example of scandal, or if a censure or reservation of sin depends on it (St. Alphonsus, V, 42).

5. **Effect.** The discussion concerns grave effects which were foreseen in the cause and either intended or permitted without sufficient reason. Effects of this kind can be, for example, blasphemies uttered in drunkenness, pollution, the death of an enemy following from the giving of poison, etc. Now:

a) The effect must be declared: 1. if the confessor asks about it so that he may judge better concerning the obligation of the penitent; 2. accidentally, if a censure or reservation of sin depends on it. Otherwise:

b) The effect need not be declared if the evil will was sincerely retracted before the event; for when that has been retracted, there is no source from which true morality can accrue to the effect, so that it cannot come under the name of sin (tom. I, n. 10). If the evil will has not been retracted, it is disputed. Moreover, it seems it must be said thus: the effect must be declared which is the complement or consummation of the internal sin, or the external execution, as foreseen blasphemies uttered in drunkenness. The reason is that an effect of this kind, as an act infected by the malice of the will (t. I, n. 60), comes under the name of sin (St. Alphonsus, IV, 149; V, 10). Otherwise it must be said of an effect which cannot be called the consummation or external execution of the internal sin, as the death of an enemy following from the giving of poison.

Question 1. Whether one satisfies integrity who declares a sin not yet confessed as confessed.

Response. It seems this must be wholly denied, because by declaring necessary matter as free, he does not subject it to the judgment of the confessor, but only to repeated absolution, or at least deceives the confessor as regards the obligation of judging the sin; and that deception is grave. Namely, necessary matter must be subjected to the judgment of the confessor and judged by him, because judgment concerning it has not yet taken place; free matter is only subjected again to absolution, although it is licit to subject it to judgment again.

Question 2. Whether one satisfies integrity who, with the confessor aware, for example in a general confession, omits to distinguish between sins confessed and not confessed.

Response. Affirmatively, because it is licit to subject sins already confessed together with those not yet confessed again to the judgment of the confessor, and not only to absolution, as happens if the whole confession is made concerning free matter. In the case, however, the confessor must judge concerning each sin, and therefore also investigate the species and number of old sins, namely lest some sin which has not yet been judged be left unjudged.

Question 3. Whether one satisfies integrity who declares a confessed sin as not yet confessed.

Response. Affirmatively, because it is licit to submit free matter again to the judgment of the confessor. Nevertheless he would commit a lie and a light sacrilege, and so would sin venially (n. 324).

Question 4. Whether one satisfies integrity who falsely declares the time of the committed sin, for instance by declaring a sin recently committed as committed long ago.

Response. Some deny this, because an act recently posited is not an act posited long ago, so that in the case the act posited is not declared. But it seems this must be affirmed, provided he does not proceed for this reason, that he confesses a not-yet-confessed sin as confessed. The reason is that the act is declared primarily as posited, so that it is undeservedly said that the act posited is not declared. I said "provided he does not proceed for this reason, that he confesses a not-yet-confessed sin as confessed"; this he would do if he accused himself of a sin not yet confessed in this way: "Besides, I accuse myself of this or that sin of my past life." Besides, a penitent rightly questioned about the time is bound to open the truth.

Corollary. The penitent has satisfied the precept of integrity only when he has exposed his sins in such a way that he can prudently judge that the confessor sufficiently perceived the things to be exposed. Hence: 1. one who notices that certain grave matters were either not heard by the confessor or were wrongly understood is bound to supplement; 2. *a fortiori* he is bound to this, indeed he confesses sacrilegiously, who deliberately chooses a somewhat deaf confessor lest the things to be exposed be duly perceived. On the other hand, however, the penitent can presume that the confessor sufficiently perceived the things exposed, until the contrary is established.

[1] Session 14, on Penance, chapter 5.

[2] Session 14, chapter 5.

[3] Session 14, chapter 5.

[4] Denzinger-Bannwart, n. 1208.

[5] Session 14, on Penance, chapter 5.

[6] *Summa Theologica*, part 3, title 14, chapter 19, § 7.

[7] 4, distinction 17, part 3, article, question 3.

321 **III. One who culpably did not satisfy integrity** is bound as is explained in n. 332 sq. One who inculpably did not satisfy is bound to supplement, and indeed in the first following confession, because every confession of itself must be materially integral. Nevertheless, it is not required that confession therefore be anticipated, nor that meanwhile he abstain from the Holy Eucharist (n. 179).

Question 1. Whether one who confessed a sin as doubtful, and afterward recognizes it as certain, is bound to repeat it as certain.

Response. Most more recent authors deny this; but with the older authors and St. Alphonsus (VI, 478), it seems this must be affirmed. The reason is that the declaration of the case which is to be judged as doubtfully existing, and likewise the judgment resting on a declaration of this kind, were notably defective; this seems clear of itself, and is confirmed by the fact that that declaration and judgment did not suffice for imposing a fitting penance, that is, a grave one; for in doubt whether someone sinned gravely, a grave penance is not to be imposed.

Objection 1. One who confessed, for example, "I did that about ten times," and afterward certainly knew that he had sinned eleven times, is not bound to confess that eleventh sin again. But there is complete parity with the case just discussed.

Response. I distinguish the minor: the prior case, namely of a moderate doubtful excess, is equal to the case just discussed if the doubtful excess is considered in itself, I concede; if it is considered as part of the whole case to be judged, I deny. For the human manner in which one must proceed also in sacramental judgment brings with it that one who in good faith declared, for example, that he consented to an evil desire about ten times, is immune from the obligation of supplementing, even if afterward he knows that he consented eleven times; but the same cannot with equal right be said of one who consented once and declared it as doubtful. In conformity with this doctrine, the former according to common estimation is said to have confessed morally integrally; not so the latter (St. Alphonsus, at the cited place).

Objection 2. There is no obligation of confessing what has already been directly remitted. But the sin of which we speak has already been directly remitted.

Response. There is no obligation of confessing what has already been directly remitted if it has also been rightly declared, I concede; otherwise I deny. But the sin of which we speak was not rightly declared. Nor, in order to reject the distinction, should you appeal to canon 901, since it is not judged to settle a controversy among theologians about divine law.[1]

Objection 3. It suffices to have declared the sin as it was in conscience; which took place in the case posited.

Response. It suffices to have declared the sin as it was in a right conscience, I concede; as it was in a very defective conscience, so that a sufficiently right judgment about the existence of the case could not be formed, I deny. But the latter took place in the case posited.

Objection 4. It suffices to have declared sins according to species, number, and circumstances as explained above; this is posited as having been done.

Response. It suffices to have declared sins according to species, etc., provided the very commission of the sin has been duly declared. But that did not take place.

Question 2. Whether one who omitted a circumstance to be declared is afterward bound to repeat the whole sin.

Response. It suffices to expose the omitted circumstance, if the sin arising from the circumstance can be explained in its lowest species without the whole sin being exposed. Hence one bound by a vow of

chastity who confessed fornication but omitted the circumstance of the vow satisfies afterward by confessing that he injured the vow; otherwise the whole sin must be repeated. Thus, for example, a married person who confessed mere fornication does not satisfy afterward by adding that he inflicted a grave injury on his spouse, because by this explanation the malice of the injury contained in adultery is not sufficiently exposed.

Note. One who, after receiving absolution, confesses an omitted grave sin is to be absolved again in this very confession. As regards the penance to be imposed, what was said on p. 229 can be observed.

[1] Code of Canon Law, Preface.

322 **IV. One who doubts whether he has confessed a grave sin,** in other words, whether he has fulfilled the precept of integrity, is bound in this way:

1. If he opines that he declared the sin, he is not bound to confess it again (t. I, n. 229). Moreover, one who has diligently received the sacrament can, in doubt, commonly presume or opine that he confessed integrally.
2. If, all things considered, he strictly doubts, he is bound to declare the sin again (St. Alphonsus, VI, 477). This follows from what has been said about doubtful fulfillment of a law (t. I, n. 229). Except, however, the scrupulous, of whom in n. 327.

Scholion. On Injury to Truth in Confessing

323 **I. Truth,** as it is taken here, consists in this: that the penitent declares those things which regard sacramental judgment as they are in conscience. To truth is opposed a lie, by which the penitent, in matter pertaining to sacramental judgment, denies those things which he holds as true or affirms those things which he holds as false.

1. He does not sin against truth, as it is understood here: 1. who lies about those things which do not pertain to sacramental judgment, for example, if someone falsely says that he is from this or that parish; if he falsely responds about those things concerning which the confessor lacks the right of questioning; 2. who confesses light sins to his usual confessor, but as often as he has committed a grave sin goes to another confessor. If he does this lest he expose himself to danger of keeping back the sin, he acts rightly; but badly, if it happens for this end, that he may sin more freely.
2. He sins against truth: 1. who confesses sins which he did not commit, or denies those which he perpetrated; 2. who responds falsely about those things concerning which he is rightly questioned by the confessor.

324 **II. As regards the malice of a lie in confession,** take these things: a lie in a matter pertaining to sacramental judgment involves a twofold malice, one of lying, the other of sacrilege; of sacrilege indeed, because it inflicts injury on the sacrament. The malice of lying is light. But the malice of sacrilege is grave or light according as the penitent deceives the confessor in a grave or light matter. Hence it is grave, for example, if he confesses a mortal sin not committed as committed, or a certainly committed sin as doubtfully committed, or a doubtfully committed sin as certain, although the latter is rather done from simplicity for greater tranquility and therefore subjectively is excused from grave sin; likewise if he declares a sin not confessed as confessed; likewise if, rightly questioned about a grave matter, he says what is false; if he falsely asserts that he grieves over the sins which he has

confessed, even if he has declared only one venial sin, because it concerns a matter, that is, contrition, pertaining to validity, and therefore grave. It is light if the penitent, for example, declares a confessed mortal sin as not yet confessed (St. Alphonsus, VI, 495-497, who nevertheless does not agree as regards the malice of lying).

Question. Whether it is ever licit to use in confession a restriction that is not purely mental.

Response. Negatively, if it concerns a matter about which the confessor rightly questions. Otherwise it must be affirmed: and so if the confessor undeservedly asks, for example, whether the penitent has confessed elsewhere, the penitent can respond "Negatively," understanding underneath, for example, "so that I am bound to tell you that."

Point III. On the Causes Excusing from Material Integrity

An intrinsic inconvenience does not excuse, as, for example, shame (t. I, n. 169). Concerning extraordinary shame, confer n. 327. The following excuse:

325 **I. Ignorance of the law and forgetfulness of sin,** provided it is here and now inculpable or at most lightly culpable, for instance when someone after an examination made without grave negligence does not remember some sin. I said "without grave negligence," because light negligence can be combined with ordinary diligence.

326 **II. Physical inability.** 1. The dying and the sick who, even if helped by the confessor, cannot confess integrally at all or can do so only with great difficulty, are excused.

2. The mute and the deaf, who are bound to confess integrally insofar as they can morally do that by words or signs. It is disputed whether the mute are bound to use writing if otherwise they cannot satisfy the precept. Moreover, most more recent authors deny this. But with St. Thomas (In 4, distinction 17, question 3, article 4, solution 3, ad 2) and St. Alphonsus (VI, 479), it seems this must be affirmed. For only a grave inconvenience, or one extraordinary or unusual with respect to the penitent, excuses from a grave divine precept. But the use of writing neither involves grave inconvenience nor is judged an extraordinary or unusual means of communicating with others with respect to the mute.

Objection. No one is bound to use a means which introduces danger of revelation. But writing is of this kind, since by some accident it can come into the hands of others.

Response. No one is bound to use a means which brings with it danger of revelation worthy of note, I concede; otherwise I deny. But in the case, the danger of revelation attached to writing is not worthy of note, so that not even the burden of undergoing it deserves to be noted. Therefore it does not excuse from fulfilling a grave precept.

A somewhat deaf person should be led into a remote place, unless it is to be feared that bystanders would suspect that he sinned gravely. But this does not take place if deafness is noticed at the beginning of confession; otherwise, for the most part, if it is noticed in the course of confession (St. Alphonsus, *Homo Apostolicus*, tract 16, n. 35).

3. Those ignorant of the language of the confessor are excused if another confessor cannot be had shortly and conveniently. If the confessor does not know only the dialect of the penitent, so that, at least after asking for explanation, he understands several or even many things, it is licit for a

lesser cause to hear the confession of the penitent. For the rest, the penitent is not bound to use an interpreter (canon 903), and this holds even if he can easily declare one or another sin through an interpreter, for instance a sin which is already known to the interpreter from elsewhere (St. Alphonsus, VI, 479).

4. Those lacking opportunity of time, for instance when battle or shipwreck is imminent. The same can happen in a hospital, if all, because of the multitude of the dying, cannot confess integrally in time. Likewise the penitent is excused if it is to be feared that the confessor may die or that something grave may happen to him before confession has been integrally completed, and another cannot be approached conveniently and shortly.

A great concourse of penitents does not excuse, as follows from proposition 59 condemned by Innocent XI:[1] "It is licit sacramentally to absolve those who have confessed only by half, by reason of a great concourse of penitents, such as, for example, can happen on the day of some great feast or indulgence."

[1] Denzinger-Bannwart, n. 1209.

327 **III. Moral inability,** which is had when the penitent cannot confess integrally without probable damage, whether spiritual or temporal, extrinsic to confession and proportionate to the gravity of the precept. It is said without probable damage; certain damage is not required, because it is already a grave inconvenience to expose oneself to grave danger. Here are referred:

1. Danger of infamy, for instance if a sick person, for example in a hospital, cannot confess sins without others hearing them; or if someone cannot omit or defer Holy Communion or Mass without notice or scandal, and has committed so many sins that he cannot confess integrally without others suspecting his evil state. Outside this case a lengthy confession rarely brings with it danger of infamy, because all know that confession is often prolonged not at all because of many grave sins to be confessed, but in order to seek counsels, etc.
2. Danger that the confessor will violate the seal; likewise if the penitent by confessing integrally would violate the seal. These will scarcely take place.
3. Danger of a fall arising from diligent examination and recollection of sins.
4. Danger of damage to be feared for a scrupulous person from integral confession (St. Alphonsus, VI, 484-488).

Question. Whether extraordinary shame excuses.

Response. All concede: 1. that those who are more ashamed than others are not excused; 2. that shame which arises from a circumstance commonly occurring does not excuse. But some judge that shame arising from an extraordinary circumstance excuses, for instance if someone had to confess a very disgraceful sin to his nephew. But this opinion seems wholly to be rejected, according to what was said on p. 135.

328 **IV. Damage of the confessor or of a third party to be prevented,** for instance if the penitent is infected with plague, and integral confession would expose the confessor to danger of contagion; or if the penitent fears that by confessing integrally he would create danger of a fall for a confessor inclined to lust (St. Alphonsus, VI, 479; 484-488).

Question. Whether there is an obligation of confessing a sin which cannot be manifested without infamy of the accomplice or of any third party.

Response 1. It must be affirmed if the penitent, independently of the precept of integrity, enjoys the right of bringing infamy on the accomplice or third party, for instance if the accomplice, as regards the crime of which there is question, has been condemned by a judge. The reason is that in the case the natural law of preserving reputation is not opposed to the precept of integrity.

Response 2. Outside the hypothesis posited, it is disputed. Some deny. Others not only deny, but also teach that under light obligation[1] it is illicit to confess a sin of this kind, because the natural law of preserving the reputation of one's neighbor prevails over the law of integrity. Others, whose opinion we embrace, affirm, and judge that the law of integrity, according to the mind of Christ, prevails. For: 1. if the opinion of the adversaries is admitted, provision often would not be made for the prudent ministration of the sacrament. For prudent ministration commonly, as is clear from Trent,[2] requires the manifestation of all sins according to species, number, and circumstances changing the species. 2. If that opinion is admitted, the law of integrity would not rarely become illusory, since especially in smaller places the confessor can easily suspect who the accomplice is, and another confessor cannot conveniently be approached. Add that in antiquity there was the custom, and of itself the obligation, of confessing to the parish priest, who was accustomed to know his subjects and their circumstances. 3. Authors both more numerous and more outstanding in authority adhere to the stricter opinion, for example St. Thomas (in 4, distinction 16, question 3, article 2), St. Alphonsus (VI, 489), St. Bernard,[3] St. Antoninus,[4] St. Bonaventure,[5] Cajetan,[6] Suarez,[7] Lugo.[8]

Nevertheless, the penitent is bound under light obligation,[9] if it can be done conveniently, to approach a confessor to whom the accomplice is unknown. But a just cause excuses from this obligation, as if otherwise the penitent would remain for some time in the state of mortal sin, or would have to abstain from Communion or celebration which he was accustomed to institute daily; if this confessor would be especially useful to the penitent, for instance by affording him greater quiet or consolation; if the penitent would confess with more difficulty to another than to his usual confessor, etc. (St. Alphonsus, VI, 490). Besides, in practice the confessor can commonly permit penitents to expose sins, and ask them about occasions and circumstances to be confessed, even if from that accidentally he comes to knowledge of the accomplice. Nevertheless, let him generally take care that penitents expose their own sins rather than the sins of others, for example of husband or wife.

Corollary I. In order that it be licit, because of the excusing causes explained above, not to confess integrally, it is required:

1. That there be some necessity or at least a moderate cause of confessing, for instance the precept of annual Communion or confession, or if someone could not omit Communion without notice; likewise the inconvenience of remaining, for instance for a day, in sin, or of omitting Communion which he was accustomed to receive daily (St. Alphonsus, VI, 487).
2. That another confessor cannot be had without grave inconvenience, to whom integral confession can be made without the inconvenience which the penitent intends to avoid.

Corollary II. It is clear: 1. that only that sin can be kept back to the declaring of which the excusing inconvenience is attached;[10] 2. that sins kept back are afterward to be declared if the excusing

inconvenience has ceased.

[1] Under light obligation only, because the manifestation of a sin to one man who will keep the secret is light, unless it concerns an enormous crime; or unless the sin is manifested to one from whom it is especially in the sinner's interest that it be hidden, for example to his superior.

[2] Session 14, chapter 5.

[3] *Varia et brevia documenta*, n. 1.

[4] Part 3, title 14, chapter 19, § 11.

[5] In 4, distinction 21, part 2, article 1, question 3.

[6] *Summa*, word *Confessio*, condition 3.

[7] Disputation 34, section 2, assertion 2.

[8] Disputation 16, section 7, n. 394.

[9] Under light obligation, because infamy before one trustworthy man is of itself venially evil.

[10] But it is disputed whether the whole sin or only the circumstance can be kept back if the inconvenience is attached only to the circumstance to be declared. Some teach that only the circumstance can be kept back; others judge that in the case the whole sin can be kept back when afterward the circumstance to be kept back cannot be supplied without the whole sin being exposed. Otherwise, they say, there would be an obligation of confessing the same thing twice. But the controversy is of little practical importance.

Point IV. On the Means of Procuring Integrity, or on the Examination of Conscience

329 **I. The obligation of examining conscience** exists insofar as it is required for confessing integrally. This is clear both from the Council of Trent[1] and canon 901, and from the fact that one who is bound to the end is also bound to the means.

[1] Session 14, chapter 5 and canon 7.

330 **II. Required diligence.** Ordinary or moderate diligence suffices, that is, such as a prudent man is accustomed to employ in a serious matter. It suffices even if someone judges that by examining conscience longer and more diligently he would remember more sins. Nevertheless, diligence depends on the capacity of the penitent, on the moral state of the soul, on the time concerning which the examination must be instituted, etc. (St. Alphonsus, VI, 471).

Question. Whether the penitent is bound to write down sins if otherwise he is exposed to grave danger of not confessing integrally.

Response. Negatively, because ordinary or moderate diligence suffices for knowing and retaining sins in memory. But writing exceeds the limits of ordinary diligence. Besides, very many men who confess rarely are in the said danger, and therefore, if the stricter opinion is admitted, they would be bound to writing. Now, from frequent use of that means so many inconveniences would follow - especially the manifestation of written confessions, which from carelessness, etc., would fall into others' hands - that that use cannot be held as prescribed.

331 **III. Causes excusing from diligent, or at least from more accurate, examination of conscience** are sufficiently clear from what has been said about the causes excusing from integrity. Thus, for example, the same examination is not required for the sick as for the healthy (St.

Alphonsus, VI, 471). Add that one who arranges with the confessor about questioning can lessen diligence in examining, because examination is required only as a means.

Corollary I. Writing is generally also to be discouraged, except sometimes once or twice in life, when someone is about to institute a general confession.

Corollary II. One who is morally certain that he does not have necessary matter is not bound to examination; nevertheless it is advised, namely so that he may better know and uproot venial defects. Besides, let penitents not examine themselves longer either about doubtful sins or about temptations against chastity; it is better, with further examination omitted, to confess doubtful sins as doubtful.

Corollary III. One who is bound under grave obligation to diligent examination, and, after neglecting it, confesses, receives the sacrament invalidly and sacrilegiously if he sufficiently adverts to the grave defect; this rarely happens, so that confessions are rarely to be repeated precisely for that reason.

Corollary IV. Uneducated penitents who in confession are found to have examined their conscience negligently should commonly not be sent away so that they may examine themselves more diligently; rather the confessor himself should examine them (St. Alphonsus, VI, 471). The same holds concerning penitents who are found by the confessor to have kept back sins and not to have examined themselves regarding past sins.

Scholion I. On Repeating Confessions in General

332 **Preliminary I.** The obligation of repeating confessions in which necessary matter is involved can arise from a defect either of validity or of integrity, for instance if someone previously confessed sins without species and number, or if the confessor, because of deafness or sleep, did not hear or understand the things confessed.[1] But an invalid confession can be either simply invalid, or invalid and sacrilegious. It is also sacrilegious at the same time when the penitent sinned gravely in the very reception of the sacrament.

Preliminary II. Defect of validity can come:

1. From the confessor, for example if he lacked jurisdiction, if he omitted the form or changed it substantially.
2. From the penitent, for example if he was ignorant of things to be known and believed by necessity of means, if he lacked contrition or purpose, if in bad faith he kept back a grave sin.

[1] In the case, for the most part at least generic confession is had, so that one cannot seriously doubt about validity.

333 **I. The obligation of repeating confessions is had:**

1. If someone confessed very incompletely, that is, without species and number. Nevertheless, this is not presumed, since the confessor must be presumed to have helped the penitent sufficiently.
2. If it is morally certain that someone confessed invalidly, as if someone continually and in the same way relapsed into a habit.
3. **Disputation 1.** Whether one who doubts whether he confessed invalidly is bound to repeat confessions. Moreover, it seems it must be said thus:

a) If the doubt about validity comes from doubt about the way in which someone confessed, for example whether with true contrition, the penitent is not bound to repeat the confessions, because he

can presume that he confessed rightly according to that principle: in doubt, what has been done is presumed to have been rightly done (St. Alphonsus, VI, 505).

b) If the doubt does not come from doubt about the way in which someone confessed, but from the fact that it is doubted whether confession instituted in that way is valid,[1] the penitent seems to be bound to repeat the confession. For then there is no reason for presuming that the confession was valid, so that it is truly doubtfully valid and remains so. But one who, all things considered, seriously doubts whether he confessed validly seems to be bound to repetition. For one who certainly sinned gravely must take care that he enjoys, at least with moral certainty, the means prescribed of itself for obtaining pardon, that is, direct absolution from sin, or such an absolution as the sacrament of Penance confers by reason of itself, not merely insofar as remission of one mortal sin necessarily brings with it the expulsion of the others. But in the hypothesis posited direct absolution from sins is uncertain and remains uncertain until the sins are again subjected to the keys (St. Alphonsus, II, 2; VI, 450).[2] Whether in a following confession the sins must again be declared distinctly, or whether it suffices to confess them generally, draw from what is to be said in n. 334.

4. **Disputation 2.** How far there is an obligation of repeating confession if the confessor, because of deafness or sleep, understood the things confessed only in part. Now:

a) if the penitent knows which sins were not understood, he is bound to repeat these (n. 397).

b) if the penitent does not know that, he is bound to repeat the confession if it was brief, because as regards the individual sins he doubts whether they were understood; nor is there an inconvenience which excuses. But if the confession was long, the inconvenience of repeating it and consequently many sins already confessed and understood seems to excuse from integrity, or from renewing a distinct confession; and it suffices that the penitent declare in general that there are certain sins which the confessor did not perceive (St. Alphonsus, VI, 499).

[1] For instance, if someone, having confessed two sins, was contrite solely from a particular motive of one sin; or if he confessed while ignorant of the mysteries which probably must be known by necessity of means.

[2] What St. Alphonsus teaches here coheres very well with what is said in book VI, n. 595, where he teaches that the faithful are not to be compelled to repeat confessions unless it is morally established that they were invalid. The latter is generally true, and therefore can be stated in that way; but in the exceptional case discussed by the Holy Doctor in book II, n. 2, the principle cannot be applied, as otherwise it commonly can: in doubt one must stand for the validity of the act. "If," Gaude adds, "there were a contradiction between the two places, those things which are handed down in the present place would certainly seem to be preferred, and it is clear that the Holy Doctor changed his opinion on this matter. For what is here asserted about necessarily repeating confession is absent in the first five editions of the *Theologia Moralis*, and is first found in the sixth edition printed in 1767; whereas, on the contrary, the doctrine taken from the tract on Penance had already obtained a place in the earlier editions of the *Theologia Moralis*" (note in this place). But, as I noted, there is no contradiction.

334 **II. The manner of repeating confessions.** 1. If the repetition is made before the same confessor before whom the invalid confessions were made, then:

a) If the confessor has retained at least confused knowledge of the state of the penitent, it suffices, as regards the sins confessed, that these be subjected to the keys by a general accusation. For in the case there are had, or rather previously were had, confession and distinct judicial knowledge; besides, here and now there are had confession at least generic and confused judicial knowledge. That more is

required is commonly and quite soundly denied. Note also that confused knowledge can sometimes be gathered from the penance itself imposed and retained in memory (St. Alphonsus, VI, 502).

b) If the confessor has not retained even confused knowledge, nor can gather it from the penance imposed and known, it suffices, but more probably is also required, that he resume confused knowledge; or that the penitent again expose in a confused way the sins previously confessed, for example by saying that he sinned against chastity, temperance, justice, religion. That this suffices is clear from what was said under a). That this is required, with St. Alphonsus (VI, 502) against several more recent authors,[1] we hold as more probable, and indeed: 1. because sentence does not seem to be pronounced unless the judge has at least confused knowledge of the state of the penitent, that is, has retained it or now resumes it; 2. because otherwise a sufficiently fitting penance cannot be imposed.

2. If the repetition is made before a different confessor, the confessions must be repeated integrally. The reason is that the confessor who pronounces sentence must have or have had distinct judicial knowledge of the sins. Nevertheless, sometimes it will suffice to question the penitent, for example, about the last year; namely if, because of a uniform manner of life, a sufficient judgment can at the same time be formed about the preceding years - that is, one equal to what would be obtained by a repetition of the confessions. The same is to be applied if the confessor, after hearing the confession of the last year, detects a defect of past confessions; in which case it suffices that the confessor has retained knowledge of the sins heard, and from that knowledge forms a sufficient judgment about the past years. In either case, however, let the penitent accuse himself in a general way concerning the preceding years (St. Alphonsus, VI, 504).

Corollary I. Whether the repetition is made before the same confessor or before a different confessor, those things which perhaps were lacking to integrity in the prior confessions must always be added by the penitent. Besides, if the prior confessions were sacrilegious, let the penitent declare how often he received the sacrament of Penance and Holy Communion, likewise whether he received other sacraments, namely Confirmation, Matrimony, Extreme Unction; finally whether and how often he injured the precepts of annual Confession and Communion, whether by neglecting them or by receiving the sacraments sacrilegiously.[2]

Corollary II. It sometimes happens that prior confessions were invalid, but not later ones; for instance if the penitent at first confessed without contrition but in good faith, and afterward with due disposition; likewise if at first sacrilegiously, but afterward, having forgotten the sacrilege, he validly received the sacrament. Now it is clear that these things are to be attended to in the repetition of confessions.

[1] They say that it suffices that the confessor remember that this penitent had confessed and been judged.

[2] Many, however, are ignorant that by sacrilegiously receiving the sacraments they injure that twofold precept.

Scholion II. On General Confession

335 **I. Notion.** General confession is that by which several confessions previously instituted are repeated. It can comprehend either one's whole life or a notable part of it.

336 **II. How far is it to be instituted?** 1. It is necessary for those who have confessed either invalidly, whether simply invalidly or at the same time sacrilegiously, or very incompletely (n. 332); likewise in the doubt about the validity of confession discussed in n. 333.

2. It must be prohibited to the scrupulous, and to those for whom the recollection of sins would become a danger of relapse or of grave temptations. If, however, the necessity of general confession were established, let it be prudently instituted. Cf. nevertheless, as regards the scrupulous, what was said in n. 327.

3. It is useful: 1. in doubt about the nullity of confessions; 2. on the occasion a) of solemn First Communion; b) of the choice of a state of life, whether conjugal, religious, or clerical through Major Orders; c) of spiritual exercises or a Mission,[1] at least from the last general confession; 3. in dangerous illness. But the choice of a new confessor commonly is not a reason for instituting a general confession. Besides, it can easily be permitted that sins of past life be repeated summarily.

[1] Postulants, before they begin the novitiate, "according to the prudent judgment of the confessor, should premise a general confession of their past life" (canon 541).

337 **III. The manner of receiving it.** 1. **Things to be premised.** First let the confessor inquire whether or not general confession is necessary,[1] and therefore in a friendly way ask the penitent for what reason he desires to institute a general confession. Next, let him inquire into the age and state of the penitent, especially whether he is married, whether he is being courted or seeking marriage; likewise sometimes about satisfactions fulfilled. Finally, let him ask whether the penitent would prefer to make the confession himself or to be questioned.

2. **Things to be observed in confession.** First let inquiry be made into sins committed after the last confession. When this has been done:

a) According to some, it is better to divide life into diverse epochs, for instance from infancy up to the choice of a state of life, etc., and to question separately about the individual epochs. According to others, it is more expedient, or equally expedient, to question about sins in one continuous course, meanwhile taking account of the diverse epochs. According to others, the questioning should be made about the sixth precept according to the diverse epochs, and about other sins in one continuous course.

b) In questioning, let a definite order be observed, for instance by successively inquiring into sins against: 1. the precepts of the Decalogue; 2. the precepts of the Church; 3. the duties of one's state. Others refer all sins to the Decalogue. If, however, it is clear that the penitent has kept back some sin, let him first be questioned about this. Besides, it is generally better at the beginning of confession to inquire into sins against the sixth precept, especially if the confessor suspects that the penitent has not led a chaste life.

For the rest, let each confessor set before himself a definite order which he will observe. The questions to be proposed can be compared in Aertnys.[2]

3. **Things to be added.** At the end let him ask the penitent whether any anxiety of conscience remains, and let him render him entirely at peace.

[1] If general confession is not necessary, the confessor can moderate the questions; but let him proceed in such a way that the penitent does not notice this; hence let him not strive to finish everything very quickly, lest he leave the penitent anxious and not content.

[2] *Theologia pastoralis*, nn. 247-256.

Scholion III. On Venial Sins to Be Confessed and on Doubtful Matter Alone Confessed

338 **I.** Since venial sins indeed can be declared (n. 294), but do not necessarily have to be declared, there is no obligation of declaring them according to species and number. Nevertheless, that they be manifested at least according to species is greatly to be advised because of the reasons alleged in n. 310. Indeed, it can happen that the confessor must ask about species and number, namely so that he may judge concerning the disposition of the penitent, or so that he may know whether, because of coalescing matter, a grave sin has been committed or a grave obligation of restoring has arisen. But the penitent, rightly questioned, is bound to respond.

339 **II.** A penitent who confesses only doubtful matter or doubtful mortal sins, after certain and more or less determined matter has been sought, is absolved absolutely. If matter more or less determined cannot be obtained, let the penitent, after a generic confession of all sins has been sought, be given absolution (n. 310).

Chapter III. On the Form, or on Absolution

340 The form of the sacrament of Penance is: I absolve thee from thy sins in the name of the Father, and of the Son, and of the Holy Spirit. Amen. This, however, together with the things to be added, is related thus by the Roman Ritual:[1]

"May almighty God have mercy on thee, and having forgiven thy sins, bring thee to eternal life. Amen.

Then, with the right hand raised toward the penitent, he says: May the almighty and merciful Lord grant thee indulgence, absolution, and remission of thy sins. Amen. May our Lord Jesus Christ absolve thee, and I by his authority absolve thee from every bond of excommunication, suspension, and interdict, insofar as I can and thou needest.

Then I absolve thee from thy sins, in the name of the Father, and of the Son, and of the Holy Spirit. Amen.

If the penitent is a layman, the word suspension is omitted. But a bishop in absolving the faithful makes the sign of the cross three times.

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

For a just cause the *Misereatur*, etc., can be omitted, and it is enough to say: May our Lord Jesus Christ, etc., as above, up to that part: May the Passion of our Lord, etc.

But when some grave necessity presses in danger of death, the priest will be able to say briefly: I absolve thee from all censures and sins, in the name of the Father, and of the Son, and of the Holy Spirit. Amen."

As regards the prayers attached to the formula of absolution, canon 885 says this: "Although the prayers attached by the Church to the formula of absolution are not necessary for obtaining absolution itself, nevertheless, unless for a just cause, let them not be omitted."

[1] Title III, chapter 2.

341 **I. The essentials of the form.** 1. Certainly these suffice for validity: I absolve thee from sins. It is disputed whether these suffice: I absolve thee; and: I absolve from thy sins. The words *I, in the name of the Father and of the Son and of the Holy Spirit*, and *Amen* oblige, but only under venial sin.

2. The formula by which the form is uttered must be formally, or as regards sense, indicative, and not only formally deprecative; in other words, the priest must manifest that by ministerial power he imparts remission to the penitent, and not only signify that he prays for remission from God for the penitent. The reason is that absolution is a judicial act; a mere prayer is not of this kind.

Question. Whether a formula grammatically, that is, considering the words alone, deprecative can be valid.

Response. Affirmatively; for: 1. A formula of this kind can, from the circumstances - others say, from use approved by the Church - have an indicative sense, or exhibit a judicial sentence; for instance, if there is a use of uttering the said formula with the intention of remitting sins. But from no head is it clear that more is required; in other words, that a formula is required which is also grammatically indicative. 2. A formula grammatically deprecative was used quite commonly in the Eastern Church, and is even now used; and the same use flourished for centuries in the Latin Church.

In the Latin Church the indicative formula has been prescribed; hence a formula grammatically deprecative is illicit. Whether it is also invalid is not clear from what has been said above.

3. The sense of the form or of absolution is presented in different ways by different authors. Some state the sense thus: I remit sins to thee. But the sense must, if the sacrament is received validly, always be verified. But the aforesaid sense is not verified: 1. if the sacrament remains *informe*; 2. if absolution regards sins already remitted. For it is repugnant that sins already remitted or deleted be remitted or deleted again. This cannot happen except in appearance. Indeed, it is objected that a father can say to his son: "Again I remit everything to thee." But the said words effect nothing, and are merely a new sign of a remission already carried out; and if the matter concerns the form of a sacrament, this does not suffice. Others present the sense of absolution with these words: I confer upon thee grace of itself remissive of sin. But this sense also is not verified in an *informe* sacrament. Others speak thus: I bestow upon thee the sacramental title of absolution. But this opinion rests on the doctrine of intentional causality, which is less pleasing according to what was said in the treatise on the sacraments in general. Therefore the sense seems to be: I confer upon thee, as much as is on the part of the sacrament, absolution from sin; or: I confer upon thee a sacrament of itself absolving from sin; or, as St. Thomas speaks: I "bestow upon thee the sacrament, understand: of itself, of absolution" (3 p., question 84, article 3, ad 5). This sense is verified even in an *informe* sacrament; likewise if the matter concerns sin already remitted. For the sacrament can be of itself absolving from sin, even if sin is not actually remitted, as in an *informe* sacrament, or when it has already been remitted.

342 **II. The accidentals of the form.** 1. The words *Misereatur*, etc., *Indulgentiam*, etc., and *Passio Domini*, etc., according to the Roman Ritual cited above and canon 885, can be omitted for a just cause, for instance, as earlier editions of the Ritual have it, if confessions are more frequent and briefer; indeed, from the fact that Trent[1] says that prayers are laudably added, they can quite probably always be omitted without sin (St. Alphonsus, VI, 430, doubt 3). The same can be said of the raising

of the hand, to be continued from the word *Indulgentiam* up to *Passio Domini*, and of the sign of the cross. Nevertheless, commonly one should not depart from the rubric.

2. Absolution from censures must be premised to absolution from sins; and indeed under grave obligation if the confessor holds at least as probable that the penitent is bound by a censure which prohibits reception of the sacrament. One who by a single formula absolved from censures and from sins would sin only lightly, provided he intended to absolve first, in order, from censures; indeed, quite probably he would not sin if no probable suspicion is present that the penitent has incurred some censure (St. Alphonsus, VI, 430, doubt 4).

3. The word *suspension* should be omitted if the penitent is a layman. The word *then*, previously printed in authentic editions sometimes in red, sometimes in black type, in later editions is printed in black type, so that now it cannot be held as a mere rubric, but must be expressed. To omit it is venial, just as to omit the words *in the name of the Father, and of the Son, and of the Holy Spirit. Amen.* The words *whatever good thou hast done*, etc., *may it be unto thee for remission of sins*, according to St. Thomas (Quodlibet 3, article 28) and others, while others contradict, elevate all the good works of the penitent to sacramental satisfaction, provided the confessor intends this, at least implicitly, by intending to benefit the penitent as much as he can.

4. Where there is a custom that the penitent before confession asks for a blessing, let the confessor impart it, saying: May the Lord be in thy heart and on thy lips, that thou mayest rightly confess thy sins.

[1] Session 14, on Penance, chapter 3.

343 **III. The manner of uttering the form.** It is required:

1. For validity, that the form be uttered: 1. by voice; 2. upon one physically or corporally present.

a) **By voice.** "The form of this sacrament," says the Synod of Florence, "is the words of absolution which the priest utters when he says..." Universal Tradition is added. Therefore absolution given by letters or by a nod is not valid.

b) **Upon one physically present.** For from the decrees of Clement VIII and Paul V, of which we spoke in n. 312, it is licit in no case to give absolution to one absent; the sole reason of which absolute prohibition can be that absolution of this kind is invalid. It is added that sacramental judgment is judged to have been instituted as human judgments were and are accustomed to be exercised, and as it is fitting that they be exercised. But human judgments were and are accustomed to be exercised among those physically present, and it is fitting that they be exercised thus.

Moreover, the physical presence which is required must be taken morally, so that that presence suffices within which men can speak with one another in a common voice, even if a louder one. A distance of about twenty paces, considering distance alone, according to St. Alphonsus, is not opposed to validity. For the rest, note: 1. It very probably does not suffice that the penitent be seen by the confessor, because from that he is not constituted present; 2. if the penitent and confessor are in different rooms, absolution will more easily be invalid; 3. in order that absolution not be certainly invalid, such presence suffices that, if there were no impediment, the penitent could be perceived by some sense; 4. if the required presence is present, it is not required that the confessor actually see the penitent or perceive him by some sense (St. Alphonsus, VI, 428, 429); 5. if the discussion concerns

absolution of a continuous multitude, presence can be taken in a broader sense; indeed, in the case nothing seems to prevent many from being far off, provided the multitude as such is near.

Corollary I. If a penitent not yet absolved has departed from the confessional, let him be absolved if he is seen nearby or is known not to be far away. Nevertheless, it is better that he be recalled, if it can conveniently be done. If the confessor because of danger of infection or another cause cannot enter the room of the sick person, let him absolve him from the doorway. If someone seems to be falling from a roof or into a river, let him be absolved under condition (St. Alphonsus, VI, 429).

Corollary II. Absolution given by telephone is very probably invalid. For truly and according to common estimation there is speech between those physically absent. This is confirmed by the fact that not even that is present which according to some constitutes sufficient presence; in other words, not even the voice itself, but, as in the phonograph, only a reproduction of the voice is heard. Nevertheless, until the authority of the Church has settled the question,[1] I would not condemn one who in a case of necessity absolves under condition by means of the telephone.

Corollary III. Absolution given through an ear-tube is commonly doubtfully valid. In the case the human voice indeed is heard; but it is doubtful whether conjunction through an ear-tube and the human voice renders persons staying in different rooms or places of the house sufficiently present. Hence in a case of necessity absolution should be granted under condition.

[1] The Sacred Penitentiary, to the question "whether in a case of extreme necessity absolution can be given by telephone," on July 1, 1884, responded: "nothing is to be answered."

344 **2. For liceity,** it is required that absolution be conferred: 1. only upon those who enjoy the right of receiving it, as will be explained afterward; 2. absolutely or under condition, as follows:

a) Absolution, if it is conferred, must be conferred absolutely when it is at least morally certain that the requisites for the validity of the sacrament are present. Broader moral certainty suffices (n. 398).

b) Absolution can and must be conferred under condition if it is seriously doubted whether it can be conferred validly, but grave damage threatens the penitent if it is denied; if lesser damage threatens, absolution can be given but need not be given (St. Alphonsus, VI, 431).

c) The sacrament should be conferred under the condition *if thou art capable* rather than under the condition *if thou art disposed*.[1] The reason alleged is that in this way better provision is made for the validity and reviviscence of the sacrament. For according to many, less is required for capacity of receiving the sacrament than for the required disposition by which it is fruitfully received (n. 299). And so it can happen that the sacrament conferred under the condition *if thou art capable* is validly ministered, and afterward, when the required disposition arrives, revives; the sacrament, I say, which, conferred under the condition *if thou art disposed*, would be conferred invalidly and therefore could not revive. Moreover, these things are true if by the condition *if thou art disposed* is understood: if thou art disposed to receive the sacrament fruitfully. For the rest, it also suffices to confer the sacrament "according to the mind of Christ or of the Church"; nor is it required that the condition be stated in words, but it suffices to have conceived it mentally.

Corollary I. Absolution under condition can and must be conferred:

1. If the confessor doubts whether he absolved a penitent who confessed a grave or doubtfully grave sin. If the penitent confessed only venial sins, the confessor can, but need not, absolve him under

condition; in other words, he can prefer either the convenience of the penitent or the reverence of itself belonging to the sacrament. For the rest, in doubt about absolution having been given, it can commonly be presumed that it was granted.

2. In doubt whether the penitent still lives; whether the dying person, deprived of the senses, is Catholic, or at least enrolled in a sect which admits the sacrament of Penance.
3. In doubt about sufficient use of reason in children and in the half-witted, if they have probably sinned gravely. If this is not probable, absolution should at least sometimes be conferred.
4. In doubt about necessary remote matter, for example if the penitent has confessed only a doubtfully grave sin and certain matter cannot easily be obtained. If there is doubt about free remote matter, in other words, if the penitent has confessed only a doubtfully sinful act and certain matter can be had with difficulty, absolution should be granted at least sometimes. But these things are almost merely theoretical, since, at least by means of generic confession, matter sufficiently certain can commonly be obtained.
5. In doubt whether the penitent who confessed mortal sins is disposed, let him be absolved, as will be explained afterward.
6. In doubt about the required presence (St. Alphonsus, VI, 432; *Homo Apostolicus*, tract XVI, n. 9).
7. In doubt whether the confessor enjoys jurisdiction over the penitent, according to what is to be said afterward.

Question 1. Whether a penitent absolved under condition must be warned about repeating confession.

Response. Affirmatively, if it can be done prudently. But commonly an admonition of this kind will give occasion to anxieties of the penitent and perplexities of the confessor. But sins perhaps not remitted will be remitted in the following valid confession. Sometimes, however, it can be done prudently if the penitent is absolved under condition because of doubtful jurisdiction of the confessor.

Question 2. Whether a penitent absolved under condition can be admitted to Holy Communion.

Response. Strictly speaking, he cannot be admitted to Holy Communion, because he probably remains in a mortal state. Nevertheless, prudence will commonly advise that the confessor be silent (St. Alphonsus, I, 51).

[1] Formerly some taught that absolution conferred under the condition *if thou art disposed* is always invalid. But this opinion is now commonly rejected (St. Alphonsus, VI, 432).

Chapter IV. On the Integral Part, or on Satisfaction

We shall speak first of the notion and efficacy of satisfaction, then of the power and obligation of imposing satisfaction, and then of the obligation of accepting and fulfilling satisfaction.

Article I. On the Notion and Efficacy of Satisfaction

The discussion concerns actual satisfaction, not satisfaction insofar as it is only in purpose.

345 **I. Notion.** What satisfaction generically taken is has been said in t. I, n. 979. But sacramental satisfaction is compensation for temporal punishment owed because of sins, through an afflictive work. Therefore sacramental satisfaction is not a prayer which someone says in place of a penance he has forgotten. Nor does it suffice that the confessor afterward ratify that prayer, because satisfaction must be imposed before it is performed.

346 **II. Efficacy.** Sacramental satisfaction compensates for, and thus removes, temporal punishment not only *ex opere operantis* but also *ex opere operato*. The reason is that the said satisfaction is not only a salutary and meritorious act, satisfying *de condigno* for some remaining punishment, but also an integral part of the sacrament; in other words, satisfaction effects that the sacrament be an efficacious sign of integral, or more perfect, remission, or remission extending itself to the debt of remaining punishment. But through sacramental satisfaction so much punishment is removed as corresponds to the satisfaction performed, so that by a heavier penance more, and by a lighter penance less, of the punishment owed is remitted.

It is disputed whether actual satisfaction also increases sanctifying grace *ex opere operato* (cf. St. Thomas, 3 p., question 90, article 2, ad 2).

Article II. On the Power and Obligation of Imposing Satisfaction

347 **I. Power and obligation of imposing satisfaction.** The ministers of the sacrament of Penance can and of themselves must impose satisfaction. This is clear: 1. from the Council of Trent[1] and from canon 887; 2. from the universal and constant practice of the Church, which is shown in penitential books, rituals, and testimonies of Councils[2] and of the Holy Fathers;[3] 3. from theological reasons. For the confessor must, as judge, punish the accused, and, as physician, provide medicine to him; these things are done through the imposition of vindicative and medicinal satisfaction[4] (St. Alphonsus, VI, 506).

I said that the confessor of himself must impose satisfaction, because accidentally he is not bound when the penitent cannot perform any satisfaction; this, however, scarcely happens except in one dying, deprived of the senses, or lacking mental power. Those gravely sick commonly can fulfill at least a very slight satisfaction, so that very rarely is there a cause excusing from all satisfaction (St. Alphonsus, VI, 507).

[1] Session 14, canon 15 and chapter 8.

[2] Cf. Council of Laodicea (372), canon 2 (Harduin, t. 1, col. 1531); Third Council of Carthage (397), canon 31 (Harduin, t. 2, col. 1404).

[3] Cf. dogmatic theologians.

[4] Council of Trent, at the cited place.

348 **II. How much satisfaction is to be imposed?** This can be deduced from these words of the Council of Trent: "Therefore the priests of the Lord, so far as spirit and prudence shall suggest, ought, according to the quality of the crimes and the capacity of the penitents, to enjoin salutary and fitting satisfactions, lest, if perhaps they connive at sins and deal too indulgently with penitents by enjoining certain very light works for very grave offenses, they become participants in others' sins."[1] These words of canon 887 correspond to them: "According to the quality and number of sins and the

condition of the penitent, let the confessor enjoin salutary and fitting satisfactions." Therefore satisfaction must be in some way proportioned to sins. Hence:

1. Let a light satisfaction be imposed for free matter, that is, for venial sins and for mortal sins already declared;[2] a grave satisfaction for necessary matter, that is, for a mortal sin not yet declared. Thus at least generally: since, if a penitent who confessed a mortal sin omitted a grave sin because of forgetfulness, it seems that a light satisfaction can be imposed afterward on one confessing the omitted sin. Besides, for a greater number and gravity of sins let the satisfaction be increased, but not arithmetically.

A work is judged grave which, if it were commanded by the Church, would oblige under grave obligation, for example hearing Mass, a rosary of five decades, the Litany of All Saints, abstinence or fasting of one day. Some judge that grave satisfaction is already contained in a prayer which is equivalent to a Little Hour of the divine office, because sacramental satisfaction has greater dignity and force by reason of the sacrament of which it is an integral part. But that greater force and dignity does not seem to be considered, because satisfaction must primarily compensate for the injury inflicted on God, or primarily be vindicative or punitive, so that the punitive force must primarily be regarded, not the force that deletes punishment. It is added that almost all authors require heavier matter for grave satisfaction.

2. As regards the gravity of the obligation of imposing proportionate satisfaction, take these things:

a) By the consent of all, one who imposed no satisfaction, or a very slight satisfaction, for very grave sins would sin gravely. The reason is that proportion is notably lacking.

b) According to most authors, one who enjoined no satisfaction for a mortal sin would sin gravely. The reason is that also in this case proportion is notably lacking. It is added that the sacrament is deprived of an integral part, and a grave one.

c) It is more disputed whether one who enjoined a light satisfaction for a grave sin would sin gravely. Moreover, it seems this must be affirmed, because also in this case proportion is notably lacking; indeed, morally speaking, it is equally or almost equally absent as in the case in which no satisfaction is imposed for a grave sin.

Objection. The more benign opinion is more conformable to the words of Trent cited above, which indicate that one sins gravely only when a very slight satisfaction is imposed for very grave sins.

Response. The words of Trent can well be taken by way of example.

d) Besides, it is asked whether a confessor who imposes no satisfaction for light matter sins gravely. Some affirm, because he deprives the sacrament of an integral part, which seems grave. Others sufficiently probably deny this, because it does not seem grave to deprive the sacrament of a complement or light integral part.

e) Finally, of itself, one who imposes a simply grave satisfaction for very grave sins sins lightly.

[1] Session 14, chapter 8.

[2] It is disputed whether the confessor can sometimes impose grave satisfaction for light sins which strongly dispose to mortal sin; likewise for mortal sins already remitted, for which worthy penance has not been performed (cf. St. Alphonsus, VI, 517). Whatever the case may be, certainly from elsewhere there is an obligation of employing the means necessary for avoiding mortal sin.

349 **III. What kind of satisfaction is to be imposed?** The Council of Trent[1] teaches thus: "Let them have before their eyes that the satisfaction which they impose be not only for the protection of new life and as a remedy of infirmity, but also for the vengeance and chastisement of past sins." Add canon 887 cited in n. 348. Therefore satisfaction vindicative, medicinal, and fitting for the penitent must be imposed; in other words, such as is punitive as regards committed sins, preservative as regards future ones, and congruous to the state and circumstances of the penitent. For the rest:

1. All good works can be imposed, even:

a) Internal works, since by the imposition of the confessor and the acceptance of the penitent they are sufficiently sensible so that they can be an integral part of the sacrament (St. Alphonsus, VI, 514, doubt 1). Nevertheless, meditation should not be imposed on those little accustomed to it, because it is too difficult and would give occasion to scruples.

b) Works to be applied for the dead or for others; in which case the satisfactory force which belongs to the said works *ex opere operantis* is granted to the dead or to others; that which belongs to them *ex opere operato* comes to the penitent (St. Alphonsus, VI, 514, doubt 2).

c) Works owed from elsewhere; for nothing prevents them from being elevated by absolution to sacramental satisfaction. Nevertheless, it is not expedient to impose works of this kind except because of the fragility of the penitent. Besides, an intention of imposing a voluntary work is presumed in the confessor, unless the contrary is understood from the circumstances (St. Alphonsus, VI, 513, doubt 1).

d) Abstinence from some good work, because abstinence can become an act of obedience or of another virtue (St. Alphonsus, VI, 514, doubt 3). Nevertheless, abstinence from Communion should not be imposed, both lest someone be impeded from frequent Communion, and because the fruit of the sacrament is to be preferred to the said acts of virtues.

e) Whether a work to be fulfilled if the penitent relapses can be imposed as the only satisfaction is disputed. With St. Alphonsus (VI, 524) and others, it seems this must be denied, because satisfaction must be performed certainly or absolutely. The adversaries indeed say that in the case the greater effort itself to guard against relapse is for satisfaction. But it is supposed that a work to be fulfilled if the penitent relapses is imposed; not, however, that greater effort, so that this cannot be for satisfaction. Nevertheless, St. Alphonsus grants with others that to proportionate satisfaction there can be added the precept of fulfilling some work if the penitent relapses.

f) Whether a work to be fulfilled only by counsel can be validly[2] imposed is likewise disputed. But with St. Alphonsus (VI, 518) we have denied it, because the act of imposing satisfaction is primarily a punitive or vindicative act. But the nature of a punitive act implies that punishment is truly imposed, not merely counseled. The adversaries object that the act of designating a punishment and elevating it to sacramental dignity is an act of jurisdiction. Let that pass; but, as follows from what has been said, it is not an act of jurisdiction such as the imposition of satisfaction requires, that is, a punitive act.

2. Certain works cannot be imposed, or at least should not be imposed, as follows:

a) A public work which suggests suspicion of a grave sin committed cannot be imposed for hidden sins; both because the Roman Ritual prohibits it,[3] and because it harms the reputation of the penitent. But a public work can be imposed for public sins, as Trent[4] and chapter 1, *De poenitentiis et*

remissionibus, teach. Nor should it be objected that a public work could suggest suspicion of a confessed sin and therefore violation of the seal. For observance of the seal forbids only an act of the confessor which suggests suspicion of a confessed sin, not cooperation in an act of the penitent which brings with it the said suspicion and, as posited by the penitent himself, cannot be opposed to the seal (St. Thomas, in 4, distinction 14, question 1, article 5, solution 1; St. Alphonsus, VI, 511, 521). "For the rest, if public penance is not so necessary, they rightly say... that the confessor should not impose it on one resisting, since otherwise the salvation of the penitent and the repair of scandal can be obtained, namely through public frequenting of the sacraments, visitation of churches, hearing of Masses, entrance into some Congregation where works of piety are exercised, and similar things" (St. Alphonsus, VI, 512).

b) The religious state and matrimony cannot be imposed, because they require complete freedom. Besides, to impose the religious state can be dangerous for the penitent. Nevertheless, matrimony is very much to be counseled to many (St. Alphonsus, VI, 511).

c) Works to which the penitent is opposed, or which there is danger of omitting; hence, for example, it should commonly not be imposed on children that they ask pardon from their parents (St. Alphonsus, *Homo Apostolicus*, tract 16, 52-54).

d) Longer works, for example for two months, or complicated works, or uncertain and not sufficiently defined works, such as to tolerate adversities patiently (St. Alphonsus, at the cited place).

3. The following can opportunely be imposed, for example: 1. "Hearing Mass, the Rosary, the Way of the Cross, though the latter two should not be enjoined on those to whom they are unfamiliar, almsgiving, Penitential Psalms, Litanies, meditations, pious readings, etc. 2. On individual days through one or another week, or through a month, to pay certain prayers, for example, the Angelic Salutation three times morning and evening. St. Alphonsus was accustomed generally to enjoin, or at least to counsel, this penance with the invocation: 'Through thy Immaculate Conception, O Mary, make my body pure and my soul holy,' to those who were not accustomed to frequent those prayers. Besides, 3. for a fixed time every evening to elicit an act of sorrow and every morning to renew the purpose of abstaining from such a sin. 4. Besides the satisfaction imposed absolutely, to fulfill some penance as often as the penitent has relapsed into some sin, for example, the Litany of the Blessed Virgin Mary, five Our Fathers and Hail Marys, some alms; for it helps much toward restraining an evil habit. Nevertheless, this penance is to be enjoined only for a brief time, because of danger of neglect, for instance for a month, until the next confession. 5. Within a determined time to confess again, and, if it is expedient, to communicate; unless, however, danger of omission stands in the way, as will not rarely happen; then it is better to exhort urgently to frequenting the sacraments. Wherefore it must be kept before the eyes that, although of itself it would be greatly advantageous to enjoin frequenting of the sacraments and alms, experience nevertheless teaches that this becomes harmful to those who rarely exercise these good works."[5]

[1] Session 14, chapter 8.

[2] That this is done illicitly follows from the fact that confessors according to Trent (session 14, chapter 8) and canon 887 must enjoin - not merely counsel - satisfaction.

[3] Title III, chapter 1, n. 22.

[4] Session 24, chapter 8, on reform.

[5] Aertnys-Damen, II, n. 322.

350 **IV. Causes excusing from imposing satisfaction owed of itself.** Moreover:

1. The causes because of which it is licit to impose satisfaction less proportionate to the gravity or frequency of offenses, though not light satisfaction, are:

a) Vehement contrition, even if not most vehement.

b) The occasion of a jubilee or plenary indulgence which the penitent intends to gain (St. Alphonsus, VI, 510; *Homo Apostolicus*, tract 16, n. 49).

c) Fear lest the penitent, because of the proportionate penance to be fulfilled, will seek laxer confessors or will omit the sufficiently proportionate satisfaction itself; nevertheless, these dangers can commonly be forestalled by adding a work or works already owed from elsewhere (St. Alphonsus, VI, 509, 513; *Homo Apostolicus*, tract 16, n. 50; cf. St. Thomas, Supplement, question 18, article 4).

d) Hope of enticing the penitent to more frequent confession by a lesser satisfaction (St. Alphonsus, VI, 510).

e) The will of the confessor to take upon himself part of the satisfaction. For it is established from the doctrine on the communion of Saints that one can satisfy for another. I said part, because if he were to take upon himself the whole satisfaction, the sacramental action to be performed by the penitent himself would be lacking. Besides, note that proposition 15, "that a penitent can by his own authority substitute another for himself, who will fulfill the penance in his place," was condemned by Alexander VII.[1] Nevertheless, the confessor can grant to the penitent that another pay the enjoined satisfaction for him, in which case the satisfaction is not the work performed by another, but the procuring of this work (St. Alphonsus, VI, 526).

f) Whether the words *whatever good thou hast done*, etc., are a cause because of which satisfaction can be lessened is disputed. A few affirm, because, they say, by those words the confessor probably elevates all the good works of the penitent to sacramental satisfaction, at least if he explicitly or implicitly intends to do that (n. 342). But even if that opinion is admitted, it nevertheless does not seem to be a reason for lessening satisfaction; since Trent, although it knew that the aforesaid formula was used by confessors, nevertheless seriously admonishes them to impose satisfaction fitting for sins.[2]

2. The causes because of which it is licit to impose light satisfaction for grave faults are:

a) Most vehement contrition.

b) Great satisfaction already performed.

c) Fear lest the penitent, because of the grave penance to be fulfilled, will seek laxer confessors, or will omit the grave penance itself; nevertheless, these dangers again can commonly be avoided by imposing a work already owed from elsewhere (cf. St. Alphonsus, VI, 509, 513; *Homo Apostolicus*, tract 16, n. 50; cf. St. Thomas, Supplement, question 18, article 4).

3. A cause because of which it is licit to absolve without satisfaction imposed scarcely occurs except in one lacking mental power or in one dying, deprived of the senses. That this is licit because of a plenary indulgence Benedict XIV reprobates in the Constitution *Inter praeteritos*.[3] Note, however:

a) A very slight satisfaction, for example a very brief act of charity, invocation at least mentally of the names of Jesus and Mary, should be imposed in urgent danger of death (St. Alphonsus, *Homo Apostolicus*, tract 16, n. 49).

b) As regards the sick, the Roman Ritual[4] admonishes that "a grave or laborious penance is not to be enjoined on them; but only that is to be indicated which, if they recover, they may perform at a suitable time. Meanwhile, according to the gravity of the illness, with some prayer or light satisfaction imposed and accepted, let them be absolved, as there will be need."

Finally, if the penitent after absolution confesses a sin omitted because of forgetfulness, the confessor indeed must impose a new satisfaction; but commonly he can satisfy this obligation by lessening the satisfaction imposed insofar as it regards the former confession, and leaving it unchanged insofar as it pertains to the later one. Some indeed judge that in the case a new satisfaction need not be imposed; but just as for a new absolution, at least practically, a new act of sorrow and a new confession are required, so also a new satisfaction must be imposed (St. Alphonsus, VI, 513). This opinion must be followed in practice, because otherwise the new absolution would be exposed to the danger of being deprived of an integral part.

Note. If satisfaction is diminished, it is sometimes useful to admonish the penitent about the smallness of the satisfaction imposed and to stir him up to supply voluntarily.

[1] Denzinger-Bannwart, n. 1115.

[2] Session 14, chapter 8.

[3] December 3, 1749.

[4] Title 3, chapter 1, n. 25.

351 **V. Time of imposing satisfaction.** Satisfaction can be imposed validly both before and after absolution; if it is imposed after absolution, let it not be enjoined too long after it, so that the moral unity of the judgment be preserved (p. 271). But it is expedient that it be imposed before absolution, both because this is conformable to the Roman Ritual,[1] and because the order of judgment counsels that satisfaction be enjoined and accepted before the penitent is absolved (St. Alphonsus, VI, 514).

[1] Title III, chapter 2, n. 1.

Scholion. On Commutation of Satisfaction

352 **I. Nature of sacramental commutation.** Commutation of satisfaction is a certain retraction or correction of the judgment, insofar as it imposed punishment; and just as in other judgments, so also in sacramental judgment it can be made by a competent judge.

353 **II. The persons who can commute** are confessors: both the one who imposed the satisfaction and another of the same jurisdiction. Those who are not confessors cannot commute, because commutation is a judicial act to be posited by virtue of the keys. I said "another of the same jurisdiction," for it is disputed whether a simple confessor can commute satisfaction imposed for a reserved sin. With St. Alphonsus (VI, 529, doubt 2), it seems this must be denied, because the confessor lacks power over a judgment instituted concerning a case whose treatment had been withdrawn from him. The adversaries object that reservation was removed by absolution, so that the simple confessor now has power over the aforesaid case or over those sins. I respond by conceding

the assertion, but he lacks power over the judgment instituted concerning that case, so that he cannot moderate it; in other words, he cannot commute the enjoined satisfaction. Note, however, that the confessor has power over reserved matters, and therefore can commute satisfaction, in the case in which the Superior cannot conveniently be approached.

354 **III. The manner of commuting.** 1. For validity it is required that commutation be made in the sacramental tribunal, or in such a way that with the absolution given or to be given by the one commuting, it constitutes at least morally one thing. The reason is that satisfaction must become sacramental by force of absolution; this cannot take place unless it is united with it. Moreover, as regards the union with absolution required, take these things:

a) The commutation is certainly valid which is made either during the course of confession, or immediately after absolution, or at least while the penitent is still in the confessional. The reason is that the judgment still morally endures, so that the act of commuting morally constitutes one thing with the absolution.

b) It is disputed whether a greater space of time, and how much, can intervene between confession and the act of commuting. Now some extend the faculty of commuting to one or another day after the confession has been completed. Others judge that no space of time stands in the way of the required conjunction. Others, with St. Alphonsus (VI, 529), judge that commutation must be made immediately after absolution, or at least while the penitent is still in the confessional. As soon as, after receiving absolution, he has departed, the judicial process is finished, so that the judicial act, in the case the act of commuting, which afterward is instituted cannot constitute one thing with it, but must be directed to a new judicial process. I said that the process is finished as soon as the penitent, after receiving absolution, has departed. This indeed is pleasing in itself, and is confirmed by the fact that in the case the confessor could no longer speak with the penitent about the confession made without violating the sacramental seal.

Objection. Just as satisfaction fulfilled after a long time, so also the commutation of the same satisfaction not yet performed will always make one moral thing with the preceding confession.

Response. I deny the parity; namely, satisfaction is not a judicial action, as commutation is. But a judicial action, in order to constitute at least morally one thing with the judicial process, must be posited before the process is finished. It is added that, if the objection is admitted, commutation can be separated from absolution by as long a time as satisfaction; which few admit. For the rest, in doubt the opinion of St. Alphonsus is to be followed, lest the validity of the commutation be exposed to danger.

2. As regards liceity, a just cause is certainly required. It is not necessary for the penitent to repeat the sins, whether he confesses to the same or to another confessor. The reason is that the one commuting must not judge about sins already judged, but only about the reason for commuting. Nevertheless, a certain confused knowledge of the state of the penitent is required, because also the penance to be imposed by the confessor commuting must be, at least of itself, in some degree proportioned to the sins; likewise medicinal. But for the said ends the knowledge suffices which the confessor can gather from the very penance to be commuted; according to it and the disposition of the penitent let him direct himself in commuting (St. Alphonsus, *Homo Apostolicus*, tract 16, n. 61; *Theologia moralis*, VI, 529, doubt 1).

Corollary I. The confessor, even when not asked, can commute satisfaction (St. Alphonsus, VI, 529, doubt 1).

Corollary II. Let commutation be made into a work more or less equally grave, unless according to what was explained above (n. 350) there is a cause for lessening satisfaction.

Corollary III. It is disputed whether the penitent after a commutation has been made can return to the former satisfaction, or whether this must be held as retracted. More commonly it is affirmed that the faculty of choosing either satisfaction remains to the penitent. Nevertheless, the matter is doubtful, because it is not clear that the confessor can proceed in such a way that it depends on the choice of the penitent which act will constitute the integral part of the sacrament.

Article III. On the Obligation of Accepting and Fulfilling Satisfaction

355 **I. Obligation of accepting satisfaction.** The penitent is bound, considering present discipline, to accept an equitable satisfaction (canon 887). This follows from the right and obligation of the confessor to impose it. Moreover:

1. The obligation of accepting satisfaction seems grave if the satisfaction imposed is grave. Nor should it be objected that the penitent can depart without grave fault, because he is not bound under grave obligation to complete the sacrament, or because it is not grave to posit only part of the rite. For even if that is conceded, nevertheless a grave obligation of accepting seems to follow from the right and grave obligation of the confessor to impose grave satisfaction.
2. The obligation of accepting satisfaction seems only light if the satisfaction imposed is light. The reason is that in the case a grave obligation of not departing is not clear.
3. Likewise the penitent is bound under grave obligation to have the will of fulfilling the satisfaction imposed, if the matter concerns grave satisfaction. If the satisfaction is light, some require under grave obligation the will of fulfilling it, because according to them the will of fulfilling pertains to the essence of the sacrament (n. 291). Others demand the said will only under light obligation, because of the contrary reason. Because the former opinion is probable, in practice it must be said that the will of fulfilling a light satisfaction is required under grave obligation, namely lest the sacrament be exposed to danger of nullity.
4. Of itself the penitent does not sin by accepting satisfaction with the intention of asking commutation from another, because a petition for commutation of itself involves nothing evil.

Corollary I. If satisfaction manifestly greater than just is imposed, the penitent can ask for diminution and, if this is denied, depart (St. Alphonsus, VI, 516). If he does not depart and receives absolution, which is also licit for him, according to some he is bound to fulfill the satisfaction, lest the sacrament be deprived of an integral part; according to others, he is not bound to fulfill the satisfaction, and it must be imputed to the confessor that the sacrament lacks an integral part. But he seems to be bound, if the matter of penance is well divisible, to fulfill the part equal to the sins.

Corollary II. Let the confessor easily acquiesce to one asking a lesser or another satisfaction and prepared to fulfill a grave one (St. Alphonsus, VI, 516).

356 **II. Obligation of fulfilling satisfaction.** 1. **Person obligated.** The penitent, as canon 887 declares, "must fulfill satisfaction himself personally." This, however, as we noted, does not prevent

the confessor from granting the penitent the faculty of substituting another for himself, who will fulfill the satisfaction (n. 350).

2. **Gravity of the obligation.** The obligation of fulfilling satisfaction is grave if: 1. it was imposed for necessary matter; 2. it is grave; and 3. it was enjoined under grave obligation. When these conditions have been fulfilled, it is also grave to omit a grave part; nevertheless, this for the most part does not take place if the satisfaction has a successive extension, in which case, therefore, commonly it is not grave to omit once or twice what, for example, was enjoined for the individual days of some week. If one of the enumerated conditions is lacking, the obligation of fulfilling the satisfaction is light; and in the case in which the confession was invalid, the satisfaction does not oblige. I said:

a) If it was imposed for necessary matter, because for free matter grave satisfaction cannot, at least of itself, be imposed (n. 348; St. Alphonsus, VI, 517).

b) If it is grave, because light satisfaction cannot be enjoined under grave obligation.

c) If it was enjoined under grave obligation, which it is altogether expedient to do, and is presumed to have been done. Indeed there are those who judge that grave satisfaction cannot be enjoined under light obligation, because although a legislator can oblige only lightly in grave matter, nevertheless in this sacrament the confessor is not regarded as a legislator, but as a simple minister, since there he acts in the name of God. Hence he cannot impose matter of itself grave under light obligation. Others, however, admit the contrary, relying on this reason: "The confessor in this sacrament not only performs the office of Christ, but also has been constituted by Christ as true judge and legislator, who from the power handed over to him looses by remitting sins, and binds by imposing precepts concerning the obligation of fulfilling satisfaction" (St. Alphonsus, VI, 118).

A circumstance of satisfaction, for example the Way of the Cross to be performed by the penitent on bent knee, obliges under grave obligation if either in itself or with respect to the penance it is grave and - which, once the first condition has been fulfilled, is presumed - it was imposed under grave obligation (St. Alphonsus, VI, 517).

3. **Time of fulfilling satisfaction.** First note that imposed satisfaction can be fulfilled both before and after absolution. That it can be fulfilled after absolution is clear both from the practice now commonly in force and in force through so many centuries, and from the contrary doctrine condemned.[1] Nevertheless, it can also be fulfilled before absolution. A reason for doubting could arise from the fact that the penitent before absolution is easily in the state of mortal sin, and therefore satisfaction, that is, the integral part of the sacrament, cannot yet obtain its effect, that is, remission of punishment, so that, until the state of grace is recovered, it would remain *informe*. But satisfaction becomes an integral part only when it is conjoined with absolution, and at that very moment obtains its effect, so that satisfaction as an integral part was not *informe*. For the rest, observe:

a) If a time has been set by the confessor, this must be observed. Once the time has passed, the obligation does not cease; both because the confessor principally intends the work and accessorily the time, and because it is not licit for the sacrament to be deprived of an integral part (St. Alphonsus, VI, 525). If a time has not been set, satisfaction should not be delayed longer, and, in conformity with

the mind of the confessor, should be fulfilled as soon as it can conveniently be fulfilled (St. Alphonsus, VI, 521).

b) Delay of grave satisfaction is a grave sin: 1. if it brings with it grave danger of forgetfulness or of inability that will follow; 2. if it frustrates or notably lessens the end of the satisfaction, for example if a confession to be instituted after a month is delayed beyond a week. It is disputed whether delay of itself is ever a grave sin. Moreover, with St. Alphonsus (VI, 521), it seems this must be affirmed, because a lengthy delay, for instance of six months, of a grave obligation to be fulfilled of itself at the first moral opportunity seems to involve grave disorder.

4. **Manner of fulfilling satisfaction.** a) The intention of satisfying seems to be required, or of performing the imposed work for satisfaction. For just as the intention of receiving the sacrament is required as regards the essentials, so also it is required as regards the integral parts, so that the sacrament may be received integrally. But it suffices that the penitent had and did not retract the intention of receiving the sacrament, since this intention regards the whole sacrament. The said intention indeed probably comprehends a work enjoined by the confessor which someone, forgetful of the satisfaction owed, has posited (cf. St. Alphonsus, III, 700, question 2); but since the matter concerns the validity of an integral part, the work seems to have to be performed again (cf. St. Alphonsus, II, 2).

Objection. The intention of satisfying is not required, since it suffices to have posited the act imposed by the confessor.

Response. From what has been said it follows that this does not suffice for the act posited to be an integral part of the sacrament.

b) Satisfaction seems to have to be fulfilled in the state of grace if it is fulfilled after absolution; for it is illicit to place an obstacle to the effect, even secondary, of a sacrament (St. Alphonsus, VI, 523).

Objection 1. The end of the precept, in the case remission of remaining punishment, does not fall under the precept.

Response. Let that pass; but the end of the sacrament falls under the precept.

Objection 2. Satisfaction will afterward revive once the obstacle has been removed.

Response. Besides the fact that this opinion is doubtful, and therefore does not hold for practice because the danger remains lest the sacrament be deprived of its secondary effect, it is illicit to fulfill satisfaction *informiter*, just as it is illicit to receive the sacrament as regards the essentials *informiter*.

If satisfaction is fulfilled before absolution, it is not required that it be done in the state of grace; for then, as we have already noted, it does not become an integral part before absolution is conferred and therefore, as is supposed, before the state of grace is recovered by the penitent. This posited, the integral part does not remain *informe*, but immediately obtains its effect.

c) Satisfaction can be fulfilled with another if prayers were imposed which are customarily recited with others.

5. **Cessation of the obligation** can come either from supervening inability or from forgetfulness.

One who has forgotten the satisfaction imposed and cannot gather it from the confessor's custom of imposing this or that penance is bound to approach the confessor, if it can conveniently be done and

the confessor is presumed to have retained it in memory. Otherwise the obligation ceases. Nor should you say: he is bound to return so that the confessor, if he has forgotten the penance imposed, may impose a new one. For, since the completed judicial process has been finished, the confessor cannot impose a new penance unless the penitent institutes a new confession; he is not bound to this burden (St. Alphonsus, VI, 520).

What if the confessor omitted to impose satisfaction?

Response. In the case the penitent is bound to return, if he conveniently can, lest the sacrament be deprived of an integral part; for since the judicial process remained incomplete, it seems morally to persevere, even if the penitent has left the confessional.

[1] Denzinger-Bannwart, nn. 728, 1306, 1437, 1535.

Section III. On the Effects of the Sacrament of Penance

357 The effects of the sacrament of Penance are:

1. Sanctifying grace, whether first grace, or, if the penitent is already in the state of grace, second grace.
2. Sacramental grace. This consists in the fact that the sanctifying grace which the sacrament of Penance confers gives a right to actual graces by which past sins are entirely taken away and future sins are guarded against.
3. Remission of eternal punishment and the reviviscence of merits.
4. Remission of temporal punishment, proportioned to the disposition of the penitent;[1] likewise by the power of sacramental satisfaction.
5. Peace and serenity of conscience, according to these words of the Council of Trent: "Indeed the reality and effect of this sacrament, so far as its force and efficacy are concerned, is reconciliation with God, which sometimes, in devout men who receive this sacrament with devotion, is wont to be followed by peace and serenity of conscience with vehement consolation of spirit."[2]

[1] Cf. Council of Trent, Session 14, chapter 2.

[2] Session 14, chapter 3.

Section IV. On the Necessity of the Sacrament of Penance

The necessity both of means and of precept must be examined; nevertheless only that of the divine precept, because the ecclesiastical precept has been discussed in volume I, n. 1104.

358 **I. Necessity of means.** The sacrament of Penance is necessary for salvation by necessity of means for those who have sinned gravely after Baptism. This is clear: 1. from these words of the Council of Trent: "This sacrament of Penance is necessary for salvation for those fallen after Baptism, just as Baptism itself is for those not yet regenerated";[1] 2. from Sacred Scripture. For Christ declared that sins are retained for those for whom they are retained by the judges constituted by him.[2] But sins would not truly be retained if another means of obtaining pardon were available to the sinner apart from those judges. There are added: 3. the testimonies of the Holy Fathers; and 4. the argument of prescription. These, together with other arguments, you may compare in the Dogmatic theologians.

Corollary. From what has been said it follows that perfect contrition and the act of charity do not justify the sinner except insofar as they are at the same time a recourse to the sacrament of Penance in desire, or insofar as they at the same time include the purpose of submitting oneself to the judges constituted by Christ. Hence, for one thus justified there remains the obligation afterward of having recourse to the judge.

[1] Session 14, chapter 2.

[2] John 20:23.

359 **II. Necessity by force of divine precept.** 1. The existence of the precept follows from the necessity of means.

2. **The time for fulfilling the precept.** The precept obliges:

a) **Of itself:** 1. in the article of death; for one who then does not fulfill the divine law rashly exposes himself to the danger of never fulfilling it; 2. it is disputed whether it obliges at some times in life, but the affirmative seems to have to be held, because it is difficult to admit that Christ instituted a tribunal by which the sinner is reconciled with God, and at the same time granted the sinner the faculty of avoiding that tribunal until the end of life (St. Alphonsus, VI, 662, 663, 665). For the rest, it is certain: 1. that the divine precept does not oblige immediately after a sin has been committed; 2. that satisfaction is made to the said precept by fulfilling the ecclesiastical precept (St. Alphonsus, VI, 663).

b) **Accidentally:** 1. if confession is held to be a morally necessary means of avoiding sin (St. Thomas, Supplement, q. 6, art. 5); 2. according to many, before the reception of the Eucharist, if one has sinned gravely (n. 179), in which case there is certainly an obligation, whether from divine law or from ecclesiastical law.

Part II. On the Ministration of the Sacrament of Penance

360 The minister of the sacrament of Penance is the priest alone; this is clear both from the Council of Trent and from canon 871. The Council of Trent declared: "If anyone shall say ... that priests alone are not the ministers of absolution ... let him be anathema."[1]

Having set these things down, we shall treat first of the ministration of the sacrament of Penance generally, then of its ministration to some persons specifically.

[1] Session 14, canon 10.

Section I. On the Ministration of the Sacrament of Penance Generally

We shall speak first of the power required for ministering the sacrament of Penance, then of the right use of that power.

Chapter I. On the Required Power

In the minister of Penance a twofold power is required, namely the power of order and the power of jurisdiction (can. 872). That the power of order is required follows from the fact that, as was proved above, the priest alone is the minister of this sacrament. The power of jurisdiction, that is, sacramental jurisdiction, must be treated more fully: first, sacramental jurisdiction generally; then jurisdiction over some classes of persons specifically; finally, the limitation of jurisdiction with respect to sins, or the reservation of sins.

Article I. On Sacramental Jurisdiction Generally

361 **I. Notion.** Sacramental jurisdiction is the power of hearing judicially the confessions of the faithful, and of absolving or binding them. In the new Code, the conferral of sacramental jurisdiction is called approval (cf. canons 872, 881, 882), so that that word no longer signifies an authentic testimony concerning someone's fitness to hear confessions.

362 **II. Necessity** is taught by Trent[1] and by the Code of Canon Law (can. 872), and follows from the fact that absolution is not only a sacramental action, but also a judicial one, and therefore must be exercised upon a subject.[2] But someone is constituted a subject through jurisdiction over him.[3] Hence the opinion of some who taught that jurisdiction is not required for absolving from venial sins and from mortal sins already directly remitted must be rejected, and it is commonly rejected.

[1] Session 14, chapter 7.

[2] To the question how a confessor can have jurisdiction over his superior, this answer must be given: the superior, through the jurisdiction of the external forum which he has received from Christ as Pope, or from another, confers jurisdiction of the internal forum on the confessor, who then, by this jurisdiction, by which he acts in the name of Christ, absolves the superior as a private man.

[3] The local Ordinary, although he enjoys ordinary jurisdiction over exempt religious and over travelers staying in the diocese, since the faculty of absolving them is attached to his office by the law itself, nevertheless cannot absolve the aforesaid outside the diocese, because they are not his subjects simply speaking. I said "simply speaking," because as long as they are staying in the diocese, they are subject to him in the order of absolution. Others call the jurisdiction of the local Ordinary over exempt religious and travelers staying in the diocese delegated by law, precisely because it does

not extend to the same persons when they are staying outside the diocese. He can absolve everywhere non-exempt religious who dwell in the diocese, because they are his subjects.

363 **III. Division.** Sacramental jurisdiction is divided into ordinary and delegated, according as it is attached to an office by the law itself or committed to a person (can. 197, § 1; vol. I, n. 97).

364 **IV. Ordinary jurisdiction.** 1. It belongs, for the universal Church, to the Supreme Pontiff and to the Cardinals of the Holy Roman Church; for his own territory, to the local Ordinary, to the parish priest, and to others who take the place of the parish priest;[1] likewise to the penitentiary canon of a cathedral or collegiate church, for all diocesan persons, even outside the diocese, and for outsiders who are staying in the diocese. All these he can absolve even from sins and censures reserved to the Bishop. Finally it belongs to exempt religious superiors for their subjects, according to the norm of the constitutions (can. 873, §§ 1 and 2).

2. It can be exercised over subjects wherever they are, so that, for example, a parish priest can absolve his parishioners even outside the parish or diocese (can. 873, § 2). In addition, parish priests commonly receive delegated jurisdiction for the whole diocese.

3. It ceases by loss of office and, after a condemnatory or declaratory sentence, by excommunication, suspension from office, and interdict (can. 873, § 3).

[1] Who are meant by the name of local Ordinary and parish priest is set forth at length in the treatise on Matrimony. Those who are in the place of the parish priest are parochial vicars who are endowed with full parochial power; who these are, see the cited place.

365 **V. Delegated jurisdiction.** 1. The persons who delegate are:

a) The local Ordinary in whose place confessions are heard confers jurisdiction on priests, both secular and religious, even exempt, for hearing the confessions both of secular persons[1] and of religious, even exempt; religious priests, however, are not to use that same jurisdiction without at least the presumed permission of their superior (can. 874, § 1).

b) In an exempt clerical religion,[2] delegated jurisdiction for receiving the confessions of the professed, novices, and others of the household[3] is also conferred by their Superior, according to the norm of the constitutions; he is permitted to grant it even to priests from the secular clergy or from another religion (can. 875, § 1). In an exempt lay religion,[4] the Superior proposes the confessor, who nevertheless must obtain jurisdiction from the local Ordinary in whose place the religious house is found (can. 875, § 2).

c) For receiving validly and licitly the confessions of any religious women and novices, a special jurisdiction is required, any contrary particular law or privilege being revoked. This jurisdiction is conferred by the local Ordinary where the house of the religious women is situated (can. 876). More will be said about that special jurisdiction in n. 373.[5]

Corollary I. A Cardinal, a penitentiary canon, and a parish priest cannot delegate the ordinary sacramental jurisdiction which belongs to them by common law. For they are not enumerated in canons 874-876, in which the legislator manifestly intends to list all those who can delegate sacramental jurisdiction. Moreover, as regards the penitentiary canon this is established from canon 401, § 1, and as regards the parish priest from a response of the Pontifical Commission.[6]

Corollary II. One who has delegated sacramental jurisdiction from the Apostolic See can subdelegate it, unless the personal industry of the person was chosen or subdelegation was prohibited (can. 199, § 2). But one who has delegated sacramental jurisdiction from another than the Apostolic See cannot subdelegate it, unless by express concession (can. 199, § 4).

[1] Many thought that Regulars received from the Supreme Pontiff, through their Superiors, jurisdiction over secular persons. If that privilege ever existed, it can no longer be maintained.

[2] A clerical religion is one whose members for the most part are promoted to the priesthood (can. 488, 4).

[3] That is, of those staying day and night in the religious house by reason of service, education, hospitality, or infirm health (can. 514, § 1).

[4] A lay religion is one whose members for the most part are not promoted to the priesthood (can. 488, 4).

[5] Canon 525 states: "If the house of religious women is immediately subject to the Apostolic See or to the local Ordinary, he chooses both ordinary and extraordinary priests for confessions; if it is subject to a regular Superior, he presents confessors to the Ordinary, whose duty it is to approve them for hearing the confessions of those nuns and, if need be, to supply for the Superior's negligence."

[6] October 16, 1919, to 3 (A.A.S. 1919, p. 476).

366 **2. The manner of delegating.** For hearing confessions validly, jurisdiction expressly granted in writing or by words is necessary (can. 879, § 1). Therefore, for validity it is required that the jurisdiction be: 1. truly granted. Hence it is not enough that it has been requested, nor that the one delegating is presumed to be about to grant it; 2. expressly granted in writing or by words. This, however, has place sufficiently when the one delegating uses a telephone or telegraph. It is not required that the concession of jurisdiction be notified, because the conferral of jurisdiction is a favor made, or a favor which is granted without an intervening executor. Concessions of this kind have effect from the moment at which the letters are issued (can. 38). Hence a priest absolves validly after the Ordinary has signed the letters or has signified the concession by a mandatary; he absolves validly and licitly after he has in some true way been made certain of the concession, although outside a case of necessity it is expedient to await authentic notification.

We said that jurisdiction must be expressly granted in writing or by words. Yet this probably does not prevent a custom known to the Ordinary and tacitly approved by him from sufficing. For tacitly granted jurisdiction, which is disapproved by law, is one thing; a tacitly approved custom is another, so that in the case jurisdiction is at least probable and is supplied by the Church.

For the rest, the one delegating should observe these things:

a) Local Ordinaries should not habitually grant jurisdiction for hearing confessions to religious who are not presented by their own Superior; but they should not deny it without grave cause to those who are presented by their own Superior, with the prescription of canon 874, § 2 remaining firm. That canon is now set forth.

b) Neither local Ordinaries in granting jurisdiction nor religious Superiors in granting jurisdiction or permission for hearing confessions should grant it except to those who have been found fit by examination, unless the case concerns a priest whose theological doctrine they have ascertained from another source. If, after jurisdiction or permission has been granted, they prudently doubt whether a priest previously approved by them still continues to be fit, they should compel him to a new test of doctrine, even if the case concerns a parish priest or a penitentiary canon (can. 877). Hence, for

someone licitly to be compelled to a new examination before his jurisdiction has elapsed, a founded doubt about his fitness is required.

c) Delegated jurisdiction or permission to hear confessions can be granted as circumscribed by certain limits (can. 878, § 1), for example for a definite time, or for men only. Nevertheless, local Ordinaries and religious Superiors should take care not to restrict jurisdiction or permission without reasonable cause too narrowly (can. 878, § 2). It would be unreasonable to except some time, for example the Easter season;[1] likewise the sick.[2]

d) The local Ordinary or religious Superior should not revoke or suspend jurisdiction or permission to hear confessions except for a grave cause. But for grave causes the Ordinary can forbid even a parish priest or penitentiary confessor to exercise his function, with recourse in devolutive effect to the Apostolic See preserved. Nevertheless it is not lawful for a Bishop, without consulting the Apostolic See, if the case concerns a formed house, to take away jurisdiction all at once from all the confessors of some religious house (can. 880). It is otherwise if it is taken away from individuals successively.

e) An Ordinary who revokes jurisdiction without just cause indeed acts illicitly, but he does not seem to act invalidly; for against a revocation notified to a parish priest or penitentiary, who have ordinary jurisdiction, only recourse in devolutive effect is granted (can. 880); a fortiori for those who possess only delegated jurisdiction.

Corollary I. Some formerly taught that jurisdiction over venial sins and over mortal sins already directly remitted is conferred by Christ in ordination itself. But this opinion, which rests on no solid foundation, has long since been commonly rejected. Nor can the opinion formerly admitted by some any longer be maintained, according to which the aforesaid jurisdiction would be granted by the Church in ordination itself.[3] The Code is silent about such a disposition, nor is the custom still in force to which some appealed (St. Alphonsus, VI, 543, 582).

Corollary II. Religious who have received jurisdiction from the local Ordinary should not use it without at least the presumed permission of the Superior (can. 519).

[1] Cf. decree of the Sacred Congregation of the Council, September 22, 1668; Sacred Congregation of Bishops, April 3, 1584.

[2] Cf. Constitution *Superna* of Clement X, September 13, 1641; Sacred Congregation of Bishops and Regulars, September 22, 1645; Sacred Congregation of the Council, December 14, 1658.

[3] Innocent XI, by decree of February 12, 1679, prescribed: "Let them not permit [the bishops] that confession of venial sins be made to a simple priest not approved by the Bishop or Ordinary." And the Council of Trent absolutely, without excepting confession of venial sins, established that no one can hear confessions unless he has obtained a parochial benefice or approval (St. Alphonsus, *Homo Apostolicus*, tract 16, n. 77).

367 **3. Cessation of delegation.** Delegated sacramental jurisdiction ceases in the ways set forth in volume I, n. 101, where jurisdiction generally was discussed. Note also that of itself it does not cease by a mere change of domicile. If, however, jurisdiction was conferred because of an office, for example that of chaplain, which the confessor performed as a subject in some diocese, it is not judged to continue after he has resigned the office, unless the Ordinary's contrary intention is established. In addition, provincial and diocesan statutes should be attended to. Finally, observe that by force of

canon 207, § 2, absolutions granted through inadvertence after the time has elapsed or after the number of cases has been exhausted are valid.

Note. Superiors should take care that religious subjects designated by them, especially in the diocese in which they dwell, when their ministry is required by local Ordinaries or parish priests for providing for the necessity of the people, both within and outside their own churches or public oratories, offer that ministry willingly, while religious discipline is preserved. Conversely, local Ordinaries and parish priests should willingly use the work of religious, especially those dwelling in the diocese, in the sacred ministry and especially in administering the sacrament of Penance (can. 608).

Article II. On Sacramental Jurisdiction Over Some Classes of Persons Specifically

368 **I. Jurisdiction over soldiers.** 1. It is clear that soldiers can confess to a priest who has jurisdiction from the local Ordinary in whose place the confessions are instituted. What military chaplains can do independently of the local Ordinary depends on the special prescriptions of the Holy See (cf. can. 451, § 3). Namely, if a military bishop has been constituted, or at least if a chief chaplain has been placed over the whole army, the faculty of conferring jurisdiction over soldiers on other priests is easily granted to these.[1]

2. Soldiers called to war, or mobilized as it is said, are equated with those constituted in danger of death; hence for them there hold the things which we shall say about jurisdiction over the dying (n. 370).[2]

[1] Cf. A.A.S. 1915, p. 217.

[2] Sacred Penitentiary, March 18, 1912; May 29, 1915 (A.A.S. 1915, p. 282); cf. Sacred Penitentiary, December 18, 1914 (A.A.S. 1914, p. 712); December 4, 1915 (A.A.S. 1915, p. 526).

369 **II. Jurisdiction over those sailing.** All priests undertaking a sea voyage, provided they have duly received the faculty of hearing confessions either from their own Ordinary, or from the Ordinary of the port in which they board the ship, or even from the Ordinary of any intermediate port through which they pass on the journey, can throughout the whole journey receive on board the ship the confessions of any of the faithful sailing with them, even though the ship on the journey passes through, or even remains for some time in, various places subject to the jurisdiction of different Ordinaries. Whenever the ship stops on the journey, they can receive the confessions both of the faithful who for any reason come to the ship and of those who, while the priests are briefly calling at land, ask to confess, and can validly and licitly absolve them even from cases reserved to the local Ordinary (can. 883). Therefore observe:

1. The proper Ordinary of a secular priest and of a non-exempt religious is the local Ordinary in whose place the aforesaid have domicile or quasi-domicile up to the undertaking of the journey. It is disputed whether jurisdiction can also be conferred on an exempt religious by his own major Superior. Some affirm this, because the Code speaks of the Ordinary, not of the local Ordinary. But under the name Ordinary there also comes a major Superior. Nevertheless, it seems this must be denied, considering the character of both the ancient[1] and the new legislation, which continually assigns the conferral of jurisdiction over secular persons and non-exempt religious to

the local Ordinary. There is added the fact that in doubt one must not depart from the old law (can. 6, 4).

2. Jurisdiction is had throughout the whole journey. The journey, however, is judged to begin when the ship first leaves the port. The journey and the jurisdiction continue until the priest, having left the ship, has definitively landed.

3. The word *briefly* comprehends three whole days, not more. This also holds in the case in which, to continue the same journey, the confessor must leave one ship in order to board another, if he must wait so long for this ship in port.[2]

[1] Holy Office, August 23, 1905 (*Collectanea*, n. 2244).

[2] Pontifical Commission, May 20, 1923 (A.A.S. 1923, p. 112).

370 **III. Jurisdiction over the dying.** In danger of death all priests, even those not approved for confessions, validly and licitly absolve any penitents from any sins or censures whatsoever, however reserved and notorious, even if an approved priest is present, with the prescription of canons 884 and 2252 preserved (can. 882). It is said:

1. **In danger of death.** The article of death is not required, but grave danger of death suffices, and indeed whether truly existing or prudently, though falsely, thought to exist, whether already arisen or soon to arise. Therefore the case is present: 1. in a dangerous illness; 2. in a very difficult childbirth, or a little before it; 3. before a dangerous surgical operation; 4. before a voyage full of danger; 5. in time of plague; 6. in battle or a little before it (St. Alphonsus, VI, 561). With those constituted in danger of death are equated: 1. soldiers called to war or mobilized;[1] 2. all men and women, not excluding religious sisters, who in some way belong to mobilized armies and are staying in camps.[2] These, however, regard only kingdoms which are waging war or are in imminent danger of war, as seems to be deduced from the words "called to war" and "staying in camps."[3]

2. **All priests, even those not approved for confessions;** even public heretics or schismatics; likewise excommunicates, both tolerated and to be avoided (cf. can. 2261, § 3).

3. **Even if an approved priest is present;** hence as regards validity no priest is now excluded. Nevertheless, of itself it is illicit to receive absolution from a heretic or schismatic if another is present.

4. **With the prescription of canon 884 preserved;** considering that canon, absolution of an accomplice in danger of death is indeed valid, but outside a case of necessity is illicit.

5. **With the prescription of canon 2252 preserved;** that canon treats of the recourse sometimes to be made after recovery; this will be discussed later. In addition, note:

a) Absolution in danger of death, as regards censure, is limited to the internal forum;[4] hence for all penal effects, for example for ecclesiastical burial, recourse must be had to the ecclesiastical judge.

b) Absolution, although valid, can nevertheless be illicit because the priest acts imprudently, for example because he is not sufficiently versed in Moral Theology and another more learned one is present. In the case, an excusing cause is required, for example if the dying person desires to be absolved by such a determinate confessor.

[1] Sacred Penitentiary, March 18, 1912.

[2] Sacred Penitentiary, December 21, 1914; May 29, 1915.

[3] Sacred Penitentiary, March 11, 1915; May 25, 1915.

[4] Pontifical Commission, December 28, 1927, to II (A.A.S. 1928, p. 61).

371 **IV. Jurisdiction over travelers and those without a domicile.** All priests of either clergy approved for hearing confessions in some place, whether instructed with ordinary or delegated jurisdiction, can also validly and licitly absolve persons without a domicile and travelers from another diocese or parish who come to them, and likewise Catholics of any Oriental rite (can. 881, § 1). From these things it is deduced, as is also clear from canon 874, § 1 and from a response of the Pontifical Commission,[1] that jurisdiction over travelers is obtained from the local Ordinary. To what extent travelers can be absolved from reserved cases will be discussed later.

[1] November 24, 1920 (A.A.S. 1920, p. 575).

372 **V. Jurisdiction over exempt religious.** We speak only of exempt religious, because non-exempt religious, as regards jurisdiction over them, are equated with the other faithful. Over exempt religious, however, jurisdiction is possessed by:

1. **Over religious of an exempt clerical religion:**

a) The proper Superior of the religious, who indeed enjoys ordinary jurisdiction over them (can. 875, § 1).

b) The local Ordinary in whose place they are staying (can. 519). His jurisdiction over them seems to be delegated by law rather than ordinary, because it extends only to those who are staying in his territory (n. 362). Nevertheless, he can absolve them even from sins and censures reserved in the religion (can. 519).

c) Those to whom the Superior or local Ordinary has delegated jurisdiction (can. 519 and 875, § 1). Jurisdiction delegated by the Superior is personal, so that it can be exercised everywhere; but jurisdiction granted by the local Ordinary does not extend to religious staying outside the Ordinary's territory. With respect to those who are staying in the Ordinary's territory, however, the granted jurisdiction also includes sins and censures reserved in the religion (can. 519).

What has been said about exempt religious also holds for their novices, students, boarders, and others of whom n. 164 speaks (can. 874, § 1; 875, § 1). It can nevertheless be disputed whether the religious Superior and those delegated by him retain jurisdiction over students during holidays while they are staying outside the religious house. This seems to have to be denied, because at that time the students are not subject to the Superior's power. Otherwise one should speak if during school time they go out, for example for the purpose of making a pilgrimage.

Exempt religious staying outside their own house can confess as follows:

a) Those actually traveling can confess, just as those dwelling at home can, to one approved either by the local Ordinary in whose place the confession is made, or by their own Superior; but not to a companion or another who has been approved by neither. That jurisdiction must be received from one or the other follows from canons 519, 874, § 1, and 875, § 1, so that the contrary doctrine, formerly admitted by many, must be rejected.

b) Travelers who are staying in some convent of their own order can confess: 1. to those approved by the local Ordinary; 2. to those approved by their own Superior; 3. to the Prelate of that convent and to those approved by him, namely by custom.

2. **Over members of an exempt lay religion,** jurisdiction is possessed by the local Ordinary in whose place they are staying and by those to whom the local Ordinary has granted it (can. 519 and 875, § 2).

3. If a religious, even an exempt one, for the quiet of his conscience approaches a confessor approved by the local Ordinary, even though not listed among those designated, the confession, any contrary privilege being revoked, is valid and licit; and the confessor can absolve the religious even from sins and censures reserved in the religion (can. 519). Moreover:

a) A confession is made for quiet of conscience whenever from a confession made in this way greater quiet of conscience is hoped for, whether because of a more candid accusation, or because of a nearer occasion of confessing, for example if the ordinary confessor is absent. The causes assigned are of themselves accidental, and in such a case the religious would not have to approach the ordinary confessor again on that occasion, which is nowhere imposed. Besides, if a permanent cause were present, a permanent exception would also be permitted. Nevertheless, then it would be better to seek from the Superior, with permission, that different confessor who would become habitual.

b) The condition set forth under a) is not judged to pertain to validity, both because a condition so intimate is not presumed by the legislator to be intended for validity, and because that would provide occasion for doubts and anxieties. Nevertheless, to approach a non-designated confessor merely at one's own pleasure is illicit.

c) It is not lawful for a religious, if the constitutions forbid it, to leave the house without the Superior's permission for the purpose of confessing.

373 **VI. Jurisdiction over religious women.** Priests, both secular and religious, of whatever rank or office, need special jurisdiction for validly and licitly receiving the confessions of any religious women and novices, with the privilege of Cardinals preserved,[1] and with the cases assigned by law excepted (can. 876, § 1). This jurisdiction is conferred by the local Ordinary where the house of the religious women is situated (can. 876, § 2). Moreover:

1. The special jurisdiction of which the canon speaks is required even for validity, as authors now commonly admit and as they deduce from the very word jurisdiction, which imports power, and from the Code itself, where it is distinguished from permission (cf. for example can. 877). Special jurisdiction is required for women religious and their novices, but not for their postulants, since these are not named. It can be disputed whether it is required for women living in common without vows. The reason for doubting is drawn from the fact that canon 675, to which some appeal, indeed refers to canons 499-530, but not to canon 876, which establishes the necessity of special jurisdiction.

2. **The cases in which common law confers jurisdiction over religious women are:**

a) If some religious woman, for the tranquility of her conscience, approaches a confessor approved by the local Ordinary for women, the confession, made in any church or even semi-public oratory, is valid and licit, any contrary privilege being revoked; nor can the Superior forbid it or inquire about

the matter, not even indirectly; and the religious women are bound to report nothing to the Superior (can. 522). It is said:

1. **For the tranquility of her conscience;** this is not required for validity, as has already been explained in n. 372.
2. **Approaches,** that is, has recourse to him. This can be done both inside and outside the house; hence it is not required that the religious woman be staying outside her own house, but she can also call the confessor.[2]
3. **A confessor approved for women,** that is, approved for women, whether secular or religious.[3]
4. **In any church or even semi-public oratory;** to these the Pontifical Commission added: or in a place lawfully designated for hearing the confessions of women[4] or of religious women.[5] Moreover, the circumstance of place is required not only for liceity but also for validity.[6]

It is disputed whether among places lawfully designated there also belongs a place in which, according to canon 910, § 1,[7] the confessions of women are sometimes licitly heard, namely by reason of sickness or another true necessity. Now although the obvious sense of the law, "in a place lawfully designated for hearing confessions of women or of religious women," seems to favor the negative opinion, nevertheless it is difficult to admit that a means of absolution of this kind is excluded for religious women, for example religious women who have difficulty approaching the place habitually designated for hearing the confessions of women or religious women. Hence jurisdiction is probably had, and certainly had when the Church supplies.

5. **Nor can the Superior forbid it,** that is, she cannot forbid precisely that the religious woman confess to such a confessor, although it is not lawful to leave the house without permission.

Question. Can a confessor lacking special jurisdiction, by force of canon 522, validly absolve an entire community, for example in the absence of the ordinary confessor?

Response. It must be denied, because canon 522 supposes that the case is particular, since it grants jurisdiction for the case in which some religious woman approaches or calls such a confessor.

b) All religious women, when they are gravely ill, even though danger of death is absent, can call any priest approved for receiving the confessions of women, even if he is not designated for religious women, and can confess to him as often as they wish while the grave infirmity continues; nor can the Superior prohibit them either directly or indirectly (can. 523). A grave illness is one which notably weakens health; such an illness easily becomes dangerous. Since the canon declares "any priest approved for receiving the confessions of women," according to some it is not required that he be approved by the local Ordinary in whose place the confession is made, but it suffices that he has received jurisdiction over women from some local Ordinary and still enjoys it now. This opinion, however, although the letter favors it, does not seem admissible, namely considering the character of the whole legislation, which continually requires jurisdiction conferred by the local Ordinary in whose place the confession is instituted.

c) In danger of death, for religious women as for the other faithful, canon 882 holds, as explained in n. 370.

[1] Cardinals enjoy the faculty of hearing confessions everywhere on earth, even of religious of either sex (can. 239, § 1, 1).

[2] Pontifical Commission, December 28, 1927 (A.A.S. 1928, p. 61).

[3] Pontifical Commission, December 28, 1927 (A.A.S. 1928, p. 61).

[4] November 24, 1920 (A.A.S. 1920, p. 573).

[5] December 28, 1927 (A.A.S. 1928, p. 61).

[6] Pontifical Commission, December 28, 1927 (A.A.S. 1928, p. 61).

[7] Canon 910, § 1 states: the confessions of women are not to be heard outside the confessional seat except by reason of sickness or another true necessity and with the precautions which the local Ordinary has judged opportune.

Scholion. On Confessors to Be Deputed for Religious

I. Clerical Religion of Men

374 **I.** In individual houses of a clerical religion, several confessors legitimately approved should be deputed in proportion to the number of members, with the power, if the case concerns an exempt religion, of absolving even in cases reserved in the religion (can. 518, § 1).

Note 1. Religious Superiors having the power of hearing confessions can, with the things to be observed by law observed, hear the confessions of subjects who spontaneously and of their own motion ask this from them, but they should not do this habitually without grave cause (can. 518, § 2). Grave causes are, for example, a shortage of confessors, an anxious state of conscience in a subject, and the like. But a petition made spontaneously and of one's own motion suffices for the Superior to hear confessions by way of an act.

Note 2. Superiors should take care not to induce any subject, either personally or through another, by force, fear, importunate persuasions, or in any other way, to confess sins to them (can. 518, § 3). Simple counsel or persuasion in a particular case is not excluded.

II. With the constitutions remaining firm which command or counsel confession to be made at stated times with determinate confessors, if a religious, even an exempt one, for the quiet of his conscience, approaches a confessor approved by the local Ordinary, even though not listed among those designated, the confession, any contrary privilege being revoked, is valid and licit; and the confessor can absolve the religious even from sins and censures reserved in the religion (can. 519). These things were explained in n. 372.

III. As regards novices, these things hold:

1. In proportion to the number of novices, one or more ordinary confessors should be had (can. 566, § 2, 1); these should stay in the novitiate house itself (can. 566, § 2, 2).
2. Besides ordinary confessors, some confessors should be designated whom the novices can freely approach in particular cases, and the Master should not show that he takes this ill (can. 566, § 2, 3).
3. At least four times a year an extraordinary confessor should be given to the novices, to whom all should approach at least to receive a blessing (can. 566, § 2, 4).
4. Also for novices the things said in n. 374, II hold.

Note 1. The master of novices and his associate, and the Superior of a Seminary or college, should not hear the sacramental confessions of their students staying with them in the same house, unless the students ask this spontaneously from a grave and urgent cause in particular cases (can. 891). Therefore novices cannot habitually confess to the master of novices even for a grave and urgent cause. It is not clear that the prohibition of confessing to the master of novices should also be extended to postulants, since the Master is not of himself set over postulants.

Note 2. Novices can confess to the Superior of the house for a just cause in particular cases; for a grave cause, habitually (cf. can. 518, § 2).

IV. As regards postulants, nothing special is established by the Code, so that they are subject only to the common governance of religious.

II. Lay Religion of Men

375 **I.** Also in lay religions of men an ordinary and extraordinary confessor should be deputed; and if a religious asks for some special confessor, the Superior should grant him, in no way inquiring into the reason for the petition nor showing that he takes it ill (can. 528).

Note. In an exempt lay religion, the Superior proposes the confessor, who nevertheless must obtain jurisdiction from the local Ordinary in whose place the religious house is found (can. 875, § 2).

II. Also for lay male religious the things said in n. 374, II hold.

III. As regards novices, the things said in n. 374, III hold. Their ordinary confessors, however, should either stay in the novitiate house itself or at least frequently come to the novitiate house to hear the confessions of the novices. Postulants are subject only to the common governance of religious.

III. Religion of Women

376 **I. Different confessors.** They are distinguished as ordinary, special, extraordinary, and particular.

1. **Ordinary confessor.** a) For each house of religious women only one ordinary confessor should be given, who receives the sacramental confessions of the whole community, unless because of their great number or another just cause there is need of another or of several (can. 520, § 1).[1]

The words "who receives the sacramental confessions of the whole community" indicate the office of the confessor rather than an obligation of the religious women to approach him in the case in which, within the time established by the rule, they have confessed to another. Nevertheless, of itself it should be counseled that all be content with the ordinary confessor and ordinarily confess to him at the stated times.

A just cause for naming several ordinary confessors could be, for example, a plurality of national languages.

b) For the office of ordinary confessor of religious women there should be deputed priests, whether from the secular clergy or religious with the permission of their Superiors, outstanding in integrity of morals and prudence. They should moreover be forty years of age, unless a just cause, in the judgment of the Ordinary, requires otherwise, and they should have no power in the external forum over those same religious women (can. 524, § 1).

If the house of religious women is immediately subject to the Apostolic See or to the local Ordinary, he chooses priests for confessions, both ordinary and extraordinary; if it is subject to a regular Superior, he presents confessors to the Ordinary, whose duty it is to approve the same for hearing the confessions of those nuns and, if need be, to supply for the Superior's negligence (can. 525).

The ordinary confessor of religious women should not exercise his office beyond three years. Nevertheless, the Ordinary can confirm him for a second, indeed even for a third, three-year period, if either because of a shortage of priests fit for this office he cannot provide otherwise, or if the greater part of the religious women, including those who in other matters do not have the right of casting a vote, has agreed by secret votes to the confirmation of the same confessor. Nevertheless, for those dissenting, if they wish, provision must be made otherwise (can. 526).[2] Outside the cases set forth, the ordinary confessor cannot again be deputed as ordinary in the same community except after a year from the completion of his office; but an extraordinary confessor can immediately be named as ordinary (can. 524, § 2).

2. **Special confessor.** If some religious woman, for the quiet of her soul and for greater progress in the way of God, asks for some special confessor or spiritual moderator, the Ordinary should readily grant him. Nevertheless, he should watch lest abuses creep in from this concession; but if they do creep in, he should eliminate them cautiously and prudently, with liberty of conscience preserved (can. 520, § 2). Therefore a special spiritual director could also be granted without the office of confessor.

a) A special confessor or spiritual moderator is to be granted not for a prefixed time, but as long as the just cause of necessity or spiritual utility of the religious woman who requested him endures.[3]

b) The ordinary confessor of the community can also be deputed as moderator of conscience for some religious woman.[4]

3. **Extraordinary confessor.** To each community of religious women there should be given an extraordinary confessor who at least four times a year comes to the religious house, and to whom all religious women must present themselves, at least to receive a blessing (can. 521, § 1). In an extraordinary confessor the same things are required as in an ordinary one (can. 524, § 1). The same things also hold as regards his selection (can. 525), but he can be named for an indefinite time. Finally, the mind of the legislator is judged to be that, as such, he should not come to the religious house more than four times a year without the authority of the Ordinary.

4. **Particular confessor.** The local Ordinaries in whose places communities of religious women exist should designate some priests for individual houses, to whom the religious women can easily have recourse for the sacrament of Penance in particular cases, without its being necessary to approach the Ordinary himself as often as the case arises (can. 521, § 2). It is said, 1. for the sacrament of Penance; therefore not only for seeking direction or counsel. It is said, 2. in particular cases; therefore not habitually after the manner of the special confessor of whom under 2.

Note. If some religious woman asks for one of those confessors, no Superior is permitted, either personally or through others, directly or indirectly, to inquire into the reason for the petition, to oppose the petition by words or deeds, or in any way to show that she takes it ill (can. 521, § 3). This paragraph seems to regard both the extraordinary confessor of paragraph 1 and the particular

confessor of paragraph 2. For first, canon 521 treats of both kinds of confessors, § 1 of the extraordinary confessor, § 2 of particular confessors; then § 3 says: "If some religious woman asks for one of those confessors," not "of these confessors." Then the distinct paragraph confirms this; for if this admonition regarded only particular confessors, it should have been stated in the same paragraph, not in a distinct paragraph of the same canon, which also treats of the extraordinary confessor.[5]

[1] The Sacred Congregation for Religious, July 3, 1916, declared that there was no obligation of naming an ordinary confessor for a community which did not contain at least six sisters. But the same Congregation several times, for example January 10, 1920 and January 18, 1921, ordered canon 520 to be observed even for small houses. But that canon supposes confessors who receive confessions in the house of the sisters itself. Therefore, if they are allowed to approach a church so that there they may confess in the manner of secular women, a confessor does not seem to have to be named (Vermeersch, *Epitome*, 4, n. 590).

[2] Sacred Congregation for Religious, April 20, 1913.

[3] Sacred Congregation for Religious, April 20, 1913.

[4] Sacred Congregation for Religious, April 20, 1913.

[5] Vermeersch, *Periodica*, IX, p. (3).

377 **II.** As regards naming confessors of women novices, the things said about the religious women themselves hold (can. 566, § 1). Postulants, as regards this matter, are numbered among religious women, although it can be disputed whether special jurisdiction is required for hearing them validly (n. 373).

378 **III. Things to be observed by confessors and by religious women.** 1. The confessors of religious women, both ordinary and extraordinary, should in no way involve themselves in the internal or external governance of the community (can. 524, § 3). Special confessors called to the monastery or religious house, if they understand that the religious women approach them with no just cause either of necessity or of spiritual utility, should prudently dismiss them.[1]

2. All religious women should in no way speak among themselves about the confessions of their companions, nor should they dare to criticize those sisters who make their confession to another than the deputed confessor.[2]

3. A Superior who acts against the prescriptions of canons 521, § 3,[3] 522,[4] and 523[5] should be warned by the local Ordinary. If she offends again, she should be punished by him with deprivation of office, the Sacred Congregation of Religious being immediately informed (can. 2414).

[1] Decree *Cum de sacramentalibus*. The things said in the text, even if perhaps they can no longer be urged by force of the cited Decree, are nevertheless worthy of mention.

[2] Cf. p. 290.

[3] Cf. p. 290.

[4] Cf. p. 286.

[5] Cf. p. 286.

IV. A Society, Whether of Men or Women, Living in Community without Vows

The things said about male religious also hold for societies of men living in community without vows; likewise the things said about women religious hold for societies of women living in common without vows (can. 675).

Article III. On the Limitation of Jurisdiction with Respect to Sins, or on the Reservation of Sins

379 **I. Notion of reservation.** Reservation is an act by which a Superior who by ordinary right can grant the power of hearing confessions or impose censures calls a case, that is, a sin or censure, to his own judgment, and thereby limits the power of the inferior judge (can. 893).

380 **II. The end of reservation** is the protection of ecclesiastical discipline,[1] both by calling some transgressions to a judge who can better guard against them, and, as others add, by making remission more difficult. The former is intended primarily (cf. can. 893, § 1 and can. 897); the latter, or the character of punishment, at most secondarily (St. Alphonsus, VI, 581, doubt 1).

[1] Session 14, chapter 7.

381 **III. Division of reservation.** Reservation of sins can be distinguished in three ways, according as it directly regards either the censure alone annexed to the sin, or the sin alone, or the sin and the censure. If it directly regards the censure alone, the sin is said to be reserved by reason of the censure, and once this is taken away, the reservation of the sin ceases. If it directly regards either the sin alone or the sin and the censure, the sin is said to be reserved by reason of itself (St. Alphonsus, VI, 580). We are treating of sins reserved by reason of themselves; concerning censures we shall speak in the treatise on ecclesiastical penalties.

382 **IV. The power of reserving.** 1. This is to be acknowledged in the Church, as is deduced from the Council of Trent,[1] from the Constitution *Auctorem fidei* of Pius VI,[2] from the usage prevailing from the earlier centuries, and from the fact that the Church, to whom the conferral of jurisdiction has been entrusted, can, just as secular power can, confer it with limitation.

2. It belongs to those who by ordinary right can confer sacramental jurisdiction or establish censures, except the Capitular Vicar and the Vicar General without a special mandate (can. 893, § 1). Among Superiors of an exempt clerical religion, only the Superior general and, in monasteries sui iuris, the Abbot, each with his proper Council, can reserve sins of subjects, as above (can. 896). Understand this of personal Superiors, lest the General Chapter, enjoying supreme authority, be excluded; by force of canon 893, § 1, it also can reserve sins.

3. It regards only subjects, that is, those over whom someone can confer on others the power of absolving or of striking with censure.

Corollary I. Those without a domicile are bound by the reservation of the local Ordinary in whose place they are staying, since they are subjects of that Ordinary (can. 94, § 2).

Corollary II. Travelers are not bound by the reservation of their own territory as long as they are absent from it; and this holds even if they have departed only to obtain absolution (can. 900, § 3). They are, however, bound by the reservation of the place in which they are dwelling. The reason for the former is that jurisdiction over travelers is not received from their own Ordinary (n. 371). The

latter was declared by the Pontifical Commission[3] and is deduced from the fact that travelers are absolved by force of jurisdiction obtained from the local Ordinary in whose place they confess. But the local Ordinary, with respect to travelers just as with respect to diocesan persons, restricts jurisdiction. If a traveler confesses to his own parish priest, the latter can absolve him both from the reserved cases of his own territory, since he is not bound by that reservation outside his own territory, and from those of the place in which he is staying, because the parish priest does not receive jurisdiction over his own parishioner from the local Ordinary in whose place the traveler is staying.

Corollary III. Exempt religious are bound by the reservation of the local Ordinary when they confess to one approved by him. For he confers jurisdiction over them, and consequently can confer it as limited (can. 874, § 1). Hence one who absolves them by force of jurisdiction received from the local Ordinary should take account of the aforesaid reservation; but he can absolve them from sins and censures reserved in the Religion (can. 519). If they are absolved by force of jurisdiction granted by the regular Superior, no account must be taken of episcopal reservation.

[1] Session 14, chapter 7 and canon 11.

[2] August 28, 1794.

[3] November 24, 1920 (A.A.S. 1920, p. 573).

383 **V. Use of the power of reserving.** 1. Local Ordinaries should not reserve sins unless, after the matter has been discussed in diocesan Synod, or outside Synod after the cathedral Chapter and some of the more prudent and more approved curators of souls of their diocese have been heard, the true necessity or utility of the reservation has been established (can. 895).

2. The cases to be reserved should be altogether few, namely three or at most four, only from the graver and more atrocious external crimes specifically determined. The reservation itself should not remain in force longer than is necessary for uprooting some public, deeply rooted vice and perhaps restoring collapsed Christian discipline (can. 897). All should entirely abstain from reserving to themselves those sins which are already reserved to the Apostolic See, even by reason of censure, and regularly from those also to which a censure, even one reserved to no one, has been imposed by law (can. 898).

3. Once reservations have been established which they have judged truly necessary or useful, local Ordinaries should take care that these be brought to the knowledge of subjects in the way that seems better to them, and they should not impart to just anyone and indiscriminately the faculty of absolving from reserved cases (can. 899, § 1).

4. The Supreme Pontiff reserved to himself only one sin, though with a censure (can. 2303), by reason of itself:[1] namely false denunciation by which an innocent priest is accused of the crime of solicitation before ecclesiastical judges (can. 894). This will be discussed later.

[1] A sin is said to be reserved by reason of itself when the reservation immediately affects the sin; by reason of censure, when the reservation immediately affects only the censure, so that the sin can indeed be remitted directly by a simple confessor, but the censure cannot be removed. While the censure remains, however, absolution from the sin is commonly gravely illicit. Finally, there is a sin reserved with censure when the sin is reserved by reason of itself and has an attached censure; in this case the reservation of the sin can be present even if the censure is not contracted or ceases.

384 **VI. Conditions of reservation.** It is required that the sin be:

1. **Mortal,** and indeed objectively, subjectively, and insofar as it is reserved. Objectively, and therefore not only by reason of an erroneous conscience; subjectively, so that, for example, an act posited with half-full advertence is not enough;[1] insofar as it is reserved, for example, if incest is reserved, it is not enough that someone has intercourse with a blood-relative, but it is also required that he know that that person is a blood-relative.
2. **External** and indeed externally mortal, because the Church has not been accustomed to reserve merely internal sins.[2] Nevertheless, it is sufficiently externally mortal if it manifests grave internal malice (St. Alphonsus, *Homo Apostolicus*, tract 16, n. 132).
3. **Complete according to the words of the law,** in other words, that it be that work which is circumscribed by the words of the law. Hence if the law, for example, declares that homicide is reserved, it is required that death has followed. It is otherwise if it is established that an attempt, machination, and so forth is reserved; in that case it suffices that those actions themselves have been posited (St. Alphonsus, VI, 582).
4. **Certain.** Hence reservation is judged to be absent: 1. in doubt about the act committed, likewise about the required conditions; 2. in doubt about grave subjective fault; 3. in a doubt of law concerning the law of reservation.

Question 1. Does ignorance excuse from the reservation of sin?

Response. Some affirm this, because they regard reservation as penal. But it seems this must be denied, because the character of punishment is intended at most secondarily. This also holds as regards the one sin reserved to the Holy See by reason of itself, whose reservation most authors judged to be penal, relying on these words of Benedict XIV in the Constitution *Sacramentum Poenitentiae*: "so that so detestable a crime may be restrained by fear of the greatness of the penalty," and so forth. But, considering the canons cited above, no reservation now seems to be penal, at least primarily (St. Alphonsus, VI, 581, doubt 1).

Question 2. Does grave fear excuse from the reservation of sin?

Response. Some affirm this, because a reserved sin is understood to have been committed as it is commonly accustomed to be committed, and therefore not from grave fear. But it must be denied, because the words of the law, as is supposed, are absolute and therefore also include a sin committed from fear, provided that fear does not take away full deliberation.

[1] Jurisdiction could nevertheless be limited by the Church also with respect to venial and merely internal sins, as is commonly taught against Vasquez (St. Alphonsus, VI, 582, doubts 1 and 2).

[2] See the preceding note.

385 **VII. Cessation of the reservation of sin.** Any reservation by which a sin is reserved by reason of itself ceases:

1. When confession is made either by the sick who cannot leave the house, or by betrothed persons for the purpose of entering marriage (can. 900, 1). Under the name of the sick, considering the mind of the legislator, there also seem to come all who because of a notable bodily injury cannot leave the house, such as the paralyzed, those detained in prison, and the aged. The disposition holds even if the sick person is staying in the same house as the confessor. For betrothed persons the exception holds even if they confess several times in order to their approaching nuptials, for

example by making a general confession some time before marriage, afterward making an ordinary confession; or by now confessing in the customary way in order to marriage, afterward confessing again in order to marriage, for example because something was omitted through forgetfulness or a new reserved sin was committed. Moreover, sacramental confession sometimes takes away reservation even if the confession was invalid, so that betrothed persons can be absolved from the reserved sin even after marriage; these things are more fully explained in n. 386.

2. As often as either the legitimate Superior has denied the faculty of absolving requested for some determinate case, or, in the prudent judgment of the confessor, the faculty of absolving cannot be requested from the legitimate Superior without grave inconvenience to the penitent or without danger of violating the sacramental seal (can. 900, 2). It is said:

a) **As often as the Superior has denied the faculty of absolving requested for some determinate case.** Reservation ceases even if the Superior has denied the faculty for a just cause, provided that the case is determinate; for the law does not distinguish.

b) **Or the faculty cannot be requested without grave inconvenience to the penitent,** for example if Communion or the celebration of Mass cannot be deferred without danger of scandal or infamy until the faculty has been obtained;[1] if the penitent can return only with difficulty to the confessor who will seek the permission; if it is hard for the penitent to remain in the state of grave sin during the time required for obtaining and using the faculty. For this reason St. Alphonsus observes: "It seems hard to me for one who is in mortal sin to remain without absolution even for a day" (IV, 490). It is sufficiently probable that founded fear lest the penitent, if absolution is delayed, be driven away from the sacraments, suffices.

c) **Or the faculty cannot be requested without danger of violating the sacramental seal,** that is, without danger that the Superior would recognize or suspect for what person the faculty of absolving is requested.

3. Outside the territory of the one reserving, even if the penitent has departed from it only to obtain absolution (can. 900, 3; n. 382).

Corollary I. Since canon 900 declares that any reservation ceases in the cases set forth, this must also be applied to the one sin reserved to the Holy See by reason of itself, of which canon 894 speaks, that is, false denunciation of a priest concerning the delict of solicitation. This is confirmed by a response of the Pontifical Commission.[2]

Corollary II. A penitent who has committed a reserved sin and is in circumstances in which reservation ceases is bound, if he wishes to communicate, to confess, and indeed integrally, that is, even sins reserved of themselves, even if only a simple confessor is present, because the latter can absolve him directly. For the same reason, he is not bound to confess to a privileged confessor who is present, but can also make confession to a simple confessor.

Corollary III. A penitent who has committed a reserved sin and is not in circumstances in which reservation ceases seems to be bound, if a privileged confessor is lacking, to defer confession and Communion for a little while. He is bound to defer confession, because he can be absolved from the reserved sin only indirectly, which without a grave cause is gravely illicit. But a grave cause is lacking; for if it were present, reservation would cease and the penitent could be absolved even directly from

the reserved sin. He is bound to defer Communion; for one who has sinned gravely cannot communicate without confession, unless a grave cause urges.

But if Corollary III is not admitted, there arises:

Question. Is one who has committed a reserved sin and is not in circumstances in which reservation ceases, if he wishes to communicate, bound, when a privileged confessor is lacking, to confess to a simple confessor?

Response 1. No, if he has only reserved sins, because with respect to this confessor these are not matter for absolution; hence there cannot be an obligation of confessing them. Accidentally he is bound to confess some venial sin or mortal sin already confessed, if he fears that he is not contrite.

Response 2. It is disputed if he also has non-reserved mortal sins. A few deny it, because there is no obligation of instituting a confession which, because of the confessor's lack of jurisdiction over the reserved sins, will necessarily lack integrity. Much more commonly it is affirmed, because the precept of putting confession before Communion prevails over the precept of material integrity. If he confesses, he is not bound to declare the reserved sins, unless he is a relapser into them or is in their proximate occasion, and is questioned about them by the confessor. The reason is that the confessor has the right and obligation of providing for the prudent ministration of the sacrament, and consequently of questioning about the aforesaid things; to this right there corresponds in the penitent an obligation of responding (St. Alphonsus, VI, 265, questions 1 and 2; 585, doubt 2 and 3).

Corollary IV. If the penitent confesses a reserved sin to a simple confessor and is not in circumstances in which reservation ceases, the confessor should either send the penitent to a privileged confessor or seek the faculty of absolving.

[1] It is not necessary, indeed it is not expedient, to seek the faculty by means of telegraph or telephone. "Considering," so the Letter of the Secretary of State, December 10, 1891, "the inconveniences that have actually arisen and easily will arise from the fact that written petitions are received by telegraphic route, the Holy Father prescribed that as an ordinary rule neither the Sacred Congregations nor other Roman Ecclesiastical Offices should henceforth receive petitions of this kind by the aforesaid route. Moreover, because the same reasons hold also for Episcopal Curias themselves, His Holiness willed that the Pastors of Dioceses also conform themselves to this prescription." And the Pontifical Commission answered on November 12, 1922, that the Ordinary must be judged unable to be approached if recourse to him can be had only by telegraph or telephone (A.A.S. 1922, p. 661).

[2] November 10, 1925 (A.A.S. 1925, p. 582).

386 **VIII. Removal of the reservation of sin.** Sometimes, as is commonly admitted, only the reservation of the sin is removed, whether by an inferior privileged confessor, or, as others who judge that this power is lacking to an inferior wish, by the Superior (St. Alphonsus, VI, 598, question 3). Once the reservation has been removed, however, a simple confessor can now absolve from the sin. Moreover, removal of the reservation alone has place in confession made to one having the faculty of absolving from reserved sins, in the following cases:

1. In an invalid confession, whether culpably or inculpably, in which the reserved sin was declared. The reason is that, once the end of reservation has been obtained, the reservation is judged to be removed. But in the case posited, the end of reservation has been obtained; for this is obtained by the fact that the penitent submits the reserved sin to the judgment of a competent confessor, who assigns remedies and imposes penance (St. Alphonsus, VI, 598). Except the time of Jubilee, if the

penitent confesses either invalidly, whether culpably or inculpably, or without the intention of fulfilling the works required for the Jubilee, and makes confession to a confessor who has the faculty of absolving from the reserved sin only on the occasion of the Jubilee. This is deduced from these words of the Constitution *Inter praeteritos* of Benedict XIV:[1] "Since all the faculties which are granted are directed to the obtaining of the Jubilee and are, as it were, preparation for it, it clearly follows from this that there is no place for the use of those faculties except with one who is both prepared to obtain the Jubilee and has a certain purpose of fulfilling the enjoined works"; add § 86 (St. Alphonsus, VI, 598).

2. In a valid confession in which the reserved sin was omitted inculpably; because "it can probably be presumed that the Superior consents that the reservation be removed whenever the penitent validly confesses to one having the faculty" (St. Alphonsus, VI, 597). Yet it stands in the way that the end of reservation has not been obtained. St. Alphonsus does not reprobate this opinion because of authority (2nd catalogue of reformed questions, question 18).

3. According to some, in an inculpably invalid confession in which the reserved sin was omitted; because the Superior probably consents to the removal of reservation whenever the penitent confesses to one having the faculty, provided the confession is not culpably invalid. Indeed, according to some, in a culpably invalid or sacrilegious confession, provided the defect of validity does not proceed precisely from the fact that the reserved sin was culpably omitted. But these opinions do not seem safe enough to most authors (St. Alphonsus, VI, 598).

[1] November 28, 1749, § 62.

387 **IX. Absolution from a reserved sin.** The general rule is this: the following can absolve: 1. the one reserving and his successor; 2. the Superior in the sacramental forum of the one reserving or of his successor; 3. those deputed or delegated either by law or by the aforesaid persons (St. Alphonsus, VI, 599). Specifically, note:

1. From the one sin and censure reserved by reason of itself to the Holy See, that is, from false denunciation of a priest concerning the delict of solicitation, the following can absolve: 1. Cardinals from the time of their promotion (can. 239, § 1, 1); 2. the priest whom a Cardinal or Bishop, whether residential or titular, has chosen for confessions for himself and his household, namely if the chosen priest receives the confessions of the aforesaid persons (can. 239, § 1, 2; 349, § 1, 1).

2. From sins and censures which local Ordinaries have in any way reserved to themselves, the following can absolve:

a) Cardinals, as above; likewise the priest chosen by a Bishop for confessions, as above.

b) The penitentiary canon (can. 899, § 2; 401, § 1).[1]

c) Parish priests, or others who in law are judged under the name of parish priests, during the whole time useful for fulfilling the Easter precept; then individual missionaries during the time when missions to the people happen to be held (can. 899, § 3). Moreover:

a) The time useful for the Easter precept is that which has been established either by common law, or by particular law, or by a prorogation granted to someone. The faculty can also be used in a

confession which is indeed instituted during the Easter season, but not in order to fulfill the Easter precept.

Under the name of missions, spiritual exercises instituted for the whole parish can also be taken, with sufficient probability.

Note. Local Ordinaries should not impart to just anyone and indiscriminately the faculty of absolving from reserved cases (can. 899, § 1), but it should be imparted habitually at least to vicars forane, with the faculty added, especially in places of the diocese more remote from the episcopal see, of subdelegating as often as confessors of their district have recourse to them for some more urgent determinate case (can. 899, § 2).

3. From sins and censures reserved by a regular Prelate, the following can absolve:

a) Cardinals, as above; likewise the priest whom a Bishop has chosen for confessions for himself and his household, namely if the chosen priest receives the confessions of the aforesaid persons, among whom perhaps a religious is found (can. 239, § 1, 1; 349, § 1, 1).

b) Those approved by the local Ordinary (can. 519).

Note. In individual houses of a clerical religion, several must be deputed with the power, if the case concerns an exempt religion, of absolving even from cases reserved in the religion (can. 518, § 1).

[1] This canon enjoys ordinary power, which, however, he cannot delegate (can. 401, § 1).

Scholion. On Supplied Sacramental Jurisdiction

388 Let the things said about supplied jurisdiction generally be compared (vol. I, n. 102 sq.).

Chapter II. On the Right Use of the Power

389 Before we speak of the use itself of the power, certain things must be noted about those things which are prerequisite to right use; these indeed are "goodness, knowledge, and prudence."[1] A few things concerning knowledge alone.

I. The necessity of knowledge needs no proof. It suffices to have noted with St. Alphonsus that "that confessor is in the state of damnation who exposes himself to receiving confessions without sufficient knowledge" (*Praxis Confessarii*, n. 18). That is, he is guilty of all the defects that follow from ignorance and that were foreseen at least confusedly.

II. Mediocre knowledge is required and suffices, greater or lesser, however, according to the diversity of places and penitents. In a word: it is required and suffices that the confessor know how to solve the cases commonly occurring in the place, and know how to doubt prudently about more difficult ones (St. Alphonsus, at the cited place and VI, 627). Nevertheless, greater knowledge is desired according to these words of the Roman Ritual: "That he may be able to judge rightly, distinguishing between leprosy and leprosy, and as a skilled physician prudently cure the diseases of souls, and know how to apply suitable remedies to each one, he should strive to acquire for himself as much knowledge and prudence as he can for this purpose."[2]

III. As regards the means of acquiring and preserving due knowledge, I note with St. Alphonsus:

"Those who desire this office of receiving confessions should not easily persuade themselves that they can render themselves sufficiently fit for so great an office without long study of moral science. For this, certainly, it is not enough to run through some little summary of those which are circulated; nor is it enough to know the general principles of this faculty, as some, who, despising casuists, arrogate to themselves the name of learned men, suppose. For moral science is not only very necessary to the Christian commonwealth, since the good governance of souls depends on it, but is also supremely difficult. First, because it requires a general knowledge of all the other sciences, offices, and arts; second, because it embraces so many diverse matters distant from one another; third, because in great part it consists of so many positive laws, which are found brought together only among the casuists, and especially among the more recent ones, since laws of this kind come forth day by day. Finally, it becomes most difficult because of the innumerable circumstances of cases, on which the variation of resolutions depends; for from the diversity of circumstances different principles must be applied, and in this consists the difficulty, since it cannot be done without great discussion or the careful reading of several books which examine and elucidate the matters" (VI, 628).

And in the *Praxis Confessarii* the Holy Doctor says thus: "No confessor should interrupt the study of moral theology; because from so many things so diverse and disparate among themselves which pertain to this science, many, although read, because they happen more rarely, fall from the mind with the progress of time. For this reason it is necessary always to recall them to memory by frequent study" (n. 18). In addition, all should prepare themselves well for the moral conferences, as they are called. Finally, especially new confessors, after a more difficult confession has been heard, should weigh whether they have acted rightly. If doubts occur, they should consult books or more learned persons, account nevertheless being taken of the sacramental seal.

Corollary I. One who doubts whether he enjoys due knowledge should acquiesce in the judgment of the Bishop or Superior (St. Alphonsus, *Praxis Confessarii*, n. 18).

Corollary II. One destitute of due knowledge, and a Bishop or Superior using him, are excused on account of grave cause. A grave cause is present in the article of death and generally if otherwise penitents would for a long time lack the faculty of confessing, as can happen, for example, among captives and in Missions because of a shortage of priests (St. Alphonsus, VI, 628).

Having noted these things, we shall speak first of the things to be observed in confession, then of the things to be avoided in it, finally of the things to be observed after confession.

[1] Roman Ritual, title III, chapter 1, n. 1.

[2] At the cited place, n. 3.

Article I. On the Things to Be Observed in Confession

The confessor has the office of questioning, instructing, judging sins, judging and promoting disposition, consulting for amendment of life, and rendering sentence. Each must be treated.

§ I. On the Office of Questioning

390 **I. Existence of the obligation.** The confessor is bound to question the penitent: 1. if he prudently fears that formal integrity is lacking, in other words, that the penitent has kept back things which he knew had to be confessed by him; 2. if he prudently fears that material integrity is lacking,

in other words, that the penitent in good faith is silent about things which of themselves are to be confessed.

The first is clear from the fact that the confessor cannot expose the sacrament to danger of nullity. Add the arguments to be brought for the second part.

The second is proved: 1. by the authority of Councils, Pontiffs, and the Roman Ritual.

The Fourth Lateran Council: "Let the priest be discreet and cautious ... diligently inquiring both into the circumstances of the sinner and of the sin."[1] Leo XII in the encyclical *Caritate Christi*[2] teaches that necessary diligence must be applied by the confessor in questioning penitents. Benedict XIV in the Constitution *Apostolica*:[3] "In the first place we admonish them to remember that they do not fulfill the parts of the office they have undertaken, indeed rather all those are guilty of a graver crime who, when they sit in the sacred tribunal of Penance, listen to penitents touched by no solicitude, do not admonish, do not question, but when the enumeration of crimes has been completed, immediately pronounce the form of absolution." The Roman Ritual: "If the penitent has not expressed the number, species, and circumstances of sins necessary to be explained, let the priest prudently question him."[4]

2. The Doctors agree. St. Thomas: "It must be said that the priest ought to search out the conscience of the sinner as a physician searches a wound and a judge a cause; because frequently those things which the one confessing would keep silent through shame, when questioned he reveals" (*In IV Sentences*, distinction 19). St. Antoninus,[5] St. Bonaventure,[6] St. Bernardine of Siena,[7] St. Charles Borromeo,[8] and St. Alphonsus teach the same (VI, 607, 629).

3. There are added arguments from reason; namely, the obligation is deduced: a) from the fact that the confessor as minister of the sacrament must take care that all sins not yet directly remitted be directly remitted, in other words, that confession also be materially integral; b) from the fact that the character of judgment requires that the judge know the whole cause before he pronounces sentence. There is added c) that the confessor as physician must strive to detect all diseases and provide medicine for them (St. Alphonsus, VI, 629).

Question 1. Must the confessor question if he notices that the penitent, after sufficient diligence has been applied, omits some sin?

Response. Some formerly denied this, because formal integrity suffices, and in the case it is posited to be present. But with St. Alphonsus it is rightly affirmed, because the confessor, although formal integrity suffices for the penitent himself, is bound both as minister of the sacrament, and as judge, and as physician to consult, with ordinary diligence, for the integrity of the sacrament required of itself, that is, material integrity. There is added the fact that "otherwise, as Suarez says, confessors would almost never be bound to question rude and unlearned men, who, however much diligence they put forward, can never of themselves confess integrally by explaining the circumstances, species, and number of sins.... The consequence is against the practice of the Church and against the intention of the chapter *Omnis utriusque sexus*" (St. Alphonsus, VI, 629). Nor should you object that the confessor is not bound to greater diligence than the penitent himself, who is supposed already to have applied the required diligence. For I answer that the obligation of the confessor is one thing and the obligation of the penitent another: the latter is bound to examine himself properly, while the former must, if he prudently fears that something is lacking to integrity, supply for it; but in supplying he is not bound to greater diligence than the penitent is in examining. I said: if he

prudently fears that something is lacking to integrity. This commonly does not have place if the case concerns penitents who are both sufficiently instructed and diligent in examining and confessing sins; hence priests, religious, and pious persons commonly are not to be questioned (St. Alphonsus, VI, 607).

Question 2. To what extent is there an obligation of questioning if the confessor does not understand the penitent, because the latter, for example because of an organic defect or another reason, cannot express his thoughts in an intelligible way?

Response. In the proposed case it is for the most part expedient and sufficient, once the accusation is finished, to ask whether grave sins have been committed.

[1] Chapter 21, in chapter 12, *De poenitentia*.

[2] December 25, 1725.

[3] June 26, 1749.

[4] Title III, chapter 1, n. 16.

[5] *Summa Theologica*, t. III, title 17, chapter 17, § 2.

[6] *In IV Sentences*, distinction 19, doubt 5.

[7] Tome II, sermon 27, article 2, chapter 3, p. 167.

[8] *Instructiones Poenit.*, in *Acta Ecclesiae Mediolanensis*, 1683, part IV, p. 431.

391 **II. Object of the obligation.** The obligation of questioning, as follows from what has been said above, commonly regards only those things which pertain to integrity, or which must be declared. Therefore commonly there is no obligation of questioning about species entirely unknown or not sufficiently attended to, and therefore not contracted, venial sins, mortal sins doubtfully committed, sins doubtfully mortal, and circumstances aggravating grave malice in the same species. Sometimes, however, there is an obligation so that a right judgment may be made about the required disposition or about the obligation of making restitution.[1]

[1] Hence, for example, one should commonly inquire how great a sum a thief stole.

392 **III. Required diligence.** Mediocre diligence is required and suffices, as was said about the obligation of the penitent to examine conscience. For greater diligence cannot be demanded in the confessor, who is bound only secondarily, than in the penitent, who is bound primarily to procure integrity. For the rest, diligence should be proportioned both to the capacity of the penitent and to the character of the confession to be instituted. It is said:

1. **To the capacity of the penitent:** "Therefore the confessor," says Lugo, "ought to accommodate himself to the penitent and seek knowledge of sins from individual persons according to the capacity of each: subtler knowledge from the subtler, cruder from the cruder";[1] from which St. Alphonsus concludes: "When the penitent, although rude, seems sufficiently instructed and diligent in confessing sins with their circumstances according to his state and capacity, for a learned person is bound to examine himself in one way and a rude person in another, then the confessor is bound to ask nothing else" (*Homo Apostolicus*, tract 16, n. 103).
2. **To the character of the confession to be instituted;** thus, for example, a general confession requires relatively less diligence than a confession of one month.

[1] *De Poenitentia*, disputation 16, n. 594.

393 **IV. Gravity of the obligation.** The obligation of which we have spoken is grave, although the obligation of the penitent to consult for integrity is graver than the obligation of the confessor. The reason is that the matter is grave.

Question. Does a confessor sin gravely who advertently omits one or another necessary question about species, number, and so forth? It is said advertently, that is, from grave carelessness or negligence; for it is clear that smallness of matter can be had in the negligence itself, but the question is whether smallness of matter can be admitted in the matter itself, that is, in mortal sins to be investigated.

Response. Many judge that the aforesaid confessor does not sin gravely, at least if he acted thus in a long series of confessions. But the contrary seems to have to be admitted, because the confessor advertently fails in a grave matter. Nor should you object that by this opinion too grave a burden is imposed on the confessor, since the burden imposed by this opinion scarcely differs from the burden imposed by the adversaries. For they say that then only is sin not grave when, in a long series of confessions, one or another necessary question is omitted. But this kind of diminution of the burden scarcely deserves notice (St. Alphonsus, VI, 629).

Objection. The obligation of the penitent is greater than that of the confessor.

Response. Let that pass; but the argument proves that the obligation of the confessor also is grave.

394 **V. Manner of fulfilling the obligation.** The questions should be:

1. **Timely,** or made at an opportune time. Of itself, it is better to permit the penitent to explain himself, and not to interrupt him. Practically, one should proceed for the most part in this way. If the confession is foreseen to be brief, the confessor does not interrupt the penitent by questioning him, but waits for the end of the confession. If it concerns a long confession, the confessor will easily forget something necessary unless he mixes questions into the confession (St. Alphonsus, VI, 629).
2. **Apt,** that is, suited to the capacity, condition, and psychological state of the penitent. Generally questions should be brief, clear, and determinate, not negative ("Surely you did not consent?") nor disjunctive ("Did you sin by yourself or with others?"). A number greater rather than lesser should be proposed.
3. **Kind.** Therefore he should avoid harsh words ("Have you committed the most shameful sin of lust?"), likewise words which signify impatience ("What more? Have you finished? Hurry up and get yourself done"). If the confessor notices that the penitent has a sin which he declares with difficulty, let him say: Do not fear; I will gladly question you.
4. **Prudent,** or such that the penitent does not learn to sin from them (cf. can. 888, § 2).[1] But if this is feared, "the question ought to be made from afar, so that if the penitent committed it he may say so, and if he did not commit it he may not learn it" (St. Thomas, *In IV Sentences*, distinction 19, at the end).
5. **Chaste.** Generally the confessor should be mindful of this: in the matter of lust it is better to be deficient in many things than to abound in one; likewise of the admonition of St. Alphonsus:

"Questions in the matter of chastity ought to be few and cautious" (St. Alphonsus, VI, 632). Specifically:

a) The confessor should not descend to particular modes or circumstances of the sin, nor to species which commonly do not occur. This is so that: 1. he may not be a cause of shameful temptation to the penitent or to himself; 2. he may not provide scandal to the penitent, as one who might suspect that the confessor is taking pleasure in the investigation of those things; 3. he may not bring confession into disrepute, namely, because there is danger lest some penitents narrate to others that matters of this kind were handled in this way (St. Alphonsus, at the cited place; cf. can. 888, § 2).

b) Let him use chaste terms, and such as do not teach sin to those who perhaps are ignorant of it. Hence, for example, he should not ask boys whether there was emission of seed, and so forth (St. Alphonsus, at the cited place). If a modest mode of questioning does not occur to his mind, let him rather abstain from the question.

[1] Cf. Roman Ritual, title III, chapter 1, n. 17.

395 **VI. Excusing causes.** The confessor is excused from questioning integrally:

1. As often as the penitent is excused from integrity, for example because of infirm health, scruples, and so forth.
2. When and insofar as the questions would be harmful, for example if they could not be made without danger being created for the penitent (St. Alphonsus, VI, 632).
3. When and insofar as the questions would be useless. Hence, for example, he should not commonly ask penitents whether they regarded this or that as a grave sin; nor should inquiry be made too much into the number, as was said in n. 320 (St. Alphonsus, *Praxis Confessarii*, n. 20).

Corollary. Just as a great number of penitents does not excuse the penitent from integrity, so neither does it excuse the confessor from the obligation of supplying the defect (n. 326).

§ II. On the Office of Instructing

396 **I.** If ignorance concerns either those things which certainly or probably must be known by necessity of means, or those things which are required for receiving the sacrament of Penance fruitfully, the confessor, before absolving the penitent, should instruct him or should take care that he first learn them (St. Alphonsus, VI, 608, 610). Commonly it will be better at once to instruct such a penitent summarily,[1] to stir him to an act of faith in the things to be known,[2] and to absolve him, with the obligation imposed of afterward learning more diligently the rudiments of the Christian faith.[3]

II. If ignorance concerns things to be known by necessity of precept, commonly he should absolve the penitent at once; nevertheless, he should be warned of the obligation of afterward obtaining fuller instruction.

III. If ignorance concerns an obligation of doing or omitting something, admonition of itself must always be made, because both ignorance of this kind and the material sins arising from it involve some evil and can become harmful. Practically, however, these rules are established:

1. Admonition must always be made if the common good or positive law requires it. I said "always," even if the penitent is foreseen as not going to obey the admonition. "Universally," so Benedict XIV in the Constitution *Apostolica*,[4] "the penitent must be admonished when ... he is in those circumstances of fact which, if the confessor dissimulates, strengthen the sinner in a wicked work, not without the scandal of others, when someone observes that those things which are practiced with impunity by those who frequent the Sacraments of the Church are judged by him to be lawful for himself." The reason for this doctrine is handed down by St. Alphonsus in these words: "Although the confessor by reason of his office is principally bound to attend to the good of the penitent, nevertheless, since he is a part of the commonwealth and has been constituted minister for the good of the Christian commonwealth, he is bound to prefer the public good to the private good of the penitent. So commonly" (VI, 615; *Homo Apostolicus*, tract 16, n. 116). Hence generally the following must be admonished: 1. those who hold public offices, whether ecclesiastical or civil, and err concerning the duties of the office (St. Alphonsus, at the cited place); 2. those who have given their name to a harmful sect, for example socialism, liberalism, or the sect of Freemasons; 3. those who have been deputed by the party of liberals or socialists either to Legislative Assemblies or to Provincial or Municipal Administration; 4. those who are bound to denounce a confessor by reason of solicitation, as will be explained later.
2. Outside the case of the common good or of positive law, or considering only the good of the penitent, admonition is to be made as follows:

a) It must be made if it is judged that it will be useful or at least not harmful to the penitent. Hence it must be made: 1. if the penitent through ignorance regards as a sin what is not a sin, or as a grave sin what is light; 2. if the penitent actually doubts about liceity. Nevertheless, if the penitent asks the confessor, often "he ought not answer more than he is asked. For example, if someone bound by a vow of chastity asks whether the marriage was valid because of the vow, and whether he is bound to render the debt to his wife, the confessor should affirm both, saying nothing about the obligation of not asking, even if he knows that the marriage is null because of some diriment impediment" (St. Alphonsus, VI, 616); 3. if the ignorance is foreseen as soon going to cease, as if it concerns the first conclusions of the natural law, for example concerning the malice of pollution, the penitent should commonly be warned at once, and all the more because customs of this kind are rooted out with greater difficulty the longer they have been protracted (St. Alphonsus, III, 226); 4. if it concerns removing a proximate and voluntary occasion of sinning. Yet I would not deny that the penitent can be left in good faith in this case if it is truly feared that, after the admonition has been made and neglected, he will become wholly alienated from the sacraments; 5. if it concerns Prelates, Superiors, parish priests, or parents, both because ignorance is commonly not perfect and because the common good is involved (St. Alphonsus, VI, 615). Finally, if the penitent is judged not indeed immediately, but soon, to be going to obey the admonition, it should be deferred somewhat (St. Alphonsus, *Homo Apostolicus*, tract 16, n. 115).

b) It must be omitted if it is judged that it will be harmful to the penitent.

c) If it is doubtful whether the admonition will help or harm, "the confessor ought to weigh the harm and the useful result, likewise the degree of fear of harm and of hope of utility, and choose that which he judges to preponderate.... For the rest, in doubt it regularly seems to me that formal evils are to be avoided rather than material ones" (St. Alphonsus, VI, 616).

[1] Let him not always require that the proposed articles be held in memory.

[2] For example by asking: Do you believe that there is one God? and so forth.

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

[4] June 26, 1749.

§ III. On the Office of Judging Sins

397 **I.** For the confessor to absolve validly, it suffices that he has apprehended the act of the penitent under the aspect of sin, even if he forms no judgment either about the gravity or about the species of the sin (St. Alphonsus, VI, 627).

II. For the confessor to absolve in such a way that there does not remain for the penitent the burden of afterwards confessing the sin again, it suffices that the penitent has declared the sin, as it was committed, to an attentive confessor, even if the confessor errs both as regards gravity and as regards species (St. Alphonsus, VI, 478).

III. For the confessor to absolve licitly, he generally ought to have judged whether the sins accused were grave or light, and of what species they were (St. Alphonsus, VI, 627). To explain these things more, observe that it suffices that the confessor: 1. habitually know the gravity and species of the more obvious sins;[1] 2. equipped with that knowledge, hear the sins, even if he does not form an entirely explicit judgment about gravity and species; 3. have judged about the sins in the way set forth at the moment when the penitent declares them, and pronounce sentence from the judgment previously had, even if, while he grants absolution, he does not remember the sins declared.

Corollary I. While the confessor imposes satisfaction, he ought to retain or reassume sufficient knowledge, which is easily present, for imposing a fitting satisfaction.

Corollary II. If absolution is deferred, for example for one or two weeks, it is required that in the following confession the confessor have retained, or now reassume, at least confused knowledge of the state of the penitent (n. 334).

[1] "Let him hear the rest and absolve" (St. Alphonsus, VI, 627).

§ IV. On the Office of Judging and Promoting Disposition

398 **I.** For the confessor to absolve licitly, of itself at least broad moral certitude about the due disposition of the penitent is required, but that also suffices. It is said:

1. **Of itself,** because sometimes absolution can be granted conditionally even if the confessor lacks broad moral certitude (n. 404).
2. **Broad moral certitude,** that is, one which excludes strict doubt or imports the state of one opining.
3. **That also suffices,** for the matter concerns an internal thing, especially the sorrow of the penitent, about which greater certitude is had with difficulty, so that, if greater were required, "the administration of the sacrament would become subject to excessive scruples and difficulties" (St. Alphonsus, VI, 57). Hence apply these words of St. Thomas: "Certitude is not to be sought in the same way in all things, but in each matter according to its proper mode" (II-II, q. 47, a. 9, ad 2).

Having noted these things, the necessity of broad moral certitude is proved by these arguments:

First, the Sacred Congregation of Propaganda Fide[1] has these words: "Confessors should deny absolution to those who provide either no signs or only signs of feigned penance; but they should defer absolution for those whose penance is uncertain and suspect."

Next, after the first proposition condemned by Innocent XI,[2] almost all, both older and more recent authors, admit and defend the doctrine stated, as Aertnys,[3] Berardi,[4] and especially Ter Haar[5] prove by the testimonies they cite.

Finally, the reverence due to the sacrament forbids its being ministered with so great a danger of nullity as the defect of broad moral certitude imports. In the case the sacrament will indeed probably be valid and probably will grant pardon to the sinner; but it cannot be admitted that for that reason alone the reverence due of itself to the sacrament may be neglected, or that the sacrament may thus be subordinated to the good of the subject, especially because a sinner who is doubtfully disposed wholly lacks an unimpeded right to absolution, since he ought to take care that he is certainly or at least sufficiently certainly disposed (St. Alphonsus, VI, 461; *Homo Apostolicus*, tract 16, n. 117).

Objection 1. The Roman Catechism teaches: "For if the priest, after hearing the confession, has judged that diligence was not wholly lacking to the penitent in enumerating sins, nor sorrow in detesting them, he can be absolved."[6] Therefore he to whom contrition seems not wholly lacking can be absolved; this is far different from saying that only one about whose contrition the confessor is morally certain can be absolved.

Response. The only sense corresponding to the words, or the natural sense, is this: the penitent can be absolved if the confessor has judged that some true sorrow is not lacking. But one who truly doubts whether sorrow is present does not judge that it is present (vol. I, n. 215). Therefore the Roman Catechism favors rather than opposes the opinion defended by us.

Objection 2. It suffices that the confessor administer the sacrament prudently and without rashness. But this has place when he imparts absolution to those who are probably contrite.

Response. I concede the major; I deny the minor. For he administers the sacrament imprudently and rashly when he exposes it to grave danger of nullity. But ministration made to those who are only probably attrite exposes the sacrament to grave danger of nullity.

Objection 3. In those who most need the sacrament of Penance, broad moral certitude about due disposition is scarcely had, so that, if the stricter opinion is admitted, absolution would of itself almost always have to be deferred for them.

Response. I deny the assertion, and that it must be denied will be clearer from what is to be said under II.

[1] August 1827.

[2] The said proposition is this: it is not illicit in conferring sacraments to follow a probable opinion about the validity of the sacrament, leaving aside the safer one, unless law or agreement or danger of incurring grave harm forbids it (Denzinger-Bannwart, n. 1151).

[3] In *Nouvelle Revue Theologique*, 1900, pp. 283-536.

[4] *De Recidivis*, n. 19 sq.

[5] Cited work, n. 408 sq.

[6] *De Poenitentia*, n. 60.

399 **II.** The very confession or assertion of the penitent provides sufficient certitude about due disposition, unless from some other source a positive prejudice against due disposition arises (St. Alphonsus, VI, 459). When such a prejudice has arisen, some other special sign of disposition should be added to the confession or assertion, by which the prejudice is removed or sufficiently weakened. It is said:

1. The confession itself provides sufficient certitude about due disposition. For no one is presumed evil or a hypocrite.
2. Unless from another source a prejudice against due disposition arises, for example from the fact that the penitent is a habituated relapser; likewise from the fact that the penitent, who several times promised that he would avoid an interrupted voluntary occasion, nevertheless has not ceased to approach it and to sin in it, even if he is not a habituated relapser. Each of these things will be developed more later.

400 **III.** Once a prejudice has arisen, another sign of disposition should be added by which the prejudice is removed or sufficiently weakened. Signs of this kind[1] are, for example: 1. confession following from an extraordinary motive, as from a sudden death or from a sermon; indeed a confession which is instituted neither from the precept of the Church, nor from the authority of others, nor from custom alone, can suffice, for example a confession instituted immediately or soon after a fall; 2. unusual good works, for example prayers, fasting, almsgiving, pilgrimage, performed before confession; 3. manifestation of a sin previously hidden; 4. sorrow expressed by sighs and tears, although these must not always be trusted; 5. words which signify a firmer purpose, although even these cannot always be trusted; 6. spontaneous request for means of amending oneself, and so forth (St. Alphonsus, VI, 460, 505).

[1] They are called extraordinary signs by many; but one must not insist on the character of the extraordinary.

401 **IV.** When a prejudice against the penitent's disposition has arisen, the confessor should try to dispose him and to elicit a sign by which the prejudice is removed. He is bound to these things under grave obligation, both because then the precept of fraternal correction is especially urgent, and because another practice is very harmful. "For if absolution is immediately denied or deferred for penitents of this kind, they will easily fall into despair or religious indifference."[1] Hence the Roman Ritual rightly says: "After hearing the confession ... he will apply opportune corrections and admonitions, as he judges there to be need, with fatherly charity, and he will try to lead the penitent to sorrow and contrition by efficacious words."[2]

Benedict XIV in the Constitution *Apostolica*[3] has these words: "They should not cease to exhort especially those who are accustomed to approach the sacrament of Penance either rarely or not without many crimes; they should open to them the most wretched life which they have led under the yoke of sin; they should explain the baseness of their crimes, so that, namely, they may grieve from the heart and seriously propose that they will withdraw from sins in the future. For it is settled that solid and grave exhortations of confessors, given in the forum of Penance, are far more efficacious than the sacred sermons of preachers, so that the penitent may turn his soul away from vices.... Nor should confessors reply that this cannot be done if a more frequent number of penitents suggests brevity; for that golden saying of St. Francis Xavier, in Fursellini's *Life* of him (book 6,

chapter 17), has already solved the difficulty, conceived in these words: As for those confessing, he judged that care should be bestowed not hurriedly but diligently, admonishing that they should prefer to hear few confessions rightly made rather than many rashly hurried" (n. 22). Leo XII inculcates the same in the Constitution *Charitate Christi*.[4]

[1] Ter Haar, cited work, n. 351.

[2] Title III, chapter 1, n. 18.

[3] June 26, 1749.

[4] December 25, 1825.

§ V. On the Office of Consulting for Amendment of Life

402 After hearing confession, the confessor "will lead the penitent to amending and better ordering his life, and will hand down remedies for sins."[1] Hence he should inquire into the causes of sins, especially whether there was some occasion, and assign remedies. The general means are: 1. flight from occasions; 2. prayer, especially devotion toward the Blessed Virgin Mary; 3. frequency of the sacraments; 4. spiritual exercises instituted in some house of exercises. As regards particular means, compare what is to be said about the ministration of the sacrament to some persons specifically.

[1] Roman Ritual, title III, chapter 1, n. 18.

§ VI. On the Office of Rendering Sentence

One must distinguish between those certainly indisposed, those doubtfully disposed, and those sufficiently certainly disposed.

403 **I.** For those certainly indisposed, that is, after paternal admonition, absolution must be denied. Those certainly indisposed are those who manifestly lack contrition or purpose, or do not wish to fulfill a grave obligation. "Let him not absolve those," says the Roman Ritual, "who are incapable of such a benefit: such are those who give no signs of sorrow; who do not wish to put aside hatred and enmities, or to restore another's property if they can, or to leave a proximate occasion of sinning, or in another way to abandon sins and amend life for the better; or who have given public scandal, unless they publicly make satisfaction and remove the scandal."[1]

[1] Title III, chapter 1, n. 23.

404 **II.** For those doubtfully disposed, absolution of itself must be deferred (n. 398); but for a grave reason it can or even must be granted, but only under condition.

1. Those are understood as doubtfully disposed who, after paternal admonition, are not indeed held as certainly indisposed, but nevertheless do not bring those signs of penance which found broad moral certitude about due disposition.

2. A grave reason is had: 1. if someone is in danger of death; 2. if the penitent judges that he is disposed and it is prudently feared that, if absolution is delayed, he will become alienated from the sacraments and waste away in sins, or, for example by communicating or entering marriage, will commit another sacrilege (St. Alphonsus, VI, 432, 4).

405 **III.** To those sufficiently certainly disposed, absolution must be granted from justice, and regularly indeed immediately. In some cases, however, it can or even must be deferred, unless a

special reason is present for imparting absolution immediately even then. It is said:

1. **Absolution must be granted from justice and regularly immediately.** For a penitent rightly confessed and disposed has by tacit contract a right to be absolved at once. Hence canon 886: if the confessor cannot doubt about the dispositions of the penitent and the latter asks for absolution, absolution is neither to be denied nor deferred.

406 **2. In some cases, however, it can or even must be deferred,**[1] namely if the confessor judges delay to be necessary or more useful for the amendment of the penitent. This doctrine rests first on the almost common authority of theologians. Thus teach, for example, St. Antoninus, St. Francis Xavier, St. Charles Borromeo, St. Leonard of Port Maurice, St. Alphonsus, Venerable Segneri, Fessius, Suarez, Lugo, and others, whose testimonies you will find cited in Ter Haar.[2] There is added the theological reason: namely, the confessor must perform not only the office of judge, but also that of physician (can. 888, § 1), to each of which offices, as is clear, the penitent must submit himself. But it belongs to a physician to apply means which are judged necessary or more useful. Moreover, delay of absolution is sometimes necessary or at least more useful for the amendment of the penitent (St. Alphonsus, VI, 462-464). It is judged necessary if otherwise there is grave danger that the penitent will break his purpose; more useful, if delay of absolution will more efficaciously guard against relapse. "This is not to be understood as though delay of itself would effect this, that the strength of the penitent against future temptations and relapses would be increased, for that would be plainly absurd, but in the sense that the penitent, often struck with salutary fear on the occasion of the delay, is stirred up so that, aided by the actual grace of God, he may better apply other remedies, for example flight from occasions, prayer, and due vigilance, and thus also in the future avoid sins more efficaciously."[3]

Corollary. Attending to what has been set forth above, absolution of itself is usefully or necessarily deferred according to the circumstances:

1. For one who is held by a very difficult obligation, such as the obligation of restoring a thing of great value which he can restore; of denouncing a confessor who is guilty of solicitation; of reconciling himself with an enemy; of physically leaving a proximate, continuous, and voluntary occasion to which someone is greatly attached; of applying the prescribed means lest he relapse in a necessary proximate occasion. In these cases absolution is deferred until the obligation has been fulfilled or the prescribed means have been applied. The reason is that otherwise there is danger lest the penitent, after receiving absolution, break a purpose very difficult to fulfill (St. Alphonsus, III, 682; VI, 454, 456).
2. For a habituated relapser from occasion, that is, for one who has contracted a habit of some sin and, after being admonished by the confessor, continued the custom of sinning for the same reason, because of the occasion, but not for a relapser from internal frailty. The reason is that the will of the relapser, unless something stands in the way, must be strengthened by a stronger means, namely by delay of absolution. I said unless something stands in the way, for in a relapser from internal frailty courage must be given and the grace of the sacrament must be conferred (St. Alphonsus, VI, 456, 459, 463, 464).

Objection. Canon 886 declares: "If the confessor cannot doubt about the dispositions of the penitent and the latter asks for absolution, absolution is neither to be denied nor deferred." Therefore

absolution, if it is asked by the penitent, can never be deferred for those sufficiently certainly disposed.

Response. The cited canon is not to be interpreted thus. For: 1. a priori it seems very improbable that the canon is opposed to the doctrine commonly admitted, even by the more benign authors. Now such is the doctrine according to which absolution sometimes can, or even must, be deferred for one disposed.

2. The canon can well be understood of the general norm, or the norm to be followed of itself; this does not prevent one from departing from it accidentally or because of special circumstances. And if that is less pleasing, observe: the canon speaks of dispositions, not of the disposition of the penitent, and for that reason perhaps signifies that absolution is then not to be deferred for a penitent asking it when the confessor does not doubt about the dispositions which seem to have to be required here and now by him not only as judge but also as physician, so that absolution can be granted without grave danger of breaking the purpose. Therefore it remains that we say that nothing new is contained in the cited canon. That the canon can be well harmonized with the common doctrine seems to be admitted sufficiently commonly.[4] We said, however, that in the cases set forth absolution is to be deferred:

[1] As regards the origin of this practice, Ter Haar writes: "In antiquity, especially up to the thirteenth century, confessors generally followed the penitential books as the norm of acting.... But the more moral and pastoral Theology advanced, theologians, especially after the Council of Trent, established several rules of prudence and discretion concerning absolution to be conferred or deferred ... so that the twofold end of this sacrament, which is to remit past sins and to prevent future ones, would be obtained more efficaciously. Hence then they spoke more and more often expressly about the delay of absolution. There is added this reason indicated by Francolini (*De Poenitentiae disciplina*, book 3, chapter 10, nn. 5, 6), namely that in the Middle Ages sinners were accustomed to confess rarely and scarcely once a year; for these, therefore, if they were truly contrite, it was dangerous to defer absolution. Hence also the theologians of that time scarcely spoke about delay of absolution. But since from the sixteenth century the use of the sacraments had grown greatly, theologians repeatedly treated of this delay, so that the sacraments would be received with greater fruit and would serve more for the amendment of penitents. Finally, it must be noted that canonical and sacramental penances in antiquity were for the most part very grave; and therefore, if they were accepted, they were highly medicinal and very efficacious against relapse into sin. But with the progress of time, when, faith growing cold, medicinal penances were always imposed more mildly, theologians began to commend more expressly delay of absolution, even for those who were judged truly contrite, so that by this remedy, especially relapsers and occasionaries, would be incited to shake off spiritual sloth and to impose on themselves greater force, by which they would avoid occasions and apply other means" (*De conferenda absolutione sacramentali iuxta canonem 886*, n. 12).

[2] *De conferenda absolutione sacramentali iuxta can. 886*, n. 13 sq.

[3] Ter Haar, *De occasionariis et recidivis*, n. 437.

[4] Cf. Ter Haar, cited work, p. 63 sq.

407 **3. Unless a special reason is present for imparting it immediately even then.** Special reason is involved by: 1. danger of death, as is clear; 2. an extraordinary disposition of such a kind that it sufficiently guarantees future amendment. Such an extraordinary disposition, however, should not easily be presumed; 3. danger of alienation from the sacraments; 4. danger of infamy; 5. grave difficulty of returning to the same confessor, provided it is grave for the penitent to repeat the confession before another. The reason for 4 and 5 is that the very necessity of receiving absolution, which is present in the said cases, founds the hope of acquiring more efficacious graces (St. Alphonsus, VI, 454, 456). There is added the fact that in the case delay of absolution will easily be

borne with difficulty, and for that reason can carry with it alienation from the sacraments (St. Alphonsus, VI, 454, 456).

Corollary I. For those who are weak in faith or negligent in religious practice, if they are sufficiently certainly disposed, absolution should commonly not be deferred.

Corollary II. On the occasion of a mission or spiritual exercises, some one of the enumerated causes is commonly present, so that then, at least for the most part, absolution can be granted at once to those sufficiently certainly disposed, and almost must be.

Corollary III. If delay of absolution is applied: 1. it should not be made for a long time, more advisedly for only one week or at most another; 2. it should be signified in the most humane words, and in such a way that it is clear that absolution is deferred not from anger or hatred, but only for the good of the penitent (St. Alphonsus, VI, 463); 3. the confessor should take pains that the penitent grasp the usefulness of the delay and consent to it willingly; 4. it should be made together with the indication of means of amendment and with an exhortation that he return without fear.

Question. What sentence should be rendered by a confessor who prudently fears that the penitent is sacrilegiously keeping silent about, or denying, a committed sin? Moreover, in order that he sacrilegiously keep silent about or deny it, it is required that the penitent: 1. have sinned subjectively gravely; 2. not yet have confessed the sin; 3. now remember the sin; 4. judge that there is no cause excusing from integrity. With these things noted:

Response 1. If the confessor doubts, absolution should commonly be granted, and indeed absolutely, according to this principle: the penitent is to be believed whether he speaks for himself or against himself. If, however, all things considered, the doubt persists, one must distinguish. If it persists independently of the confession of another, for example from the report of others, let the penitent be absolved conditionally. If it persists dependently on the confession of another,[1] according to some the penitent is to be absolved, and indeed absolutely, because, they say, it is not licit to use that sacramental knowledge. According to others, he is to be absolved conditionally.

Response 2. If the confessor is certain, which, considering the state of the question, will scarcely have place, one must distinguish. If he is certain independently of the confession of another, absolution should be denied. If he is certain from the confession of another,[1] according to some the penitent must be absolved, and indeed absolutely, because, they say, it is illicit to use that sacramental knowledge. According to others, absolution must be denied; nevertheless, to conceal the denial, some prayer should be recited (St. Alphonsus, VI, 631).

[1] In this case he cannot question the penitent more or otherwise than he would do if he had not known it, unless he has received express permission. Sometimes it is expedient to ask permission to use sacramental knowledge for helping another penitent, for example an accomplice.

Article II. On Things to Be Avoided in Confession

Here especially these things must be treated: 1. inquiry into the name of an accomplice; 2. absolution of an accomplice; 3. solicitation to shameful acts.

§ I. On Inquiry into the Name of an Accomplice

408 Canon 888, § 2 establishes: "Let the confessor take care altogether not to inquire into the name of an accomplice." This canon takes the place of the ecclesiastical documents[1] which before the Code governed this matter. Therefore, of itself it is forbidden to induce the penitent to reveal the name of an accomplice, and indeed under grave sin or, as commonly happens, under light sin, according as, considering the rules on defamation of neighbor (vol. I, n. 1069), it is grave or light to reveal the sin of a third person to one upright man. Scandal can be added, and the danger that the penitent may be somewhat alienated from the sacrament. Moreover, of itself it is always a grave sin to inquire into the name of an accomplice under denial of absolution.

And so the matter stands of itself, since, when a proportionate cause is added, inquiry into the name becomes licit.

Corollary I. It is lawful for the confessor to inquire into the name of an accomplice if the penitent is bound from another source to denounce the accomplice, and either the confessor is the superior to whom the accomplice must be denounced, or the denunciation cannot conveniently be made except through the mediation of the confessor, who has been made certain of the accomplice's name. But commonly, even in these cases, it is better that the name be revealed outside confession. If it is done through the mediation of the confessor, it can commonly be done without the name of the accomplice being manifested to the confessor, namely by handing to him a closed note on which the name of the accomplice is written, or even by handing to the confessor a closed note which contains both the facts to be manifested and the name of the accomplice, and which is handed over by the confessor to the one to whom it belongs by law.

Corollary II. The confessor can and must question the penitent insofar as the integrity of confession and the prudent ministration of the sacrament require it, even if from this he comes to knowledge of the accomplice, as was explained in n. 328 (St. Alphonsus, VI, 491, 492).

[1] The documents were: the Constitutions *Suprema* of Benedict XIV, July 7, 1745; *Ubi primum*, June 2, 1746; *Ad eradicandum*, September 28, 1746; and the Constitution *Apostolicae Sedis* of Pius IX, October 12, 1869. The law, however, not only prohibited inquiry into the name of an accomplice, but also, when the conditions were posited, established penalties; these have now been removed.

§ II. On Absolution of an Accomplice

The principal documents pertaining here are: canon 884, which refers to the Apostolic Constitutions; the Constitution *Sacramentum Poenitentiae* of Benedict XIV;[1] the Brief *Apostoli muneris* of Benedict XIV;[2] the Constitution *Apostolicae Sedis* of Pius IX;[3] canon 2367.

Moreover, considering the documents cited, two things must be distinguished here, namely a certain subtraction of jurisdiction and an excommunication reserved to the Apostolic See in the most special manner. The former is established against the confessor accomplice who absolves the other accomplice party.

[1] June 1, 1741.

[2] February 8, 1745.

[3] October 12, 1869.

409 **1. Subtraction of jurisdiction.** Canon 884 establishes: "Absolution of an accomplice in a shameful sin is invalid except in danger of death; and even in danger of death, outside the case of necessity, it is illicit on the part of the confessor according to the norm of the Apostolic Constitutions and especially the Constitution *Sacramentum Poenitentiae* of Benedict XIV, June 1, 1741." We shall speak first of the requisites for subtraction of jurisdiction to have place; then of the way in which subtraction of jurisdiction must be understood; finally we shall assign exceptions to the general rule.

1. **Requisites for subtraction of jurisdiction to have place.** A sin is required:

a) **Against chastity.** It does not matter whether it is a sin of deed, of sight, or of speech[2] (St. Alphonsus, VI, 554).

b) **Committed with another,** whether with a male or with a female, whether with one mature or one immature, and, as the Sacred Penitentiary[3] responded, whether before or after the priesthood was received. Nor does it stand in the way that in the latter case the danger of relapse has almost vanished; for a law which is founded on the presumption of common danger persists, even if in a particular case the danger has ceased. There is added the fact that, besides the danger of relapse to be avoided, other ends of the law are also assigned, such as the indecency of a confession of this kind.

c) **Grave,** and indeed subjectively and externally. It is nevertheless sufficiently externally grave if it shows grave internal malice (St. Alphonsus, VI, 554).

d) **As grave and known to the other party,** and indeed at the time when the sin is committed. Otherwise there is not complicity, or participation in the same grave external sin. Moreover, this condition is presumed to be present if the case concerns a mutual act of itself gravely influencing venereal commotion. But if the discussion is of an act not gravely influencing of itself, but posited with lustful intention or with venereal commotion, that intention or commotion must become known from the circumstances; otherwise the act is indeed common, but it is not common insofar as it involves grave sin.

e) **Such in both parties as has been described.** Hence the case is not present if the other party did not consent, or was ignorant of the malice, even if he or she was led into that error by the accomplice; nor is it present if the sin was committed with one sleeping, with one drunk, or with one not yet possessing the use of reason (St. Alphonsus, VI, 554).

f) **That the confessor and the penitent know themselves as accomplices,** whether previously, for example at the time of the sin, or now. This is required with sufficient probability, because otherwise it can happen that the confessor would have to defame himself before the penitent. Suppose some person presents herself to the confessor, ignorant that she has sinned with that priest, while the confessor notices that the person is present with whom he perpetrated lust. Otherwise one must speak if the confessor and penitent previously knew themselves as accomplices, and only the penitent did not notice that he or she was confessing to the confessor with whom he or she had sinned.

g) **That the aforesaid things are at least morally certain.** Doubt sometimes concerns the gravity of a touch, and so forth.

Corollary. When the conditions have been fulfilled, subtraction of jurisdiction has place:

a) Even if the confessor is ignorant of the law which establishes the subtraction of jurisdiction; for "ignorance of invalidating or inhabilitating laws does not excuse from them unless something else is

expressly said" (can. 16, § 1), or unless the incapacity is established only by way of penalty, which does not have place in the case, since the law was principally issued so that relapses might be guarded against.

b) Even if the confessor does not recognize the penitent; for if ignorance of an inhabilitating law does not excuse from it, still less does ignorance of the fact on which the application of the law depends. Nor should you object that Benedict XIV takes jurisdiction away from the confessor who "dares to receive the sacramental confession of the accomplice person," but that in our hypothesis rash daring is lacking. For the Supreme Pontiff subtracts jurisdiction from the confessor "lest he dare to receive the confession."

c) Even if the penitent does not notice that he or she is confessing to the confessor with whom he or she sinned, provided nevertheless that the confessor and penitent previously knew themselves as accomplices. For when this latter hypothesis has been fulfilled, the confessor admonishing the penitent does not defame himself.

[1] Cf. De Smet, *De absolutione complicis et sollicitatione*, 2nd ed.

[2] Holy Office, May 28, 1873.

[3] January 22, 1879.

410 **2. The way in which subtraction of jurisdiction must be understood.** a) The confessor certainly cannot directly absolve the accomplice from the sin of complicity as long as another confessor has not yet directly absolved him or her from it. After the sin has been directly remitted, even the confessor accomplice validly absolves directly from it (St. Alphonsus, VI, 555). I said validly, because commonly he acts illicitly; for the Holy See is accustomed to enjoin on one who, when the sin of complicity has not yet been directly remitted, absolves or feigns to absolve an accomplice, that he abstain in the future from hearing the confessions of the accomplice.

b) It is disputed whether jurisdiction has also been taken away with respect to other sins, or whether it persists with respect to them, so that the confessor can absolve directly from the others, and thus indirectly from the sin of complicity. Some affirm simply. Others affirm if the penitent declares the sin of complicity, otherwise they deny. Others simply deny, or judge that jurisdiction persists with respect to other sins. This opinion is sufficiently probable, both because the Constitution *Sacramentum Poenitentiae* declares that jurisdiction has been taken away "for absolving any person whatever from a fault of this kind; so indeed that absolution, if he shall have imparted any, is altogether null and void," namely absolution from that sin, since as not direct it is null as such, so that the sin must be confessed anew and remitted directly; and because the Sacred Penitentiary responded[1] that "privation of jurisdiction ... is in order to the shameful sin itself in which the same confessor was an accomplice." This opinion is at least probable, so that the Church supplies for caution.

[1] May 16, 1877.

411 **3. Exceptions.** a) The confessor validly absolves even from the sin of complicity in danger of death; likewise in the same danger he licitly absolves if necessity urges (the cited documents). It is said:

1. **In danger of death;** who are said to be in danger of death, see n. 370.

2. **In danger of death he also absolves licitly if necessity urges,** that is: 1. if another, even one not approved, cannot be used without danger of infamy or scandal (can. 2367, § 1).[1] Nevertheless, fear of infamy to be incurred before that one confessor, in the confession itself, does not excuse. Moreover, the priest accomplice is bound under grave obligation, if it can be done, to remove or anticipate the danger of infamy or scandal, for example by pretending illness or by going away for some time. Nevertheless, danger of infamy or scandal will easily be present if only one not approved can be called; still more, if only one suspended or excommunicated, known as such, remains. There are even those who judge that the obligation of calling the latter persons is simply absent. Necessity urges: 2. if another refuses to receive the confession; 3. if the penitent refuses to confess to another, for example to a blood-relative, or manifests grave repugnance to doing so, in which case there is danger of sacrilege (can. 2367, § 1). The reason for 2 and 3 is that then another priest is morally absent.

Corollary. One who has begun a confession licitly continues and directly absolves the accomplice from the sin of complicity, even if now another priest can receive the confession: 1. if he began licitly, that is, when another could not conveniently be present, even perhaps because of preceding culpable negligence by the one beginning; 2. with sufficient probability, if he began illicitly, that is, when another could be present. As regards excommunication, however, in the case one must speak thus: if he began licitly, he does not incur excommunication, and this is probable even if he culpably neglected to anticipate the danger which, when he began the confession, could no longer be anticipated. If he began illicitly, that is, when another could conveniently be present, he escapes or does not escape excommunication according as before absolution he repents or does not repent of the sin committed.

b) It is disputed whether the confessor ever validly absolves from the sin of complicity even outside danger of death, for example if the accomplice would for a long time, or at least for a very long time, lack the occasion of confessing to another. Now it seems this must be denied. For the law expressly and repeatedly declares that only danger of death is excepted. So also canon 884. Likewise the Holy Office declared[2] that jurisdiction is taken away "unless the most extreme necessity entirely urges, namely if in the very article of death another priest is lacking." Finally, the end of the law, which is that priests be turned away from sin and relapse, advises that the law be urged, even if the penitent sometimes suffers some harm from it. For the rest, that harm scarcely deserves notice, since the penitent in the cases here supposed can be absolved directly from other sins, and thus indirectly from the sin of complicity, as we shall now note.

c) As we said, the confessor enjoys jurisdiction over the other sins of the accomplice (n. 410). Moreover, if a truly grave reason is present and another cannot be approached without grave inconvenience, it is lawful to absolve the accomplice directly from other sins, indirectly from the sin of complicity. A truly grave reason, considering the most severe law which forbids absolution of an accomplice, is, for example, an annual confession to be made, Easter Communion, or another Communion which cannot be omitted without danger of infamy or scandal. Nevertheless, in the case the penitent can also be content with perfect contrition; indeed, this of itself is to be preferred. A grave cause on the part of the confessor is had if the penitent knows the confessor accomplice only by face, not by name, and denial of absolution perhaps brings danger that the name of the confessor will afterward be inquired into.

[1] Constitution *Apostolici muneris*, § 3.

[2] February 20, 1867.

412 **II. Excommunication.** Canon 2367 establishes: one absolving or feigning to absolve an accomplice in a shameful sin incurs by the very fact an excommunication reserved in a most special manner to the Apostolic See. And this also in the article of death, if another priest, even one not approved for confessions, can receive the confession of the dying person without some grave infamy and scandal going to arise, except the case in which the dying person refuses to confess to another (§ 1). The one absolving or feigning to absolve an accomplice who indeed does not confess the sin of complicity, from which he or she has not yet been absolved, does not escape the same excommunication if he or she conducts himself or herself in this way because he or she was induced to this either directly or indirectly by the accomplice confessor (§ 2). We shall speak of the requisites for excommunication to be incurred, and of absolution from it, with some things to be noted added.

413 **1. Requisites for excommunication to be incurred.** It is required:

a) That, as regards the sin, the things set forth above in n. 409, under I, 1 be present.

b) That the sin of complicity has not yet been directly remitted by another confessor (cf. can. 2367, § 2).

c) That the confessor either has directly absolved or feigned to absolve the accomplice from the sin of complicity, or has absolved or feigned to absolve the accomplice who keeps back the sin of complicity, but does so because he or she has been induced to this by the confessor, either directly or indirectly. It is said:

a) **Either has absolved or feigned to absolve;** hence it does not suffice that he only received the confession. The fiction, moreover, is required with respect to the penitent, in other words, it is required that with respect to the penitent he acted in such a way that the latter ought to judge that he or she was being absolved. It is not required, nor does it suffice, that only others ought to think that the penitent was being absolved. But it does not matter whether the confessor simulates absolution, that is, pronounces the form without the intention of absolving, or dissembles the denial of absolution by reciting some prayer, or by pronouncing other words, or even by keeping silence, yet in such a way that because of signs or gestures of the hands he seems truly to loose the penitent from sins.

b) **Or has directly absolved or feigned to absolve the accomplice from the sin of complicity.** Hence he does not incur excommunication who, after the sin of complicity has been declared by the penitent, signifies to the penitent that he can absolve only from other sins, but not from that sin. Nor does one incur excommunication who absolves or feigns to absolve an accomplice who keeps back the sin of complicity, except in the case now to be assigned.

c) **Or has absolved or feigned to absolve an accomplice who keeps back the sin of complicity, but does so because he or she has been induced to this by the confessor, either directly or indirectly;**[1] although in the case the confessor neither directly absolves nor feigns to absolve directly from the sin of complicity, nevertheless excommunication is contracted.

d) That the confessor, if he absolved the accomplice, has acted objectively illicitly. Moreover, it was set forth above when the confessor licitly absolves the accomplice.

e) That the confessor has both sinned subjectively gravely and known the censure and adverted to it. Defect of grave subjective fault can arise, for example, from ignorance of the law forbidding absolution, from the fact that he is ignorant that an unconsummated sin suffices, or does not know that the person confessing is an accomplice. Ignorance of the censure excuses, even if it is vincible, provided it is not affected, crass, or supine (can. 2229).

[1] "The confessor directly induces the penitent when he positively and explicitly forewarns him or her about keeping silent concerning the sin of complicity, because, for example, he already knows it and its declaration would be useless. But he induces indirectly when the confessor tries to persuade the penitent either that the shameful action committed with him is not a sin, or at least is not so grave that he or she ought to be disturbed about it; whence the penitent concludes that it is lawful for him or her not to declare such a sin, and really abstains from declaring it" (Sacred Penitentiary, February 19, 1896).

414 **2. Absolution from the excommunication** can be granted as follows:

a) In more urgent cases any confessor can absolve from this excommunication in the sacramental forum, with the burden enjoined of having recourse, under penalty of reincidence, within a month, at least by letter and through the confessor, if this can be done without grave inconvenience, the name being kept back, to the Sacred Penitentiary and of standing by its mandates (can. 2254, §§ 1 and 3). It is said:

a) **Confessor,** that is, every priest approved for hearing confessions.

b) **In more urgent cases;** a more urgent case is had if the censure cannot be observed externally without danger of grave scandal or infamy, or if it is hard for the penitent to remain in the state of grave sin for the time necessary for the competent Superior to provide (can. 2254, § 1).

c) The confessor must, under penalty of reincidence, impose the burden of having recourse to the Sacred Penitentiary within a month from the absolution received. Recourse is always necessary, so that the disposition of canon 2254, § 3, by force of which sometimes the penitent can be absolved without the burden of having recourse, cannot, as the cited canon adds, be applied to this excommunication. Therefore the obligation of having recourse urges until it has been fulfilled. The recourse is made with the name kept back, and can be made either through the confessor or by the penitent himself. If the penitent can conveniently approach the same confessor, it is better that the recourse be made through the confessor; otherwise let the penitent have recourse, unless he wishes to approach another confessor who is willing to have recourse. If the confessor refuses, the penitent is bound, unless however he is impeded by sickness or by inability to write; in that case he is excused until the impediment has ceased.

b) In danger of death any priest, even one not approved, can absolve from this excommunication, while there remains, however, for the sick person, under penalty of reincidence, the obligation of having recourse, after he has recovered, unless he has been absolved by one endowed with a special faculty, to the Sacred Penitentiary and of obeying its mandates (can. 882 compared with can. 2252). The obligation of having recourse urges from the time health has been recovered, so that recourse must be instituted as soon as possible. If it is delayed longer, the penitent falls back into the censure. For the rest, as regards recourse, the things said above under a) hold.

415 **3. Things to be noted** regard both the petition to be directed to the Sacred Penitentiary, and the execution of the rescript to be received, and the clauses contained in the rescript. To these we shall

add a formula for having recourse to the Sacred Penitentiary.

a) In the petition, with the assumed name of the penitent used, let there be set forth: 1. that the penitent has fallen into excommunication; 2. how many accomplice persons and how many times he absolved them; 3. whether and how many times he has been absolved from the same delict and excommunication; 4. whether he has contracted one or more irregularities from violation of the censure. This, however, can be omitted if he has already been dispensed from the irregularity by the confessor; 5. that the penitent has been absolved in danger of death, or in an urgent case, but now has recourse to the Sacred Penitentiary; 6. according to the circumstances it is laudably added that the sin of complicity was less grave, that the occasion of relapse has been removed, that a long time intervened between the grace obtained and the relapse, and that through the interval he conducted himself well.

b) If the rescript is granted in gracious form, it suffices that the penitent read it and fulfill the obligations imposed. If the confessor wrote, it is enough that the received rescript be communicated to the penitent, whether in confession or outside it. If the rescript is granted in commissory form, the execution is committed to the confessor chosen or to be chosen by the penitent, so that it can be carried out by any confessor whom the penitent has chosen. The execution must be done in sacramental confession, and indeed so that first absolution from the censure is given, then absolution from sins, finally dispensation is granted in the irregularity.

If the penitent can return to the confessor only with difficulty, it is better that the rescript be sought in gracious form.

c) Several clauses are commonly inserted into the rescript of the Sacred Penitentiary, for example:

1. The guilty person, if the penitent again approaches him, should admonish the penitent concerning the nullity of the past confessions.
2. Let him abstain, insofar as this can be done without grave scandal, from hearing the confessions of the accomplice person. This clause obliges under grave obligation.
3. Let the guilty person be warned that, if he commits another crime of absolution and obtains a similar favor from the Sacred Penitentiary, this favor will in no way profit him unless he has made mention of the present favor.
4. As regards the clause of giving up the office of confessor, if it is added, note these things:

This clause is imposed either absolutely, or with mitigation, namely insofar as, before the term fixed for giving up the office, a new recourse to the Sacred Penitentiary is permitted, if it is judged that grave causes stand in the way of resigning the office.

If it is imposed with mitigation, recourse can be had to the Sacred Penitentiary for the purpose of obtaining relaxation of the clause, after the reasons have been set forth and, according to the circumstances, also the good disposition of the penitent and the amendment of his morals have been invoked.

If it is imposed absolutely, nothing prevents the confessor from having recourse again and obtaining either relaxation of the clause or at least prorogation of the term.[1]

d) **Formula for having recourse to the Sacred Penitentiary.**

Most Eminent Prince,

Titius, a priest, has incurred the excommunication reserved to the Supreme Pontiff in the most special manner, because once, or twice, or three times, he absolved an accomplice, or feigned to absolve an accomplice. Since he could not be dismissed without absolution, he received it. Now, however, through me he has recourse to the Holy See, prepared to execute the mandates which it may please Your Eminence to impose, in gracious form. Titius continued to celebrate before absolution. The office which he holds cannot be given up without grave inconvenience.

May Your Eminence deign to direct the response to me, the undersigned.

Reverently kissing the sacred purple, I subscribe with the greatest reverence which is fitting.

Your Eminence's most humble servant.

Notes. The name and domicile of the confessor should be clearly noted. The letter, however, should be addressed thus: *A sua Eminenza Reverendissima - Il Cardinale Penitenziere-Maggiore - Palazzo del S. Uffizio, Roma.*

[1] De Smet, *De absolutione complicis et sollicitatione*, 2nd edition, n. 40.

§ III. On Solicitation to Shameful Things

416 The principal ecclesiastical documents which pertain here are:

I. The Constitution *Cum sicut nuper* of Pius IV;[1] the Constitution *Universi gregis* of Gregory XV,[2] to which the Holy Office added sixteen responses on February 11, 1661; the Constitution *Sacramentum Poenitentiae* of Benedict XIV,[3] and *Etsi Pastoralis*, § 9, n. 5;[4] the Instructions of the Holy Office.[5]

II. Canon 904 establishes as follows: "According to the norm of the apostolic constitutions, and especially of the Constitution *Sacramentum Poenitentiae* of Benedict XIV, June 1, 1741, a penitent must, within a month, denounce to the local Ordinary, or to the Sacred Congregation of the Holy Office, the priest guilty of the delict of solicitation in confession; and the confessor must, with the penitent's conscience gravely burdened, admonish the penitent concerning this obligation."

III. Canon 2368 declares that these penalties are to be decreed against those soliciting: "Whoever has committed the crime of solicitation of which canon 904 treats is to be suspended from the celebration of Mass and from hearing sacramental confessions, or even, according to the gravity of the delict, is to be declared incapable of receiving them; he is to be deprived of all benefices, dignities, active and passive voice, and is to be declared incapable of all these things; and in graver cases he is also to be subjected to degradation."

The law also affects the Eastern Church,[6] not indeed by force of the Code (cf. can. 1), but by force of the earlier legislation, which the Code left in its vigor with respect to the Eastern Churches.

With these things premised, we shall speak first of those who must be denounced, then of those who must denounce, then of the manner of denouncing, finally of the obligation of the confessor with respect to the penitent who is bound to denounce; a scholion being added on the manner of receiving a denunciation.

[1] April 16 (17), 1561.

[2] August 30, 1622.

[3] June 1, 1741.

[4] May 26, 1742.

[5] February 20, 1867, and July 20, 1890.

[6] Holy Office, June 13, 1740; April 25, 1838 (*Collectanea*, n. 1282); Constitution *Etsi pastoralis* of Benedict XIV; Instruction of the Sacred Congregation of Propaganda Fide, August 26, 1775 (*Collectanea*, n. 1732).

Point I. On Those who Must Be Denounced

417 All and only priests must be denounced who themselves have provoked someone to shameful things, or who have had with someone illicit and dishonest conversations or dealings with rash daring in one of the circumstances soon to be set forth. It is said:

I. **All priests,** both seculars and regulars, both approved and not approved. It is disputed, however, whether even Bishops must be denounced. It seems that an affirmative answer must be given, because the Constitution *Sacramentum Poenitentiae* of Benedict XIV declares that "all priests ... of whatever dignity and preeminence" must be denounced (St. Alphonsus, VI, 685).

Objection. The denunciation must be made to the local Ordinary or to the Sacred Congregation of the Holy Office (can. 904). But criminal causes of Bishops, according to canon 1557, § 1, 3, and canon 2227, § 1, must be judged by the Supreme Pontiff.

Response. By establishing that all priests of whatever dignity must be denounced, the legislator seems to signify sufficiently that Bishops, as regards this cause, must be denounced to the Holy Office.

II. **And only priests,** so that laymen and lower clerics who solicit in confession while pretending to be confessors are excluded. Nevertheless, by receiving sacramental confession, according to canon 2322, 1, they contract an excommunication reserved in a special manner to the Apostolic See; moreover, the cleric is to be deposed, the layman is to be deprived of pension or ecclesiastical office, and punished with other penalties according to the gravity of the fault.

III. **Who themselves,** etc. Therefore neither those commanding or advising solicitation, nor interpreters, are to be denounced, since they act in the name of another.[2]

IV. **Someone;** it is the same whether the matter concerns a male or a female, and of whatever age the person may be.[3]

V. **They have provoked to shameful things;** wherefore observe:

1. A provocation to venereal matters is required, and therefore to grave sin, "since in venereal matters there is no smallness of matter."[4] Moreover the provocation, as the Constitution *Sacramentum Poenitentiae* has it, can be made "whether by words, or by signs, or by nods, or by touch, or by writing." Nor does it stand in the way that the provocation is made by way of advice given.

The Sacred Penitentiary[5] declared that the crime of solicitation is present in the following case. Tibullus, hearing the confessions of women whose husbands are often accustomed to be absent and who do not easily contain themselves, teaches and persuades these same women that they do not sin in the following cases: 1. if, by desiring their own absent husband, they suffer sensual commotion or pollution; 2. if they desire to experience this same pollution in themselves from burning love of the

absent husband; 3. if they excite pollution in themselves by touches performed with themselves, provided that they refer these acts to the absent husband. The Sacred Penitentiary adds that "this Holy Tribunal has already twice responded on this matter, and that acts of this kind are gravely illicit and that a confessor approving them must be denounced."

It is required, however, that the confessor have sinned gravely not only objectively but also subjectively. Still, subjective fault is commonly presumed to correspond to objective malice (St. Alphonsus, VI, 683).

2. It is the same whether the penitent is provoked to sin with the confessor, or with himself or herself, or with a third party. Likewise a confessor must be denounced who solicits the penitent to excite another to a sin of lust, whether to be perpetrated solitarily or with another (St. Alphonsus, VI, 691).

VI. **Or they have had illicit and dishonest conversations or dealings with rash daring.** Dealings, conversations, or words gravely dishonest are understood; and this even if explicit provocation to venereal matters is lacking, for conversations of this kind of themselves move toward shameful things (St. Alphonsus, VI, 680). Hence authors teach that a confessor must be denounced who would ask a married person, or one accusing himself or herself of a guilty carnal act, whether it would please him or her to be engaged in those things, what conversations the sinning person would have, what acts or motions the person would perform, and the like. If rash daring is lacking, there is no place for denunciation, when the confessor necessarily, usefully, or at least without grave fault asks about a shameful sin. Nevertheless, let him beware lest he inquire into circumstances of carnal sin which there is no obligation of declaring. For the rest, as regards V and VI, observe:

1. It is not required that the sinful act or conversation be consummated, but it suffices that it be begun, provided, however, that the confessor, when beginning these things, has the intention afterward of gravely delinquent conduct even externally and objectively. Thus, if a confessor asks the penitent where he or she lives with the intention of afterwards approaching and soliciting that person; if he hands to the penitent a paper to be read later, in which he solicits the person,[6] or treats dishonest things (St. Alphonsus, VI, 676).

2. It is not required that the penitent consent to the provocation or shameful conversation; indeed, it is not even required that the penitent perceive the provocation or the shameful meaning of the conversation. Hence the Holy Office[7] declared that "a girl situated in simplicity and without knowledge of the dishonesty is bound to denounce the soliciting confessor after she has become in possession of herself and has acquired knowledge of the past solicitation."

3. Finally, it is not required that the provocation or shameful conversation have been begun by the confessor; it suffices that they were begun by the penitent and that the confessor consented, provided however that he did or said something shameful, even if he immediately desists from it.[8] Nor does it stand in the way that the confessor consented after being induced by fear.[9]

[1] Cf. De Smet, *De absolutione complicis et sollicitatione*, 2nd ed., n. 40.

[2] Holy Office, February 11, 1661, responses 6 and 7.

[3] Constitution *Cum sicut nuper*, § 4; Constitution *Sacramentum Poenitentiae*, § 1; Instruction of the Holy Office, February 20, 1867, response 1.

[4] Holy Office, February 11, 1661, response 3.

[5] September 2, 1904.

[6] Constitution *Sacramentum Poenitentiae*, § 1; Holy Office, February 11, 1661, response 1; Proposition 6 condemned by Alexander VII (Denzinger-Bannwart, n. 1106).

[7] May 11, 1707.

[8] Holy Office, February 11, 1661, response 2; February 20, 1867, response 2 (*Collectanea*, n. 1282).

[9] Holy Office, February 11, 1661, response 9.

418 VII. **In one of the circumstances soon to be set forth.** Namely, it is required that the solicitation or dishonest conversation have a connection with the sacrament of Penance, and indeed that they have place "either in the act of sacramental confession, or before or immediately after confession, or on the occasion or pretext of confession" ("even if confession itself has not followed," adds the Constitution *Cum sicut nuper*),[1] "or even outside the occasion of confession in the confessional, whether in another place destined or chosen for hearing confessions, with simulation of hearing confession there."[2] It is said:

1. **In the act of sacramental confession,** that is, once the accusation of the penitent has been begun, even if after the solicitation or shameful conversation the confession is not completed (St. Alphonsus, VI, 676).
2. **Before or immediately after confession.** The word "immediately" regards both before and after, so that the sense is "either immediately before or immediately after confession." This is clear both from the grammatical construction in the Constitution of Gregory XV, and from the fact that otherwise the time preceding confession would not be determined. Moreover the aforesaid word must be understood in a rather strict sense, so that no other serious action or grave business intervenes between confession and solicitation (St. Alphonsus, VI, 677).
3. **On the occasion of confession;** this has place: 1. if the confessor and the penitent are already actually prepared for confession, for example if the confessor is already seated and the penitent is already kneeling or about to kneel; 2. according to St. Alphonsus and others, with others contradicting, if the confessor invites someone to make confession immediately; if the penitent asks the confessor to hear his or her confession immediately; if the confessor, from the confession heard, for instance from the revealed frailty of the penitent, takes occasion afterward to solicit the penitent. The reason for all these is that in the cases enumerated the solicitation is rightly said to be made on the occasion of confession, since in the first two cases confession is proposed as immediately to be made, but in the later case[3] confession furnished occasion or impulse for the solicitation (St. Alphonsus, VI, 678). Practically, however, a confessor who from a confession heard took occasion afterward to solicit the penitent will scarcely ever have to be denounced; both because it will not easily be clear that he was led to a gravely dishonest act from the knowledge received, for it could have happened that he sinned, or at least sinned gravely, from a conversation begun or from prolonged association; and because denunciation in the case can scarcely be made without defamation of the penitent himself or herself.

The case, at least practically, should not be judged to be present if the confessor invites, or the penitent asks, that confession be made not immediately but afterward.[4]

4. **On the pretext of confession;** this case is held, with sufficient probability, only when the confessor himself, with respect to the very person to be solicited, proposes confession with the

intention of soliciting. The case is not held: 1. if the confessor, under pretext of hearing confession, obtains from the Superior permission to visit a person whom he then solicits to shameful things, because the pretext was not with respect to the solicited person; 2. if the confessor, lest household members accompany him, puts forward as a pretext that he is going to hear the confession of a sick woman, whom he afterward solicits. The reason again is that the pretext was only with respect to the household members; 3. if a woman under pretext of confession summons the confessor and afterward perpetrates sin with him, because the pretext did not arise from the confessor. But the case seems to be present "if the confessor were to solicit outside confession, and the woman refused, fearing defamation; and therefore the confessor persuaded her that, feigning herself sick, she should summon him for sinning. For then the confessor is rightly said to have solicited the woman under the pretext of confession to furnish consent" (St. Alphonsus, VI, 679).

5. **Outside the occasion of confession in the confessional, or in another place destined or chosen for hearing confessions, with simulation of hearing confession there.** In order that someone be denounced by force of this clause, it is required: 1. that he solicited or had a shameful conversation in the confessional, or in another place destined or chosen for hearing confessions; and 2. that he did these things while simulating confession. Moreover:

a) A place destined for hearing confessions is a place which, although it lacks the customary form of a confessional, is nevertheless stably destined for hearing confessions, as for example a cell in which there is a seat for the confessor and a kneeler for the penitent; or also, for instance in the sacristy or in the parlor, the very chair for the confessor together with a kneeler for the penitent.

A place chosen for hearing confessions is any other place, for instance the room of a sick person, provided however that at least by one or the other party it has truly been chosen for instituting confession.

b) Besides this, simulation of confession is required. A simulated confession is had if those who are present must judge from the circumstances, or those who would be present would have to judge from the circumstances, that true confession is being instituted. Now some hold that simulation of confession is not required if the solicitation takes place in the confessional. But this is deservedly rejected, since: 1. the rule of law is, "A clause placed in the last place is referred to all the connected preceding things"; 2. the Holy Office agrees.[5] Here, however, note that simulation of confession is present of itself (that is, unless positive indications to the contrary are had), if the confessor and penitent are either in the confessional or in a place destined for hearing confessions; and is absent of itself (that is, unless positive indications to the contrary are at hand), if they are in a place only chosen for hearing confessions.

[1] Constitution *Cum sicut nuper*.

[2] Constitution *Sacramentum Poenitentiae*, § 1.

[3] Santi-Leitner (*Praelectiones Iuris Canonici*, p. 230) appeal to a rescript of the Sacred Penitentiary inspected by them, in which this case is considered as comprehended by the law. Cf. De Smet, cited work, p. 46.

[4] Holy Office, February 11, 1661, response 4.

[5] February 11, 1661, response 15.

419 **Question 1.** Whether one who is certainly amended must be denounced.

Response. The affirmative answer must be given, both because the law does not distinguish, nor do authentic declarations found this exception; because the law intends to instill fear into all, and this end is obtained more securely if even one amended must be denounced; and because the more benign opinion gives an occasion for weakening the law. Nevertheless, in the denunciation mention should be made of the amendment (St. Alphonsus, VI, 686). Therefore only a deceased priest is excepted.[1] Some extend this to a priest who, worn out by old age and impeded by chronic illnesses, is now never going to hear confessions. But that seems altogether to be rejected for the reasons just given.

Question 2. Whether someone must be denounced in doubt whether the required solicitation took place.

Response. The answer is negative, because a law does not oblige in doubt about the fact founding the law (vol. I, n. 228). There is added that no one is to be deprived of reputation in doubt. Therefore denunciation can be omitted: 1. in doubt whether the crime here required was present; 2. in doubt whether the crime was committed in the circumstances required by law; 3. in doubt who was the soliciting confessor, unless the judge can become certain about the person soliciting from the indicated circumstances. Sometimes, however, circumstances can be such that the common good demands some denunciation (St. Alphonsus, VI, 702).

Note. The crime of solicitation is not reserved by common law.[2]

[1] Holy Office, March 6, 1839; Sacred Penitentiary, April 24, 1884.

[2] Holy Office, September 15, 1859.

Point II. On Those who Must Denounce

420 I. The persons who are bound to denounce are:

1. The solicited persons themselves (can. 904 and 2368, § 2), even immature persons. One who because of simplicity did not understand the solicitation is bound "after he or she has become in possession of himself or herself and has acquired knowledge of the past solicitation."[1] Moreover the solicited persons themselves, and they alone, are bound under penalty of excommunication according to canon 2368, § 2, as follows: "But the faithful person who knowingly has omitted, within a month, to denounce the one by whom he or she was solicited, contrary to the prescription of canon 904, incurs an excommunication *latae sententiae* reserved to no one, and is not to be absolved unless after he or she has satisfied the obligation or has seriously promised that he or she will satisfy it." Immature persons, however, are not liable to excommunication (can. 2230). It is said "within a month," that is, within a month from the obligation having become known. Moreover the solicited person is bound, even if he or she cannot prove the crime (St. Alphonsus, VI, 695).

2. It is disputed whether others who know the crime with sufficient certainty are bound to denunciation. Moreover the guilty person certainly is not bound to denounce himself.[2] Likewise, as regards others, who certainly are not bound under censure, once the law set forth is considered, the negative answer is given with sufficient probability, because canon 904 speaks only of the solicited penitent. The Code indeed refers to the apostolic constitutions; but, apart from the fact that the apostolic constitutions do not speak of others,[3] the Code declares only that the penitent is bound according to the norm of the said constitutions. It is clear, however, that

others can be obligated by reason of the common good to be protected, and this also by force of canon 1935, § 2.

[1] Holy Office, May 11, 1707.

[2] Holy Office, November 17, 1626.

[3] Others, however, before the Code were bound to denounce (Holy Office, February 11, 1661, response 14; March 10, 1677).

421 II. **Causes excusing from the obligation.** From the obligation there excuse, or at least suspend it:

1. Grave extrinsic damage or inconvenience prudently feared. The case could be present if the priest to be denounced were one who supported the solicited person; likewise if a sick person would be so disturbed by this burden that the illness would be aggravated. When the inconvenience ceases, the obligation urges.
2. An entrusted secret, but not a natural or promised secret. "No one," says St. Alphonsus, "is bound to a secret, even promised by oath, when the secret tends toward common damage. But otherwise ... if the solicitation was manifested for the purpose of asking counsel; for disclosure of the secret would then be contrary to human intercourse, and also contrary to the public good, which certainly intervenes in counsels being sought" (VI, 698).
3. In remote regions, impossibility of approaching the competent Authority without grave inconvenience excuses.[1]

Intrinsic inconvenience does not excuse, such as the shame of the solicited person, or fear of arousing hatred of the one denounced.[2] A truly founded fear of one's own infamy, however, would excuse (St. Alphonsus, VI, 681). Nevertheless, here observe that the circumstance that the denouncing person first solicited, or consented to the solicitation, would not excuse. Still, the person cannot be questioned about consent, nor is he or she bound to manifest it; and if it is manifested, it cannot be noted in the acts.[3] Moreover, "if a person known to the Ordinary himself fears some infamation from the denunciation to be made before him, the Sacred Penitentiary, having been consulted, will delegate a confessor to receive the denunciation in the name of the Holy See and to transmit it to that Apostolic See."[4]

[1] Holy Office, January 22, 1727 (*Collectanea*, n. 308); May 20, 1842 (*Collectanea*, n. 949).

[2] Note that the name of the denouncer is never to be manifested to the priest.

[3] Holy Office, July 25, 1624; February 20, 1867.

[4] Planchard, *De Const. Bened. XIV quae incipit "Sacra Poen."*, p. 48, note.

Point III. On the Manner of Denouncing

422 I. The denunciation must be made to the local Ordinary or to the Sacred Congregation of the Holy Office (can. 904). Moreover, the denunciation can be made to the Ordinary of the place, whether of the denouncing person, or of the one denounced, or of the place in which the delict was committed. I said "can," because it is better that the denunciation be made to the Ordinary of the denouncing person, that is, of the solicited penitent. If it is made to an Ordinary who is not the Ordinary of the one denounced, it belongs to that Ordinary to transmit the act to the proper Ordinary

of the one denounced, who can instruct the process, or to the Sacred Congregation of the Holy Office. If the Ordinary refuses to accept the denunciation, the penitent is freed from further obligation.

II. Considering the norms prescribed of themselves, the person denouncing should appear personally either "before the Bishop or his delegate with the intervention of an ecclesiastical man who holds the part of notary, and with oath and with expression and subscription of his or her name";[1] or before a confessor or another ecclesiastical man deputed by the Bishop without the intervention of a notary.[2] The deputed person can summon the denouncing person to himself, or he himself can approach that person.

III. Practically, let the procedure be as follows:

1. The person about to denounce, if it can conveniently be done, should approach the Ordinary, set forth the cause to him, and carry out his mandates.
2. If the person cannot conveniently approach the Ordinary, let him or her write letters to him in which the fact of solicitation, the place of the delict, the name and office of the delinquent confessor, and his or her own address are set forth. If the solicited person cannot afterward present himself or herself to the Ordinary, let this be added in the letter so that the Bishop can depute another who may receive the denunciation. If a grave reason stands in the way of someone other than the confessor being deputed, let this also be added so that the Bishop, if it pleases him, may depute the confessor, who, according as the Ordinary prefers, may receive the denunciation outside or in the confessional, but outside the act of confession.
3. If the person about to denounce can neither approach the Ordinary nor write to him, let him or her do this through another person well-disposed toward him or her. The confessor of himself is not bound to this. But if nevertheless he does it, with the names both of the one to be denounced and of the one about to denounce kept back, let him inform the Ordinary of the fact of solicitation and of the inability of the solicited person to appear and to write. Let him add whether the solicited person can conveniently and is willing to present himself or herself to a delegate from the Bishop, at least if a confessor is delegated. I said that the confessor of himself is not bound to this; nevertheless, we do not deny "that in some case, for instance if public damage were threatening somewhere and no other way were open for avoiding it, the confessor could be bound by the law of charity to undertake a burden of this kind; but this will rarely happen" (St. Alphonsus, VI, 699). Indeed St. Alphonsus at the cited place, with others, observes that "in practice it is not expedient that the confessor take upon himself this burden of carrying the denunciation in place of the penitent or of receiving it."
4. If the penitent can neither approach the Ordinary, nor write to him, nor find someone who would do either, he or she will be able to await an occasion.
5. Religious Superiors are strictly prohibited from involving themselves in these causes (can. 501, § 2).

[1] Instruction of the Holy Office, February 20, 1867, n. 6.

[2] Cited Instruction, n. 8.

Point IV. On the Obligation of the Confessor with Respect to a Penitent who Is Bound to Denounce

423 I. The confessor must, with the penitent's conscience gravely burdened, admonish a penitent solicited by another concerning the obligation of denouncing; nor does the penitent's good faith excuse the confessor from admonishing him or her, although even here there is sometimes place for epikeia. This is clear from the ecclesiastical documents cited or to be cited. It is said:

1. **The confessor** (can. 904); and indeed every confessor, not only one who habitually enjoys jurisdiction, but also one who possesses it only transiently, for instance by hearing the confession of a dying person.
2. **The penitent ... solicited.** Others who are not solicited but perhaps are bound by the law of charity to denounce (n. 420) must be admonished according to the common rules of admonishing.
3. **The penitent solicited by another.** For a confessor is not bound to admonish a penitent solicited by himself (n. 420). Nevertheless, for this reason the penitent is not freed from the burden of denouncing, and once the burden is known, he or she must fulfill it.[1]
4. **Concerning the obligation of denouncing.** Concerning the excommunication which the penitent incurs unless within a month, from the obligation having become known, he or she has satisfied the obligation (n. 424), the penitent must be admonished according to the common rules.
5. **Nor does the penitent's good faith excuse the confessor from admonishing him or her.**[2] Therefore admonition concerning the obligation of denouncing must be made even if the penitent is foreseen not to be going to obey. Thus, namely, the Church established on account of the common good; for a disposition of this kind more greatly deters confessors, and more greatly consults for denunciation (St. Alphonsus, VI, 694).
6. **Even here there is sometimes place for epikeia.** Moreover, the admonition can be omitted if the penitent is in danger of death and is foreseen to be going to refuse denunciation; likewise if danger of disclosure and scandal is feared, for instance if the matter concerns a very frivolous and talkative person; likewise if the penitent did not understand the solicitation and the admonition cannot be made without scandal. If, however, he or she later understands it, the person must be admonished. Other excusing causes which are alleged by some, though few, cannot be reconciled with the severity of the law and give occasion for weakening discipline. Observe, however, that the admonition can be deferred if there is hope that the penitent on another occasion will do what would now be demanded in vain.

[1] Proposition 7 condemned by Alexander VII (Denzinger-Bannwart, n. 1107).

[2] Instruction of the Holy Office, February 20, 1867, response 3.

424 II. Penitents who have been admonished and entirely refuse cannot be absolved;[1] but those who can defer denunciation for a just cause, and who pledge and seriously promise that they will make it as soon as they can, can be absolved. For the rest, observe:

1. A penitent who without just cause has omitted to denounce the one soliciting within a month from knowledge of the obligation of denouncing incurs an excommunication *latae sententiae*,

reserved to no one; nor is the penitent to be absolved from it unless after he or she has satisfied the obligation or has seriously promised to satisfy it (can. 2368, § 2).

2. But if the penitent, "detained by no impediment, absolutely refuses denunciation, in this case ... the confessor is to be praised who has not denied his service to the penitent and has consulted either the Ordinary or the Holy See for opportune provisions, with the name of the penitent, however, suppressed";[2] namely, afterwards dispensation from the burden of denouncing was granted by the Holy See.

[1] Cited Instruction, response 5.

[2] Cited Instruction, response 7.

425 III. If the case occurs, let the confessor:

1. Weigh: 1. whether all the requisites, both on the part of the act and on the part of the circumstances, are present; 2. whether the penitent is worthy of faith.

a) As regards the first: if the external act is not ambiguous, the intention of the priest is judged to be consonant with the act; if the act is ambiguous, commonly the gravely depraved intention of the priest will also be doubtful.

b) As regards the other: a reason for doubting the sincerity of the penitent exists if he or she readily acquiesces in denunciation; likewise if, once the obligation has been proposed, the person begins to speak doubtfully. If doubt about sincerity remains, it is better to say only: If the things you say are true, you must admonish the Bishop; and the confessor should not provide his services to that person.

2. In doubt he cannot impose the obligation, according to the norm of the things we noted in n. 419.

3. Generally, unless the matter is manifest, before he imposes the obligation he should prudently consult someone more learned, and enjoin on the penitent that on another occasion he or she speak about the same matter.

Scholion I. On the Manner of Receiving a Denunciation, And, Once It Has Been Received, of Proceeding Further Against Those Denounced

426 I. The denunciation must be made before the Bishop or his delegate, with the intervention of an ecclesiastical man who holds the part of notary. Other witnesses cannot be present, and the Bishop can dispense from the intervention of the notary for a reasonable cause.[1] For the rest, the deputation of the delegate and of the notary, if the latter is used, must be made in writing.

II. If a confessor or another person is delegated to receive the denunciation without the intervention of a notary, a formula to be followed is handed to him by the Ordinary, or by the Holy Office.

III. Let the one who receives the denunciation see that the crime of false denunciation is reserved to the Supreme Pontiff, and let him signify to the denouncing person that no inquiry concerning consent furnished is to be instituted. For the rest, this order is regularly prescribed: first, the oath concerning speaking the truth, to be given by touching the Holy Gospels, is to be asked from the denouncing person; then he or she is questioned according to the formula handed down by the Ordinary or by the Holy Office, with the responses immediately put into writing not only as regards substance but also as regards words; then the entire instrument is to be read aloud to the denouncing person, with the

faculty being given of adding, suppressing, correcting, and changing; finally the signature of the denouncing person is to be required, or, if he or she cannot write, the sign of the cross; and while the denouncing person is still present, there is to be added the signature of the one receiving it and, if one was used, of the notary. Lastly, an oath of preserving secrecy is to be demanded from the denouncing person, with excommunication reserved to the local Ordinary or to the Holy See being threatened if necessary.[2]

Note. "Sometimes for a grave reason it can be permitted that one or another of the prescribed forms, with the substance being preserved, be omitted, for example the touching of the Gospels. In more difficult cases it is also permitted that the denunciation, with the prior permission of the denouncing person, lest the sacramental seal seem to be violated, be received by the confessor in the confessional seat. Indeed, when a wholly grave and altogether extraordinary cause is urgent, the denunciation will also be able to be made through a report written by the denouncing person, provided however that it is afterward confirmed by oath and signed before the local Ordinary or his delegate and notary, if one is present."[3]

IV. Once the denunciation has been juridically received, whether by himself or through a delegate, the Ordinary under grave obligation must signify it to the promoter of justice, who is to declare whether the crime of solicitation is present or not. Once this has been done:

1. If the Ordinary dissents from the promoter of justice, the latter must refer the matter to the Holy Office within ten days.
2. If the Ordinary agrees with the promoter of justice, or if the promoter in any way does not have recourse to the Holy Office, let the procedure be as follows:

a) If the Ordinary judges that the crime of solicitation is lacking, let him place the acts in the secret archive or, considering the gravity of the matters denounced, use his own right, for instance by admonishing or punishing the denounced person, although he is not guilty of the crime of solicitation.

b) If the Ordinary judges that the crime is present, let him proceed to an inquiry (cf. can. 1939, § 1).

IV. Let the inquiry be made in the manner set forth in the Instructions of the Holy Office of February 20, 1867, n. 9, and July 20, 1890.

V. Once the inquiry has been completed:

1. If it is established that the denunciation lacks all foundation, let this be reported in the acts, and let the documents of accusation be destroyed.
2. If vague or uncertain indications are at hand, let the acts be placed in the secret archive until something else arises.
3. If sufficiently grave indications are at hand, but not indications sufficient for an accusatory action, let the guilty person be admonished in a different manner according to the diversity of the case.
4. If certain or at least probable indications are had for an accusatory action, the guilty person must be cited (cf. can. 1946); however, an oath concerning speaking the truth cannot be administered to him (cf. can. 1744).

VI. Once the guilty person has been cited and appears, the procedure must be as follows:

1. If the guilty person confesses the crime, and his confession agrees at least substantially with the accusation, a definitive sentence can be pronounced. Nevertheless, the guilty person can either accept it or demand the regular development of the process.
2. If he does not confess the crime, or if his confession does not agree even substantially with the accusation, let the acts of inquiry be handed over to the promoter of justice, who is to draw up the libellus of accusation (can. 1954 and 1955). In the meantime the guilty person can already be suspended from sacred ministry or from hearing confessions until the end of the trial. Then let him be questioned carefully, while avoiding manifestation of the denouncing persons or of the sacramental seal. After a suitable time has elapsed, in which the defender of the guilty person prepares and exhibits the defense, and the promoter of justice prepares and exhibits the libellus of accusation or his requisition of justice, let the judge pronounce the definitive sentence according to the acts and the proofs, that is: if he is certain of the crime, let him condemn the guilty person; if he is certain of innocence, let him absolve him; if he is doubtful, let him dismiss him.
3. From the pronounced sentence both the guilty person and the promoter of justice can appeal to the Holy Office within ten days. The appeal is suspensive, while nevertheless the suspension of the guilty person perhaps issued before the definitive sentence remains firm. If appeal is made, let the acts, or an authentic copy of them, be transmitted to the Holy Office.[4]

VII. Certain things remain to be noted:

1. The Ordinary is bound to manifest at once to the Holy Office the denunciation juridically received. In addition, if the one denounced lives in another territory, let him send to the Ordinary of that place an authentic copy of the denunciation with the inquiries and declarations of the guilty person.
2. The Ordinary must signify the outcome of the juridically received cause to the Holy Office and, if the denounced person is a religious, to his Superior General.
3. If a priest who has been condemned, or only admonished, transfers his residence into another territory, the Ordinary *a quo* is bound as soon as possible to admonish the Ordinary *ad quem* concerning the antecedents and juridical status of the denounced person.
4. If the denounced person, suspended from hearing confessions but not from preaching, goes into another territory for preaching, the Superior of the denounced person, whether secular or religious, must admonish the Ordinary of the other territory that he cannot be used for hearing confessions.[5]
5. Those who are assumed for treating or defending these causes, namely the judge, the promoter of justice, the defender of the guilty person, the notary, and so forth, are bound to the secrecy of the Holy Office: the Ordinary by force of office; the ministers by oath; others absent by a precept to be imposed on them; and indeed under penalty of excommunication *latae sententiae*, reserved to the Supreme Pontiff alone, even the Sacred Penitentiary being excluded.[6]
6. If the things set forth are difficult to observe exactly, the Holy See sometimes permits that the matter be treated in an easier manner.[7]
7. If the treatment of the matter carries with it grave difficulties, the matter, with the acts transmitted, can be referred to the Holy Office, which can hand down particular instructions.[8]

[1] Instruction of the Holy Office, February 20, 1867.

[2] Aertnys-Damen, *Theologia Moralis*, II, n. 426.

[3] Aertnys-Damen, cited work, n. 427.

[4] Aertnys-Damen, cited work, n. 428.

[5] Aertnys-Damen, cited work, n. 429.

[6] Aertnys-Damen, cited place, n. 15.

[7] Cited Instruction, n. 16.

[8] Cited Instruction.

Scholion II. On False Denunciation

427 I premise the canons which regard false denunciation. Canon 894 establishes: "The sole sin reserved to the Holy See by reason of itself is false denunciation by which an innocent priest is accused of the crime of solicitation before ecclesiastical judges." And canon 2363 decrees: "If anyone, by himself or through others, has falsely denounced a confessor for the crime of solicitation before Superiors, he incurs by the fact itself an excommunication reserved in a special manner to the Apostolic See, from which in no case can he be absolved unless he has formally retracted the false denunciation, and has repaired, according to his powers, the damages if any have followed from it, with a grave and lasting penance having also been imposed, the prescription of canon 894 remaining firm." Therefore two things must be distinguished: namely, the crime of false denunciation is: 1. a sin reserved by reason of itself, and indeed to the Holy See; 2. a sin reserved by reason of the censure, or one which has annexed to it an excommunication reserved in a special manner to the Apostolic See. These things having been noted, let these be the conclusions:

I. **Requisites in order that the crime be reserved by reason of itself to the Holy See.** There is required a false denunciation by which an innocent priest is accused of the crime of solicitation before ecclesiastical judges. It is said:

1. **A false denunciation,** made either by oneself or through another, namely "by wickedly procuring that it be done by others";[1] it can be procured by mandate, threats, or efficacious counsel. According to the more common and safe opinion, it is required that the denunciation be made juridically, that is, either personally and with the intervention of an ecclesiastical man who holds the part of notary, and with oath and subscription of one's name, or personally without the intervention of a notary.[2] Hence letters directed to the Ordinary do not suffice, even if they are subscribed; a fortiori anonymous letters are excluded, which have no force.[3]
2. **For the crime of solicitation,** that is, for a crime which, if it had taken place, would carry with it the obligation of denouncing.
3. **Before ecclesiastical judges,** that is, before the Sacred Congregation of the Holy Office, or the local Ordinary, or another delegated by them for this affair. It suffices that the denunciation has been made before them, whether they institute a further inquiry or do not institute it. Knowledge of the reservation does not seem to be required (n. 384).

II. **Requisites in order that the crime be reserved by reason of the censure, or that it have annexed to it an excommunication reserved in a special manner to the Apostolic See.** First the

same things are required which were set forth under I,[4] then knowledge of the censure and puberty. It is said:

1. **Knowledge of the censure;** ignorance excuses from it unless it was affected (can. 2229, § 1), crass, or supine (can. 2229, § 3, 1). Ignorance only of the reservation does not excuse (cited canon).

2. **Puberty;** since "the immature are excused from penalties *latae sententiae*" (can. 2230).

III. **Absolution from false denunciation.**

1. Absolution from the censure, if it has been contracted, must be put before absolution from the sin; but insofar as one can be absolved from the censure, this is explained in the treatise on ecclesiastical penalties.

2. As regards absolution from the sin, which is also reserved by reason of itself, by whom it can be given, see n. 387; but note that the reservation of the sin ceases in the cases set forth in n. 385.

[1] Constitution *Sacramentum Poenitentiae*, § 3.

[2] Cf. Instruction of the Holy Office, February 20, 1867.

[3] Cited Instruction, n. 6.

[4] Canon 2363, which treats of the censure annexed to the crime, indeed speaks of denunciation before Superiors, while canon 894 speaks of denunciation before ecclesiastical judges. Hence some think that, for the censure, it suffices that the denunciation be made before ecclesiastical Superiors. But by "Superiors" there seem to be understood the Superiors competent here, that is, the ecclesiastical judges of whom canon 894 speaks. Major Superiors, even of exempt religious institutes, are prohibited from involving themselves in this affair (can. 501, § 2).

Article III. On Things to Be Observed After Confession

Two things come to be treated, namely the office of preserving the sacramental seal and the obligation of repairing defects admitted in confession.

§ I. On the Office of Preserving the Sacramental Seal

428 The law of the sacramental seal[1] can be taken in a broad and in a stricter sense. Taken in a broad sense, it is the law which forbids the use of sacramental knowledge which is of a nature to redound to the burden of the penitent, and therefore, if it were licit, would render confession more difficult. I said "which is of a nature," etc., because it does not matter whether the penitent notices the use or not; it suffices that in itself it involves a burden.

Taken in the stricter sense, it is the law which forbids the use of sacramental knowledge together with manifestation, or danger of manifesting the penitent.

The prohibited use of sacramental knowledge, or violation of the sacramental seal, is distinguished as twofold: direct and indirect (cf. can. 2369, § 2). Direct violation is the use of knowledge acquired from confession together with manifestation of the sinner. Wherefore observe that it is not required that the person of the penitent be known, but it suffices that the person be sufficiently determined; for instance, if I say concerning a person meeting me and unknown to you that he or she confessed this or that. Indirect violation is judged to be the use of knowledge acquired from confession which

has annexed to it the danger that the sinner be betrayed, or which involves a burden of the penitent with or without danger of manifestation of the sinner.

These things having been noted, we shall speak first of the obligation, then of the object, then of the subject of the sacramental seal, and finally we shall deduce certain corollaries from the things set forth.

[1] So called because that law covers the things heard in confession as with a seal.

Point I. On the Obligation of the Sacramental Seal

429 I. **Existence of the obligation.** This is clear first from the fact that Christ, by instituting and imposing confession, must be judged to have imposed on the confessor an obligation without which the reception of confession would be morally impossible. But the obligation of preserving the seal is such an obligation. Add that between the penitent and the confessor there intervenes a tacit contract; to this there is added the obligation of the confessor to preserve the right of the penitent to reputation. Finally, the Church confirms the obligation of the seal and decrees that both direct and indirect violation are prohibited. Thus canon 889, § 1, says: the sacramental seal is inviolable; wherefore let the confessor diligently beware lest by word or sign, or in any other way and for any cause whatever, he betray the sinner in any manner (direct violation).[1] And canon 890 says: the use by the confessor of knowledge acquired from confession, with burden to the penitent, is altogether prohibited, even any danger of revelation being excluded (§ 1).[2] Both Superiors existing for the time and confessors who afterward have been appointed Superiors can in no way use for external governance the knowledge which they have had concerning sins in confession (§ 2; St. Alphonsus, VI, 635).

Corollary I. The obligation of the seal is of natural law, insofar as it flows from the tacit contract and from the right of the penitent to reputation; of divine-natural law, as it is said,[3] insofar as it follows upon the sacrament; and of ecclesiastical law, insofar as it is confirmed by the Church (cf. St. Thomas, Supplement, q. 11, a. 1, ad 2).

Corollary II. The obligation of the seal exists even in doubt: 1. whether some object falls under the seal; 2. whether something is known by sacramental knowledge or otherwise; 3. whether something to be said or done is opposed to the seal. The reason is that otherwise provision would not be made sufficiently for the security of the faithful who confess (St. Alphonsus, VI, 633, 637).

[1] Thus also the ancient law. In the Decree of Gratian (c. 2, dist. 6, *De poenit.*) it is declared: "Let the priest before all things beware lest he recount to anyone the sins of those who confess to him. For if he has done this, let him be deposed and go about all the days of his life as an ignominious pilgrim." Lateran IV: "Let the priest beware altogether lest by word or sign or in any other way he betray the sinner in any manner. But if he needs more prudent counsel, let him cautiously seek it without any expression of the person, since we decree that one who has presumed to reveal a sin disclosed to him in the penitential judgment is not only to be deposed from priestly office, but also to be thrust into a strict monastery for doing perpetual penance."

[2] Likewise Clement VIII, May 26, 1593; and the proposition condemned by decree of the Holy Office, November 18, 1682 (Denzinger-Bannwart, n. 1220).

[3] There are those who think that such an obligation, which excludes exception, flows from the positive law of Christ.

430 II. **The proximate source of the obligation.** The obligation of the seal arises from every confession such that use of the knowledge received from it would turn the faithful away from

confession. If the confession is sacramental, the benefit of the seal belongs to it principally; if it is not sacramental, it belongs to it participatively. Hence it arises:

1. From confession made in order to the power of the keys to a priest who can and wills to discharge the office of judge, or to use jurisdiction. Such a confession is certainly sacramental.

2. From confession made in order to the power of the keys: 1. to a priest who enjoys jurisdiction but does not will to use it; 2. to a priest who lacks jurisdiction; 3. to one who is not a priest but is regarded as a priest by the penitent; whether the aforesaid confessions are called sacramental or are not called such. The reason is that the use of knowledge received from a confession of this kind, if it were licit, would at least redound to the detriment of the sacrament, or would turn the faithful away from confession in some measure. But if it is asked whether the said confessions are sacramental, I respond that the first, which is made to a priest who does not will to use jurisdiction merely internally, seems sacramental; as regards the later ones, a reason for seriously doubting is taken from the fact that the objective relation of confession to the sentence to be rendered seems to be lacking.

3. It is disputed whether it arises from confession made to one who is neither a priest nor regarded as a priest by the penitent; for instance if someone thought that a layman could absolve in a case of necessity. Moreover, the negative answer seems to be given, because the use of knowledge drawn from such a confession does not turn one away from confession to be made before a priest.

For the rest, the obligation of the sacramental seal arises from a confession both perfect and only begun, both valid and invalid. It is also the same whether absolution is granted, denied, or deferred.

Corollary I. The obligation of the sacramental seal does not arise from a confession made without the will of receiving the sacrament, but only with the intention of speaking with the confessor, or of mocking or seducing him (St. Alphonsus, VI, 636); nor from a confession made to one who is known by the penitent to lack jurisdiction, because then there is also lacking an accusation made in order to the power of the keys.

Corollary II. The fact that someone manifests something outside confession "under the seal of confession," as they say, and another receives it in that way, cannot effect that something be covered by the seal of sacramental confession (St. Alphonsus, VI, 636). Nevertheless, "someone ought not readily receive something in this way" (St. Thomas, Supplement, q. 11, a. 2).

431 III. **Quality of the obligation.** The obligation of the seal is threefold, namely: 1. of religion, insofar as it arises from the signification of the sacrament, and the law has been issued from reverence for the sacrament; 2. of justice from the tacit contract between confessor and penitent; 3. of another species of justice, namely that which commands preserving the reputation of one's neighbor (St. Alphonsus, VI, 635).

432 IV. **Gravity of the obligation.**

1. The obligation of the law, insofar as from religion it prohibits direct violation of the seal, or revelation of the sin together with revelation of the sinner, is grave from its whole genus. The reason is that, if small matter were admitted, it would be gravely opposed to the end of the sacrament, since the faithful would be turned away from confession of venial sins, indeed even of mortal sins, fearing that the confessor might take as light what was mortal.

2. The obligation of the law, insofar as it prohibits indirect violation of the seal, is grave from its genus, but in such a way that sufficiently grave matter for constituting grave sin is easily present. Hence:

Under grave obligation there is prohibited: 1. manifestation of a thing closed by the seal together with grave or middling danger of betraying the sinner; 2. use of sacramental knowledge which involves a notable or middling burden of the penitent.

Under light obligation there is prohibited: 1. manifestation of a thing closed by the seal together with danger altogether light of betraying the sinner; 2. use of sacramental knowledge which involves a burden of the penitent altogether light.

There are not prohibited: 1. manifestation of a thing closed by the seal together with a danger of betraying the sinner which does not deserve to be noted; 2. use of sacramental knowledge which involves a burden which is not worthy of note.

433 V. **Cessation of the obligation.** The obligation of the sacramental seal, at least insofar as it forbids direct violation, never ceases without the license of the penitent. The penitent, however, can grant license. It is said:

1. **The obligation of the sacramental seal, at least insofar as it forbids direct violation, never ceases.** This is clear from tradition. The reason seems to be that, on account of the spiritual and common good of the faithful, sacramental knowledge, by the intention and institution of Christ, has been ordered to the sacramental forum alone, or to the good of the penitent, and as such has been altogether withdrawn from the common intercourse of men (St. Alphonsus, VI, 634). It is disputed, however, whether for protecting the seal it is licit to posit an act which, independently of the law of the seal, is intrinsically evil; for instance, whether it is licit for a married priest to use marriage which he certainly knows from sacramental confession to be invalid by natural law. The matter is doubtful to me; while the doubt stands, however, one may act according to one's pleasure.
2. **Without the license of the penitent;** and that license freely, expressly, and certainly granted, and not revoked. Presumed license is judged not to suffice, because confessors can be deceived in this matter, so that the sufficiency of presumed license would render confession odious. For the rest, license can be granted explicitly and implicitly, for instance by the very fact that the penitent begins to speak outside confession about a matter of itself closed by the seal. Nevertheless, let the confessor beware lest he extend the concession beyond the intention of the penitent. Besides this, the penitent can revoke the granted license according to his or her pleasure. Finally, note that license of this kind is not to be sought except for a grave cause, and only from those whose consent can certainly be expected to be altogether free (St. Alphonsus, cited place).
3. The penitent can grant license because the seal has been imposed in his or her favor, and the penitent can renounce that favor.

434 **Corollary I.** One who has known something by both sacramental and extra-sacramental knowledge licitly uses the extra-sacramental knowledge; nevertheless let him proceed prudently and avoid scandal (St. Thomas, Supplement, q. 11, a. 5; St. Alphonsus, VI, 638, 4).

Corollary II. One who is questioned about a matter closed by the seal should of himself repel the questioner. But if otherwise he cannot with sufficient certainty repel suspicion against the penitent, let him answer, even with an oath, that he knows nothing. "A man," says St. Thomas, "is not brought in as a witness except as man, and therefore without injury to conscience he can swear that he does not know what he knows only as God" (St. Thomas, Supplement, q. 11, a. 1, ad 3). And thus he can say or swear, even if "he has been asked to answer not as man but especially as a minister of God," indeed even if "he is additionally asked to answer without equivocation" (St. Alphonsus, VI, 646).

Point II. On the Object of the Sacramental Seal

435 The object or matter of the seal is all things known from confession which, according to what was set forth in n. 430, carry with them the obligation of the seal, and whose revelation or use would render confession more difficult. Therefore the object of the seal is:

I. Mortal sins, both in species and in genus, namely that such a penitent has sinned gravely.

II. Venial sins, both in species and in some other manner at least somewhat determinate, for instance by saying that such a penitent declared a venial sin in this confession (St. Alphonsus, VI, 640). It is otherwise if he said only that the person had at some time sinned venially.

Notorious sins also are matter of the seal: both because the confessor, insofar as he knows something as God, must always be silent; and because the liceity of manifesting a notorious confession would render confession more difficult, since penitents would easily fear that the confessor might take as notorious what was not notorious. There is added the fact that the said sins, by the declaration of the confessor, would commonly be rendered more notorious and more certain.

III. The causes, object, and circumstances of sins; for example, the blasphemies of the father on account of which the penitent was angry, or the homicide concerning which he rejoiced. If, however, the matter concerns a public fact, the penitent commonly is not judged to close it by the seal (St. Alphonsus, VI, 641, doubt 2).

IV. An accomplice and his or her sin; for the liceity of revealing these things would render confession more difficult (St. Alphonsus, VI, 640). It is licit, however, with the license of the penitent, to admonish the accomplice (St. Alphonsus, 641, doubt 1).

V. The penance imposed, unless it is very slight (St. Alphonsus, *Homo Apostolicus*, tr. 16, n. 153).

VI. Natural and moral defects are the object of the seal: 1. if they are manifested by the penitent for explaining sins; 2. probably, if they become known to the confessor from the penitent's manner of confessing or acting, and are odious or occult; but not if they are not odious and are public, such as stammering, deafness, blindness. For in this case, contrary to the former ones, no burden to confession would arise from manifestation (St. Alphonsus, *Homo Apostolicus*, tr. 16, n. 154; VI, 642, 643).

VII. The condition and status of the penitent are to be judged in the same way as defects. Hence it is not matter of the seal that someone is unmarried, married, a magistrate, a workman. Nevertheless, let the confessor beware lest he speak of these things in such a way that he suggests that the penitent has sinned against the obligations of his or her state (St. Alphonsus, cited place).

VIII. Scruples are the object of the seal; for they are declared by the penitent as sins, at least doubtful ones. Likewise scrupulosity, insofar as it designates, as commonly happens, a confused and wavering conscience, is the object of the seal, and this holds even if the scrupulosity is publicly known; for it is an odious defect, or one which is a cause of shame (St. Alphonsus, VI, 644).

IX. Virtues and gifts are not the object of the sacramental seal, unless "they are spoken of in order to explain some defect or one's own ingratitude toward God" (St. Alphonsus, VI, 641). This, however, does not prevent them from being able to be the object of a non-sacramental secret.

Point III. On the Subject of the Sacramental Seal

436 Besides the confessor, who, as minister of the sacrament to which the seal is annexed, is obligated primarily and principally, secondarily and participatively "the interpreter also and all others to whom knowledge of confession has come in any way whatever are held by the obligation of preserving the sacramental seal" (can. 889, § 2). Except the case in which the penitent himself manifests the things confessed by himself. Under the name of confession comes every accusation to which, according to what was said in n. 430, the benefit of the sacramental seal belongs principally or participatively.

The reason for the rule stated is that "otherwise provision would not have been made sufficiently for the reverence of this sacrament, nor would hatred of confession have been sufficiently removed" (St. Alphonsus, VI, 648). The penitent, who is immune from the burden of the sacramental seal, transfers the knowledge of the confession made by himself even without that burden.

Therefore, besides the confessor, the following are bound:

I. The interpreter; for he, just as one hearing a confession, of whom we shall speak immediately, has received knowledge of the confession from the very confession of the penitent. The same must be said for the same reason about one who within confession writes the sins for the penitent (St. Alphonsus, VI, 647, 3 and 8).

II. One who has heard the confession of another, whether by chance or deliberately; one who deliberately hears, by that very act, violates the sacramental secret. Those are not held to the seal who have heard a confession which someone has freely made publicly; for such a manner of acting by its nature deprives confession of the benefit of the sacramental secret.

III. Those to whom a matter closed by the seal has been sacrilegiously or imprudently revealed; likewise one to whom the confessor, with the license of the penitent, for instance for the sake of seeking counsel, has revealed the matter, unless, what cannot be presumed, the license was granted indefinitely, so that the knowledge became extra-sacramental (St. Alphonsus, VI, 647, 5; 648).

IV. A Superior or another reading letters in which the faculty is sought of absolving someone from reserved sins, or something similar, is held by the sacramental seal as follows:

1. He is held if the letters were written by the confessor after confession had at least been begun, because the one reading received knowledge of the confession through the mediation of a confessor already bound to the sacramental seal.
2. Likewise he seems to be held if the letters were written by the confessor in order to a confession to be made, or by the penitent either before or after confession. The reason is that the liceity of

using knowledge received in this way seems to redound to the detriment of confession, which cannot rightly be made without the faculty having been obtained.

V. One consulted about a confession to be made to him, that is, to the one consulted, probably is held by the sacramental seal, because the consultation of the one to whom, according to the intention of the one consulting, confession will be made is so closely united with the confession that will follow that the liceity of using knowledge received in this way seems to redound to the detriment of the sacrament. The opposite must be said if someone is consulted about confession to be made before another; authors more commonly adhere to this solution of the case (St. Alphonsus, VI, 649). The opposite also must be said if the penitent consults a priest, for instance about a special case, without thinking of confession to be made to him, and, after counsel has been received, makes confession. But let the confessor beware of scandal.

VI. One reading a paper on which the penitent wrote the confession:

1. Of himself he is not held by the sacramental seal, because a paper of this kind is neither a confession nor a necessary means of making confession, so that the liceity of using knowledge of confession received in this way does not redound to the detriment of confession; in other words, it renders not confession but only the writing odious (St. Alphonsus, VI, 650).
2. He is held by the sacramental seal: 1. who reads the paper while the confessor reads it, since in that case by the writing itself sins are manifested here and now to the confessor, and he is rightly said to have drawn knowledge of the confession from the confession of the penitent; 2. who reads the paper while the penitent reads the confession from it, because, at least morally speaking, he comes to knowledge of the confession by means of confession; 3. probably, who reads the paper left behind by the confessor after confession, because in the case it seems possible to say that, through the mediation of the confessor, he received knowledge of the confession, and therefore he is held by the seal, as those assigned under III; 4. who reads the paper in the case in which it was the prescribed means of making confession, as can happen in a mute person (n. 326). The reason is that the liceity of using knowledge of confession drawn from a necessary means of confessing would redound to the detriment of confession (St. Alphonsus, cited place).

VII. One reading letters written by the confessor to the penitent, in which matters closed by the seal are treated, is held by the sacramental seal, because he receives knowledge of the confession from the confessor (cf. n. III). But one who reads letters sent by the penitent to the confessor, in which confessed matter is treated, is not held by the sacramental seal, whether this is done for the sake of completing confession or is not done for that end. The reason is that the said letters are in no way confession, nor does that so-called complement of confession have anything of confession properly so called. Moreover, the liceity of using knowledge drawn from those letters does not render confession odious, but only that so-called complement added outside a new confession.

Point IV. Corollaries from the Doctrine Handed Down

437 I. The sacramental seal is violated:

1. By one who either reproves the penitent in a loud voice or questions the penitent about sins.
2. By one who speaks about the sin of someone with another confessor, even if the penitent confessed that same sin to both.

3. By one who, for example, says about a notorious homicide that he confessed the homicide.

4. By one who, after hearing the confessions of a few, says that he heard such a sin.

5. By one who praises one penitent before the rest whom he heard by saying that the penitent confessed only venial sins (St. Alphonsus, *Homo Apostolicus*, tr. 16, n. 156).

6. By one who says that he heard a grave sin in such a convent; for then individual members of that convent, and therefore also the penitent, suffer detriment. If someone said the same about such an Order, it depends on the circumstances whether a grave, light, or almost no burden is created, and therefore whether there is grave, light, or no violation of the seal. Namely, it must be considered: 1. whether the Order is numerous; 2. whether it is notoriously relaxed or not; 3. before whom that is said; 4. whether suspicion falls upon the inhabitants of a few houses (cf. St. Alphonsus, VI, 654, doubt 2).

7. By one who without the permission of the penitent speaks with the penitent outside confession about things heard in confession.

8. By one who after confession looks upon the penitent with stern eyes, does not speak to him as he had previously been accustomed, and so forth. Likewise by one who, on account of things heard in confession, would dismiss a servant, or take keys away from him, or remove money from a chest lest he steal it. Likewise by one who, on account of things known from confession, would deny a vote to someone (St. Alphonsus, VI, 657). Likewise by one who, on account of sins declared in an earlier confession or on account of a defect of disposition then revealed, would refuse to receive someone's confession (St. Alphonsus, VI, 659).

438 **Question 1.** Whether one violates the seal who from the confession of the penitent has known that snares are being laid for him, and without the license of the penitent uses the knowledge received for his own defense.

Response. Affirmatively, if, for example, accomplices could suspect that that sin had been accused by the penitent, or if some other burden would come to the penitent from it. For the liceity of directing oneself in this way, without the license of the penitent, from the knowledge of confession would turn the faithful away from confession (St. Alphonsus, VI, 659). If the penitent threatens to inflict death on the confessor at an opportune time unless he is absolved, the confessor can avert the danger of death, because by doing this he neither betrays the sin of the penitent in any way, as is supposed, nor does the liceity of acting in this way render confession itself odious.

Question 2. Whether one violates the sacramental seal who says that in some place such a vice is spreading.

Response 1. He does not violate the seal if the vice is notorious and the place is sufficiently large, for instance about 3,000 persons; or, if the matter concerns a very infamous vice, such as sodomy or bestiality, 6,000-7,000 Catholics. The reason is that the burden which from this comes to penitents does not deserve to be noted.

Response 2. He violates the seal if the vice is occult; likewise if the vice is notorious but the place is sufficiently narrow, for instance less than 3,000; or, if the matter concerns a very infamous vice, less than 6,000-7,000 Catholics (St. Alphonsus, VI, 654, doubt 1; *Homo Apostolicus*, tr. 16, n. 158).

If, however, the discussion concerns a notorious vice, it can easily happen that the burden is only altogether light, or even such that it does not deserve to be noted, so that there is only venial fault or even no fault.

Note. As has already been indicated above, one who does not expressly say that such a vice flourishes in some place, but on account of things heard in confession more vigorously attacks certain not unaccustomed vices, for instance drunkenness, lust, dishonest courtships, does not create a burden worthy of note, and therefore acts licitly.

Question 3. Whether one violates the sacramental seal who says that such a person confessed to him.

Response. Of itself, negatively. If, however, by a manifestation of this kind, for instance if the penitent came secretly, the confessor would introduce suspicion of grave sin, he would not only sin gravely, but also seems to violate the sacramental seal, insofar as only from the confession actually made did he know the fact of confession, and relying on that knowledge he signified the said fact to others, and by that very signification introduced suspicion of grave sin (St. Alphonsus, VI, 638). If in the case posited the confessor merely said that such a person had asked that he might make confession, he would violate a natural secret, but not the sacramental seal.

Question 4. Whether one violates the seal who says that such a person was absolved by him.

Response. Negatively, but let the confessor abstain from this, lest a burden be created for the penitent concerning whom he cannot testify to that fact.

In certificates of confession, only mention of confession should be made. But let him refer to the penitent a sacristan asking whether someone wishes to receive Communion (St. Alphonsus, VI, 639).

Question 5. Whether one violates the seal who denies a certificate of confession to an indisposed penitent.

Response 1. The affirmative answer must be given: 1. if it is denied to one asking for it outside confession; 2. if it is denied within confession in those circumstances in which it is customary to give it, or it is demanded by Superiors or by the pastor. The reason is that the denial, although it has place in confession, nevertheless produces an effect after confession, or creates a burden for the penitent (St. Alphonsus, VI, 639).

Response 2. The negative answer must be given if the certificate is sought outside the aforesaid cases; likewise, as is clear, if the confession was fictitiously made.

Objection 1, against response I. By denying the certificate the confessor says nothing, but only does not approve that confession by positive testimony, to which he is not bound.[1]

Response. It is the same whether the burden follows for the penitent from a positive act or from the omission of an act. If from omission, the confessor is bound to a positive act; just as, for example, he is bound to continue conversations with the penitent with whom he had previously been accustomed to converse, and cannot in the future abstain from them on account of the confession heard.

Objection 2. Nor does it stand in the way that St. Alphonsus objects that he is held to avoiding indirect revelation, which cannot be avoided when the certificate is denied. For by the same right it would have to be said that the seal is violated by one who denies absolution; for often, when the

penitent is seen to abstain from Holy Communion, for example in colleges, scarcely any other reason for his abstinence can occur to the mind of those looking on than absolution denied.[2]

Response. I deny the parity; since denial of absolution is not, as denial of a certificate is, the cause of the burden. The cause of the burden in the case of absolution denied is the defect of disposition in the penitent, which defect prevents him from receiving Holy Communion.

Question 6. Whether one violates the seal who from sins alone heard in confession takes occasion to ask who that penitent was.

Response 1. Affirmatively, as is clear, if from the question instituted suspicion is introduced against the penitent.

Response 2. With suspicion to be introduced excluded, it likewise seems that the affirmative answer must be given, because inquiry of this kind, relying on sacramental knowledge, seems to render confession odious.

[1] Thus some adversaries.

[2] Thus some adversaries.

439 II. The sacramental seal is not violated:

1. By one who remembers the sins accused; nor by one who prays for the penitent or acts more kindly toward him (St. Alphonsus, VI, 657).
2. By one who consults books and more learned persons, provided the danger that the penitent be recognized is absent.
3. By one who better fulfills the offices of his duty, for instance by questioning and instructing penitents more prudently, by watching over subjects more diligently; nevertheless let him proceed cautiously, lest the penitent be burdened or implicitly reproved (St. Thomas, in IV, dist. 21, q. 3, art. 1, sol. 1, ad 1; St. Alphonsus, cited place).
4. By one who in a sermon treats not unaccustomed matter, or more strongly turns hearers away from some not unaccustomed occasion (St. Alphonsus, VI, 654, doubt 1).
5. By one who praises the conscience of the penitent, provided an evil suspicion against others is not introduced (St. Alphonsus, VI, 638, 1).
6. By one who after absolution in the confessional speaks with the penitent about things heard in confession; nor by one who in confession speaks about those things which were declared in a previous confession (St. Alphonsus, VI, 652, 653).
7. By one who before others relates sins and so forth accused by the penitent, without naming the person and with danger of recognizing that person excluded (St. Alphonsus, VI, 638, 3). Here, however, carefully observe that a manner of acting of this kind, if it is done rashly, although the sacramental seal is not violated, is altogether to be disapproved, as follows from the Instruction of the Holy Office to the Ordinaries of places and Moderators of Religious institutes;[1] concerning this Instruction certain things must be noted. Moreover:

a) The praised Instruction, "so that even the appearance and suspicion of injury inflicted on the sacrament may be avoided, so that the pious ears of hearers may not be offended and mistrust against

the sacrament may not be stirred up," 1. disapproves the manner of acting of those "who, although all things which can in any way betray the person of the penitent have been kept back, do not fear rashly to speak, whether in private conversations or in public sermons to the people, as they say, for the edification of hearers, about things submitted in sacramental confession to the power of the keys"; 2. commands the Ordinaries of places and Superiors of Religious institutes, with their conscience gravely burdened, "that if they detect any abuses of this kind anywhere, they strive to restrain them promptly and efficaciously; and that in the future, both in theological schools and in conferences on cases of morals, as they call them, and in public and private addresses and exhortations to the clergy, they take care that the priests subject to them be diligently instructed never to dare, especially on the occasion of sacred Missions and Spiritual Exercises, to touch upon anything pertaining to the matter of sacramental confession, under whatever form and under whatever pretext, not even in passing, and neither directly nor indirectly, except in the case of necessary consultation to be proposed according to the rules handed down by approved authors, in their public or private discourses; and that in the examinations for their habilitation to receive confessions they be examined particularly on this matter"; 3. "trusts that none of the Confessors will contravene prescriptions of this kind; but if the contrary happens, let the aforesaid Ordinaries and Superiors gravely admonish transgressors, strike recidivists with fitting penalties, and in graver cases refer the matter as soon as possible to this Supreme Sacred Tribunal."

b) The Instruction certainly commands the Ordinaries of places and Superiors to remove abuses, if they exist. But it is disputed: 1. whether it imposes a true precept on confessors, or merely provides and inculcates a directive norm; 2. whether or not it had the force of law; 3. whether, if it had that force, it retained it. Namely, the aforesaid Instruction was never promulgated in the *Acta Apostolicae Sedis*; it lacks the approval of the Supreme Pontiff in specific form, indeed even in common form, which nevertheless according to the Constitution *Sapienti Consilio*[2] is required in order that Congregations may issue law. There is added that the Code did not retain the dispositions of the Instruction, nor does it refer to it in the sources, and that ecclesiastical Authority afterward was in no way accustomed to urge the said dispositions. These difficulties, although they can be weakened and partly solved, nevertheless bring it about that the Instruction can practically, at least as regards confessors, be held as a merely directive norm.

Note. As incapable of bearing testimony there are excluded "priests, as regards all those things which became known to them from sacramental confession, even if they have been released from the bond of the seal; indeed things heard by anyone and in any way on the occasion of confession cannot even be received as an indication of truth" (can. 1757, § 3, 2).

[1] June 19, 1915 (*Monitor Ecclesiasticus* 1917, p. 199).

[2] June 29, 1908.

Scholion. On the Penalties Established Against Transgressors

440 I. The confessor who has presumed to violate the sacramental seal directly (n. 428) is subject to excommunication reserved in the most special manner to the Apostolic See (can. 2369, § 1).

II. A confessor who has violated the sacramental seal "only indirectly" (n. 428) is liable to the penalties of which canon 2368, § 1, treats (cited canon), that is, he is to be suspended from the celebration of Mass and from hearing sacramental confessions, or even, according to the gravity of the

delict, is to be declared incapable of receiving them; he is to be deprived of all benefices, dignities, active and passive voice, and is to be declared incapable of all these things; and in graver cases he is also to be subjected to degradation.

III. Others who have rashly violated the sacramental seal are to be punished according to the gravity of guilt with a salutary penalty, which can even be excommunication (can. 2369, § 2).

§ II. On the Obligation of Repairing Defects Admitted in Confession

A defect committed in confession can regard either the validity, or the integrity of the confession, or another obligation.

441 I. A defect concerning validity is committed if the confessor does not absolve the penitent who is to be absolved, or does not absolve validly. Now a defect of this kind must of itself be repaired, and indeed from justice, because a tacit contract has intervened between confessor and penitent (St. Alphonsus, VI, 619). I said "of itself," for, considering the inconvenience often annexed to reparation, the obligation of repairing the defect is often lacking. For the rest, the obligation is more determined by these points:

1. If grave damage threatens the penitent, for instance if there is danger that he or she will die in the state of sin or remain in it for a long time, the confessor must repair the defect, and indeed with grave inconvenience: 1. if he committed it with grave fault; 2. if, although grave fault is absent, the confessor is a pastor, or the penitent is in grave danger of eternal damnation (St. Alphonsus, cited place).
2. If grave damage does not threaten the penitent, for instance if he or she has confessed again to another confessor, or is judged shortly to be going to confess; if, being at least attrite, which disposition can be presumed, he or she received the Holy Eucharist, the obligation of repairing the defect committed, and of admonishing the penitent about the invalidity of the prior confession, is had almost only insofar as there is an obligation of consulting for the integrity of the confession that will follow; in other words, the obligation of procuring that the penitent in the following confession subject again to the keys the sins of the prior confession. Of this obligation there will be discussion under II.

Corollary. If a penitent, not absolved or not validly absolved, returns to the same confessor, the latter is not bound to admonish him or her about the invalidity of the prior confession, provided that he consults for the integrity of the confession; to obtain this end it suffices to induce the penitent to accuse himself or herself collectively of the sins already confessed in the prior confession.

442 II. A defect concerning integrity must be repaired or supplied in this way:

1. If the confessor acted negatively, by not questioning when there was an obligation of questioning, he is not bound to supply the defect unless the penitent returns; in that case he is bound, because otherwise this new confession would not be integral (St. Alphonsus, VI, 620).
2. If the confessor positively induced the penitent to a defect of integrity, he is bound from justice to reparation, and indeed with grave inconvenience if he sinned gravely, with lesser inconvenience if he sinned lightly. If he did not sin, he is not bound, because admonition outside confession cannot be made without inconvenience (St. Alphonsus, cited place). I said above: he is bound from

justice, because by a lie he took from the penitent the liberty of confessing in such a way as to be immune from the burden of integrity.

443 III. A defect concerning an obligation distinct from the obligation of integrity is to be repaired or supplied in this way:

1. If the confessor acted negatively, one must distinguish:

a) If from the uncorrected defect no grave damage threatens either the penitent or a third party, he is not bound to supply the defect unless the penitent returns.

b) If from the uncorrected defect grave damage threatens either the penitent or a third party, for instance if he did not admonish the penitent concerning the obligation of avoiding an occasion or of making restitution, the confessor is bound from charity to correct the defect, if it can conveniently be done. A graver or lighter inconvenience excuses according as the defect was committed with grave or light fault or without fault (St. Alphonsus, VI, 621).

2. If the confessor positively induced an error, one must likewise distinguish:

a) If from the uncorrected defect no grave damage threatens either the penitent or a third party, for instance if the confessor undeservedly exempted the penitent from the obligation of fasting, he is indeed bound of himself to correct the defect, because he is bound to prevent the cause of violating the law from remaining. But in practice there will easily be an excusing reason, especially if the confessor was not gravely culpable (St. Alphonsus, cited place).

b) If from the defect grave damage threatens either the penitent or a third party, for instance if he undeservedly exempted the penitent from the obligation of avoiding an occasion or of making restitution, he is bound from justice to repair the defect, and indeed with grave inconvenience if he committed the defect with grave fault; otherwise with lesser inconvenience (St. Alphonsus, cited place).

Insofar as the confessor himself can be bound to restitution because of a defect committed, see vol. I, n. 1005.

Corollary. If the penitent has departed but is foreseen to be going to return in time, it suffices to wait and to repair the defect in confession. Outside this case the defect cannot be repaired without the penitent being admonished about it outside confession. Now admonition of this kind, as being of a nature to introduce shame, cannot be made without the license of the penitent, except in the case in which the confessor omitted absolution through forgetfulness; for manifestation of this omission brings in no burden (St. Alphonsus, VI, 622).

Section II. On the Ministration of the Sacrament of Penance to Certain Persons in Particular

(St. Alphonsus, *Praxis Confessarii*.)

Chapter I. On the Confession of Children

446 I. "With children he ought to use every charity and gentler ways, as far as can be done" (*Praxis*, n. 90); nevertheless the confessor, especially as regards girls, should always be mindful of due gravity.

II. Sometimes it must be seen whether they enjoy sufficient use of reason, although those who present themselves to the confessor can commonly be presumed sufficiently instructed.

III. Let the confessor take care that from the beginning they learn to confess rightly according to species and number. In questioning let him be cautious, lest the child learn to sin; besides this, let him correct an erroneous conscience when they take for a sin, or for a grave sin, what is no sin or only a light sin. Let the confessor strive especially for this: that he excite the child to true contrition. If some child is found prone to a more harmful sin, for instance to a shameful sin, let him take pains that the vice be eradicated in time (St. Alphonsus, *Praxis Confessarii*, nn. 90 and 91). Let the admonition be brief.

IV. As regards the sentence to be rendered, let the confessor follow this norm:

1. Those sufficiently certainly disposed are to be absolved, even if they have confessed only venial sins; since disposed children have a right to absolution just as adults do. Besides this, let him not easily defer absolution for a relapsing child sufficiently certainly disposed, lest, namely, the child be turned away from the sacrament or keep back sins.

2. Those doubtfully disposed are to be absolved under condition: 1. if they have certainly sinned gravely, they are to be absolved in the cases enumerated in n. 404; 2. in doubt whether they are guilty of grave sin, they are always to be absolved, whether the doubt proceeds from the matter of the sin, or from doubt about the full use of reason, or from suspicion of an erroneous conscience by which what is not grave is taken as grave; 3. if either they have sinned only venially, or it is doubted whether any sin was present, sometimes they are to be absolved (St. Alphonsus, *Praxis Confessarii*, n. 91; VI, 432). If they are dismissed with only a blessing, this should be signified to them.

Corollary I. Even to children there must be left the faculty of confessing to whomever they prefer; hence one who would establish that children should confess only to him who taught them Christian doctrine, or that girls should confess to the pastor and boys to the vicar, is especially to be reprehended.

Corollary II. A recent question was moved whether boys and girls before the years of puberty can sin gravely. Moreover, the affirmative answer must altogether be given. For first, the decree *Quam singulari*, issued by Pius X through the Sacred Congregation of the Sacraments,[2] declares that children around the seventh year of age are bound by the precept of annual confession. But it would not declare these things unless it judged that children from that age are capable of mortal sin, because only those who have committed mortal sin are in fact bound to confession. There is added that the decree, with the Council of Trent, on one side teaches that children are held by the obligation of Communion "when by sinning they can lose grace"; in other words, when they can sin gravely; on the other side it declares that they are bound by the said obligation around the seventh year. Therefore, according to the mind of the one issuing the decree, grace can be lost at that age; in other words, grave sin can be committed. In addition, the decree disapproves delay of Communion for this reason, that it exposes children to the danger of losing their first innocence; this demonstrates that they are held as capable of grave sin. Finally, the whole manner of acting of children before the years of puberty shows sufficiently that they are capable of fully deliberate acts and therefore also of gravely sinful acts.

[1] Cf. Reuter, *Neoconfessarius*; Berger, *Pastoraltheologie*; Gaume, *Manuel des confesseurs*; Aertnys, *Theologia Pastoralis*; Krieg, *Wissenschaft der Seelenleitung*; Schuch-Polz, *Pastoraltheologie*.

[2] August 8, 1910.

Chapter II. On the Confession of the Rude, the Slow, and the Semi-Feeble

447 I. **The confession of the rude and the slow.** Insofar as and in what manner they are to be instructed if perhaps they are ignorant of the things to be known by necessity of means and of precept, this has been said in n. 396. For the rest, in accusation and in eliciting contrition they must often be helped by the confessor. If they have omitted a diligent examination of conscience, they should not be dismissed so that they may search their conscience better.

Note. The things that have been said about the rude and the slow are also to be applied to deaf-mutes who are little instructed; for the rest, compare the things said in n. 396.

448 II. **The confession of the semi-feeble.**

1. If with sufficient certainty they are only semi-feeble, and therefore capable of moral acts, they can rather often be admitted to the sacraments, for instance every month, provided however that here and now they are judged to have posited the acts required for penance. If it is somewhat probable that they are capable of mortal sin and guilty of it, the necessity of absolving them is to be urged still more.
2. If it is doubted whether they are capable of moral acts, they are to be absolved under condition: 1. in danger of death; 2. at Easter; 3. several times in the year, especially if there is some fear that perhaps they have sinned gravely (St. Alphonsus, VI, 432).

Chapter III. On the Confession of Habituated Persons

449 I. **Notion of the habituated person.** A habituated or customary person is one who has contracted a habit of some sin. Moreover, a habit of sin is a quality stable of itself by which someone is disposed to sin (vol. I, n. 333). Furthermore:

1. A habit of sin is obtained by frequency of acts. Nevertheless, frequency by itself alone does not suffice; rather it is required that contrary acts not be opposed to the sinful acts leading to the habit, by which contrary acts the origin of the habit would be prevented (vol. I, n. 341). Hence those who commit sins which of themselves arise rather from frailty or from a passing passion do not contract a habit of sin so easily as those who perpetrate sins which of themselves proceed more from malice. The reason is that the former, after the sin has been committed, more easily come to their senses and exercise contrary acts. Sins of the former kind are, for example, pollution and blasphemies; of the latter kind are hatred, theft, conjugal onanism, transgressions of the precepts of the Church, and so forth.
2. The habituated person has the will in some way fixed in sin, and therefore sins from a bad will, that is, from a will constantly inclined to evil, and therefore promptly and even from slight concupiscence, and as though without an effort of resisting; whence he comes to his senses with difficulty. "When someone," says St. Thomas, "sins from habit, which is to sin from malice, then the will tends by itself into the act of sin, as though now totally inclined from habit by way of a

natural inclination into the act of sin" (*De malo*, q. 3, a. 13; cf. I-II, q. 78, aa. 2, 3, and 4; II-II, q. 156, a. 3; St. Alphonsus, V, 4, 2, 3; VI, 459; *Praxis Confessarii*, nn. 70, 73).

3. It cannot be accurately defined what frequency of acts, and how much time, is required for someone to be able to be judged to have contracted a habit of sin.

a) As regards frequency of acts, a greater number of sins committed through a certain time is required if the discussion concerns internal sins, to which sins of the mouth are equated, than if the discussion concerns external sins; greater, if it concerns solitary external sins than if mutual ones are concerned. The reason for the distinction is that a habit is formed the more easily, the greater the deliberation that preceded, as is usually the case in external acts, especially in mutual ones; and the more intense the deliberate acts are, as likewise customarily happens in external acts, especially in mutual ones. Hence a lesser frequency is required in these.

b) As regards time, this likewise depends on the intensity of the acts; likewise on the manner of acting more or less uniformly. Hence, for example, you would more easily call habituated one who through a notable time pollutes himself every week than one who sins frequently in one or another week and in other weeks resists temptation.

Corollary. "One who, for example, fornicated once a month for a year can well be called habituated here" (St. Alphonsus, *Praxis Confessarii*, n. 70); likewise one who for a year once a month has given himself to drunkenness; likewise one who through a notable time either commits pollution once a week, or two or three times a week indulges in morose delectations (St. Alphonsus, cited place).

[1] Cf. Cardinal van Rossum, *Commentarius de iudicio sacramentali Ioan. B. Pighi ad trutinam vocatus*; Berardi, *De recidivis et occasionariis*; Ter Haar, *De occasionariis et recidivis*.

450 II. **Division of habituated persons.** For our purpose, habituated persons are divided into habituated persons who are not relapsers and habituated persons who are relapsers.

1. By us a habituated person who is not a relapser is understood as one who either has not yet confessed after the habit was contracted, or indeed has confessed but was not seriously admonished by the confessor (St. Alphonsus, VI, 459).

2. A habituated relapser is a habituated person who, having confessed and having been admonished by the confessor, has continued the custom of sin in the same manner. Thus theoretically (St. Alphonsus, VI, 459; *Praxis Confessarii*, n. 71; *Selva*, II, Instruction 4, n. 17). Practically, a habituated relapser is a habituated person who, notwithstanding confession and admonition by the confessor,[1] has relapsed: 1. quickly (St. Alphonsus, V, 505); 2. frequently (St. Alphonsus, VI, 459); 3. in almost the same circumstances as before, not on account of singular circumstances; 4. with no assigned remedy having been used and with no effort or quasi-effort or resistance (St. Alphonsus, VI, 459, 505).

[1] The assignment of means for amending oneself also pertains to admonition.

451 III. **Absolution of the habituated person.**

1. A habituated person who is not a relapser, even if he furnishes only ordinary signs of disposition, can be held as sufficiently disposed and absolved. The ordinary signs are the confession itself and the assertion of the penitent (n. 399). The proposition is clear from the fact that a multitude of sins of itself does not constitute a reason for seriously doubting the sincerity of the penitent who,

whether explicitly or implicitly, namely by the very accusation of himself in order to obtain absolution, asserts his sorrow for sins (St. Alphonsus, VI, 459; *Praxis Confessarii*, n. 70).

Corollary. A habituated person who has confessed and relapsed after confession can not rarely be absolved, even if he furnishes only an ordinary sign of disposition, because, if some one of the conditions indicated in n. 459 is lacking, he is often not a relapser in the strict sense.

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2. A habituated relapser who brings only ordinary signs of disposition, and, although admonished by the confessor, continues to furnish only ordinary signs:

a) **Cannot be absolved as often as he comes.** For first, the Sacred Congregation of Propaganda Fide, in the Instruction of April 29, 1784, declares that before the confessor grants absolution, it must be seen whether penitents "have used the remedies previously proposed to them, by whose help they may avoid sin in necessary and involuntary occasions; whether they have cast off the custom of sinning; whether, if at other times they have obtained the benefit of absolution, they have again relapsed from their own malice into the same crimes and have wallowed in the same mire." But these things clearly signify that, according to the mind of the Congregation, a habituated relapser who brings only ordinary signs of disposition cannot be absolved as often as he comes.

Next, as we shall say immediately, a habituated relapser who brings only ordinary signs of disposition cannot of himself be absolved even the first time, namely on account of his doubtful disposition. How much more do these things hold concerning a habituated relapser who is a relapser again and again; indeed a relapser of this kind, if he brings nothing except an ordinary sign of disposition, seems to be judged not only doubtfully disposed, but much more probably indisposed (St. Alphonsus, VI, 459, 505).

There is added experience, which teaches that "many relapsers who furnish only ordinary signs are not disposed, or at least are very doubtfully disposed."

"And truly so; for whoever has some practice of the sacred tribunal will confess that very many come to the sacrament of Penance not sufficiently disposed and not truly contrite, especially among those who in the same way continually relapse into a habit of sinning. Some are not sufficiently instructed in religious matters and are little taught concerning the necessity or conditions of true contrition which, according to Trent, are required for penance. They are so accustomed to external signs of religion that they even hold confession as a certain external ceremony, and are content provided that they obtain absolution. Others take some slight displeasure, or some feeble wish of amending themselves, as sufficient sorrow and purpose. Others approach the sacraments rather from a certain domestic usage or ancestral custom or from a certain human respect, although without an evil design, without seriously turning their mind to correcting morals. Others are so light in mind that they scarcely think of eliciting a true act of sorrow; or, with mind rather distracted, they recite from memory or read from a book a simple formula of contrition, without serious consideration and an internal act of detestation arising from a supernatural motive. Preachers and missionaries who give to the people a series of instructions on contrition and purpose can commonly testify to these defects of true disposition; and they find them not only among the illiterate, but also among more cultivated persons who not rarely are little instructed in the matter of religion. Indeed in our age these defects are often to be feared so much the more, inasmuch as the spirit of this world, which bears before

itself indifference and levity in supernatural matters but the greatest industry in earthly goods, has also bespattered with its stains quite a number of Catholics who have not yet abandoned the use of the sacraments. Come now, these generally, when asked by the confessor whether they truly grieve for their sins, give an affirmative response, and this not with a feigned but, as they think, sincere mind, and therefore they furnish an ordinary sign of disposition; and nevertheless before God they are not truly contrite."[1]

Ter Haar confirms this sad experience by these testimonies.[2]

Leo XII: "Many present themselves to the ministers of the sacrament of Penance altogether unprepared."[3]

The Roman Catechism: "Charity has so grown cold that already very many of the faithful think that no intimate sorrow of soul and groaning of heart is necessary for obtaining pardon of sins, but judge that it is enough if they have only the appearance of one grieving."[4]

Segneri says: "How many there are who, through defect of purpose, make confessions invalid and often even sacrilegious! It is not one or another, but whole generations of men and women, nobles and commoners, who say: I have always confessed the evil that I did; for so many years indeed I have lived in this depraved practice, but I have always accused it. They believe themselves clean, but they are not, because they confessed without true purpose... It is indeed easy to throw oneself at the feet of the confessor, strike the breast, and say: I repent. But the chief point of the matter is to see whether you have the purpose of changing life."[5]

The Directory for the spiritual exercises of St. Ignatius, edited by the Superior General of the Society of Jesus, Claudio Aquaviva, declares concerning the usefulness of general confession: "If there were no other usefulness, this surely ought to be enough, that we experience that men commonly approach confession either without sufficient examination, or without due sorrow, with no purpose of a better life or with a very weak one."[6]

As regards the doctrine of theologians we note:[7] the ancient theologians almost commonly teach that a formal relapser who furnishes only an ordinary sign can in no way be absolved as often as he comes. Ter Haar proves this proposition by the very testimonies of the ancient theologians.[8] Thus, to name some, St. Thomas of Villanova, St. Charles Borromeo, St. Bellarmine, St. Francis de Sales, Venerable Louis of Granada, St. Leonard of Port Maurice, Paul Segneri, Lessius, and De Lugo, whose testimonies you may see in Ter Haar.[9]

[1] Ter Haar, *De occasionariis et recidivis*, n. 264.

[2] Ter Haar, cited work, n. 265.

[3] Constitution *Charitate Dei*, December 25, 1825.

[4] *De Poenitentia*, n. 67.

[5] *Penitenza istruita*, chapter 8.

[6] Chapter 16.

[7] St. Thomas has these things: "Many things are expedient for the spiritual health of one relapsing ... namely, that greater caution be used concerning him" (IV Sent., dist. 32, a. 1, a. 4).

[8] Ter Haar, cited work, n. 295 sq.

[9] Ter Haar, cited place.

453 b) A habituated relapser who brings only ordinary signs of disposition, and, although admonished by the confessor, continues to furnish only ordinary signs, of himself cannot be absolved even the first time. This is first drawn from the Instruction of the Sacred Congregation of Propaganda Fide cited above, which sufficiently manifests that according to the mind of the Sacred Congregation, ordinary signs of disposition do not suffice even the first time if the matter concerns a habituated relapser.

Next, one who is doubtfully disposed cannot of himself be absolved (n. 398). But the penitent of whom we speak must be held as doubtfully disposed.

The minor is proved. Since the same signs of disposition are supposed to be at hand, no greater certitude can be had about the present disposition than is had about the disposition had in the past confession; indeed, on account of the continued and confirmed habit, rather less certitude must be had about the present disposition. But it is rightly doubted whether the penitent was well disposed in the past confession.

The subsumed minor is proved. If right disposition in the past confession were admitted, we would posit a penitent who had had contrition estimatively supreme and a universal, firm, and efficacious purpose, and besides this had been fortified by the grace of the sacrament; and notwithstanding all these things, he would have relapsed quickly, frequently, in the same morally considered circumstances, with no means assigned by the confessor having been used and with no effort or resistance, into the same sins. This indeed can happen, but nevertheless it is deservedly doubted whether it had place (St. Alphonsus, VI, 459, 505; *Praxis Confessarii*, n. 20). Indeed, as we have said, less certitude concerning the present than concerning the earlier disposition must be had, because the habit and culpability have increased since the prior confession, and so true aversion from sin has become more difficult.

As regards the doctrine of theologians, we note that very many support the doctrine of St. Alphonsus, as for example St. Thomas of Villanova, St. Francis de Sales, Segneri, Benedict XIII, Archbishop of Benevento, etc., whose testimonies Ter Haar brings forward.[1]

Objection 1. Theologians earlier than St. Alphonsus commonly teach the contrary.

Response. By referring to those things which we noted above concerning the doctrine of theologians.

Objection 2. The penitent is to be believed, whether speaking for himself or against himself.

Response. The principle stated certainly cannot be admitted without limitation, as is clear from proposition 60 condemned by Innocent XI: "To a penitent having a custom of sinning against the law of God, of nature, or of the Church, even if no hope of amendment appears, absolution is neither to be denied nor deferred, provided that with his mouth he says that he is sorry and proposes amendment." Besides this, the principle holds more for integrity than for the disposition of the penitent, since the penitent can err more easily as regards the latter. Finally, the principle can be urged less when, as in our hypothesis, there is deserved doubt about the truth of the past testimony. Nor nevertheless should the penitent for that reason be called guilty of lying; since commonly he deceived himself.

Objection 3. To return with the same sins is not of itself a sign either that true sorrow and purpose of amendment was lacking or that it is lacking; certainly not more than if he returned with other sins. Rather, it is only a sign of human frailty.

Response. The discussion concerns a habituated person, and such a one as not only returns with the same sins, but, after being admonished, has relapsed quickly, with no means assigned by the confessor having been used and with no effort or resistance having been furnished. In this case we do not contend that there is a certain sign that sorrow was lacking, but that there is a reason for seriously doubting whether right disposition was present, and still more whether it is present.

Instance. "That someone," says St. Thomas, "afterwards, that is, after penance, sins either in act or in purpose, does not exclude that the first penance was true, for the truth of a prior act is never excluded through a contrary subsequent act; for just as one truly ran who afterwards sits, so one truly repented who afterwards sins" (III, q. 84, a. 10, ad 4).

Response with Billuart:[2] "His words, that is, St. Thomas's, are not to the point. For there the Holy Doctor means that a following sin does not exclude preceding penance, supposing that it was true; because, he says, the truth of a prior act is not excluded through a contrary subsequent act. Hence, just as he truly ran who afterwards sits, so he truly repented, if he truly repented, who afterwards sins; for what has been done cannot become undone. All admit this. But the Holy Doctor does not deny that frequent following relapses are indications that the prior penance was not true," or at least that it is to be doubted.

I said that a habituated relapser who brings only ordinary signs of disposition cannot of himself be absolved; since, although he is doubtfully disposed, nevertheless he can be absolved under condition if some one of the causes assigned in n. 404 is present.

[1] Ter Haar, cited work, n. 295 sq.

[2] *Tractatus de Sacramento Poenitentiae*, dissertation 6, article 10.

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3. If a habituated relapser either of himself, or after being admonished by the confessor, furnishes an extraordinary sign of disposition, he can be held as sufficiently certainly disposed, and therefore can be absolved by the confessor as judge, though not always as physician (St. Alphonsus, VI, 459). It is said:

a) **Either of himself, or after being admonished by the confessor.** Namely, let the confessor admonish the doubtfully disposed penitent paternally and try to elicit an extraordinary sign of disposition by which the prejudice against his disposition is removed (n. 401).

b) **An extraordinary sign of disposition;** what the extraordinary signs of disposition are, see n. 400.

c) **He can be absolved by the confessor as judge, though not always as physician.** Namely, generally let him be absolved at once if he is a relapser from internal frailty; otherwise, if from an occasion, especially a continuous one (St. Alphonsus, VI, 456, 450, 463, 464; *Praxis Confessarii*, nn. 76, 77). I said:

a) **Generally let him be absolved at once if he is a relapser from internal frailty;** because sometimes delay is expedient or even necessary for strengthening the will, as if remedies have long been used in vain.

b) **Otherwise, if from an occasion, especially a continuous one;** in this case delay of absolution should be used, unless there is a special reason for granting absolution at once. What the special reasons are, see n. 407.

Note. If a habituated relapser in venial sins occurs, let the confessor take care either to elicit an extraordinary sign of contrition, or to "dispose the penitent to grieve especially over some light fault from which he has greater horror, or to suggest to him that he confess some graver sin of past life against some precept, for it suffices that he confess in general without number, so that he may have certain matter on which absolution can rest" (St. Alphonsus, *Praxis Confessarii*, n. 71).

Scholion. On the Confession of Those Given to Pollution or Onanism

Cf. our little work: *De virtute castitatis et vitiis oppositis*, nn. 138 sq., 114 sq.

Chapter IV. On the Confession of Those in Occasions of Sin

Article I. On Those in Occasions in General

455 I. **Notion of occasion.** An occasion is a person or external thing which creates for a person a danger of sinning.

456 II. **Division of occasion.**

1. Occasion is distinguished into remote and proximate. Remote is that which creates a light danger; proximate is that which creates a grave danger, that is, such a danger in which someone is certainly, more probably, or probably going to fall. Such are, for example, a tavern for a drunkard, a master for a maidservant seduced by him. For the rest, the presence of a proximate occasion can be gathered both *a priori* and *a posteriori*. It is gathered *a priori* when, considering the enticement of the object and the disposition of the subject, it is at least probable that someone is going to fall. It is gathered *a posteriori* through experience or frequency of falls, namely if someone in a certain occasion, considering the times in which he was exposed to the occasion, has fallen so frequently that it is probable that, with the occasion present, he is going to fall again (St. Alphonsus, VI, 452).

Many call a proximate occasion that in which someone is certainly, or almost certainly, or very probably going to fall. Hence, in order to gather from experience whether an occasion is proximate, they require that someone always, or almost always, or altogether more frequently, has sinned in it. But that the definition of St. Alphonsus handed down by us is right will be clear from what is to be said, since an occasion is already rightly called proximate when there is of itself an obligation of avoiding it physically. But, as we shall prove, there is of itself an obligation of avoiding even that occasion in which someone is only probably going to fall.

2. Proximate occasion is subdivided into:

a) Absolute and relative, according as it creates a danger for people commonly or for a certain person.

b) Continuous and interrupted, according as it occurs habitually or at intervals.

c) Voluntary and necessary. Voluntary is that which can be avoided without grave inconvenience. Necessary is that which either physically cannot be avoided or cannot be avoided without grave

inconvenience. But in order that an occasion can be called necessary, an inconvenience is required the graver in proportion as the danger of damnation, the danger of sinning, the sin to be feared, and the scandal to arise from the occasion are greater. Wherefore note two condemned propositions, namely proposition 62 proscribed by Innocent XI: "A proximate occasion of sinning is not to be fled when some useful or honest cause for not fleeing occurs";[2] and proposition 41 condemned by Alexander VII: "A concubinary is not to be obliged to cast out the concubine if she would be too useful for the pleasure of the concubinary, commonly *regalo*, since, with her lacking, he would live life too bitterly, and other banquets would affect the concubinary with great weariness, and another female servant would be too difficult to find."[3] Therefore an occasion should not easily be held as necessary. In addition note that the difficulty of renouncing the occasion is commonly exaggerated by penitents (St. Alphonsus, 452, 454).

[1] Cf. Ter Haar, *De occasionariis et recidivis*.

[2] Denzinger-Bannwart, n. 1212.

[3] Denzinger-Bannwart, n. 1141.

457 III. **Obligation of avoiding occasions.** First it must be noted that an occasion of sinning can be avoided physically or morally: physically, that is, by removing or abandoning it; morally, that is, by bringing it about in another way that the danger of sinning ceases to persist. Next it must be observed that we are speaking expressly of occasions of sinning gravely. Now:

1. There is no obligation of avoiding remote occasions of sinning gravely. The reason is that such an obligation would bring with it an intolerable burden to be borne through one's whole life and continual anxieties; for occasions of this kind continually occur to a person. But it cannot be admitted that a burden of this kind has been imposed on people. Some indeed think that of itself there is a venial obligation; but the argument seems also to exclude that obligation.

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2. As regards proximate occasions of sinning gravely, these things hold:

a) There is a grave obligation of physically avoiding a voluntary proximate occasion of sinning gravely. The proposition thus stated now seems commonly to be admitted, and it is deduced from proposition 61 condemned by Innocent XI: "One who is in a proximate occasion of sinning, which he can and does not will to omit, indeed directly and deliberately seeks or thrusts himself into it, can sometimes be absolved." Now the words of omitting, seeking, and thrusting oneself into it seem altogether to have to be understood of physical avoidance. Next, the proposition stated is proved by the same argument by which the proposition now to be stated is proved.

459 b) There is a grave obligation of physically avoiding a voluntary proximate occasion, as it has been defined by us; in other words, there is a grave obligation of physically avoiding also that voluntary occasion in which someone is only probably going to fall. For each person is held to avoid a danger, here and now grave, of sinning formally; or to proceed here and now in such a way that he is not probably going to sin gravely. But one who does not physically avoid a voluntary occasion in which he is probably going to fall does not avoid a danger, here and now grave, of sinning formally.

The major is clear from the fact that one who does not avoid a danger, here and now grave, of sinning formally does not truly and simply turn away from the formal offense of God, nor truly and simply turn away from his own supreme evil.

The minor is proved thus: one who does not physically avoid a voluntary occasion in which he is probably going to fall cannot avoid a danger, here and now grave, of sinning formally, except through the help of God, by which the danger here and now ceases to be grave. But one who does not physically avoid a voluntary occasion, that is, an occasion which he can easily avoid, cannot without rashness expect the help of God.

The subsumed minor is proved. The help of God, as gratuitous, cannot legitimately be expected except insofar as it is necessary. But it is in no way necessary where the occasion is voluntary, because this can easily be physically avoided; and once it has been avoided, help for resisting it is no longer required (St. Alphonsus, V, 63; VI, 452). These words of the Council of Trent are added: God does not command impossibilities, but by commanding admonishes both to do what you can and to ask for what you cannot, and he helps so that you can.[1] Likewise these words of St. Thomas: "Tempting God consists in this, when a man omits to do what he can for escaping dangers, looking only to divine help" (II-II, q. 97, a. 1).

Nor should you object that divine help can be expected, provided it is asked for. For the said help can be expected by one asking only when it is necessary. Indeed, a petition of this kind is not even honest, and therefore it can exercise no influence upon God: the petition of departing from the occasion is honest; the petition of conquering while you remain in the occasion is dishonest.

As regards the doctrine of theologians, I note that most earlier theologians of greater note adhere to the opinion defended, as Ter Haar proves by the testimonies brought forward.[2] St. Thomas has these things: "The weak in faith, whose subversion can probably be feared, are to be prohibited from association with unbelievers" (II-II, q. 10, a. 9). St. Alphonsus strenuously defends the same opinion in the places cited, and very many, even those who wrote after St. Alphonsus, defend it, as the praised Ter Haar again shows.[3]

Corollary. The genuine definition of proximate occasion is this: it is an occasion in which someone is at least probably going to fall. For a proximate occasion is that which there is of itself an obligation of avoiding physically. But from what has been said it follows that there is of itself an obligation of physically avoiding an occasion in which someone is at least probably going to fall.

Objection 1. It does not appear why he truly sins gravely who has an altogether notable probability that in this occasion which he approaches he is not going to sin gravely; for he does not choose a thing which by moral necessity brings sin with it.

Response. It suffices, as follows from the argument brought forward, that someone choose a thing such that, once it is posited, he will probably commit sin.

Objection 2. If from the nature of things or from experience it is clear that probably the sin will be avoided, this is a sign that the danger can be avoided with those ordinary helps of grace which can prudently be expected and asked by any person.

Response. I deny the consequent, since the divine help of which there is discussion cannot prudently be expected and asked in the hypothesis posited, because it is not necessary, as we have said.

Objection 3. Because by hypothesis it is also probable that sin will not follow, one who for a reasonable cause commits himself to such an occasion cannot be accused of rashness and said to will sin.

Response. I deny the consequent, since one who without grave cause exposes himself to a grave danger of a grave evil is deservedly accused of rashness. But since in the hypothesis posited it is also probable that sin will follow, the matter concerns a grave danger of a grave evil, that is, of sinning mortally.

Objection 4. In several texts of authors alleged by Berardi and Ter Haar in their favor, the question is only of probable danger, and it is not established that the authors did not understand a probability to which nothing is opposed, and which therefore would be equivalent to moral certitude.

Response. An interpretation of this kind does not agree with the customary meaning of the words.

Note. If someone without cause enters into a danger, but uses such means as remove the very impulse to sin, he is not to be said to expose himself rashly to danger; rather the danger is now not present. For example, if someone always steals when he is alone in some house, he can go there if people are present.

[1] Session 6, chapter 11.

[2] Ter Haar, cited work, nn. 53-55; nn. 63, 64.

[3] Ter Haar, cited work, n. 65.

460 c) There is no obligation of physically avoiding a necessary proximate occasion. For one who for a grave reason exposes himself to a grave danger cannot be accused of rashness, and therefore can rightly hope that, with means having been used, he will acquire divine help by which the proximate occasion ceases to be such. "And thus surgeons are excused if they expose themselves to danger in treating women, when sometimes in the past they have already fallen because of such an occasion. And thus pastors who have experienced the same misery in receiving confessions. Thus also others are excused who cannot abandon their own office, for instance that of clerk, soldier, tavern-keeper, or merchant, without grave detriment" (St. Alphonsus, V, 63; VI, 455). The same must be said of those for whom, on account of a vehement inclination to evil, innumerable things are proximate occasions. They are indeed held to use means of not sinning, but they are not held to avoid all those things; this would be a very grave burden, and by itself alone already excuses.

461 **Question 1.** Whether one is bound, even with very grave damage, to abandon the occasion if he continually neglects to use remedies, and therefore continually relapses.

Response. The affirmative answer seems altogether to be given; for each person is held to avoid a danger, here and now grave, of sinning formally, or is held here and now to proceed in such a way that he is not probably going to sin gravely (St. Alphonsus, VI, 457). But the person of whom we speak is probably, not to say almost certainly, going to sin formally unless he abandons the occasion. Therefore he is bound to abandon it.

The minor is drawn from the fact that one who has continually neglected the remedies to be used will probably, not to say almost certainly, neglect them again, and therefore will probably sin again.

Objection. The penitent is bound only either to use the means or to avoid the occasion. Therefore the confessor cannot impose on him the obligation of avoiding the occasion.

Response. In the case the penitent is held to choose the means of avoiding the occasion, because he probably, indeed almost certainly, is not going to use the other means. Nor does the confessor impose

that obligation on him, but the law of nature does. But let the confessor teach the penitent the obligation; nor of itself should he abstain from admonition for this reason, that the penitent who neglects the means will not use the more difficult means of abandoning the occasion. For, as Ter Haar observes, "often it is easier for a rightly disposed penitent to posit one very difficult and quasi-heroic act, namely to break off a morally necessary occasion, than afterward, when fervor has diminished and temptation has increased, through a long time, perhaps through months and years, daily to use those remedies of vigilance and prayer with constant struggle against his own passions and the snares of enticements."[1]

Question 2. Whether one is bound, even with very grave damage, to abandon the occasion if, although he uses remedies, he nevertheless always relapses in the same way.

Response. The case will not easily occur, because a penitent who diligently uses the means will commonly be amended little by little. But if it occurs, the affirmative answer must be given, because, as we have just said, each person is held to avoid a danger, here and now grave, of sinning formally. But the one of whom we speak is probably, not to say almost certainly, going to sin formally unless he abandons the occasion. There is added that, at least in the hypothesis posited, these words of Christ urge: "If your eye scandalizes you, pluck it out and cast it from you: it is good for you to enter into life with one eye, rather than having two eyes to be cast into the hell of fire."[2] (St. Alphonsus, VI, 457). Finally, in the work of Pellizzari *De Monialibus*, the Sacred Congregation of the Index willed the contrary opinion to be suppressed by decree of April 21, 1693.

[1] Ter Haar, *De occasionariis et recidivis*, n. 176.

[2] Matthew 18:9.

462 IV. **Absolution of those in occasions.** As regards the absolution of those in occasions, these things especially come to be noted:

1. One who is in a proximate, voluntary, and continuous occasion to which he is strongly attached should not be absolved before he has physically or quasi-physically[1] abandoned the occasion, unless there is a special reason for granting absolution at once. This is deduced first from the fact that "such a penitent is indisposed for absolution if he asks for it before he removes the occasion" (St. Alphonsus, *Praxis Confessarii*, n. 66). Moreover, he is indisposed because he exposes himself to a grave danger of breaking his purpose, that is, of not removing the proximate occasion. St. Alphonsus explains this in this way: "Removal of the occasion is a greatly arduous thing, and does not happen unless one inflicts great force on himself, so that he may be torn away from that occasion to which, because of the past adhesion of his mind, he remains strongly inclined. And therefore, if the occasion is not removed before absolution, the penitent will easily deceive himself after absolution, falsely persuading himself that he will resist temptations; and thus, with the occasion not dismissed, he will certainly return to his vomit" (VI, 454; III, 436). But if the penitent does not notice the danger, of itself he must be admonished by the confessor; and once admonished he becomes indisposed if nevertheless he wills to receive absolution immediately. There is added that the confessor as physician is of himself held to use a means without which the penitent is exposed to grave danger of breaking his purpose (St. Alphonsus, cited place). Finally, theologians by far more commonly admit the proposition stated. Thus, for example, St. Charles Borromeo, St. Thomas of Villanova, St. Francis Xavier, St. Leonard of Port Maurice, Venerable Paul Segneri, Lehmkuhl, Bucceroni, Prummer, and others, whose testimonies Ter Haar brings forward.[2]

What the special reasons are for departing from the rule, or granting absolution at once, see n. 407.

Objection 1. The opinion of St. Alphonsus rests on a doubtful foundation, namely that he sins gravely who exposes himself only to probable sin.

Response. By referring to the proof of that doctrine and the refutation of those things which are opposed to it (n. 468).

Objection 2. The earlier theologians only counsel, and do not prescribe, the opinion which St. Alphonsus defends.

Response. An interpretation of this kind is opposed to the obvious and clear sense of the testimonies of which there was discussion above.

[1] For instance, if the matter concerns a maidservant, by renouncing service, even if she does not depart immediately.

[2] Ter Haar, cited work, n. 117 sq.

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2. One who is in a proximate, voluntary, and continuous occasion should not be absolved before he has used the assigned means, unless there is a special reason for granting absolution at once. The reason is that, considering the very great blandishments of the present occasion and the danger arising from it of neglecting the assigned means, the will of the penitent must be sustained by the remedy of delay. "For I judge," says St. Alphonsus, "that the confessor as physician is bound to apply to his penitent the more opportune remedies, so that he may work his salvation; and I think that no more apt antidote can be administered to one who is in a proximate occasion than delay of absolution. For experience teaches that penitents, after they depart absolved, for the most part neglect to use the prescribed means, and thus they relapse most easily. On the contrary, when absolution is denied to them, they strive more vigilantly to carry out the remedies and to resist temptations, moved indeed by fear lest, when they return to the confessor, they again be dismissed without absolution" (VI, 456). What the special reasons are for departing from the rule or granting absolution at once, see n. 407.

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3. One who approaches a proximate, voluntary, and interrupted occasion, and returns twice or three times after being absolved without any amendment:

a) If he shows only ordinary signs of disposition, of himself he cannot be absolved; for since he has already several times not avoided the occasion, although he could easily have avoided it, there is deserved doubt about the disposition. He can be absolved under condition if some one of the causes assigned in n. 404 is present.

b) If either of himself or after being admonished by the confessor he shows an extraordinary sign of disposition, he can be held as sufficiently disposed and absolved (St. Alphonsus, VI, 454; *Praxis Confessarii*, n. 66).

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4. One in an occasion who is a habituated relapser is to be treated according as was set forth in nn. 461-463, where we spoke about habituated relapsers (St. Alphonsus, VI, 455, 456).

Corollary. Let the confessor not omit to assign to the penitent who is in or approaches a necessary proximate occasion remedies for not sinning; these are:

1. To diminish the force of the occasion. Not rarely a few words said with strong spirit, a serious threat or reproach, an opening of the mouth to cry out, or reporting the matter to someone who can apply a remedy, suffice so that the perfidious insidiator is cast down in spirit and ceases from every annoyance. Then he ought to avoid being alone with a lone person, flee all familiarity, and as far as can be done even the sight of the accomplice, not speak about him or her, not think about him or her, and similar things. In addition, if the occasion is not presently existing, he ought, insofar as can be done, to shorten his stay in it and quickly finish the necessary business.
2. To diminish the force of passion by furnishing no encouragement to it through idleness, liberty of the senses, depraved thoughts, depraved reading, intemperance, and so forth; likewise by subjecting it through labor, fasts, and other mortifications, if possible.
3. To increase spiritual strength by prayer, frequenting of the sacraments, and meditation on eternal truths. Daily, especially in the morning, let him renew the purpose of sinning no more, more profitably before a Crucifix. If the occasion is not presently existing, let him always renew the same purpose before he approaches it.[1]

[1] Berardi, nn. 79-83; Aertnys-Damen, II, n. 478.

Article II. On Some Occasions in Species

§ I. On Concubinage

One must distinguish between concubinaries who are in ordinary circumstances and those who are in danger of death.

466 I. **Concubinaries living in ordinary circumstances.**

1. If the concubinage is public, it must be removed either by marriage or by separation; but commonly not through means by which the occasion would become remote, because in that way the danger and scandal can scarcely be removed. If that is permitted in a very rare case, let the scandal, insofar as can be done, be removed by making public the absolute necessity of the occasion and by instituting a truly Christian life.
2. If the concubinage is occult, it can and must be removed either by marriage or by separation or, if inescapable difficulties stand in the way both of marriage and of separation, through means by which the occasion would become remote. It is said:

a) **Either by marriage;** and indeed this of itself is especially to be urged. Nevertheless, commonly one should not have recourse to secret marriage or marriage of conscience, unless the concubinaries are publicly judged to be joined in marriage (cf. treatise on marriage).

b) **Or by separation.** If marriage is morally impossible or at least is not chosen, and separation is morally possible, this must be imposed. If separation can be made shortly, the concubinaries should not be absolved before they are separated, unless there is a special reason for immediately imparting absolution (n. 471). If separation cannot be made shortly, let the concubinaries take pains that it be done as soon as possible; and then, unless a special reason is present, absolution should not be

granted before they have used means of not relapsing (St. Alphonsus, III, 436). Of these means it will now be said:

c) **Or through means by which it would become remote.** The means, besides the general ones (n. 474)†, are:

a) If the concubinaries live in the same house: 1. let each openly declare to the accomplice that he or she no longer wills to lead such a life; 2. if the concubinary turns aside to her at night, let her close the door in such a way that it cannot be opened.

b) If the concubinaries live in different houses: 1. let the concubine not open the door to the concubinary when he comes; 2. let her take care to live with another woman or at least not be found alone; 3. sometimes let it be advised that she change domicile.

467 II. **Concubinaries living in danger of death.**

1. If the concubinage is public, one must speak as follows:

a) If the concubinary is now deprived of the senses, let him or her be absolved under condition, and also be given Extreme Unction (cf. nevertheless n. 485).

b) If indeed the person uses the senses, but nevertheless is in extremis, so that there is no time available either for contracting marriage or for effecting separation, the concubinary, having been reduced to penance, must be absolved and fortified with the remaining sacraments. Nevertheless, care must be taken, insofar as will be possible, that the accomplice not show himself or herself, and that the dying person repair the scandal, either by himself or herself or through the priest, by asking pardon before witnesses. If this manner of repairing scandal cannot prudently be used, the very carrying of Viaticum seems to involve sufficient reparation of scandal.

c) If the illness allows delay, the occasion and scandal are to be removed through marriage or separation. If neither marriage nor separation can have place, let the person declare before witnesses as soon as possible that this impossibility is to be made public, and at the same time promise that, if perhaps he or she recovers, he or she will effect separation and will have no further association with the accomplice. In addition, let the means assigned in n. 475 be used.

2. If the concubinage is occult, the procedure is as follows:

a) As was said above under a).

b) As above under b); but reparation of scandal, as is clear, is not required.

c) As above under c); but note that in the case one can sometimes have recourse to marriage of conscience (cf. treatise on marriage).

§ II. On Courtships

468 I. Courtships or visits of lovers with a view to marriage, considering present-day morals, can be held as necessary. Nevertheless, they are commonly not made without danger, although the danger arises more from solitary courtship than from courtship as such. Solitary courtship is understood as that which has place outside the sight of others.

II. Solitary courtship for many is already *a priori*, so to speak, a proximate occasion; for many it can become a proximate occasion; and as soon as the courting persons have sinned gravely, it has become

a proximate occasion and must be treated as such by the confessor.

III. That the danger may be diminished the more, let the following precautions be used:

1. Courtship should be permitted only to those who can and will enter marriage within a reasonable time. If younger persons have begun courtship, let it be deferred; if the hope of entering marriage sufficiently soon is lacking for a reason other than age, and the courtship cannot conveniently be interrupted, let the visits be diminished.
2. Let the lovers not dwell under the same roof.
3. Let them obtain the consent of parents as soon as possible; this does not prevent certain beginnings of love from sometimes being tolerated even without the parents' knowledge, namely so that they may know whether some reciprocal affection is present.
4. Let one not be alone with a lone person, or let courtship not be made outside the sight of others. This happens if it is done in a closed room; in a house while no one is present or all have gone away to bed; when a girl follows a young man to the door of the house toward evening or at night; in a remote place; in darkness, even if in a public place. It happens less when they are in a room and the mother now and then leaves very briefly on account of domestic business; scarcely or not at all when by day a young man accompanies a girl along a public road. It is also more dangerous if the courting persons deliberately seek solitude.
5. Let the visits not be too frequent, nor too prolonged.
6. If it happens that they are alone, let them not approach each other; this in itself is dangerous and gives occasion to immodest touches.
7. Let them fortify themselves with spiritual helps, especially frequency of the sacraments.

Corollary. The breaking off of a courtship should not easily be imposed on account of sins alone, namely if otherwise nothing stands in the way of the courtship; rather, in every way, even by delaying absolution for those who relapse, let care be taken that one is not alone with a lone person. I would say this: 1. because solitary courtship, rather than courtship itself, is the occasion of sinning; 2. because a courtship to which otherwise nothing is opposed cannot be broken off without sufficiently grave inconvenience; and 3. because, even if it is broken off, afterward it is easily renewed. But if courting persons who have sinned can, on account of singular circumstances, converse only alone, the courtship is rightly called a necessary occasion, since to renounce a courtship to which otherwise nothing stands in the way is a grave inconvenience.

§ III. On Domestic Dangers

469 I. A maidservant who yesterday yielded to solicitation, or who because of frailty is exposed to grave danger of yielding to it, is bound to seek another service; and, if for this purpose it is necessary, to warn her parents that she is exposed to danger. "These things, however," adds St. Alphonsus, "are to be understood if a person of this kind is frail and little devout; for if she were given to piety and cautious, and used suitable remedies for repelling temptations and for meeting passion, then I would not bind her to remove the occasion" (VI, 452). Likewise a maidservant must seek another service if the son of the household or a fellow servant is for her a proximate occasion of sinning, unless by warning the master or the son's parents she can put an end to the occasion and prefers to do so (St.

Alphonsus, VI, 439). The master himself is bound, if it can be done without grave inconvenience - of which kind would be his wife's suspicion - to dismiss the maidservant under one pretext or another.

II. A young man for whom a brother lying in the same bed is an occasion of sinning is bound, if there is hope, to seek a change of bed, and, if for this purpose it is necessary, to warn his parents about his brother's wickedness. If a change of bed cannot be hoped for, he is nevertheless bound to warn his parents, unless the brother wholly desists from shameful acts.

§ IV. On Dances

470 I. "Dances according to themselves are not evil, nor acts of lust, but of joy" (St. Alphonsus, III, 429). Nevertheless, they can be illicit by reason of the end, for example for the sake of seeking lust, which more easily happens in masked dances than in others; by reason of danger, especially because of the manner in which they are held; by reason of scandal; likewise by reason of danger arising from the fact that young men and girls, after dances have been held, go home without a companion. Besides this, even respectable dances should therefore also, as far as can be done, be kept away, because, especially if they become more frequent, they foster levity of mind both in young men and in girls, and diminish their devotion. Children's dances (*bals d'enfants*) likewise are greatly to be disapproved.

As regards the danger attached to dances, note: dances which are held publicly are commonly more dangerous than those which are led among a few families; likewise there is greater danger in dances which are conducted with masks; dances of the wealthy, by reason of dress, and popular dances, by reason of levity in acting and speaking, not at all rarely carry grave danger with them; and generally the matter depends much on social condition and education.

II. As regards the proximate occasion which dances are naturally suited to constitute, I would say as follows:

1. Very immodest dances, whether by reason of dress or nakedness, or by reason of the manner in which they are conducted, are commonly a proximate occasion of sinning.
2. Fairly immodest dances create a proximate occasion for many, especially young men. To these are numbered many dances used today, which require a close embrace of the dancers and also furnish occasion for contacts of bodies. The reason why the said dances, although fairly immodest, constitute a proximate occasion only for many - but not commonly, especially as regards girls - is this: because the mind during dancing is distracted to other things and especially occupied with rhythmic movements, which keeps many from intense impure thoughts.
3. Respectable dances by reason of themselves are a proximate occasion for some. They can, however, easily be - and this is also to be applied to other dances - a proximate occasion by reason of the lack of a companion on the return.

Corollary. Very immodest dances are to be prohibited. As regards others which are a proximate occasion for the penitent, one must see whether they create danger by reason of themselves or by reason of the lack of a companion. If the first has place, the dances themselves are to be wholly prohibited to the penitent, unless a grave reason excuses, for example the absolute will of parents or of a husband; and this prohibition, if the matter concerns fairly immodest dances, is to be urged even

more because of the scandal attached to them. If the second happens, the obligation of not going home without a companion is to be urged.

III. Those who introduce dances easily sin gravely, whether by promoting them, or by holding them, or by giving over a house for holding them. If, however, the custom flourishes in all neighboring parishes, it is almost equivalent to existence in one's own parish. Besides this, innkeepers are bound to take care that all things are done respectably.

IV. Where the custom of dances does not exist, the pastor and confessors should prudently keep them away, even respectable ones. Where it exists and cannot prudently be abolished, one must labor so that they are not prolonged too much, and so that young men and girls do not return home without a trustworthy companion. Besides this, pastors and confessors, insofar as it can prudently be done, should turn the faithful away from dances.

§ V. On Theatrical Spectacles

471 I. Theatrical spectacles can be dangerous both by reason of themselves and by reason of dances which are inserted; and rather often, because of the dancers' dress, manner of dancing, and lascivious gestures, they strongly excite to venereal things.

II. As regards the proximate occasion which they are naturally suited to constitute, hold these things:

1. Very immodest spectacles and dances are a proximate occasion for very many. Likewise spectacles notably contrary to religion create grave danger for many.
2. Fairly immodest spectacles and dances are a relative occasion; lighter ones are a grave danger for some (St. Alphonsus, III, 427).
3. If spectacles are attended especially for hearing music, the danger is more easily removed, provided the theaters are not too foul. And as regards dances, it must be noted that spectators can more easily leave on occasion of them.

III. In doubt whether a spectacle which will be exhibited is shameful or contrary to religion, to attend it is of itself illicit. Besides this, the confessor should prudently turn penitents away, especially from attending public theaters, also for this reason: because frequenting theaters, just as frequenting dances, promotes levity of mind and diminishes devotion.

§ VI. On Evil Writings

472 I. Books and newspapers professedly or notably contrary to religion or good morals are commonly a proximate occasion. Of this kind are, for example, socialist newspapers and many novels. Books and newspapers which do not oppose religion or good morals so notably are a relative occasion. To this are referred several liberal newspapers and many novels, as being erotic.

II. In doubt whether a book is dangerous, to read through it is illicit.

§ VII. On Evil Associations

473 I. As regards societies properly so called, compare what was said in volume I, n. 509.

II. As regards the danger which associates create in a workshop, in military houses, etc., these occasions are commonly necessary. Let the confessor be greatly intent on this: that those living in the

occasion frequent the sacraments.

III. Frequenting unbelievers, if the matter concerns familiar and habitual conversation, easily carries grave danger with it. Otherwise one must speak about rare and interrupted conversation. Nevertheless, the so-called circles are more dangerous, especially those of younger people, which are set up, for example, for the sake of playing games or cultivating musical art, whether young men and girls come together at the same time, or both Catholics and non-Catholics are enrolled in them.

§ VIII. On Evil Schools

474 These matters were treated at length in volume I, n. 714 sq.

Appendix. On External Circumstances to Be Observed

444 I. **Place.**

1. The proper place of sacramental confession is a church or a public or semi-public oratory (can. 908); hence, of itself, it is better that even the confessions of men be received in some one of the places assigned. As regards women, there is an obligation insofar as the confessional seat in which they must be heard is generally to be placed in such a place. But "it is licit to receive the confessions of men even in private houses" (can. 910, § 2).
2. The confessions of women should not be heard outside the confessional seat except for a cause of illness or other true necessity, and with the precautions which the local Ordinary has judged opportune (can. 910, § 1). For the rest, observe:

a) The confessional seat for hearing the confessions of women is always to be placed in an open and conspicuous place, and generally in a church or public or semi-public oratory destined for women (can. 909, § 1). Since "generally" is said, for a just cause it is licit to erect the confessional seat in another open and conspicuous place, for instance in the sacristy or in a room annexed to the church or oratory.

b) The confessional seat should be furnished with a fixed grating, finely perforated, between penitent and confessor (can. 909, § 2).

c) Even the confessions of men must be received in such a seat if they are received in a church or public oratory.[1]

[1] Pontifical Commission, November 24, 1920 (*A.A.S.* 1920, p. 573).

445 II. **Vesture.** "Let him use a surplice and a violet stole, as time or the custom of places will allow."[1] Moreover, many regulars, either through direct concession or through communication of privileges, enjoy the faculty of using only the stole in church.

As regards the custom of using nothing except the stole alone or only the surplice, the response was: "Let the Roman Ritual be observed."[2] And finally it was declared: "It is fitting that in church a stole be used, according to the decrees of the Sacred Congregation of Rites."[3]

[1] Roman Ritual, title III, chapter I, n. 10.

[2] Sacred Congregation of Rites, March 23, 1882 (n. 3542, response 3); cf. Sacred Congregation of Rites, July 7, 1877 (n. 3426, response 4).

[3] Sacred Congregation of Rites, August 31, 1867 (n. 3158, response 2).

Part III. On the Reception of the Sacrament of Penance

479 Since the acts of the penitent, placed in order to the reception of the sacrament of Penance, constitute its proximate matter, those things which regard the reception of the sacrament are already comprehended in what has been set forth above. Hence it suffices, by way of very brief repetition, to note these things:

I. In order that someone be capable of receiving the sacrament of Penance, it is required that he be baptized and have sinned after baptism. If he has not sinned after baptism, the matter concerning which the sacrament is engaged is lacking.

II. In order that someone validly receive the sacrament of Penance, besides intention it is required that he be contrite and subject his sins to the keys. For contrition and confession constitute the proximate matter of the sacrament.

III. In order that someone receive the sacrament fruitfully, contrition is required which is estimatively supreme and universal; whether such contrition is required for validity is disputed (n. 299).

IV. In order that someone licitly receive the sacrament of Penance, it is required that, if he is excommunicated or personally interdicted, he first be absolved from the censure (cf. the treatise on ecclesiastical penalties). One who receives the sacrament illicitly, because of defect of contrition, also receives it invalidly, unless he proceeds in good faith.

Appendix. On Indulgences

480 (St. Thomas, *Supplement*, q. 25-27; St. Alphonsus, *Theologia Moralis*, book VI, n. 531-538; *Homo Apostolicus*, treatise 16, n. 62-72).

The sacrament of Penance was instituted by Christ the Lord for remitting both guilt and eternal and temporal punishment due for sins committed. It happens, however, that not every temporal punishment is remitted through the sacrament. Now the punishment surviving can be remitted both through other sacraments, and through good works - since in each there is a satisfactory value - and through indulgences. Hence the dissertation on indulgences is suitably attached to the treatise on the Sacrament of Penance, inasmuch as it is ordered to the integral remission of sins.

We shall speak first of indulgences generally, then of some indulgences in particular.

Part I. On Indulgences Generally

We shall discuss first the notion or essence, existence, and division of indulgences; then their concession; then their gaining; finally the transfer, suspension, and cessation of indulgences.

Section I. On the Notion, Existence, and Division of Indulgences

481 I. **Notion.** An indulgence is the remission before God of temporal punishment due for sins which, as far as guilt is concerned, have already been blotted out, which ecclesiastical authority grants from the treasury of the Church outside the sacrament, for the living by way of absolution, for the departed by way of suffrage (canon 911).

It is said:

1. **Remission of temporal punishment;** but not of guilt, whether mortal or venial; nor of eternal punishment, but only temporal punishment.
2. **Before God.** This is clear both from proposition 19 of Luther condemned by Leo X: "Indulgences are of no value for those who truly gain them for the remission, before divine justice, of punishment due for actual sins;"[2] and from the authentic declaration of Pius VI issued against propositions 40 and 41 of the Synod of Pistoia.[3]

Besides this, indulgences are worth as much before God as the Church expresses in her words; so that, for example, a plenary indulgence of itself remits all temporal punishment, and an indulgence, for example, of one year of itself is worth only as much as one year of penance would be worth, passed according to the penitential canons, independently of the devotion or fervor of the subject. The reason is that "the quantity of the effect follows the quantity of its cause. But the cause of the remission of punishment in indulgences is nothing except the abundance of the merits of the Church, which is sufficient for expiating the whole punishment; but the devotion, or labor, or gift of the one receiving the indulgence, or the cause for which the indulgence is given, is not the effective cause. Hence the quantity of the remission ought not to be proportioned to any of these things, but to the merits of the Church, which always superabound" (St. Thomas, *Supplement*, q. 25, a. 2). "Nor in this is too great a market made of the mercy of God, as some say; nor is derogation made from divine justice, because nothing of the punishment is remitted, but the punishment of one is reckoned to another" (St. Thomas, cited place).

3. **Due for sins which, as far as guilt is concerned, have already been blotted out.** For while the guilt remains, the punishment corresponding to it cannot be remitted. But once guilt has been remitted, not necessarily every temporal punishment is remitted.
4. **Ecclesiastical authority,** since to it alone belongs disposing of the common treasury. Who are the subjects of this power is explained in n. 494.
5. **From the treasury of the Church.** By the treasury of the Church is understood the accumulation of satisfactions of the Saints, both those reigning in heaven and those dwelling on earth, which they did not apply to others. Namely, to every good work proceeding from grace there belongs a threefold value: meritorious, insofar as, when the other conditions have been fulfilled, it confers a right to a just reward; impetratory, insofar as it has the force of obtaining goods from God by supplication; satisfactory, insofar as by reason of the difficulty of the work itself and at least by

reason of the reluctance of our nature, it can satisfy the injured justice of God. Now the satisfactions of Christ, certainly of infinite value, and likewise the satisfactions of the saints, insofar as they were neither necessary for blotting out their own punishment nor applied by them to other persons, constitute, as it is called, the treasury of the Church.

6. **Outside the sacrament;** by which indulgence is distinguished from the remission of punishment which is made by the power of the keys in the sacrament of Penance.

7. **Grants for the living by way of absolution, for the departed by way of suffrage.** Namely:

a) An indulgence granted to the living is a judicial act by which the Church definitively applies the satisfactions of Christ and the Saints to her subjects in substitution for the temporal punishment still due for guilt that has been remitted. Therefore it is made by way of absolution, or is a quasi-absolution; but it is not a pure and simple absolution, because it has payment attached, insofar as it applies to the faithful satisfactions rendered by others. Hence St. Thomas says: "One who receives indulgences is not, simply speaking, absolved from the punishment due, but it is given to him so that he may pay the debt" (*Supplement*, q. 25, a. 1, ad 2).

b) An indulgence for the departed - over whom the Church lacks jurisdiction - involves the Church, from her power of administering her treasury, offering - or granting the one gaining the indulgence the right of offering in her name - to God the satisfactions of Christ and the Saints, praying to Him that He will accept them in substitution for the punishment to be paid by the departed. Hence an indulgence of this kind is valid only by way of suffrage.

From what has been said it follows that an indulgence granted to the living, when the things to be observed have been observed, has an infallible effect. But as regards the effect with respect to the departed, it is disputed whether or not it is infallible. Some affirm, because God, by the very fact that He gave the Supreme Pontiff the power of granting indulgences for the departed, seems also to have bound Himself by a promise to apply indulgences to them. Others deny this, or at least think that the application of the whole value, and to the designated souls, is not infallible, because such a divine promise is not proved in any way. For the power of the Church to grant indulgences for the departed involves only the competence of offering to God for the departed the spiritual treasury entrusted to herself, that is, to the Church. But a competence of this kind does not prove a divine promise of accepting what is offered. The response of the Sacred Congregation of Indulgences, dated July 28, 1840, taken in its obvious sense, favors this opinion: "By an indulgence of a privileged altar, if the mind of the one granting and the use of the power of the keys are considered, there is to be understood a plenary indulgence which immediately frees the soul from all the punishments of purgatory. But if the effect of the application is considered, there is to be understood an indulgence whose measure corresponds to the good pleasure and acceptance of divine mercy" (St. Alphonsus, VI, 534, under 10).

[1] Cf. Beringer-Steinen, *Die Ablässe*; Fanfani, *De indulgentiis: manuale theoretico-practicum*; Stein, *De indulgentiis lucrandis*.

[2] Denzinger-Bannwart, n. 759.

[3] Denzinger-Bannwart, n. 1540 and 1541.

482 II. **Existence of indulgences.** The existence of indulgences must be admitted if it is proved: 1. that there exists in the Church a treasury of satisfactions which in itself suffices for blotting out

before God the temporal punishment due for sins; 2. that these satisfactions are applicable to the faithful; 3. that the Church enjoys the power of applying them. Now:

1. There exists in the Church a treasury of satisfactions which in itself suffices for blotting out before God the temporal punishment due for sins. This follows from the propositions of Luther condemned by Leo X. For, as we noted above, in proposition 19 he condemned Luther's doctrine which teaches that indulgences are not of value for the remission, before divine justice, of punishment due for actual sins; and in proposition 17 the same Supreme Pontiff condemns this: "The treasures of the Church, from which the Pope gives indulgences, are not the merits of Christ and of the Saints."[1] Hence there exists in the Church a treasury of satisfactions which in itself suffices for blotting out before God the temporal punishment due for sins. Besides this, the existence of such a treasury is clear from the superabundant and infinite satisfaction which belongs to the works of Christ, as being a divine Person, and which He offered to God the Father for us.

2. The said satisfactions are applicable to the faithful. This is clear from the condemned propositions cited; as regards the satisfactions of Christ, it is furthermore clear from the work of redemption, by which the Savior satisfied God for us; as regards the superabundant satisfactions of the Saints, it follows from the dogma of the communion of Saints, by virtue of which a mutual participation of goods is had in the Church.

3. The Church enjoys the power of applying them; this is proved in Section II.

[1] Denzinger-Bannwart, n. 757.

483 III. **Division of indulgences.** Indulgences are chiefly divided:

1. Into plenary and partial, according as of themselves they wholly or partially remit the punishment due for sins. Now when an indulgence is granted, for example, of one year, the sense is that so much punishment is remitted to someone as would be remitted to him if for a year he performed the penance once customarily imposed for sins according to the canons (St. Alphonsus, VI, 535). By quarantines, however, which are sometimes attached to years - for example, an indulgence of seven years and seven quarantines - there is not understood some time beyond the years themselves, but that part of the year in which a harder penance was prescribed, namely the time of Lent.

2. Into personal, local, and real, according as they are granted only to certain persons, for example religious or members of a confraternity; or are affixed to certain places, for example to a church or altar, that is, to their pious visitation, etc.; or are attached to certain things, for example rosaries, medals, etc., that is, to the pious use of them.

3. Into temporary and perpetual, according as they are granted in perpetuity or only for a definite time.

4. Into indulgences for the living only, for the departed only, and for both the living and the departed.

Corollary I. From what has been said it follows how deservedly canon 911 states that indulgences are to be held in great esteem, and that their use - which is of faith[1] - is most salutary. For

indulgences, besides remitting temporal punishment, stir the faithful to contrition and other salutary works, since they are not granted except to penitents and under definite conditions.

Corollary II. Those who make gain from indulgences are guilty of simony (vol. I, n. 621); indeed, by canon 2327 they are punished *ipso facto* with excommunication simply reserved to the Apostolic See.

[1] Council of Trent, session 25, Decree on Indulgences.

Section II. On the Concession of Indulgences

484 I. **Existence of the power in the Church of granting indulgences.** That the power of dispensing indulgences belongs to the Church is of faith from Trent;[1] and it follows from the power which Christ conferred on the Church of remitting sins and opening the kingdom of heaven to believers;[2] for to the perfect remission of sin and to the opening of the kingdom of heaven there also belongs the removal of temporal punishment still remaining after the guilt of sins has been remitted. That this power can be used outside the conferral of the sacrament is clear from the general sense of the words, which also contain the power of teaching and of making laws; and this certainly has place outside the sacrament. Besides this, the whole tradition from the first centuries has recognized this power in the Church.[3]

[1] Council of Trent, session 25, Decree on Indulgences.

[2] Matthew 16:18.

[3] Cf. Fanfani, cited work, p. 19-22.

485 II. **Subject of the power.** The Supreme Pontiff alone, by his own and full right, can grant indulgences (canon 912). The reason is that he, and he alone, can dispose of the common treasury of the Church to whom the government of the whole Church has been committed. Now the Supreme Pontiff commonly exercises the said power through the Sacred Penitentiary, whose office it is to judge all those things which regard the use and concession of indulgences, without prejudice to the right of the Holy Office to see to those things which regard dogmatic doctrine concerning the same indulgences or concerning new prayers and devotions (canon 258, § 2). Those inferior to the Supreme Pontiff can dispense indulgences by ordinary power only insofar as this has been expressly granted to them by law. Now the law states:

1. **As regards a plenary indulgence.**

a) Bishops, each in his own diocese, can impart the papal blessing with a plenary indulgence, according to the prescribed formula, twice a year, that is, on the solemn day of the Resurrection at Easter and on another solemn feast day designated by themselves, even if they have only assisted at the solemn Mass (canon 914). If some Bishop has several dioceses to be governed, he cannot, by his own right, transfer in one of them to another day the papal blessing attached to Easter of the Resurrection.[1]

b) Abbots or Prelates nullius, Apostolic Vicars and Prefects, even if they lack episcopal dignity, can do the same, namely impart the papal blessing with a plenary indulgence according to the prescribed formula, in their territories on only one of the more solemn days during the year (cited canon).

c) Regulars who have the privilege of imparting the papal blessing are not only bound by the obligation of observing the prescribed formula, but also cannot use this privilege except in their own

churches and in the churches of nuns or tertiaries lawfully aggregated to their Order; but not on the same day and in the same place[2] where the Bishop imparts it (canon 915).[3]

d) A pastor or another priest who assists the sick has the faculty of granting to them the apostolic blessing with a plenary indulgence at the point of death, according to the form handed down by approved liturgical books, and he should not omit to impart this blessing (canon 468, § 2).

e) Bishops, Abbots or Prelates nullius, Apostolic Vicars and Prefects, and major Superiors of exempt clerical religious institutes can designate and declare one daily perpetual privileged altar, provided another is not already had, in their cathedral, abbatial, collegiate, conventual, parochial, and quasi-parochial churches, but not in public or semi-public oratories, unless they are united to a parish church or are subsidiary to it (canon 916).

2. **As regards partial indulgences.**

a) Cardinals, from their promotion in Consistory, enjoy the faculty of granting indulgences of two hundred days, even to be gained as often as often, in places or institutes and for persons of their jurisdiction or protection; likewise in other places, but to be gained only by those present, on each occasion (canon 239, § 1, 24°).

b) Metropolitans or Archbishops can grant indulgences of one hundred days both in their own diocese and in suffragan dioceses (canon 274, 2°).

c) Residential Bishops, from taking possession of the diocese, enjoy the right of granting indulgences of fifty days in places of their jurisdiction (canon 349, § 2, 2°). But the words "in places of their jurisdiction" are not to be understood so that Bishops are prohibited from granting indulgences to exempt religious or in their churches.[4]

d) Apostolic Vicars and Prefects, even those who lack episcopal character, possess the same faculty as residential Bishops (canon 294, § 2).

e) The consecrating Bishop, when a church or altar is consecrated, even though he lacks jurisdiction in the territory, grants an indulgence of one year to those visiting the church or altar on the day of the consecration itself; but on the anniversary day, one of fifty days if he is a Bishop, one hundred if an Archbishop, and two hundred if a Cardinal of the Holy Roman Church (canon 1166, § 3). Capitular Vicars and Vicars General lack ordinary power of granting indulgences, since the Law does not enumerate them. They therefore, like the others not enumerated above, cannot grant indulgences except by commission or delegation of the Supreme Pontiff or of another to whom the faculty of delegating has been expressly granted.

f) What Nuncios can do is to be drawn from their letters.

Note 1. Those inferior to the Roman Pontiff cannot: 1. commit to others the faculty of granting indulgences, unless this has been expressly granted to them by the Apostolic See; 2. grant indulgences applicable to the departed; 3. add other indulgences to the same thing or act of piety or sodality to which indulgences have already been granted by the Apostolic See or by another, unless new conditions to be fulfilled are prescribed (canon 913).

Note 2. Generals of Orders and Prelates of Religious, having regard to common law, enjoy no power of issuing Indulgences; but some of them have the privilege of reserving to themselves and of

granting to others the faculty of imparting certain blessings - for example, the blessing of a rosary of the Most Holy Rosary - to which Indulgences are attached.[5]

[1] *A.A.S.* XXII, p. 195.

[2] Cited place: in the city, town (Brief of Leo XIII, July 2, 1882).

[3] Here, however, the matter is not the papal blessing which religious missionaries are permitted to impart at the end of missions or in similar circumstances, but the privilege by which regulars, without another condition of function, are able to impart that blessing (Aertnys-Damen, *Theologia Moralis*, 5th ed., II, n. 1112).

[4] Pontifical Commission, December 6, 1930 (*A.A.S.* 1931, p. 25).

[5] Fanfani, cited work, p. 17.

486 III. **Interpretation of the power of granting indulgences.** Both ordinary and delegated power must be interpreted according to the proper meaning of the words and the common usage of speech; but in doubt it is to be taken broadly (canons 49, 50; St. Alphonsus, 534).

487 IV. **Use of the power of granting indulgences.**

1. In order that a concession be valid, a just cause is required. The reason is that the Supreme Pontiff is not the owner of the treasury of the Church, but has been constituted only its dispenser. But a dispenser is not judged to have been granted the faculty of disposing of goods at will, that is, without a just cause (St. Thomas, *Supplement*, q. 25, a. 2; St. Alphonsus, n. 532).
2. Furthermore, for liceity there is required a cause proportioned to the quantity of the indulgence, so that for a greater indulgence a greater cause is required. But the gravity of the cause is to be judged "not only from the difficulty of the work, but from the intended end and the usefulness of the work for that end" (St. Alphonsus, cited place).

It is disputed whether the proportion of the cause is required for validity. Now with St. Alphonsus (cited place) and the more common opinion, it seems one must affirm this, because a dispenser does not seem to have been granted the faculty of disposing prodigally of goods. Besides this, once an indulgence has been granted, a proportionate cause is always presumed to be present. Furthermore, even if a proportionate cause were lacking, nevertheless the privileges attached to the indulgence would certainly be valid, for example the faculty of absolving from reserved cases, since these are matters of ecclesiastical law.

Note. The Supreme Pontiff or a Bishop can sometimes grant an indulgence without the injunction of any work, because there can be a just and reasonable cause for granting an indulgence in this way, for example to a worthy man, or at the point of death.[1]

[1] Aertnys-Damen, *Theologia Moralis*, 11th ed., II, n. 1113.

488 V. **Publication of granted indulgences.**

1. Indulgences promulgated at Rome need no further publication. Indulgences are understood to have been promulgated at Rome whether they have been granted through Briefs or through decrees contained in the *Acta Apostolicae Sedis*.
2. New indulgences, even those granted to churches of regulars, which have not been promulgated at Rome, are not to be published abroad without consulting the Ordinary of the place. In

publishing books, booklets, etc., in which concessions of indulgences for various prayers or pious works are listed, the prescription of canon 1388 is to be observed.[1]

3. Those who have obtained from the Supreme Pontiff concessions of indulgences for all the faithful are bound, under penalty of the nullity of the grace obtained, to bring authentic copies of those concessions to the Sacred Penitentiary (canon 920). It is said:

1. **Concessions for all the faithful.** Indulgences granted *for all the faithful* are understood as those which all the faithful can always and everywhere gain without the special use of a blessed thing, or participation in a pious confraternity, or visitation of a determinate church.[2]

2. **Authentic copies,** that is, a written document, either signed by the Supreme Pontiff's own hand or subscribed by a Cardinal of the Holy Roman Church, which testifies to an oral oracle.

[1] That canon states: all books of indulgences, summaries, booklets, sheets, etc., in which their concessions are contained, are not to be published without the license of the Ordinary of the place. But the express license of the Apostolic See is required in order that it be lawful to publish in print, in any language, both the authentic collection of prayers and pious works to which the Apostolic See has attached indulgences, and the list of apostolic indulgences, and a summary of indulgences either previously collected but never approved, or now for the first time to be gathered from diverse concessions.

[2] Beringer-Steinen, cited work, I, n. 199-200.

489 VI. **Interpretation of some indulgences granted or to be granted.**

1. A plenary indulgence granted for the feasts of Our Lord Jesus Christ or for the feasts of the Blessed Virgin Mary is understood to have been granted only for the feasts which are found in the universal calendar. A plenary or partial indulgence granted for the feasts of the Apostles is understood to have been granted only for their natal feast. A plenary indulgence granted as daily perpetual, or for a time, to those visiting some church or public oratory is to be understood in such a way that on any day, but only once in the year, it can be acquired by each member of the faithful, unless something else is expressly said in the decree (canon 921).

2. An indulgence affixed to some Feast is acquired by the faithful on the fixed day duly constituted in their Diocese; by Regular Orders, on the fixed day duly constituted in their Calendar; by those enrolled in a sodality of some Regular Order, on the fixed day duly constituted in the Calendar of the Diocese or in the Calendar of the Order, but not on both days. Thus the Sacred Congregation of Indulgences.[1]

3. When a plenary indulgence once in a month is granted to those who have performed a certain good work through an entire month, the month is not necessarily to be computed from the first day to the last, but is understood as a continuous space of a month, that is, of thirty days.[2]

[1] August 29, 1864; January 12, 1878.

[2] Aertnys-Damen, II, n. 1120.

Scholion. On the Faculty of Blessing Things with the Application of Indulgences

490 I. One who has received the faculty of blessing crosses, medals, scapulars, rosaries, etc., with the application of indulgences, is not bound to exhibit it to the Ordinary unless this is expressed in the concession.[1] One who has obtained the faculty of privately blessing pious things with the application

of indulgences cannot use that faculty publicly, for example in a church or oratory before the faithful gathered there and holding in their hands the things to be blessed.[2]

II. As regards the form or rite to be observed in blessings, hold these things:

1. The ordinary or customary form - which is done by forming the cross over the thing to be blessed, without pronouncing any formula and without sprinkling holy water - suffices for crosses, medals, and rosaries, except, however, rosaries of the Most Holy Rosary and of the Seven Sorrows;[3] it also suffices for crucifixes with a plenary indulgence at the point of death; likewise for the crucifix of the Way of the Cross in favor of the faithful who are impeded; and it always seems to suffice when no proper form is prescribed. In that case, the sign of the cross with the words "In the name of the Father and of the Son and of the Holy Spirit," together with the sprinkling of holy water over the object to which indulgences are to be attached, certainly suffices.[4]
2. The proper form must be used for rosaries of the Most Holy Rosary and of the Seven Sorrows, for crosses of the stations of the Way of the Cross, for a plenary indulgence at the point of death or the Apostolic Blessing, as it is called, for enrollment in the Confraternity of the sacred Scapular, etc.[5]

Cardinals, by canon 239, § 1, 5° and 6°, from their promotion enjoy the faculty of blessing everywhere, by the sign of the cross alone, with all the indulgences customarily granted by the Holy See, rosaries and other prayer-beads, crosses, medals, statues, and scapulars approved by the Apostolic See, and of imposing them without the burden of registration; likewise, by a single blessing, of erecting in churches and oratories, even private ones, and other pious places, stations of the Way of the Cross with all the indulgences which have been imparted to those performing such a pious exercise; and also of blessing for the faithful who, because of illness or another legitimate impediment, cannot visit the sacred stations of the Way of the Cross, Crucifix images with the application of all indulgences attached by the Roman Pontiffs to the devout exercise of the same Way of the Cross.

[1] Sacred Congregation of Indulgences, February 5, 1841.

[2] Sacred Congregation of Indulgences, January 7, 1843.

[3] Cf. Sacred Congregation of Indulgences, April 14, 1840; January 7, 1843; February 29, 1864; Holy Office, May 18, 1914 (*A.A.S.*, p. 346).

[4] Cf. Beringer-Steinen, cited work, I, n. 836.

[5] Sacred Congregation of Indulgences, February 5, 1841; March 12, 1855; February 29, 1864; March 22, 1879.

Section III. On the Gaining of Indulgences

First one must speak of the subject capable of gaining indulgences; then of the requisites so that a capable subject may gain indulgences.

Chapter I. On the Subject Capable of Gaining Indulgences

491 In order that someone be capable of gaining indulgences for himself, he must be baptized, not excommunicated, in the state of grace at least at the end of the prescribed works, and a subject of the one granting (canon 925, § 1). It is said:

1. **For himself.** To what extent the enumerated things are required so that someone may apply an indulgence to the departed, we shall say later.
2. **Baptized;** because the Church lacks jurisdiction over the non-baptized, even over catechumens.
3. **Not excommunicated,** because the concession of indulgences belongs to the communion of Saints, of which the Church deprives the excommunicated.

It can be disputed whether material heretics and schismatics can acquire indulgences. It seems one must deny this; for such heretics and schismatics indeed belong by will to the body of the Church, but in the external forum they seem to be considered by the Church as formal heretics and schismatics; for she does not judge concerning internal matters. Now in this case the Church does not seem to extend her act of jurisdiction to those who are considered by her, in the external forum, as formal heretics.

4. **In the state of grace at least at the end of the works.** The reason is that "a dead member does not receive influence from the other living members; but one who is in mortal sin is, as it were, a dead member; therefore through indulgences he does not receive influence from the merits of the living members" (St. Thomas, *Supplement*, q. 27, a. 1). Added to this is the response of the Sacred Congregation of Indulgences,[1] which declares that the sense of the clause "with heart at least contrite" is that contrition is required "insofar as someone placed in mortal sin and therefore incapable of gaining any indulgence is restored to the state of grace by perfect contrition with the purpose of confession, and becomes capable of obtaining indulgences." Finally, canon 925, § 1 absolutely requires the state of grace in order that someone acquire an indulgence for himself. Hence even if it were admitted that the Church can grant a partial indulgence to one constituted in mortal sin, namely the remission of punishment due because of sins already previously remitted, nevertheless that this actually occurs seems altogether to have to be denied (St. Alphonsus, n. 534, under 9).

To what extent the state of grace is required so that someone may apply an indulgence to the departed, we shall investigate immediately.

This, however, is the place for noting these words of St. Alphonsus: "No one gains a plenary indulgence of all sins unless he is free from every guilt, even venial, when he completes the last work... for it is certain that venial sin not remitted as to guilt cannot be remitted as to punishment... That venial sin, however, does not prevent the punishment due to other sins already remitted from being remitted" (n. 534, under 19). Hence nothing of itself prevents one who lacks the disposition required for gaining a plenary indulgence integrally from gaining it partially. And in fact canon 926 states: a plenary indulgence granted in such a way is understood so that, if someone cannot gain it plenarily, nevertheless he gains it partially according to the disposition which he has.

5. **A subject of the one granting,** because an act of jurisdiction, such as is the concession of an indulgence for the living, can be exercised only upon subjects. But since an indulgence is granted after the manner of a privilege, nothing prevents non-subjects also, after it has been granted, from being able to gain it according to the norm of canon 927: unless something else appears from the tenor of the concession, indulgences granted by a Bishop can be gained both by subjects outside the territory and by pilgrims, vagi, and all exempt persons dwelling in the territory.

[1] December 17, 1870.

Chapter II. On the Requisites So That a Capable Subject May Gain Indulgences

492 But in order, thus canon 925, § 2, that a capable subject actually gain them, he must have at least a general intention of acquiring them and fulfill the enjoined works at the appointed time and in the due manner according to the tenor of the concession.

Therefore, first, intention is required, because the Church does not bestow her benefits except on one willing. But a general intention suffices, by which someone wills to gain all the indulgences which he can gain through the works to be performed; and this can be habitual, that is, once elicited and not retracted (St. Alphonsus, VI, 534, 14°). Namely, the Church, on whose benign mind this whole matter depends, is not judged to require a virtual intention, much less an actual one; indeed canon 925, § 2, which speaks only of intention without addition, sufficiently signifies that every intention, even habitual, suffices. Nevertheless, it is advised that each morning one elicit the intention of gaining all indulgences perhaps attached to the works to be performed during the day.[1] Finally, an implicit intention seems to suffice, that is, one by which someone wills that his works profit as much as they will be able to profit.[2]

Besides intention, fulfillment of the enjoined works is required, concerning which one must treat more fully. We shall speak first of the works to be fulfilled generally, then of some works in particular, finally of the commutation of works.

[1] Cf. *Raccolta,* p. XI.

[2] *Raccolta,* VIII.

493 I. **Works to be fulfilled considered generally.** The fulfillment of works is a condition without which an indulgence cannot be acquired, so that neither ignorance, nor good faith, nor impotence excuses anyone. Nor does it help to substitute a work equivalent to, or even more excellent than, the prescribed work. But the works must be fulfilled integrally, personally, morally well, at the appointed time, and in the due manner. It is said:

1. **Personally;** except, however, almsgiving, according to what will be said in n. 566.
2. **Integrally.** "But if one of the enjoined works is omitted, either wholly or in a notable part, through ignorance, negligence, or impotence... except in the case of legitimate commutation, the indulgence is not acquired."[1] Nevertheless, omission of a slight part, both in itself and with respect to the prescribed work, does not stand in the way of gaining the indulgence, as if you eat a little in a fast, or in the recitation of the Rosary omit three Hail Marys. The reason is that the work is judged to have been placed morally. It is otherwise if, for example, from the five Our Fathers and Hail Marys prescribed, one is omitted (St. Alphonsus, n. 534, under 14 and 16). What must be kept before one's eyes if a particular prayer is assigned, see n. 507.
3. **Morally well,** according to what was said in volume I, n. 242; hence an act not even partly good, such as an act placed from vanity alone, is unsuited for gaining an indulgence.
4. **At the appointed time.** Now the determination of time is for beginning and for ending the privilege, so that fulfillment carried out before or after the assigned time is invalid.
5. **In the due manner,** for example if a prayer is established as to be recited kneeling. It does not matter in what order the works are fulfilled.[2]

Note 1. By a work which someone is bound by law or precept to perform, an indulgence cannot be gained, unless something else is expressly said in the concession of the same; nevertheless, one who performs a work enjoined on him as sacramental penance and perhaps enriched with indulgences can at the same time both satisfy the penance and gain the indulgences (canon 932). Hence someone cannot gain an indulgence by reciting the canonical hours owed. Sacramental penance is excepted, as the cited canon has it; likewise Easter communion, as the Sacred Congregation of Indulgences declared,[3] excepting, however, the case in which the indulgence is granted in the form of a jubilee. Those things imposed by a rule are also excepted, if the rule does not oblige under sin. Nor does anything prevent someone from gaining an indulgence by performing a work owed by vow or promise, because a vow and promise are neither law nor precept.

Note 2. By one and the same work, to which indulgences are attached by various titles, several indulgences cannot be acquired, unless the required work is confession or communion, or unless something else has been expressly provided (canon 933). Thus, for example, since it has been expressly provided, Apostolic indulgences and those of the Most Holy Rosary, perhaps attached to a rosary, can be acquired at the same time;[4] likewise indulgences of the Most Holy Rosary and of the Cross-bearers, attached to the same rosary.[5]

[1] Sacred Congregation of Indulgences, May 19, 1759 (*Decreta authentica*, n. 214).

[2] Sacred Congregation of Indulgences, May 19, 1759 (*Decreta authentica*, n. 214).

[3] December 13, 1841; May 10, 1844.

[4] Sacred Penitentiary, February 17, 1922 (*A.A.S.* 1922, p. 143); June 14, 1922 (*A.A.S.* 1922, p. 394).

[5] Sacred Congregation of Indulgences, June 12, 1907.

494 II. **Works to be fulfilled considered in particular.** The works which are rather often prescribed for gaining at least a plenary indulgence are: Confession, Holy Communion, visitation of some church or public oratory, and prayer according to the mind of the Supreme Pontiff. That these are designated by the well-known clause "under the usual conditions" is clear from the new collection published by order of the Sacred Penitentiary and approved by the decree of February 22, 1929.[1]

[1] *A.A.S.* 1929, p. 200.

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1. **Confession.** Whenever an indulgence is granted with the clause "to the contrite and confessed" or a similar clause, sacramental confession is established as a condition, even for those who do not have mortal sin, although absolution is not required for these.[1] Nevertheless:

a) For gaining any indulgences whatever, the confession perhaps required can be made within the eight days which immediately precede the day to which the indulgence was affixed, and likewise within the whole subsequent octave (canon 931, § 1).

b) For gaining indulgences granted for pious exercises of three or more days, confession can also be made within the octave which immediately follows the completed exercise (canon 931, § 2).

c) Actual confession is necessary for gaining no indulgence for those who are accustomed, unless legitimately impeded, to approach the sacrament of penance at least twice in the month, or to receive Holy Communion daily in the state of grace and with a right and pious mind, although once or twice

during the week they abstain from it (cf. canon 931, § 3). Except the indulgences of either an ordinary or extraordinary jubilee or in the likeness of a jubilee (cited canon).

[1] If the clause "with heart at least contrite" is added in the concession of an indulgence, it signifies this one thing: that the state of grace is required for the indulgence to be acquired; it does not require that one who is in the state of grace elicit an act of contrition (Sacred Congregation of Indulgences, December 17, 1870, *Decreta authentica*, n. 427). The same is signified if an indulgence is said to be granted "in the customary form of the Church."

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2. **Holy Communion.** This can be received in any church, etc., even if the visitation of a determinate church is prescribed. Besides this:

a) Communion can be received on the vigil of the day to which the indulgence is affixed and within the whole subsequent octave (canon 931, § 1).

b) For gaining indulgences granted for pious exercises of three or more days, communion can also be made within the octave which immediately follows the completed exercise (canon 931, § 2).

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3. **Visitation of a church;** concerning this, observe:

a) Visitation of a church requires entrance into it, and indeed with the intention of worshiping God.[1] If, however, because of the multitude of the faithful someone cannot enter it, it suffices to join himself to the multitude (St. Alphonsus, n. 538, q. 10). But if the visitation of the church is made processionally, it does not suffice, for carrying out the prescribed visitation, that the clergy and people pass by praying before the Church, nor that the clergy with some from the procession enter the church and recite the common prayer while the rest remain outside the church; rather, it is required that all who can be contained in it enter the church and recite the common prayer there.[2] Entrance into the church for the purpose of receiving Holy Communion can also be counted for the visitation.

b) If the visitation of a determinate church or public oratory is prescribed, these must be visited. If the visitation of a non-determinate church is prescribed, it suffices to visit any church or public oratory, but not a semi-public or private one. Nevertheless:

1. Whenever for gaining indulgences there is prescribed the visitation of some non-determinate church or of some indeterminate public oratory, the faithful of either sex who, for the sake of the pursuit of perfection, or of instruction or education, or even of health, live a common life in houses lacking a church or public chapel and established with the consent of the Ordinaries, and likewise all persons dwelling there to minister to them, can visit the chapel of their own house in which they can satisfy by law the obligation of hearing Mass, provided they have duly performed the other enjoined works (cf. canon 929).[3]
2. Cardinals from their promotion in Consistory, Archbishops, and Bishops enjoy the faculty of gaining in their own chapels indulgences for the acquiring of which the visitation of some temple or public shrine of the city or place in which the Cardinals actually reside has been prescribed, and their household members can also enjoy this privilege (canon 239, § 1, 11°; canon 349, § 1, 10°).

Finally, if the visitation of a determinate chapel or altar is prescribed, it does not suffice merely to enter the church; rather, it is necessary to betake oneself to the determinate chapel or altar, or at least to stand in a place from which the chapel or altar can be seen.[4]

c) For gaining an indulgence affixed to some day, if the visitation of a church or oratory is required, this can be done from noon of the preceding day up to the midnight which closes the appointed day (canon 923).

d) One who wishes to gain several indulgences, each of which requires visitation of a church, is bound to make as many visitations - namely, by going out after each visitation and entering again - as the indulgences he intends to gain. This also holds if some indulgence can be acquired as often as the church is visited.[5]

[1] Sacred Congregation of Indulgences, May 19, 1759 (*Decreta authentica*, n. 214); August 20, 1822 (*Decreta authentica*, n. 253, to II); December 15, 1841 (*Decreta authentica*, n. 295).

[2] *Raccolta*, p. XVI.

[3] The concession cannot be applied to the Portiuncula indulgence, since for it the visitation of a determinate church is prescribed, unless nevertheless this has been specially granted to some persons (*A.A.S.* XVI, p. 346, to VI).

[4] Adrian VI, April 1, 1523; Clement VIII, April 4, 1524; Fanfani, cited work, p. 47.

[5] Sacred Congregation of Indulgences, February 29, 1864 (*Decreta authentica*, n. 399, to II and III).

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4. **Recitation of prayers,** which, if visitation of a church is prescribed, is usually imposed as to be made in the visitation itself. Besides this, observe:

a) If, for gaining indulgences, prayer in general according to the mind of the Supreme Pontiff[1] is prescribed, mental prayer alone does not suffice; but vocal prayer can be chosen at the judgment of the faithful, unless some particular prayer is assigned (canon 934, § 1). Therefore, in the case posited, mental prayer alone does not suffice; yet it is enough to add some vocal prayer - not, however, a minimal one - to mental prayer (St. Alphonsus, n. 538, q. 10).[2]

According to the common opinion, five Our Fathers and Hail Marys suffice, or equivalents to be chosen at will, unless a particular prayer is prescribed. But for gaining the Portiuncula Indulgence, by decree of the Sacred Penitentiary dated July 10, 1924, the recitation of six Our Fathers, Hail Marys, and Glory Bes is required, and other equivalent prayers cannot be recited.[3]

b) If a particular prayer has been assigned, indulgences can be acquired in whatever language the prayer is recited, provided that the fidelity of the version is established from a declaration either of the Sacred Penitentiary or of one of the Ordinaries of the place where the language into which the prayer is translated is vernacular; but indulgences entirely cease because of any addition, subtraction, or interpolation (canon 934, § 2). Hence, for example, indulgences are not acquired if, in sung litanies of the Blessed Virgin Mary, the *Kyrie eleison* is sung only once, nor if after each title *Ora pro nobis* is not recited.[4] But the custom of announcing before each decade the mystery to be meditated upon does not seem to harm, since in the case there is no interpolation in the prayers themselves. As regards the practice of recalling the mystery in the middle of the Angelic Salutation, the Sacred Penitentiary, privately asked, declared[5] that it cannot be kept and propagated while the indulgences remain intact. Nevertheless, the same Congregation judges that by canon 934, § 3 there was in no way revoked the indult by which Pius IX in the year 1859, for places where the custom had already grown up, granted that the faithful reciting the Rosary in such a manner could gain its indulgences; and Benedict XV, at the petition of the Sacred Penitentiary, extended that indult to all who according to the aforesaid custom had been accustomed to recite the Holy Rosary in any places whatever.[6]

c) For the acquisition of indulgences, it is enough to recite the prayer alternately with a companion, or to follow it mentally while it is recited by another (canon 934, § 3).

d) Mutes can gain indulgences attached to public prayers if, together with the rest of the faithful praying in the same place, they lift up their mind and pious sentiments to God; and if the matter concerns private prayers, it is enough that they recall them mentally, or express them by signs, or merely run through them with the eyes (canon 936). Finally, by concession of Benedict XV, maimed persons can gain indulgences for the gaining of which the recitation of prayers together with some bodily act which they are unable to perform is enjoined, by pouring forth prayers alone.[7]

Finally, I note that by the faithful enrolled in some sodality, indulgences granted to the sodality can be acquired even if they do not observe the statutes of the society,[8] provided they fulfill the works imposed for the indulgences.

Question. Whether one who performs the enjoined works more perfectly, for example with greater fervor, becomes a participant in the indulgence in a greater measure than one who acts less perfectly.

Response 1. Of itself, no; because the Church is content with common fervor, and in applying the indulgence does not take account of that which is performed beyond what is due.

Response 2. Incidentally, it will easily happen that one who performs beyond what is due participates more in the indulgence, insofar namely as contrition, and therefore remission of guilt, is more universal.

[1] The Supreme Pontiff intends the prosperity and exaltation of the Church, the extirpation of heresies, the conversion of sinners, and finally the peace of the Christian people.

[2] Cf. Benedict XIV, Constitution *Inter praeteritos*, § 83.

[3] *A.A.S.* XVI, p. 343, to IX; Sacred Penitentiary, January 30, 1930 (*A.A.S.* 1930, p. 43).

[4] Sacred Penitentiary, July 21, 1919.

[5] July 27, 1920.

[6] Sacred Penitentiary, January 22, 1921 (*A.A.S.* 1921, p. 163).

[7] Sacred Penitentiary, October 22, 1917 (*A.A.S.* 1917, p. 539).

[8] Sacred Congregation of Indulgences, January 25, 1842 (*Decreta authentica*, n. 298, to II); cf. canon 692.

499 III. **Commutation of works.** Confessors can commute pious works enjoined for gaining indulgences into others for those who, detained by a legitimate impediment, cannot perform the same works (canon 935). To pious works here do not belong those which constitute the cause or occasion of the indulgence, as, for example, the use of a crucifix which ought to supply for the Way of the Cross. By confessor is understood one who enjoys sacramental jurisdiction over the faithful person to whom commutation seems to be granted, so that he can at least validly hear the confession. Commutation, however, can be made not only within confession, but also outside confession (St. Alphonsus, n. 534, 15°).

Members of some confraternity who, because of illness or imprisonment, are impeded from visiting the church, can gain the indulgences granted to the confraternity, even with the visitation perhaps prescribed being omitted.[1]

[1] Sacred Congregation of Indulgences, August 20, 1887 (*Collectanea*, n. 1680).

500 **Question.** To what extent several indulgences can be acquired on the same day.

Response 1. A plenary indulgence, unless something else has been expressly provided, can be acquired only once in the day, even if the same prescribed work is placed several times (canon 928, § 1).

Response 2. A partial indulgence, unless the contrary is expressly noted, can be gained several times during the day, the same work being repeated (canon 928, § 2).

Response 3. As is sufficiently clear of itself, diverse indulgences can be acquired on the same day, provided the works enjoined for each are fulfilled, or if the same works are prescribed, are repeated insofar as they must be repeated. Now one and the same confession and communion suffices for gaining several indulgences (n. 502).[1] The faculty of gaining diverse indulgences on the same day regards both indulgences concurring on one day because of a festivity, and those which someone out of his devotion has affixed to such a day in the week or month.[2]

[1] Sacred Congregation of Indulgences, February 29, 1864; January 12, 1878 (*Decreta authentica*, n. 434, to 3).

[2] Sacred Congregation of Indulgences, February 29, 1864.

Scholion. On the Application of Indulgences to the Souls in Purgatory

501 **Preliminary note.** Although the Supreme Pontiff can grant that we gain indulgences for other living persons, in fact, the Pontiff himself so disposing, no one acquiring indulgences can apply them to others living in this life (canon 930).[1] As regards the application of indulgences to the souls in purgatory, however, we note these things:

[1] The "privilege of the altar for the dying" does not conflict with the cited canon, because in that case the priest celebrating does not acquire the indulgence; rather, the indulgence attached to the Holy Mass is applied directly by the Church to the dying person by way of absolution. Hence the Holy Office, November 9, 1922, to 1, answered affirmatively to the question whether, after canon 930 of the new Code, the existence of an altar for the dying still persisted.

502 I. **The power of the Supreme Pontiff to grant indulgences for the departed.** That the Supreme Pontiff enjoys this faculty is proximate to faith, because of the condemnation, and that repeated several times, of the contrary opinion.[1] It is established from the practice of the Church, by which the Supreme Pontiffs have established various indulgences applicable to souls in purgatory; and it follows from the dogma of the communion of Saints, by virtue of which a mutual communication of goods has place in the Church.

The manner of granting indulgences for the departed was explained above, on p. 377.

[1] Thus, for example, proposition 42 condemned by Pius VI against the Synod of Pistoia (Denzinger-Bannwart, n. 1542).

503 II. **Requisites so that one acquiring indulgences may apply them to the departed.** It is required: 1. that the Supreme Pontiff has granted them as applicable to the departed; since, as canon 913, 2°, states, those inferior to the Roman Pontiff cannot grant indulgences applicable to the departed. Besides this, all indulgences granted by the Roman Pontiff, unless something else is established, are applicable to souls in purgatory (canon 930). 2. The intention of the one acquiring is required, by which he wills this and determines, in general or in particular, to whom the indulgence acquired by him is to be applied. The reason is that the Supreme Pontiff makes indulgences only

applicable, as follows from canon 913, 2°, and 930. A virtual intention suffices, or even, because the matter concerns a quasi-donation, a habitual one.

It is disputed whether the state of grace is required in the one gaining. The Sacred Congregation of Indulgences, when asked several times concerning this matter, answered on August 20, 1822: *Deferred*; and on February 22, 1847: *Let approved authors be consulted.* Now from the approved authors, some[1] deny it, because the state of grace is required only as a disposition for obtaining the effect of the indulgence, that is, the remission of punishment. Therefore, if the effect is to be received by the departed person, it suffices that this person be in the state of grace, but the said state is not required in the living person who fulfills the conditions of the indulgence. Nevertheless, with St. Alphonsus (n. 534, under 10) and others,[2] it seems the contrary must be admitted. For by granting indulgences for the departed, the Supreme Pontiff constitutes them only as applicable, as follows both from concessions of the Supreme Pontiff and from canon 913, 2°, and canon 930; in other words, he grants to the faithful a certain right in the satisfactions of Christ and the Saints, or at least a right of offering those same satisfactions to God in the name of the Church. Now, if the matter concerns a sinner, the former cannot be admitted, since a sinner cannot merit any satisfaction for himself. As regards the latter, it likewise is admitted with difficulty that a right of this kind is granted to a subject who, even at the end of the works to be performed by him, persists in enmity with God; all the more because then the Church would grant to a sinner the faculty of doing for others what he cannot do for himself as regards previously remitted sins.

To what extent indulgences applied to the departed produce an infallible effect was explained above, on p. 377.

[1] St. Bellarmine, *De Indulgentiis*, book I, chapter 14; Billuart, *De Indulgentiis*, single dissertation, article 6.

[2] De Lugo, Disputation XXVII, n. 75; Tournely, *De Poenitentia*, last question, article 6; Wignandt, *Tribunal Confessariorum*, treatise 14, n. 96.

504 III. **The measure according to which an indulgence comes to the departed.**

1. If the indulgence is plenary and is applied to one person, it is understood, if we suppose that God assents to the Church making suffrage, to remit all the remaining punishments of the soul. If it is plenary and is applied to several or to all, which can be done,[1] the distribution is left to Divine Providence.
2. If the indulgence is partial, for example of one year, it is understood to remit so much punishment as would be remitted to someone if for a year he performed the penance once customarily imposed for sins according to the canons. If it is partial and is applied to several or to all, the distribution is left to the Providence of God.

[1] *Raccolta*, p. XI.

Section IV. On the Transfer, Suspension, and Cessation of Indulgences

505 I. **Transfer of indulgences** consists in this, that they are transferred from one place to another or from one time to another. Some things must be noted only about transfer with respect to time. Now, having regard to canon 922:

1. If the external solemnity of a feast is transferred, the indulgences attached to the feast are transferred to the day on which the external solemnity is held; otherwise, if only the Office and

Mass are transferred and the external solemnity is held on the proper day.

2. If the matter concerns feasts which are celebrated without external solemnity, then the indulgences are transferred if the feast is only occasionally transferred.

3. Indulgences attached to sacred supplications or to novendial, septenary, or triduan prayers, which are performed before or after the feast or even while its octave lasts, are transferred or not transferred according as the indulgences attached to the feast day itself are transferred or not transferred.

Note. Nevertheless, observe that the same indulgence cannot be acquired twice, even at a different time. Thus one who, for example, in one diocese has gained the indulgence attached to the feast of the Immaculate Conception cannot gain the same indulgence again in another diocese if he is there on the day on which the external solemnity of the feast is celebrated in that place.[1] But for the Portiuncula Indulgence it was declared on January 13, 1930[2] that Christ's faithful can obtain it on the second day of the month in one church and on the Sunday next following in another church where that day has been substituted according to the norm of the Decree of the Sacred Penitentiary dated July 10, 1924, to VII.[3]

[1] Sacred Congregation of Indulgences, January 12, 1878 (*Decreta authentica*, n. 435, to III).

[2] *A.A.S.* 1930, p. 23.

[3] *A.A.S.* 1924, p. 346.

506 II. **Suspension of indulgences** consists in this, that indulgences cease for a time, but when the time has passed, they revive without a new act of the superior. Now:

1. Indulgences attached to some church are suspended if the church is overturned from its foundations; they revive, however, if within fifty years it is built in the same or almost the same place and under the same title (canon 924, § 1). It is said "almost the same place," that is, at a small distance, for example twenty or thirty paces. If a church is renewed even totally through successive repairs, the indulgences persist.

2. Likewise indulgences attached to an altar are suspended if the altar is destroyed; but they revive if it is rebuilt under the same title and in the same church, even in another place.[1] Indulgences attached to a mission cross are continued if a new cross is substituted for a fallen or destroyed cross, provided the new cross is erected in the same or almost the same place, with at least the tacit consent of the Bishop.[2]

[1] Sacred Congregation of Indulgences, September 16, 1623† (*Decreta authentica*, n. 317); July 18, 1902 (*A.S.S.* 1902, p. 62).

[2] Sacred Congregation of Indulgences, February 22, 1888 (cf. *Analecta ecclesiastica* 1902, p. 261); July 20, 1901.

507 III. **Cessation of indulgences** has place:

1. By the lapse of the time for which they were granted.

2. By revocation by the one granting or his Superior.

3. By the death of the one granting or by the resolution of his right, they cease only if they were given with the clause "at our good pleasure," or another equivalent clause; but not if they were

given absolutely, without a clause, or with the clause "at the good pleasure of the Holy See" or a similar one (cf. canons 70 and 73).

4. By the death of the one to whom the indulgences were granted, if the matter concerns a purely personal privilege; likewise by the extinction of a Confraternity, if the extinction lawfully had place; otherwise, if unlawfully, in which case the indulgences revive when the Confraternity has been restored.[1]

5. By the destruction or sale of the thing enriched with indulgences; namely, canon 924, § 2 states: Indulgences attached to rosaries or other things cease only when the rosaries or other things entirely cease to be or are sold. The exchange of one thing for another, however, seems to be equivalent to sale.[2]

Therefore indulgences do not cease because a price is paid after the rosary or blessed thing has been blessed, provided the sale itself had place before the blessing; nor do they cease from the fact that rosaries, crosses, etc., enriched with indulgences are given or lent to another for gaining indulgences; and this holds even if the one giving or lending the said rosaries, crosses, etc., has already used them for acquiring indulgences.[3] Nor is it an obstacle that something is received or even asked, provided it is not done under the title of sale.

As regards rosaries, note that the indulgences are attached to the beads; hence the chain can be changed. If the beads are bound by a thread and this is broken so that the beads are gathered into one, the indulgences seem to be suspended and, when the rosary has been restored, to revive.

[1] Sacred Congregation of Indulgences, August 26, 1840 (*Decreta authentica*, n. 285).

[2] Cf. Sacred Congregation of Indulgences, June 4, 1721 (*Decreta authentica*, n. 78).

[3] Cf. Sacred Penitentiary, February 18, 1921 (*A.A.S.* 1921, p. 164).

Part II. On Some Indulgences in Species

Section I. On the Privileged Altar

508 I. **Notion.** The privilege of an altar is a privilege by virtue of which a plenary indulgence, under certain conditions, is attached to the celebration of Mass. This indulgence indeed has chiefly been granted for the departed, but sometimes also for the living.[1] Today, however, it is usually granted for the departed only. As regards it, the Sacred Congregation of Indulgences responded on July 28, 1840 - and these things otherwise agree with general principles - that "by an indulgence attached to a privileged altar, if the mind of the one granting and the use of the power of the keys are considered, there is to be understood a plenary indulgence which immediately frees the soul from all the punishments of Purgatory; but if the effect of the application is considered, there is to be understood an Indulgence whose measure corresponds to the good pleasure and acceptance of divine mercy."[2] Now this indulgence obtains its effect more certainly than others, insofar as on the part of the priest it requires nothing except the application of the Mass (n. 521).

As regards the sense of the privilege, observe furthermore: the indulgence is applied only to him for whom the Mass is said,[3] and indeed only to one person, even if the Mass is celebrated for several.[4]

[1] If this indulgence has been granted for the living and the departed, it "is to be interpreted in such a way that a Plenary Indulgence is understood to be granted both for the living, if the sacrifice of the Mass is applied on the altar in question, and for the departed, if the Holy Sacrifice is applied for them: for the living by way of jurisdiction, for the departed by way of suffrage" (Sacred Congregation of Indulgences, August 25, 1897).

[2] *Decreta authentica*, n. 283.

[3] Sacred Congregation of Indulgences, December 18, 1885; August 25, 1897.

[4] Sacred Congregation of Indulgences, February 29, 1864 (*Decreta authentica*, n. 402, to I); June 19, 1880 (*Decreta authentica*, n. 451, to II).

509 II. **Division.** The privilege is distinguished as local, which is attached to an altar, so that all celebrating on it enjoy the privilege; personal, which inheres in the priest, so that, on whatever altar he celebrates, he enjoys the privilege; and mixed, which affects both altar and priest, so that only determinate priests, for example members of some Confraternity celebrating on such an altar, possess the privilege.

510 III. **Local privilege.**

1. First note these things, although less properly they constitute a local privilege: on the day of the Commemoration of all the faithful departed, all Masses enjoy the privilege as if they were celebrated at a privileged altar (canon 917, § 1).
2. All altars of a church, during those days on which the supplication of the Forty Hours is held in it, are privileged (canon 917, § 2). Understand: provided that in that supplication those things are observed which Pius X established by decree of the Holy Office on June 22, 1914.[1]
3. Who besides the Roman Pontiff can designate some privileged altar, and to what extent, see n. 494.

Note 1. In order that the privilege be attached to some altar, the altar must be fixed. But it suffices that it be fixed in the broad sense, or such that its structure has some firmness, insofar namely as,

even if it is not fixed to a wall, nevertheless ordinarily it is not moved, although it could be moved.[2] It is not an obstacle that the consecrated stone can be removed or another substituted for it.[3] To what extent the privilege revives if a destroyed altar is rebuilt, see n. 515.

Note 2. In order to indicate that an altar is privileged, nothing else should be inscribed except: *privileged altar*, perpetual or for a time, daily or not, according to the words of the concession (canon 918, § 1).

[1] *A.A.S.* 1914, p. 74.

[2] Sacred Congregation of Indulgences, July 18, 1902.

[3] Sacred Congregation of Indulgences, September 27, 1843 (*Decreta authentica*, n. 324).

511 IV. **Personal privilege.** By force of common law, Cardinals (canon 239, § 1, n. 10), Bishops, whether residential or titular (canon 349, § 1, 1°), and Apostolic Vicars and Prefects (canon 294, § 1) enjoy this privilege.

Note 1. One who obtains a personal privilege from the Apostolic See is not bound to exhibit the said faculty to the Ordinary unless otherwise disposed in the concession obtained.[1]

Note 2. One who enjoys a personal privilege for three or four times in the week and is aggregated to some Congregation which also enjoys such a privilege can use both, provided that in the indult something else is not expressly disposed.[2]

[1] Sacred Congregation of Indulgences, February 5, 1841 (*Decreta authentica*, n. 286, to II).

[2] Sacred Congregation of Indulgences, May 27, 1839 (*Decreta authentica*, n. 272).

512 V. **Conditions to be fulfilled.**

1. For Masses to be celebrated on a privileged altar, a greater Mass alms cannot be demanded under pretext of the privilege (canon 918, § 2).
2. The Mass must be offered for the departed only, one or several; since the privilege has no place if the Mass is offered for the living or for the living and departed at the same time.[1]
3. The Mass should be offered for one soul only, or, if it is celebrated for several, also for the soul to whom the priest wills that the indulgence be applied. For the indulgence, as was said in n. 517, is not applied except to him for whom it is celebrated.

It is not required that either the one offering the alms or the priest intend to apply the privilege; for this, by the very fact that the celebration has place, is applied to the soul, or to one of the souls, for whom it is celebrated. This is deduced from responses of the Sacred Congregation of Indulgences: in the case, the Church herself seems to ask God that, if the Mass is celebrated for one, He apply the indulgence to this one; if for several, to him to whom He Himself shall prefer. Hence it seems one must say that in the privilege of the altar the faculty of applying the indulgence does not belong to the celebrant himself. Finally, for validity the quality of a Requiem Mass, or of a feria or vigil, is now not required, nor the addition of the Prayer for the departed.[2]

[1] Sacred Congregation of Indulgences, January 23, 1901.

[2] Sacred Congregation of Indulgences, March 12, 1855 (*Decreta authentica*, n. 366, to I); June 19, 1880 (*Decreta authentica*, n. 451, to III); Holy Office, March 20, 1913.

513 VI. **Gregorian altar;** concerning this, some things must be noted in particular. Now by Gregorian Altar is understood the altar of St. Gregory on Monte Coeli in Rome. Moreover, the Sacred Congregation of Indulgences responded on March 15, 1884, that the trust by which the faithful hold the celebration of thirty Masses, which are commonly called Gregorian, as specially efficacious from the good pleasure and acceptance of divine mercy for the liberation of a soul from the punishments of purgatory, is pious and approved in the Church.[1] And the Holy Office, on December 2, 1912,[2] declared that the said Altar is truly and properly privileged, that is, such that a plenary indulgence is attached to it. There are also altars called Gregorian *ad instar*, namely which are privileged after the likeness of the Gregorian altar; these, however, after the decree of the Holy Office of December 11-12, 1912, to VII,[3] are no longer granted.

We spoke of the so-called Gregorian Masses in the treatise on the Most Holy Eucharist, n. 222.

[1] *A.S.S.* XVI, p. 500.

[2] *A.A.S.* V, p. 33, to VII.

[3] *A.S.S.* 1913, p. 33.

Section II. On the Way of the Cross and on the Crucifix of the Way of the Cross

514 The Way of the Cross is: "A pious exercise by which the whole series of the Lord's passion, expressed in painted tablets where this can conveniently be done and distributed into several stations, is proposed for contemplation in the manner in which pilgrims visiting the City of holy Jerusalem look upon the very places where Christ suffered, recalling and frequenting them."[1]

We shall speak first of the erection of the Way of the Cross, then of the indulgences attached to it and of acquiring them, and then of the Crucifix of the Way of the Cross.

[1] Constitution of Benedict XIII *Inter plurima*, March 9, 1726.

Chapter I. On the Erection of the Way of the Cross

515 I. **The power of erecting the Way of the Cross belongs:**

1. To Cardinals, who from their promotion in Consistory enjoy the faculty of erecting by a single blessing, in churches and oratories, even private ones, and in other pious places, stations of the Way of the Cross with all the indulgences which have been imparted to those performing a pious exercise of this kind (canon 239, § 1, 6°).
2. To Bishops, even titular ones, who from receiving authentic notice of canonical provision having been completed can do the same as Cardinals, but with the rites prescribed by the Church (canon 349, § 1, 1°).
3. To Apostolic Vicars and Prefects, in their territory (canon 294, § 1).
4. To Superiors of the Order of Friars Minor, even excluding the Capuchin and Conventual Minors.[1] Now:

a) The Minister General, by himself or through others, can erect Stations everywhere in the world; the Provincial Minister, within the Province; the Guardian or President, within his own guardianship or district - not to be taken too rigorously, since Benedict XIV left to the judgment of pastors the

choice of the religious man whom they judged more suitable, so that with the license of his local superior he might proceed to make the erection.[2]

b) The Minister General can delegate the faculty of erecting within and outside the Order; he can also grant authority of subdelegating. The other Superiors are wholly without this right, and furthermore can delegate for the erection of the Way of the Cross only their own subjects who are approved preachers or confessors.[3]

Note. The competent authority in the Order of Friars Minor, from whom the faculty is requested, commonly restricts this to places where the said Order does not exist. By the name of places here are meant a city, town or village, with the respective suburbs or places adjacent to them, but not a parish, or a whole diocese, or any other section or part of a diocese.[4]

[1] Cited *Monita*, n. I.

[2] Stein, p. 32.

[3] Sacred Congregation of Indulgences, December 14, 1857 (*Decreta authentica*, n. 382, to I and II).

[4] Brief of Clement XII *Exponi nobis*, January 16, 1731, together with the Rescript of the Sacred Congregation of Indulgences, March 15, 1884; cited *Monita* of Clement XII, nn. III and IV. From practice it seems that what is read as prescribed in the cited Decree, n. III, is not to be taken so strictly: "But where the Way of the Cross should be erected outside a church... care must always be taken that it begin from a church or sacred place, or have its end as far as a church or sacred place" (Sleutjes, n. 19).

516 II. **Places suitable for erection** are: churches, public and semi-public oratories; likewise private or domestic oratories in which there is the privilege of celebrating Mass; likewise common and decent places of convents, seminaries, hospitals, and other pious places; finally public and decent places under the open sky, as in cemeteries, at the entrance of churches, in gardens, in groves. For private or domestic oratories in which Mass cannot be said, a special indult is required.[1]

Nothing also prevents several Ways of the Cross from being erected in the same place.[2]

[1] Cf. cited *Monita*, n. IV.

[2] Cited *Monita*, n. III; Sacred Congregation of Indulgences, June 20, 1838 (*Decreta authentica*, n. 261), January 30, 1839 (*Decreta authentica*, n. 270, to II), November 23, 1878 (*Decreta authentica*, n. 442, to I).

517 III. **Required documents.** Before the erection, under penalty of nullity, the following are required in writing: 1. the deputation of the priest erecting, unless he himself is the Superior;[2] 2. for individual cases, the license of the Ordinary of the place, the consent of the pastor, and the consent of the superiors of the church, monastery, hospital, or pious place where the Stations of the holy Way of the Cross are to be set up.[3] Nevertheless:

1. The license of the Bishop is not required if the matter concerns an exempt place, such as churches, oratories, and internal places of exempt religious;[4] but strictly domestic oratories and other decent places of private houses are not excepted.[5]
2. Nor is the consent of the pastor required if the matter concerns places which by law, or at least in fact, for example by force of diocesan statute, are exempt from the jurisdiction of the pastor;[6] but in the latter case, the consent of the rector to whom the place has been entrusted is required. Nor is the consent of the pastor demanded for strictly private oratories and other decent places of private houses.

3. It suffices that the deputation, license, and consent to be exhibited in writing be implicit. Hence if, for example, the Bishop has deputed someone in writing to erect the Way of the Cross in a determinate place, no other document expressing the license is required.

An instrument of the completed erection must be drawn up and signed by the erector's own hand.[7] Furthermore, the petition and concession of the erection are to be preserved in the episcopal archive; the other documents, such as the instrument of erection of which we have spoken, in the archive of the place.[8] These things, however, are not prescribed under penalty of nullity.[9]

[1] Cf. Sleutjes, *Instructio de Stationibus S. Viae Crucis*.

[2] Cf. Brief of Clement XII *Exponi Nobis* and Brief of Benedict XIV *Cum tanta*.

[3] Sacred Congregation of Indulgences, September 26, 1892, to IX.

[4] Sacred Congregation of Indulgences, September 26, 1892, to VI.

[5] Sacred Congregation of Indulgences, June 21, 1879 (*Decreta authentica*, n. 445, to I); September 26, 1892.

[6] Sacred Congregation of Indulgences, September 25, 1841 (*Decreta authentica*, n. 294).

[7] Sacred Congregation of Indulgences, August 3, 1748 (*Decreta authentica*, n. 175); September 25, 1841 (*Decreta authentica*, n. 294).

[8] Sacred Congregation of Indulgences, August 6, 1890, to IV.

[9] Sacred Congregation of Indulgences, August 6, 1890, to IV.

518 IV. **Matter of erection.** For validity there are required fourteen wooden crosses visible to those standing by.[1] Although no decree clearly prescribes that the crosses must be visible as wooden, nevertheless this is the mind of the legislator. To the crosses are joined, though not necessarily,[2] tablets, whether painted or sculpted, which represent the same mysteries of the passion as the Stations of the holy Way of the Cross at Jerusalem.

[1] Cited *Monita*, n. III; Sacred Congregation of Indulgences, June 20, 1838 (*Decreta authentica*, n. 261); January 30, 1839 (*Decreta authentica*, n. 270, to II); November 23, 1878 (*Decreta authentica*, n. 442, to I).

[2] Sacred Congregation of Indulgences, November 13, 1837 (*Decreta authentica*, n. 258); September 20, 1839 (*Decreta authentica*, n. 275, to I).

519 V. **Form of erection** is constituted by the blessing and affixing of the crosses, and of the tablets if they are used, with some distance preserved.

1. The blessing of the crosses is required for validity;[1] the tablets, if they are present, can be blessed,[2] but do not have to be blessed. The blessing of the crosses must be made by a legitimate minister, in the place where the Way of the Cross is to be erected.[3] If, however, the Way of the Cross is to be erected in a monastery of nuns, it is not required that the one erecting enter the cloister, but it suffices that he bless the crosses at the grates.[4] Besides this, the blessing can be made both before and after their affixing.[5]
2. The affixing of the crosses, for example to a wall or upon benches, provided these are immovable and sufficiently upright, likewise belongs to validity.[6] Nevertheless, it makes no difference whether it is done before or after the blessing, by the erector himself or by another; and if it is done by another, it is not required that the erector be present, so that after the blessing has been made he can depart.[7]

3. Some distance between the various stations is required, so that validity would be lacking if the whole way were completed in very few paces.[8] It does not matter, however, whether the way begins on the Gospel side or on the Epistle side.

[1] Sacred Congregation of Indulgences, January 30, 1839 (*Decreta authentica*, n. 270, to II).

[2] Sacred Congregation of Indulgences, September 28, 1838 (*Decreta authentica*, n. 246, to IV) indeed declares that images, or tablets, are never blessed; but since the formula for blessing them has been retained in the Roman Ritual, the said declaration should be understood so that it is not of necessity that the images be blessed.

[3] Cf. Sacred Congregation of Indulgences, September 26, 1872.

[4] Sacred Congregation of Indulgences, June 21, 1879 (*Decreta authentica*, n. 447).

[5] Cited *Monita*, n. VIII.

[6] Cf. Sacred Congregation of Indulgences, December 16, 1760 (*Decreta authentica*, n. 223, to II).

[7] Cf. Sacred Congregation of Indulgences, August 22, 1842 (*Decreta authentica*, n. 311, to I and II); June 21, 1879, n. 447; September 26, 1892, to II.

[8] Sacred Congregation of Indulgences, August 26, 1752 (*Decreta authentica*, n. 194, to I).

520 VI. **Invalidation of the erection** has place:

1. If all the crosses originally blessed, or at least seven, perish, whether simultaneously or successively.[1] In this case a new erection is required; but that new erection or renewal in the same place is made by the blessing alone of new crosses, without the license of the Bishop and consent of the pastor being required again, provided these can be presumed to persevere.[2] Delegation, however, must be made in writing.[3]

In the case in which the crosses perish in a smaller number, the erection is not invalidated, and it suffices to substitute other crosses for the lost ones without a blessing.[4]

2. If the crosses are definitively transferred to another place;[5] but not if they are removed for a time, or are arranged in the same place in another way.[6]

In the case in which the crosses are definitively transferred to another place in which the Way of the Cross had not yet been erected, all and each of the conditions must be fulfilled which were fulfilled in the former erection. But if in that other place the Way of the Cross had already been lawfully erected, the blessing of the transferred Way of the Cross suffices, after delegation granted in writing has been had, and without renewal of the other documents, provided the license of the Bishop and consent of the pastor are presumed to persevere.

The privilege of the Way of the Cross does not cease if, the old church having been destroyed, a new one is built in almost the same place and under the same title, and the same crosses which had been affixed in the old church are affixed there.[7]

[1] Sacred Congregation of Indulgences, January 30, 1839 (*Decreta authentica*, n. 270, to V).

[2] Sacred Congregation of Indulgences, January 11, 1896.

[3] Cf. Sacred Congregation of Indulgences, August 22, 1844 (*Decreta authentica*, n. 328).

[4] Sacred Congregation of Indulgences, January 30, 1839; September 20, 1839 (*Decreta authentica*, n. 270, to V; n. 275, to II).

[5] Sacred Congregation of Indulgences, January 30, 1839 (*Decreta authentica*, n. 270, to IV).

[6] Sacred Congregation of Indulgences, September 20, 1839 (*Decreta authentica*, n. 275, to III); August 22, 1842 (*Decreta authentica*, n. 311, to IV); August 20, 1844 (*Decreta authentica*, n. 328).

[7] Sacred Congregation of Indulgences, January 11, 1896.

521 VII. **Convalidation of the erection,** or sanation of its invalidity, belongs to the Sacred Penitentiary, which will not omit to designate the conditions to be fulfilled.

Chapter II. On the Indulgences Attached to the Way of the Cross and on Acquiring Them

522 I. **Attached indulgences.** By Decree of the Sacred Penitentiary,[1] all and each of the Indulgences previously granted in performing the Way of the Cross have been abrogated, and the following new indulgences have been established: all the faithful who, whether individually or in company, with heart at least contrite, perform the pious exercise of the lawfully erected Way of the Cross according to the prescriptions of the Holy See can gain:

1. A plenary indulgence as often as they complete the pious exercise itself.
2. Another plenary indulgence, if on the same day on which they have performed the mentioned pious exercise, or even within a month after it has been performed ten times, they approach the Sacred Synaxis.
3. A partial indulgence of ten years and as many quarantines for individual stations, if perhaps, for any reasonable cause, they have not brought the exercise begun to the end.

[1] October 20, 1931 (*A.A.S.* 1931, p. 522).

523 II. **Acquisition of the indulgences.** In order that the indulgences be acquired, there are required:

1. **Visitation of the Stations,** by going from one station to another.[1] Now:

a) In a private exercise, or one performed by individual persons, passage from one Station to another is always required "insofar as either the multitude of persons who visit them or the narrowness of the place where they are erected permits."[2]

b) In a public exercise, or one performed after the manner of a public sacred function, when disturbance can be excited, it suffices that, each one of the people keeping his own place, the priest with two clerics or cantors go around, and, stopping at each station, recite there the particular customary prayers, the rest responding alternately.[3] But in the case in which, because of the size of the church or other circumstances of the place, the priest reciting prayers at each station can scarcely, or not even scarcely, be understood, it suffices that the same prayers be recited by the priest from the pulpit, from which he is understood by all, provided that another priest with two clerics or cantors goes around and stops at each station.[4]

c) In a common exercise, namely one performed by several at the same time but not after the manner of a public function, passage of all is required unless the narrowness of the place stands in the way; if this stands in the way, in the case in which the matter concerns a religious community, it suffices that one, even a layperson or woman, go around and, stopping at each station, recite the prayers.[5]

2. **Meditation on the passion of Our Lord Jesus Christ;** nor is any vocal prayer prescribed.[6] Meditation on the passion in general suffices, and that however brief and according to each one's capacity.[7]

3. **The exercise performed morally in one stretch.**[8] A brief interruption for any cause, indeed a longer one from a religious cause, does not stand in the way.[9]

[1] Cited *Monita*, n. VII.

[2] Sacred Congregation of Indulgences, February 26, 1841 (*Decreta authentica*, n. 287).

[3] Sacred Congregation of Indulgences, July 23, 1757 (*Decreta authentica*, n. 210).

[4] Sacred Congregation of Propaganda Fide, March 1, 1884.

[5] Sacred Congregation of Indulgences, February 27, 1901; May 7, 1902.

[6] Cited *Monita*, n. 6.

[7] Cf. Sacred Congregation of Indulgences, June 2, 1838 (*Decreta authentica*, n. 259); *Raccolta*, n. 88.

[8] Cf. *Raccolta*, n. 88.

[9] Sacred Congregation of Indulgences, January 22, 1858 (*Decreta authentica*, n. 385, to I); Sacred Congregation of Indulgences, December 16, 1760 (*Decreta authentica*, n. 223, to IV).

Chapter III. On the Crucifix of the Way of the Cross

524 I. **Notion.** By Crucifixes of the Way of the Cross are understood crosses with an image of the Redeemer, to which the indulgences of the Way of the Cross are attached, as will be explained under III. Now the indulgences are affixed not to the cross, but to the image of Christ, so that this image can be transferred from one cross to another without danger to the indulgences.[1] Besides this:

1. The image of the Crucified must be prominent, so that a cross with an image of the Redeemer depicted or impressed does not suffice. This is deduced from the authentic document of concession which is preserved in the archive of the convent of St. Bonaventure in Rome.[2] But crucifixes cast in bronze in such a way that the image of the divine Redeemer is indeed slightly prominent, yet cannot be detached or separated from the cross, do suffice.[3]

2. The image must be of brass or of any other non-fragile material.[4] Under the name of fragile material here tin and lead also seem to be included, just as will be said of objects to which papal indulgences are attached (n. 536). The cross seems able to be made of any material.

[1] Sacred Congregation of Indulgences, May 24, 1883.

[2] Cited authentic document; Sacred Congregation of Indulgences, August 8, 1859 (*Decreta authentica*, n. 387, to II).

[3] Sacred Congregation of Indulgences, May 24, 1883.

[4] Cited authentic document; Sacred Congregation of Indulgences, August 8, 1859 (*Decreta authentica*, n. 387, to II).

525 II. **Attachment of indulgences.**

1. The power of attaching indulgences to Crucifixes of the Way of the Cross belongs:

a) To Cardinals and Bishops, according as was said in n. 524 about the Way of the Cross itself (canon 239, § 1, 6°; canon 349, § 1, 1°).

b) To Superiors of the Order of Friars Minor; of these, the Minister General alone can delegate the faculty either to subjects or to outsiders.[1]

2. For attaching indulgences, the sign of the cross made with the intention of applying the indulgences suffices.[2] Several crucifixes can also be blessed in a group by a single sign of the cross;[3] likewise crucifixes to which other indulgences have already been attached[4] (n. 546).

[1] Rescript of the Sacred Congregation of Indulgences, cited, March 15, 1884.

[2] Sacred Congregation of Indulgences, April 11, 1840 (*Decreta authentica*, n. 281, to V); January 7, 1843 (*Decreta authentica*, n. 313, to II and IV).

[3] Sacred Congregation of Indulgences, March 11, 1855 (*Decreta authentica*, n. 363).

[4] Sacred Congregation of Indulgences, January 29, 1820 (*Decreta authentica*, n. 249, to III).

526 III. **Attached indulgences and their acquisition.**

1. To the Crucifix of the Way of the Cross are attached the same indulgences as to the Way of the Cross, that is, both the plenary indulgence attached to the Way of the Cross itself, and the plenary indulgence attached to the Way of the Cross by reason of Communion (n. 531).[1]

2. For acquiring the indulgences set forth, these things are required:

a) **Of itself, there is required:**

a) That someone be impeded by illness or another cause from visiting the stations of the Way of the Cross.[2] A moderately grave cause seems to suffice.

b) That the Crucifix be held in the hand during the recitation of the prayers, of which immediately.[3] If the prayers are recited in common, it suffices that one person hold the Crucifix in the hand, and that the others, other concerns having been set aside, compose themselves for reciting the prescribed prayers together with the person who holds the Crucifix.[4] It is said "other concerns having been set aside," that is, at least those external occupations which impede internal attention.[5]

c) That meanwhile twenty Our Fathers, Hail Marys, and Glory Bes be recited, with heart at least contrite and devoutly: namely, one for each station, five in memory of the holy Wounds of Christ, and one according to the mind of the Supreme Pontiff.[6]

d) That in the use of the crucifix there be meditation on the Lord's Passion, or at least a pious recollection of the same.[7]

Note. If someone, once the recitation has been begun, has been unable for a reasonable cause to recite all the prescribed Our Fathers, Hail Marys, and Glory Bes, instead of the plenary indulgence he obtains a partial indulgence of ten years and as many quarantines for each Our Father with Hail Mary and Glory Be recited.[8]

b) **Incidentally, so to speak, these things hold:**

a) If some sick person, without grave inconvenience or difficulty, cannot recite twenty Our Fathers, Hail Marys, and Glory Be prayers, he can gain the indulgences either by kissing, or even only by looking, with affection and a contrite mind, upon some Crucifix blessed for this purpose, shown to him either by a priest or by some other person, and by reciting some brief prayer or ejaculatory prayer in memory of the Passion and Death of Jesus Christ our Lord.[9]

b) If someone, by force of illness, is able only to kiss or only to look at the Crucifix blessed for this purpose, but not to add an ejaculatory prayer, he is not prevented from obtaining the plenary indulgences.[10]

[1] Sacred Penitentiary, October 20, 1931 (*A.A.S.* 1931, p. 522).

[2] Cited authentic document.

[3] Cited authentic document.

[4] Sacred Congregation of Indulgences, January 19, 1884. The document is held in the archive of the General Curia of the Order of Friars Minor (Sleutjes, p. 67).

[5] Sacred Congregation of Indulgences, November 13, 1893.

[6] Sacred Congregation of Indulgences, August 8, 1859 (*Decreta authentica*, n. 387, to I).

[7] Sacred Penitentiary, December 14, 1917, to IV (*A.A.S.* 1917, p. 30).

[8] Sacred Penitentiary, October 20, 1931 (*A.A.S.* 1931, p. 522).

[9] Sacred Penitentiary, March 25, 1931 (*A.A.S.* 1931, p. 167).

[10] Sacred Penitentiary, October 20, 1931 (*A.A.S.* 1931, p. 522).

Section III. On the Papal or Apostolic Blessing

527 I. **Notion.** A papal blessing is a blessing granted by the Supreme Pontiff or in his name. It is a sacramental, to which a plenary indulgence is usually attached.

528 II. **Granting of the blessing.**

1. Who can grant it by common law, see n. 494.
2. In granting the blessing the prescribed formula is to be used (canon 914). Moreover: 1. Bishops and other secular Prelates are to use the rites and formula prescribed by Clement XIII, September 5, 1762, and inserted in the appendix of the Roman Pontifical. 2. Regular Prelates are to use the formula established by Benedict XIV through the Encyclical *Exemptis praedecessorum*, March 19, 1748, and reported in the Roman Ritual, title VIII, chapter 32. 3. Missionaries can grant it with the sign of the Cross alone and the formula: "May the blessing of Almighty God, Father, and Son, and Holy Spirit, descend upon you and remain always. R. Amen";[1] nevertheless it is permitted to use the formula of the Roman Ritual.

[1] Sacred Congregation of Rites, May 11, 1911, to III.

529 III. **Acquisition of the indulgence.** Unless something else is expressly established, for acquiring the indulgence it suffices that one be: 1. present to the one blessing; 2. contrite in heart, or in the state of grace.[1]

[1] Cf. Fanfani, p. 74.

Section IV. On the Papal or Apostolic Blessing at the Point of Death

530 I. **Notion.** The blessing of which we speak is understood as a blessing granted by the Supreme Pontiff, or in his name, to one dying. To this likewise a plenary indulgence is attached, which obtains its effect at the moment at which the soul is separated from the body; and it is applicable only to the living.[1]

[1] *Raccolta*, I, p. XXII, 4 and 11, *Avvertenze*, 1°; cf. *A.S.S.* 32, p. 238.

531 II. **Granting of the indulgence.**

1. Who can grant it, see n. 494.

2. It is to be granted "to those sick persons who either asked for it while they were of sound mind and with their senses intact, or would probably have asked for it, or have given signs of contrition; it is to be imparted to them also if afterward they have been deprived of the use of the tongue and of the other senses, or have fallen into delirium or insanity. But it is altogether to be denied to the excommunicated, the impenitent, and those who die in manifest mortal sin."[1] Nor are children excluded, even if they have not yet received their first Communion, provided they are capable of sinning.[2] Likewise it can be granted to all those to whom death is imminent from an external cause, as to those condemned to death or to soldiers before battle.[3]

3. It can be granted as soon as one is in such danger that Viaticum can be administered to him; but the custom is, and it is founded in the Roman Ritual, of granting it after the Sacraments of Penance, Holy Eucharist, and Extreme Unction have been received.

4. It is to be granted with the formula prescribed by Benedict XIV through the Bull *Pia Mater*, April 5, 1747, and inserted in the Roman Ritual, title V, chapter 6, and indeed under pain of nullity both as regards the formula itself[4] and as regards the Latin language[5] to be used.

The practice of imparting the blessing to several sick persons at once can be tolerated, provided that the formula of blessing, "Our Lord Jesus Christ," down to the words "Holy Spirit, Amen," is pronounced individually over each one, even if all the rest has been recited in the plural.[6]

5. Since the indulgence is applied at the last moment of life, a blessing once granted in the same illness cannot be granted again;[7] and this holds even if it could be received under several titles,[8] or if someone received it in the state of grave sin or fell back into sin after receiving it.[9] Otherwise, if someone, having been delivered from grave danger, falls into it again.[10]

[1] Roman Ritual, title V, chapter 6, n. 1. Likewise the Sacred Congregation of Indulgences, September 23, 1775 (*Decreta authentica*, n. 237, to V), responded that the blessing at the point of death with application of the plenary indulgence can, if there is danger in delay, be granted both validly and licitly to those who, even culpably, have not been refreshed from the beginning of the illness by the Sacraments of Penance, or Eucharist, or Extreme Unction, or by any of these, and suddenly are turning toward death.

[2] Sacred Congregation of Rites, December 16, 1826 (*Decreta authentica*, n. 2650).

[3] Sacred Congregation of Indulgences, December 18, 1885.

[4] Sacred Congregation of Indulgences, February 5, 1841 (*Decreta authentica*, n. 286, to VIII); March 22, 1879; Decree of the Sacred Congregation of Rites, May 7, 1882; Brief of Leo XIII, July 7, 1882 (*Decreta authentica*, n. 444, to III, pp. 411 and 491).

[5] Cf. Sacred Congregation of Rites, June 3, 1904 (*A.S.S.* XXXVIII, p. 340, to I).

[6] Sacred Congregation of Indulgences, June 10, 1886.

[7] Sacred Congregation of Indulgences, September 23, 1775, to 6 (*Decreta authentica*, n. 237, to VI); June 20, 1836 (*Decreta authentica*, n. 237, to VII); September 24, 1838 (*Decreta authentica*, n. 263, to II).

[8] Sacred Congregation of Indulgences, March 12, 1885.

[9] Sacred Congregation of Indulgences, June 20, 1836 (*Decreta authentica*, n. 257, to VII).

[10] Sacred Congregation of Indulgences, June 10, 1886.

532 III. **Acquisition of the indulgence.** In order that the indulgence be acquired, the following are required for validity:

1. That the person constituted in danger be in the state of grace, at least at the last moment of life (n. 500).
2. That he invoke with his mouth, if he can, otherwise in his heart, the Most Holy Name of Jesus.[1]
3. That he receive the pains of sickness and death itself from the hand of the Lord with a calm and willing mind, in satisfaction for sins.[2]

Note 1. Neither the Bull *Pia Mater* nor the *Raccolta* (p. 529) requires Confession and reception of the Holy Eucharist; hence they are not prescribed, unless the rescript by which the faculty of imparting the blessing is granted to someone requires them, which today is usually the case.[3]

Note 2. When Viaticum, Extreme Unction, and the papal blessing are conferred at the point of death, the *Confiteor*, etc., must be recited three times.[4]

[1] Sacred Congregation of Indulgences, September 23, 1775 (*Decreta authentica*, n. 237, to VII); September 22, 1892 (*A.S.S.* XXV, p. 315).

[2] The Bull *Pia Mater*, already cited.

[3] Beringer-Steinen, I, n. 1027 (*A.A.S.* IX, pp. 54, 69).

[4] Sacred Congregation of Indulgences, February 5, 1841 (*Decreta authentica*, n. 286, to VII).

Section V. On General Absolution with a Plenary Indulgence

533 I. **Notion.** The absolution of which there is question consists in a deprecatory absolution from the punishments of sin, which on certain days is granted to the three Orders of certain religious families; to this absolution is attached a plenary indulgence, applicable also to the departed.

534 II. **Granting of the absolution.**

1. Publicly, that is, outside confession, whether to one or to several, it can be granted: to Religious of the First Order by their own Superior or his delegate; to Nuns of the Second Order and Tertiaries with simple vows, by the confessor of the monastery or another delegated[1] by the Bishop;[2] to secular Tertiaries by the director of the confraternity, and if he for any reason is absent, by anyone approved for confessions.[3]

Privately, or in confession, it can be granted by any confessor;[4] nor, if the penitent is in the state of grace, is it required that confession and sacramental absolution have preceded, but it is enough that it be granted in the confessional.[5]

2. The absolution is of itself to be granted on the very day to which it is attached, namely from midnight to midnight; but Leo XIII declared that any Tertiary "can become a participant in the general absolution on the day before the day on which it is listed in the Index of indulgences of the same Third Order as to be bestowed, yet not publicly, but only privately, namely after completed sacramental confession," or at least in the confessional, as seems able to be added according to what was said above.[6]
3. The formula of absolution to be used is found in the Roman Ritual (edition of 1925), namely:

a) The Formula of General Absolution for Regulars of any Order enjoying this privilege (p. 276).

b) The Formula of Blessing with a plenary indulgence for Secular Tertiaries, and for all others having communication of privileges and graces with them, or with Regulars of any Order (p. 278).

c) "If this indulgence is imparted immediately after sacramental absolution, the rest being omitted, the Priest should begin absolutely from the words: 'Our Lord Jesus Christ,' etc., and so continue to the end, with only the plural number changed into the singular" (p. 279). Indeed in the case this formula suffices: By the authority granted to me by the Supreme Pontiffs, I impart to you a plenary indulgence of all your sins, in the name of the Father and of the Son and of the Holy Spirit, Amen.[7] (p. 505).

[1] Sacred Congregation of Indulgences, February 11, 1903.

[2] Sacred Congregation of Indulgences, May 27, 1903.

[3] Holy Office, section on indulgences, December 15, 1910.

[4] Sacred Congregation of Indulgences, June 10, 1886; January 30, 1896, to I.

[5] Sacred Congregation of Indulgences, July 21, 1881.

[6] To the Orders of St. Francis these indults were furthermore granted: 1. Friars and Nuns, by decree of August 26, 1895, can receive the absolution on the vigil, or the day preceding those feasts to which it is granted. Indeed, by a privilege granted by Pius X to the Order of Friars Minor Capuchin and thence transferred to the other two families of the First Order, religious who are detained by a lawful impediment, to be recognized by the Superior, so that they cannot receive the General Absolution on the assigned day, are able to receive it on one of the seven days immediately following the assigned feast (Sacred Congregation of Indulgences, December 14, 1904). 2. Nuns of the Second Order impeded by illness can receive the same absolution on a day within the octave, when their own confessor enters the enclosure to hear the confessions of the sick sisters (Sacred Congregation of Indulgences, May 21, 1882). 3. For Tertiaries the Supreme Pontiff granted on January 16, 1886, that if on working days, or days which are not of precept, they are lawfully impeded from being able to receive the said absolution, they can receive it on some feast of precept (even on Sunday) which occurs within the octave of the working days (Stein, *Tractatus de indulgentiis lucrandis*, p. 60).

[7] Cf. Sacred Congregation of Rites, March 22, 1905.

535 III. **Acquisition of the indulgence.** In order that the indulgence be acquired, confession, communion, and the assigned prayers are required.

Section VI. On Real Indulgences

We shall treat first of real indulgences generally, then of some real indulgences in particular.

Chapter I. On Real Indulgences Generally

Real indulgences are those which are attached to pious objects. By the name of pious objects here come: chaplets, rosaries, crosses, crucifixes, small statues, and sacred medals.[1]

[1] Beringer-Steinen, I, n. 832.

536 I. **Required matter.** Pious objects must be made from solid matter, for example from iron, from wood, especially harder wood, from coral, shell, ivory, marble, etc. But those composed of fragile matter, for example from tin, lead, or glass, are excluded;[1] yet chaplets and rosaries can be made from solid and compact glass, from tin, lead, or crystal,[2] from polished steel, etc.[3] Likewise printed or

painted images are excluded. Moreover images must represent Saints canonized in the customary form or inserted in duly approved martyrologies.[4]

[1] Cf. Sacred Congregation of Indulgences, January 24, 1846 (*Decreta authentica*, n. 333); Sacred Penitentiary, February 17, 1922 (*A.A.S.* 1922, p. 143).

[2] Sacred Congregation of Indulgences, February 29, 1820 (*Decreta authentica*, n. 249, to I and II); August 8, 1859; Sacred Penitentiary, December 21, 1925 (*A.A.S.* 1926, p. 24).

[3] Sacred Congregation of Indulgences, March 22, 1839 (*Decreta authentica*, n. 271, to II).

[4] Decree of the Sacred Congregation of Rites, June 16, 1764 (*Decreta authentica*, n. 1520); cf. Sacred Penitentiary, February 17, 1922 (*A.A.S.* 1922, p. 143).

537 II. **Attachment of indulgences.**

1. By force of common law Cardinals, from their promotion in Consistory, and Bishops, even titular ones, from the day on which they receive authentic notice of the completed canonical provision, can attach to the things of which we are speaking the indulgences which are customarily granted by the Holy See, that is, the Apostolic or Papal indulgences, as they are called (canon 239, § 1, 5°; canon 349, § 1, 1°). Others also, who receive from the Holy See the simple faculty of blessing rosaries, chaplets, crosses, crucifixes, small statues, and medals, can attach to them only the Apostolic indulgences.[1]

Note. Of itself sacramental jurisdiction is not required in order that someone can receive and exercise the faculty of attaching indulgences. Nevertheless the Sacred Congregation of Indulgences, June 14, 1901, declared that the faculty of blessing pious objects with application of Apostolic and St. Bridget's indulgences is not validly exercised by one who is not approved for hearing confessions, at least of men.

2. The attachment of indulgences is made in the customary form, that is, by a single sign of the cross over the things to be blessed, with the intention of applying the indulgences, without pronouncing a formula of blessing and without sprinkling holy water;[2] and this holds even if several things are blessed in a group, which can well be done (n. 499). Sometimes, however, a special form is prescribed, for example for the rosary of St. Dominic and of the Seven Sorrows of the Blessed Virgin Mary.

3. To one and the same thing or place several indulgences can be attached under various titles (canon 933), provided, however, that the thing has the form required for each indulgence. Besides, these several indulgences can also be attached to the same thing by a single sign of the cross, unless a special form is prescribed for some indulgence. Thus, for example, to one and the same crucifix there can be attached the Apostolic indulgences and those of the Way of the Cross; to one and the same chaplet of five decades there can be attached the indulgences both Apostolic, and of St. Dominic, and of the Crucigeri.[3] But if the matter concerns medals to be blessed in place of scapulars, as many signs of the cross must be made as there are scapulars, and the blessings probably ought to correspond to the individual scapulars; but this blessing can be given, even publicly, by a single sign of the cross for each scapular to several blessed medals, even if they are destined for several persons afterward to be enrolled.[4]

[1] Sacred Congregation of Indulgences, May 29, 1841 (*Decreta authentica*, n. 291).

[2] Sacred Congregation of Indulgences, January 7, 1843 (*Decreta authentica*, n. 313, to II).

[3] Stein, op. cit., p. 41.

[4] Holy Office, June 4, 1913 (*A.A.S.* 1913, p. 303).

538 III. **How acquisition of indulgences has place** was seen above, where there was discussion of real indulgences in particular. Yet recall this: by one and the same work, to which indulgences are attached under various titles, several indulgences cannot be acquired, unless the required work is confession or communion, or unless something else has been expressly provided (canon 933); these things were explained in n. 502.

539 IV. **How cessation of real indulgences happens,** see n. 507.

Note. Among real indulgences, the Apostolic or Papal indulgences should be mentioned in particular.

1. Apostolic indulgences are those which, according to a catalogue customarily issued by the Roman Pontiff after his election, are attached to pious objects by the Supreme Pontiff or by a delegate. It is said "to pious objects," namely those of which there was discussion on p. 407, with the matter also observed of which we spoke under I on the page cited. For the catalogue of indulgences attached to the aforesaid objects by Pius XI, see *A.A.S.* 1922, p. 143.
2. Who can attach the said indulgences to things, and what form is to be used in attaching them, see n. 537.
3. "In order that someone may be able to gain Apostolic Indulgences, it is necessary that he carry upon himself, or decently keep in his house, some one of the things blessed by the Supreme Pontiff himself or by a priest endowed with the faculty."[1] Finally, in order that someone actually gain the indulgences, he must fulfill the prayers or pious works prescribed for each indulgence.

[1] Sacred Penitentiary, February 17, 1922 (*A.A.S.* 1922, p. 143).

Chapter II. On Some Real Indulgences in Particular

Article I. On Chaplets

540 I. **Different chaplets.** The principal chaplets are: the chaplet of the Blessed Virgin Mary, the chaplet of the Seven Sorrows, the chaplet of St. Bridget, etc. The name rosary belongs especially to the chaplet of the Blessed Virgin Mary.

As regards the matter required, see what was said in n. 536. Moreover:

1. The chaplet of the Blessed Virgin Mary must consist of five, ten, or fifteen decades,[1] in each of which one Our Father and ten Hail Marys are recited. Without loss of indulgences, the individual decades can be separated from one another, provided that at least five decades are recited on one and the same day.[2] In the recitation the more principal mysteries of the life, passion, and resurrection of Jesus Christ are to be meditated upon.[3] The custom, though not obligatory, is that the joyful mysteries are recalled on Monday and Thursday, the sorrowful on Tuesday and Friday, and the glorious on Wednesday, Saturday, and Sunday.[4] If some person is incapable of meditation, it suffices to recite the rosary devoutly, provided he takes care to grow accustomed to meditation on the mysteries.[5]

The indulgences attached to the chaplet of the Blessed Virgin Mary are usually called the indulgences of St. Dominic; among them there is, provided that at least five decades are recited, an indulgence of 100 days for each Our Father and Hail Mary. Besides, for the recitation of the third part of the chaplet of the Blessed Virgin Mary before the Most Holy Sacrament, whether exposed or reserved in the tabernacle, a plenary indulgence was granted by the Supreme Pontiff Pius XI on September 4, 1927.[6]

2. The chaplet of the Seven Sorrows consists of seven parts, in each of which one Our Father and seven Hail Marys are said, with three Hail Marys added at the end in honor of the tears of the Blessed Virgin Mary. Meditation on the Sorrows is not necessary.

For each Our Father and Hail Mary an indulgence of 100 days is granted.

3. The chaplet of St. Bridget consists of six decades; in each one Our Father, ten Hail Marys, and one Creed are said, with one Our Father and three Hail Marys added at the end. Meditation on the mysteries is not required.

For each Our Father, Hail Mary, and Creed an indulgence of 100 days is granted, provided that one has the intention of saying the entire chaplet.[7]

St. Bridget's indulgences can also be attached to a chaplet of five decades; then, however, to gain the indulgences, the Creed must be added at the end of each decade.[8]

Note. Among the indulgences which can be attached to chaplets besides those already mentioned, the Apostolic indulgences especially deserve mention (n. 539); likewise the indulgences of the Crucigeri, that is, 500 days for the recitation of each Our Father and Hail Mary, even if the entire chaplet is not recited.[9]

[1] A chaplet consisting of fifteen decades is also called the rosary of St. Dominic.

[2] Rescript of the Sacred Congregation of Indulgences, July 8, 1908 (*Analecta Ordinis Praedicatorum* 1908, p. 634).

[3] Sacred Congregation of Indulgences, August 13, 1726 (*Decreta authentica*, n. 92).

[4] *Raccolta*, n. 194.

[5] Constitution *Pretiosus*, May 26, 1727.

[6] *A.A.S.* 1927, p. 376.

[7] *Raccolta*, I, p. 206.

[8] Sacred Congregation of Indulgences, May 29, 1841 (*Decreta authentica*, n. 291, to VIII).

[9] Sacred Congregation of Indulgences, May 20, 1886.

541 II. **Attachment of indulgences.**

1. As regards the form to be used, see what was said in n. 537.

2. To one and the same chaplet several indulgences can be attached, provided the chaplet has the form required for each indulgence (cf. canon 933). Hence to the chaplet of the Blessed Virgin Mary can be attached the indulgences both proper to the said chaplet, or of St. Dominic (n. 540), and Apostolic (n. 539), and of the Crucigeri (n. 540), and of St. Bridget (n. 540).

542 III. **Acquisition of indulgences.** Having noted above (n. 540 under I), it suffices to add these things:

In order that the indulgences be acquired which require the recitation of certain prayers, the chaplet must be held in the hand and the beads must be passed through successively. If, however, two or more recite the chaplet together, for the acquisition of indulgences it is enough to recite the prayer alternately with a companion, or to follow it mentally while it is recited by another (canon 934, § 3).[1] It is said "to follow it mentally"; hence the faithful must abstain only from those external occupations which impede internal attention to the devout recitation of the rosary prescribed for gaining the indulgences.[2]

2. By one recitation of a chaplet, the indulgences of several chaplets cannot be acquired, unless something else has been expressly provided (cf. canon 933). Something else, however, has sometimes been expressly provided. Thus, for example, one who recites a chaplet to which the indulgences of St. Dominic and of the Crucigeri are attached acquires both indulgences by one recitation.[3]

[1] *Raccolta*, I, p. 348.

[2] Cf. Sacred Congregation of Indulgences, January 22, 1858 (*Decreta authentica*, n. 384); January 8, 1898.

[3] Sacred Congregation of Indulgences, November 13, 1893 (*A.S.S.* XXVI, p. 310).

543 IV. **How cessation of indulgences has place,** see n. 507.

Article II. On Scapulars

544 Scapulars, which the faithful are accustomed to wear, in their origin and institution are nothing other than the scapulars proper to various religious Orders, reduced to a small form for the greater convenience of the faithful.[1] Therefore they are a sign of a certain union with an Order or Congregation. More recent scapulars, however, are mere emblems or signs of a special devotion, for example toward the Sacred Heart, etc.

[1] Sacred Congregation of Indulgences, June 12, 1907, to I.

545 I. **Different scapulars.** The principal ones are: the Scapular of the Most Holy Trinity (of the Order of Trinitarians); of the Blessed Virgin Mary of Mount Carmel (of the Carmelites); of the Seven Sorrows of the Blessed Virgin Mary (of the Servites); of the Immaculate Conception of the Blessed Virgin Mary (of the Theatines); and also of the Passion of Our Lord Jesus Christ (of the Congregation of the Mission of St. Vincent de Paul).

546 II. **Conditions.** In order that someone enjoy the privileges of scapulars, these must be duly made, duly blessed and imposed by a priest having the faculty, with due inscription added if the matter concerns a scapular which is the badge of some Confraternity - such as, for example, the Scapular of the Blessed Virgin Mary of Mount Carmel, of the Seven Sorrows, and of the Most Holy Trinity - and finally they must be worn in the due manner.

1. They should be duly made, namely from woven wool. Yet nothing prevents the scapular from having ornaments woven in or embroidered with a needle from another material, provided such ornaments are such that the prescribed color predominates.[1]

White is prescribed for the scapular of the Most Holy Trinity, brown or tawny for the scapular of the Blessed Virgin Mary of Mount Carmel, black for the scapular of the Seven Sorrows, blue for the

scapular of the Immaculate Conception, red for the scapular of the Passion of Our Lord Jesus Christ. The form should be square or oblong rectangular, but not round, oval, or many-angled.[2]

The ribbons or cords can be from any material and of any color, except the cords of the red scapular, which must be made from red wool. Several scapulars can be attached to two common cords,[3] provided that, if among them there is the Scapular of the Passion, the cords are made from red wool.

Finally, different scapulars must be "distinct, that is, truly several, for example five scapulars, united either by the same number of cords or by only two cords, and in such a way that one part of each scapular hangs from the shoulders and the other from the breast, but not only one scapular on which little pieces of cloth of different color are sewn."[4] With these things considered, the little pieces of cloth should not be so joined that only the extremities of each scapular are visible; but it suffices if the individual little pieces are sewn together only at the upper part - for example by two cords - and otherwise hang loose.

2. They should be blessed and imposed by a priest having the faculty. Moreover the faculty belongs:

a) To Cardinals, who from their promotion in Consistory enjoy the faculty of blessing, by the sign of the cross alone, scapulars approved by the Apostolic See and of imposing them without the burden of inscription (canon 239, § 1, 5°).

b) To Bishops, even titular ones, who from receiving authentic notice of completed canonical provision can do the same as Cardinals, yet with the rites prescribed by the Church (canon 349, § 1, 1°).

c) To Superiors of the Orders to which the scapular pertains (n. 545).

d) Other priests must receive the faculty from the Holy See or from the Superiors of the Orders; the faculty received, however, is altogether personal, so that it does not belong to a substitute, nor can it be communicated to others, unless that has been expressly signified.[5]

3. They should be duly blessed and imposed;[6] concerning this, observe:

a) Of itself, for scapulars of different species, different blessing and imposition are prescribed. I said of itself, since to many an indult has been granted of blessing and imposing at once, that is, under a single formula, four[7] or even five[8] of the enumerated scapulars. Several scapulars of the same species can be blessed at once (n. 546). The blessing can be done whether the persons to be invested are present or absent.

b) The imposition must be done by the same one by whom the blessing was done.[9] An imposition made on only one shoulder and not around the neck is valid.[10] If several persons are to be invested, it suffices to impose one and the same blessed scapular upon those several persons in alternate turns, yet in such a way that the first scapular which the enrolled person must afterward wear is blessed.[11] It has also been granted to some that each of the faithful may impose the blessed scapular upon himself. If several are concerned, it suffices to pronounce the form of imposition once in the plural number, and this either before or after the imposition of the scapular or scapulars, if there are several.[12]

4. The persons invested should be aggregated to the confraternity, if the imposition of the scapular is connected with the said aggregation (p. 411). Hence the priest continues: *I, by authority*, etc. But in order that the aggregation or reception be established, inscription in the register of the association

must absolutely be made; indeed, since confraternities constitute a moral person (cf. canons 687, 708), inscription is necessary for validity (canon 694, § 2).

Beringer-Steinen rightly judge that the Decree of the Holy Office, April 23, 1914, persists,[13] which states: "His Holiness, in the usual audience on April 23, 1914, granted to the Most Reverend Assessor of the Holy Office, after a previous sanation of all defects hitherto admitted in the inscription and transmission of the names of Christ's faithful who have been enrolled in any pious Sodality, declared that, with the obligation in conscience of inscribing and transmitting the names according to decrees and other prescriptions of the Holy See remaining firm, the faithful, by the very fact that they are admitted by one lawfully deputed, are to be considered duly enrolled, only for the effect that they may be able to gain indulgences and become participants in other spiritual graces, even if their names for any reason have not been entered in the register of the Sodality. Anything to the contrary notwithstanding."[14] Besides, Cardinals are exempted from the burden of inscription if the matter concerns rosaries, medals, or scapulars with which association to some sodality is attached (canon 239, § 1, 5°).

Note 1. Even upon little children a scapular can validly be imposed, so that when they have attained the use of reason, they can enjoy the indulgences and privileges without a new reception.[15] Besides, someone can also impose the scapular upon himself, provided he has received the faculty indiscriminately, and not specifically, for example only for some community of Nuns, etc.[16]

Note 2. Soldiers can be received into the Confraternity of the Blessed Virgin Mary of Mount Carmel, "provided they impose upon themselves the aforesaid scapular, already previously blessed, and also pour out some prayers to the Blessed Virgin Mary (for example by reciting the Hail Mary three times while they impose the scapular upon themselves), and thus are placed under the protection of the same Blessed Virgin."[17]

Note 3. On July 24, 1884, invalid receptions to scapulars and the respective sodalities previously made in good faith were sanated. Besides, receptions into the Confraternity of the Blessed Virgin Mary of Mount Carmel were last sanated on February 4, 1908, and receptions into the Confraternity of the Seven Sorrows on September 12, 1911.[18]

5. They should be duly worn. Moreover:

a) They must be worn day and night, and in such a way that one part hangs from the shoulders and the other from the breast;[19] whether immediately upon the body or over clothing is indifferent.[20]

b) Several scapulars can be worn in the manner of one, namely so that they are suspended by only two cords[21] (p. 412).

c) One who has put aside the scapular for a brief time gains the indulgences; if it is put aside for a long time, the indulgences are suspended. If the scapular has been worn out or lost, or if someone has put it aside and even for a long time has not worn it, he is not bound to a new imposition, but it suffices to resume the scapular; nor is it necessary that the scapular which is resumed be blessed.[22] Otherwise it must be said if someone put aside the scapular out of contempt or at least with the intention of no longer wearing it.

[1] Cf. Sacred Congregation of Indulgences, August 18, 1868 (*Decreta authentica*, n. 423).

[2] Sacred Congregation of Indulgences, August 18, 1868 (*Decreta authentica*, n. 423); cf. Sacred Congregation of Indulgences, February 12, 1840 (*Decreta authentica*, n. 278).

[3] Sacred Congregation of Indulgences, April 27, 1887, to IV.

[4] Sacred Congregation of Indulgences, August 22, 1872 (*Decreta authentica*, n. 306); April 24, 1843 (*Decreta authentica*, n. 319).

[5] Cf. Sacred Congregation of Indulgences, September 18, 1862 (*Decreta authentica*, n. 394); August 18, 1868 (*Decreta authentica*, n. 421); April 27, 1887.

[6] Cf. Sacred Congregation of Indulgences, August 18, 1868 (*Decreta authentica*, n. 421); April 27, 1887.

[7] Formerly the scapular of the Blessed Virgin Mary of Mount Carmel was always excepted from the indult (Sacred Congregation of Indulgences, April 27, 1887).

[8] *Nouvelle Revue Theologique* 1911, p. 430 sq.

[9] Sacred Congregation of Indulgences, June 16, 1872 (*Decreta authentica*, n. 430).

[10] Sacred Congregation of Indulgences, September 27, 1887.

[11] Sacred Congregation of Indulgences, August 18, 1868 (*Decreta authentica*, n. 421, to I).

[12] Sacred Congregation of Indulgences, April 18, 1891; June 18, 1898, to IV and V.

[13] Beringer-Steinen, op. cit., p. 49 sq.

[14] *A.A.S.* VI, p. 307 sq.

[15] Sacred Congregation of Indulgences, August 29, 1864 (*Decreta authentica*, n. 410).

[16] Sacred Congregation of Indulgences, March 7, 1840 (*Decreta authentica*, n. 280).

[17] Pius X, January 4 and March 30, 1908.

[18] Beringer-Steinen, II, p. 207.

[19] Sacred Congregation of Indulgences, February 12, 1840 (*Decreta authentica*, n. 277).

[20] Sacred Congregation of Indulgences, March 12, 1855 (*Decreta authentica*, n. 367, to II).

[21] Sacred Congregation of Indulgences, September 26, 1864 (*Decreta authentica*, n. 408, to I).

[22] Sacred Congregation of Indulgences, May 27, 1857 (*Decreta authentica*, n. 379).

547 III. **Metal medals to be substituted for scapulars.** Although Pius X "earnestly desires that the faithful continue to wear" scapulars, nevertheless he graciously conceded that for a scapular or scapulars, except those which are proper to Third Orders,[1] a single metal medal may be substituted, so that, with the laws proper to each scapular preserved, all spiritual favors (not excepting the so-called Sabbatine privilege of the scapular of the Blessed Virgin Mary of Mount Carmel) and all indulgences attached to each one can be participated in. Moreover:

1. On the obverse the medal should bear the image of Our Most Holy Lord Jesus Christ showing his Most Sacred Heart; on the reverse, the image of the Blessed Virgin Mary.[2]
2. The medal must be blessed; moreover, someone can bless several medals at once, whether those which he has before himself, or those "which the faithful have in the church or in some convent, even though these medals are not seen and are not known individually."[3] Besides, the medal or medals must be blessed with as many distinct blessings, that is, signs of the cross, as there are scapulars for which they must substitute. But it does not matter whether or not the order of the

different scapulars is observed in making the signs of the cross.[4] "Yet lest," says Vermeersch, "those five signs of the cross, given confusedly, be valid for no definite scapular, the priest blessing will at least mentally assign his sign to each scapular."[5] So also Stein,[6] Beyersbergen.[7] But it is not contradictory that all and each of the signs of the cross - for example, five - should be valid for each of the five scapulars, determined in the mind of the priest, so that, when five signs have been made, the medal supplies those five determinate scapulars. Since, however, the matter is doubtful, the safer part is to be put into practice. Finally, several medals can also be blessed for indeterminate persons, whether already enrolled in the scapular or to be enrolled afterward: if for those not yet enrolled, the medals will enjoy the favors of the scapulars at the time when the persons will have been enrolled by regular imposition.[8] Soldiers, however, even before the scapulars have been imposed, can validly wear a medal in place of scapulars, and by that very fact are enrolled in the Confraternities.[9]

3. One who enjoys the faculty of blessing and imposing determinate scapulars can also bless a medal which supplies for them;[10] nor is it required that the same one who blessed and imposed, or is going to bless and impose, the scapular, also bless the medal.[11]

4. Of one who has put aside the medal, etc., the same must be said as was said of one who has put aside the scapular (p. 414).

[1] Holy Office, December 16, 1910; Sacred Congregation of Religious, March 25, 1922. Nevertheless, considering the cited decree of the Sacred Congregation of Religious, Superiors of the secular Third Order of St. Francis, with respect to their Tertiaries in individual cases, when a just and grave cause is present, can grant permission of substituting a blessed medal for the scapular of the secular Third Order of St. Francis.

[2] Holy Office, December 16, 1910.

[3] Holy Office, June 5, 1913, to I.

[4] Holy Office, June 5, 1913, to II and III.

[5] Vermeersch, *Periodica* VII, p. 224.

[6] Stein, op. cit., p. 54.

[7] *N. K. Stemmen*, 1923, p. 17.

[8] Secretariat of State, March 22, 1912; Vermeersch, *Periodica* VII, p. 224.

[9] Holy Office, December 16, 1910; June 5, 1913, to I.

[10] Holy Office, December 16, 1910.

[11] *Periodica* V, p. 269.

548 IV. **The Sabbatine privilege.** Among the favors attached to the scapular of the Blessed Virgin Mary of Mount Carmel, and likewise to the medal, the so-called Sabbatine privilege deserves special mention; this privilege is reported as having been promulgated by John XXII through a Bull.

Most hold the said Bull to be spurious. There is, however, a Decree of the Holy Office under Paul V, January 20, 1613, which has these words: "The Carmelite Fathers are permitted to preach that the Christian people can piously believe concerning the help of the souls of the brothers and confreres of the sodality of the Blessed Virgin Mary of Mount Carmel, namely that the Most Blessed Virgin, by her continual intercessions and pious suffrages and merits and special protection, after their passing, especially on Saturday, which day has been dedicated by the Church to the same Most Blessed Virgin,

will help the souls of the brothers and confreres dying in charity, who in life wore the habit, and observed chastity according to their state, and recited the Little Office, or, if they do not know how to recite, observed the fasts of the Church and abstained from flesh meat on Wednesday and Saturday (unless on those days the feast of the Nativity of the Lord should fall)." Moreover:

1. The Little Office can be said privately in any language. Those who are already bound to it under another title satisfy by a single recitation.
2. The faculty of commuting either the Office or abstinence on Wednesday and Saturday is conferred together with the faculty of aggregating the faithful to the confraternity, and it can be exercised even outside confession. Finally, by Decree of the Sacred Congregation of Indulgences, June 14, 1901,[1] to any confessor was granted the power of commuting abstinence on Wednesday and Saturday.

[1] *A.S.S.* XXXIV, p. 120.

Section VII. On the Heroic Act of Charity

549 I. **Notion.** "The heroic act of charity consists in this, that one of Christ's faithful, either by using some formula or even only mentally, offers to God Almighty for the souls in Purgatory all satisfactory works which he himself, so long as he lives, will perform; likewise all indulgences, both those granted for the departed and those granted only for the living, which he also can and must apply to the departed; finally all suffrages which after death will be able to come to him in any way whatsoever."[1] It is said:

1. Satisfactory works, that is, the satisfactory fruit of his works, which fruit is attached to every good work and of itself is ordered to taking away or lessening the punishments due to one's own sins. But the meritorious fruit of works is not ceded, since it is so personal that it cannot be renounced; nor are works ceded insofar as they are impetratory, whether for oneself or for others.
2. Offers to God; now this oblation can be made to God either immediately or mediately, namely through the Blessed Virgin Mary, in whose hands all satisfactory works, all indulgences, and all suffrages are deposited, to be distributed by her to the souls in purgatory as she pleases.[2] Finally, the offering made to God does not assume the character of a vow, and can always be revoked at will.[3]

That the act explained is greatly to be commended is clear from its very nature; for it is an act of charity toward the departed, by which someone as it were chooses punishments for himself, so that the souls of purgatory may more quickly escape punishment. There is added the fact that the Supreme Pontiffs have enriched the mentioned act with privileges.[4]

[1] Sacred Congregation of Indulgences, December 19, 1885.

[2] Sacred Congregation of Indulgences, December 19, 1885, to III and IV.

[3] Sacred Congregation of Indulgences, December 19, 1885.

[4] Benedict XIII, August 23, 1728; Pius VI, December 12, 1788; Pius IX, September 30, 1852.

550 II. **Privileges.**[1]

1. Priests who have made the praised act enjoy the indult of a privileged altar on individual days.

2. The faithful can gain a plenary indulgence: 1. on individual days on which they receive Holy Communion; 2. on individual Mondays on which they hear Mass in suffrage for the departed, provided that in either case they visit a church or public oratory and there pray according to the intention of the Supreme Pontiff. But if someone is impeded from hearing Mass on Monday, it suffices to assist at the Mass to be heard on Sunday by precept. Priests also can gain the said indulgences, even if they celebrate and by celebrating have already gained another indulgence; since even communion received on the occasion of celebration suffices for acquiring a plenary indulgence, indeed for acquiring several plenary indulgences[2] (canon 933).

3. All indulgences which are gained by those who have made the heroic act of charity are applicable to the departed.[3]

Note 1. The plenary indulgence which a priest gains by force of the privilege of the altar granted on account of the heroic act of charity must be applied to the soul for whom the Mass is celebrated; for the privilege is granted by the Supreme Pontiff in this sense.[4]

Note 2. It was asked whether those who have made the heroic act of charity can, or rather must, apply to the departed the plenary indulgence to be gained at the point of death. The Sacred Congregation of Indulgences left the question in suspense, responding on January 23, 1901: "No interlocutory response is to be given." But of itself nothing prevents the said indulgence from being able to be renounced; that this must be done seems to be deduced from the special character of the heroic act of charity, as explained above.

[1] *Raccolta*, p. 531; Sacred Congregation of Indulgences, December 19, 1885.

[2] Sacred Congregation of Indulgences, May 10, 1844 (*Decreta authentica*, n. 327, to II and III).

[3] *Raccolta*, p. 531.

[4] Sacred Congregation of Indulgences, December 19, 1885.

Section VIII. On the Jubilee

We must treat first of the notion, division, and interpretation; then of the benefits of the Jubilee; finally of the suspension of indulgences and faculties on the occasion of the Jubilee.

Chapter I. On the Notion, Division, and Interpretation of the Jubilee

551 I. **Notion.** Among the Jews the Jubilee meant a year of remission and joy, according to these words of Sacred Scripture: "You shall also number for yourself seven weeks of years, that is, seven times seven, which together make forty-nine years, and you shall sound the trumpet in the seventh month, on the tenth day of the month, at the time of propitiation, throughout all your land. And you shall sanctify the fiftieth year, and shall proclaim remission to all the inhabitants of your land: for it is the Jubilee."[1] Among Christians the Jubilee likewise signifies a time of remission, to which several and special benefits are attached, as we shall explain more fully afterward.

[1] Leviticus 25:8 sq.

552 II. **Division.** The Jubilee is distinguished as ordinary and extraordinary (cf. canon 931, § 3). The ordinary or greater Jubilee is the one which recurs every twenty-fifth year; the extraordinary or lesser

Jubilee is the one which is granted on account of special circumstances, for example after the coronation of the Supreme Pontiff.

The ordinary Jubilee is first celebrated at Rome for an entire year, beginning from the first Vespers of the Nativity of the Lord which precede the twenty-fifth year, up to the second Vespers of Christmas Day of the following year; that year is usually called the holy year. When the holy year has elapsed, the Jubilee is extended for a shorter time to the whole world.

The extraordinary Jubilee is usually celebrated at the same time in the City and in the world, and, according to circumstances, for a shorter or longer time.

A Jubilee is also distinguished as universal and particular, according as it is granted to the whole world or only to a part.

553 III. **Interpretation.** Unless the Bull of the Jubilee establishes the contrary, in both the ordinary and the extraordinary Jubilee the rules handed down by Benedict XIV are to be observed.[1]

[1] Sacred Congregation of Indulgences, March 15, 1852. Cf. the Bulls *Apostolica indulta*, August 3, 1744; *Peregrinantes*, May 5, 1749; *Cum nos super*, May 17, 1749; *Convocatis*, November 25, 1749; *Inter praeteritos*, December 3, 1749; *Paterna caritas*, December 17, 1749; *Benedictus Deus*, December 25, 1750; *Celebrationem*, January 1, 1751.

Chapter II. On the Benefits of the Jubilee

The benefits of the Jubilee are, besides the plenary indulgence to be gained, the faculty of choosing a confessor, and the special faculties granted to confessors. For these benefits the Bull by which the Jubilee is granted must be examined each time. For the last Jubilee see *A.A.S.* 1927, pp. 310, 317, 318, 336.

Article I. On the Faculty of Choosing a Confessor

554 I. Nuns, and their novices, candidates, and postulants who are educated by them and live with them, and also all religious sisters of simple vows with novices, candidates, and girls being educated, though not externs and others using a common table with them, and also all oblates without vows approved by Ecclesiastical authority, with novices, candidates, girls, and others living in common with them, can choose for themselves a confessor approved by their Ordinary according to the prescriptions of the Code. This confessor can absolve them from any censures and sins, even those reserved to the Holy Apostolic See in a special manner, excepting the case of formal and external heresy.[2]

II. The faculty formerly granted to regulars and others, after the new Code (cf. canon 519), now lacks practical value.

[1] Cf. Navarrus, *Commentarius de Iubilaeo*; Viva, *De Iubilaeo*; Van de Burgt, *De Iubilaeo*; Bastien, *De Iubilaeo*.

[2] *A.A.S.* 1924, pp. 317, 319.

Article II. On the Special Faculties of Confessors

555 I. **Faculties granted.** To confessors lawfully chosen according to what was said in Article I belongs:

1. The faculty of absolving both from sins and - but in the forum of conscience only - from censures reserved either to the Holy See or to Ordinaries, except those which perhaps are excepted by the Bull, with a salutary penance nevertheless imposed, and with other things to be imposed by law. Therefore, as Benedict XIV teaches, the confessor "should not omit imposing upon each penitent his own salutary penance in the sacrament, not even under the pretext of the Jubilee to be obtained by the same penitent."[1] Other things to be imposed by law are understood as those which by either divine or ecclesiastical law are imposed upon the penitent.[2] Moreover:

a) One who falsely accused a confessor of solicitation cannot be absolved unless he has retracted the accusation and compensated other damages perhaps following upon the accused person, or is prepared to retract the accusation and compensate the damages.[3]

b) Those who have propagated heresy, or at least are guilty of external heresy, should not be absolved before they have abjured the heresy before the confessor and have repaired the scandal, or at least are prepared to repair it.[4]

c) Those who retain or read prohibited books should not be absolved before they have put them away or have seriously promised that they will put them away.[5]

d) Those who have given their name to a condemned secret sect should not be absolved except on the condition that they separate themselves altogether from the respective sect and abjure it, and that books, manuscripts, and signs concerning the sect, if they retain any, be handed into your hands (the hands of the confessor), to be cautiously transmitted as soon as possible to the Ordinary, or at least, if just and grave causes demand it, to be burned.[6]

e) One who violated the enclosure of Nuns for an evil end, even in occult cases, must be forbidden by the confessor from approaching in the future any monastery and church of Nuns; and he must be warned that he is absolved from the censure in such a way that, if he does not observe the prohibition imposed, he falls back by that very fact into the same censure.[7]

f) One who absolved an accomplice is usually obliged by the Sacred Penitentiary: 1. "that insofar as the accomplice person should approach him again, after being warned of the nullity of the past absolutions, he send that person back to another confessor who is not an accomplice"; 2. "that he abstain in the future from hearing the confessions of any accomplice person, insofar as this can be done without grave scandal"; 3. "that he take care to resign the office of confessor, if he has absolved two accomplices once or one accomplice twice."[8] But more recent Bulls have been accustomed to restrict the faculty of absolving a confessor who has absolved an accomplice.

g) Those who have been excommunicated, suspended, interdicted by name, or otherwise declared to have fallen into sentences and censures, or publicly denounced, should not be absolved unless within the time of the Jubilee they have made satisfaction and have come to agreement with the parties, where that is necessary.[9] But afterward this was added: "But if within the prescribed term, in the judgment of the confessor, they could not make satisfaction, we grant that they can be absolved in the forum of conscience, for the sole effect of obtaining the indulgences of the Jubilee, with the obligation imposed of making satisfaction as soon as they can."

2. The faculty of dispensing with a penitent constituted in sacred Orders concerning an occult irregularity contracted because of violation of a censure.[10]

3. The faculty of commuting any vows whatsoever, even sworn vows and vows reserved to the Apostolic See, into other pious and salutary works. There are excepted: 1. reserved vows of chastity and Religion; 2. vows made and accepted in favor of a third party, as vows made in any Religion; 3. penal vows, which are called preservative from sin, unless the future commutation is judged to be such that it restrains no less from committing sin than the former matter of the vow;[11] the vow of not seeking commutation is not excepted (St. Alphonsus, VI, 537, q. 4). Moreover observe:

a) For the commutation of vows (during the time of the Jubilee) a special cause is not required; but that common cause on account of which the Pontiff was moved to proclaim the Jubilee suffices (St. Alphonsus, II, 537, q. 40).

b) The power of commuting sworn vows quite probably carries with it the power of commuting oaths; nor does St. Alphonsus contradict this, since he speaks only of the power of commuting vows (III, 190).

It is disputed whether the power of commuting an oath of chastity and Religion belongs to the confessor. But it seems improbable that the Church, which denies the power of commuting a vow of some thing, would grant the faculty of commuting an oath concerning the same thing.

4. The faculty of commuting, from a just cause, the works assigned for the Jubilee into other pious works;[12] concerning this see n. 559.

The faculty of dispensing in some impediments of marriage is commonly not granted; yet in the year 1925 some faculty had been granted, but only for the internal forum.

[1] Bull *Convocatis*, § 26.

[2] Cf. Sacred Penitentiary, April 18, 1900.

[3] *A.A.S.* 1924, p. 338, under IV.

[4] *A.A.S.* 1924, p. 311, under IV.

[5] *A.A.S.* 1924, p. 339, under VIII.

[6] *A.A.S.* 1924, p. 311, under IV.

[7] *A.A.S.* 1924, p. 339, under VI.

[8] *A.A.S.* 1924, p. 310, under I.

[9] *A.A.S.* 1924, p. 310, under IV.

[10] Bull *Benedictus Deus*, nn. 4 and 5.

[11] *A.A.S.* 1917, p. 311, under VII, p. 320.

[12] *A.A.S.* 1927, p. 312 sq.

556 II. **Things to be noted.** Concerning the faculties explained above these things are to be noted:

1. It is not permitted to use them except with respect to penitents who have the intention of gaining the indulgence of the Jubilee and therefore of fulfilling the prescribed works.[1] But the fact that someone sinned in hope of receiving absolution by force of the Jubilee does not prevent him from enjoying the favors, provided he is now sorry, and wills to gain the Jubilee and to fulfill the pious works (St. Alphonsus, VI, 537, q. 6). But if the penitent afterward, having changed his mind, does

not fulfill the works required for gaining the indulgence, he sins, because he acts against the intention of the Supreme Pontiff who granted the faculties for gaining the Jubilee.[2] Yet it is not established that the sin is grave. Besides, the favors granted, for example the commutation of a vow, persist[3] (St. Alphonsus, VI, 537, q. 3).

2. The faculties must be used in sacramental confession;[4] but it is not required that all the faculties be exercised in the same confession or by the same confessor. Thus, for example, one who in confession for the Jubilee omitted to ask for commutation of a vow can ask for this in another confession and from another confessor. Nor is it required that absolution be granted now to one sacramentally confessed. Hence even if the confessor judges that absolution is to be deferred, he can nevertheless remove, for example, a censure or commute a vow; and if this has taken place, an ordinary confessor also, with the censure and the reservation of the sin removed, can absolve the penitent from sins.

3. Concerning repeated use of the favors, receive these things:

a) A penitent who has enjoyed the favors granted and has fulfilled all the prescribed works cannot enjoy the favors again, for example if he should make a new vow; and this holds even if the indulgence itself can be acquired several times.[5] The faculty of commuting prescribed works is excepted; it is permitted to use this several times[6] (n. 559).

b) One who has enjoyed the favors granted, but before he has fulfilled all the prescribed works needs them again, for example by falling back into censures, can, as seems to have to be said in view of the Bull *Convocatis*, n. 84 at the end, enjoy the favors again. Namely, the Supreme Pontiff states that "if he has once shared in them (the graces) the first time that he obtained the Jubilee, he cannot become a participant in them again, if after the first acquisition of the Jubilee he falls again into censures, etc." By these words it is implied that he can again become a participant in the graces if before the acquisition of the Jubilee, or before all the works have been fulfilled, he again falls into a censure. Moreover it seems more consonant with the mind of the Church that the faculties granted can be exercised until the faithful person, all the works having been fulfilled, has obtained the Jubilee.[7]

4. If someone has forgotten a reserved sin or reserved censure in a confession otherwise valid, or from a just cause has omitted it, according to many authors the reservation of the sin and the censure have been removed. The reason is that it is fitting to the mind of the Supreme Pontiff, who granted special faculties to the confessor in favor of the penitent, that the well-disposed penitent, insofar as it can be done, enjoy the said faculties (St. Alphonsus, VI, 537, q. 4). But if someone exposed a reserved censure or sin to the confessor, yet confessed invalidly, the reserved censure and the reservation of the sin have not been removed, if the confession was culpably invalid, that is, sacrilegious; since the sincere intention of acquiring the Jubilee is lacking (p. 421). Besides, "since the Pontiff grants the faculty of absolving from reserved things so that the faithful may gain the Jubilee, he is not presumed to grant it for those who cannot gain the Jubilee by that confession" (St. Alphonsus, VI, 537, q. 2). Moreover, because of the latter reason, the same solution seems to have to be admitted against several authors, if the confession was inculpably invalid (St. Alphonsus, loc. cit.).

5. One who confessed during the time of the Jubilee can, if absolution seems to have to be deferred for him and to be granted after the Jubilee, be absolved from reserved things even after the time of

the Jubilee (St. Alphonsus, VI, 537, q. 4).

[1] Bulls *Convocatis*, § 24; *Inter praeteritos*, § 62; *Benedictus Deus*, § 6; *Celebrationem*, § 8; Sacred Penitentiary, June 1, 1869; January 15, 1886.

[2] Cf. Bull *Inter praeteritos*, n. 86.

[3] Cf. Bulls *Convocatis*, n. 34; *Inter praeteritos*, n. 86; Leo XIII, Bull *Praesentes Litteras*; Sacred Penitentiary, November 1, 1899.

[4] Bulls *Convocatis*, § 25; *Inter praeteritos*, § 62, compared with *Convocatis*, § 40.

[5] Bulls *Convocatis*, § 52; *Inter praeteritos*, § 84; Sacred Penitentiary, June 1, 1869; Sacred Penitentiary, March 18, 1886.

[6] Sacred Penitentiary, March 18, 1886 (*A.S.S.* XVIII, p. 512).

[7] For the Jubilee of the year 1875, however, the Sacred Penitentiary, January 25, 1875, by mandate of the Supreme Pontiff, declared: "His Holiness declared that by force of the present Jubilee (the faithful) can be absolved only once from censures and reserved cases (and likewise that the indulgence of the Jubilee itself can be acquired only once)." And on the same day the Sacred Penitentiary, to the question "Whether confessors can absolve a penitent who, already absolved from reserved things and censures, has fallen into them again before he has fulfilled the works prescribed for acquiring the Jubilee," responded: "By virtue of the Jubilee one can be absolved only once from reserved things and from censures, or, negatively."

Article III. On the Indulgence

To the Jubilee is attached a plenary indulgence, to be gained only once, unless it is expressly granted as to be acquired several times. Moreover, in the Jubilee of the Holy Year in the City, it is granted several times to those who repeat the prescribed works.[1] Now we must speak about the works which are usually prescribed for gaining the indulgence.

[1] Bulls *Convocatis*, § 52; *Inter praeteritos*, § 84; *Benedictus Deus*, § 2.

557 I. **Prescribed works.** In the ordinary Jubilee there are commonly prescribed only: confession, communion, and visitation of the designated churches together with prayer according to the mind of the Supreme Pontiff; in an extraordinary Jubilee, besides the works enumerated, fasting and almsgiving are usually enjoined. A few things about each; moreover compare what was said in n. 494.

1. Confession is necessary even for those who have not sinned gravely, although absolution is not required for these.[1] If someone after completing the confession of the Jubilee, but before the last work has been fulfilled, falls into mortal sin, he is bound to confess again, nor does contrition suffice; however, it is not required that the other works, even if already fulfilled in the state of sin, be repeated.[2] The annual confession, by which satisfaction is made for the precept by which one constituted in mortal sin is bound, does not suffice.[3]

2. Communion, certainly worthy communion; the Paschal communion does not suffice;[4] nevertheless in the year 1925, if someone had neglected to receive Paschal communion, communion for the Jubilee also availed for fulfilling the Paschal precept; for the Jubilee, at least of the year 1900, the Sacred Penitentiary declared on March 28, 1900, to 2, that Viaticum suffices.

3. Visitation of churches. Which churches are to be visited and how often are determined in the City by the Supreme Pontiff, outside the City by the Bishop. In instituting the visitations it is permitted to compute the day either according to civil custom (from midnight to midnight) or according to ecclesiastical custom (from first Vespers up to sunset of the following day).[5] When

several visitations are prescribed, it is not enough to enter the church once and there recite the prayers several times, but one must go out from the church and enter it again.[6] Moreover the visitations must be made with the intention of worshiping God.[7]

Regulars also are bound to visit the churches designated by the Bishop, unless they enjoy a special privilege; nevertheless commutation can be granted to those lawfully impeded.[8]

4. Prayers to be recited. They must be recited in the place to be visited and according to the mind of the Supreme Pontiff. Oral prayers suffice; merely mental prayers do not, to which therefore an oral prayer would have to be added.[9] Moreover compare what was said in n. 498.

5. Fasting is to be taken in the strict ecclesiastical sense, that is, joined with abstinence, and indeed, considering the old law, with abstinence not only from flesh meat but also from eggs and milk products.[10] Under the new law, however, fasting no longer includes abstinence from eggs and milk products. Fasting also concerns those who otherwise are not bound to it, such as children and the elderly (St. Alphonsus, VI, 534, 3°); nevertheless there is place for commutation (n. 559).

6. If almsgiving is enjoined, as devotion suggests, a modest amount suffices; if it is prescribed according to each one's means, a larger amount must be given by the rich. It is indifferent whether money or another thing is given. Religious, wives, and children of families satisfy by consenting to the alms which the Superior or father gives in the name of the whole community or family. Nevertheless religious and the truly poor can ask for commutation (St. Alphonsus, VI, 538, q. 11).

[1] Bulls *Convocatis*, § 46; *Inter praeteritos*, § 77; cf. Sacred Congregation of Indulgences, May 19, 1759 (*Decreta authentica*, n. 214); May 6, 1852 (*Decreta authentica*, n. 359, to IV).

[2] Bulls *Convocatis*, § 42; *Inter praeteritos*, § 79; cf. Sacred Congregation of Indulgences, November 28, 1759 (*Decreta authentica*, n. 217, to I).

[3] Sacred Congregation of Indulgences, May 10, 1844 (*Decreta authentica*, n. 327, to I), compared with the Sacred Penitentiary (*A.A.S.* VIII, p. 351).

[4] Sacred Congregation of Indulgences, May 10, 1844 (*Decreta authentica*, n. 327, to I).

[5] Bull *Inter praeteritos*, § 13; Sacred Penitentiary, January 24, 1875.

[6] Sacred Penitentiary, January 25, 1875.

[7] Bull *Inter praeteritos*, § 13.

[8] Bulls *Convocatis*, § 51; *Inter praeteritos*, § 83.

[9] Bulls *Convocatis*, § 51; *Inter praeteritos*, § 83.

[10] Sacred Penitentiary, March 16, 1865; Bucceroni reports other declarations of the same Congregation, *Enchiridion*, n. 1065.

558 II. **Things to be noted concerning the prescribed works.**

1. Works owed by law or precept do not suffice, unless the Supreme Pontiff signifies the contrary.[1] Hence, as has already been noted, annual confession, Paschal communion, etc., do not suffice.

2. The prescribed works, even confession and communion, must be done during the time of the Jubilee;[2] likewise with the intention of gaining the indulgence; but a habitual intention suffices (n. 501).

3. The works enjoined, whether all or some of them, can also be fulfilled outside one's domicile, provided that the ordinances of the Ordinaries of the places are observed.[3]

4. Finally, it does not matter in what order they are fulfilled, nor is it required that they be done in the state of grace, except for the last work.[4]

[1] Bull *Inter praeteritos*, § 53; this speaks of debt in any way whatsoever; but since canon 932 speaks only of law and precept, things owed under another title, for example a vow, now seem to suffice.

[2] Sacred Congregation of Indulgences, December 9, 1763 (*Decreta authentica*, n. 231); May 10, 1844 (*Decreta authentica*, n. 327, to I); canon 931, § 3.

[3] Sacred Penitentiary, January 15, 1886, to VI.

[4] Bulls *Convocatis*, § 47; *Inter praeteritos*, §§ 73-76.

559 III. **Relaxation of the works.** To the Supreme Pontiff alone belongs the faculty of dispensing in some work; but to confessors - not, however, of itself to Superiors[1] - is granted the faculty of commuting for those morally impeded the prescribed works into other pious works; concerning this, observe:

1. The faculty of commutation does not include confession; nor communion except for children who have not yet been admitted to first Communion;[2] nor the prayers to be recited according to the mind of the Supreme Pontiff.[3]

2. Commutation cannot be made into works otherwise owed, unless this is expressly granted;[4] nor, as follows from the nature of commutation, can it be made into notably lesser works.

3. Commutation of itself, that is, considering the norms of Benedict XIV, seems to have to be made in sacramental confession. For thus Benedict XIV established generally concerning the use of faculties.[5]

4. Even if the indulgence can be acquired several times, nevertheless the commutation of the works enjoined, considering the Bull of Benedict XIV,[6] can be made only once; but the Sacred Penitentiary, March 18, 1886,[7] responded that the works enjoined can be commuted several times.

Note. One who foresees that the time for completing the prescribed works will not suffice for him should ask for commutation or, if the Bull permits it, prolongation of the Jubilee.

[1] Cf. Sacred Penitentiary, April 23, 1886, to II and III.

[2] Considering the kindly mind of the Church, this perhaps can be extended to those very few sick persons who cannot communicate even at home.

[3] *Benedictus Deus*, § 3; *Inter praeteritos*, § 53.

[4] *Inter praeteritos*, § 53.

[5] *Inter praeteritos*, § 63; cf. Sacred Penitentiary, January 30, 1886.

[6] Bull *Convocatis*, §§ 52 and 39.

[7] *A.S.S.* XVIII, p. 512.

Chapter III. On the Suspension of Indulgences and Faculties on the Occasion of the Jubilee

560 In order that the City of Rome during the time of the Jubilee may be celebrated by as great a gathering of mortals as can be, during the Holy Year, that is, the year in which the ordinary Jubilee is celebrated in the City - but not during the time in which the said Jubilee is extended to the world, nor in an extraordinary Jubilee - indulgences and faculties outside the City are moderated as follows:

I. All indulgences - even those which have been granted for the living only - can be acquired for the departed. No indulgences can be acquired for the living, except indulgences granted: 1. to those who are constituted at the point of death; 2. for the recitation of the Angelus of the Lord or the Regina Caeli according to the time, and certain others to be assigned in the Bull.[1]

II. The faculties of absolving from reserved cases and censures, of commuting vows, of dispensing from irregularities and impediments, are suspended, with these exceptions:

1. Faculties granted in any way through the Code of Canon Law, except those which were granted by privilege.
2. Faculties for the external forum granted in any way to Nuncios, Internuncios, Apostolic Delegates, and also to Ordinaries of places and Superiors of Religious Orders over their subjects.
3. Faculties granted by the Sacred Penitentiary for the internal forum, insofar as they are exercised toward penitents who cannot go to the City without grave inconvenience.[2]

[1] *A.A.S.* 1927, p. 306 sq.

[2] *A.A.S.* 1927, pp. 307, 308.

Scholion I. On the Plenary Indulgence at the Point of Death

561 I. At the point of death only one plenary indulgence can be gained, although the dying person may have a right to it under various titles.[1] This holds even if the dying person, because of a less perfect disposition, acquires only partially the plenary indulgence which he acquires.

This indulgence, which is acquired at the last moment of life, cannot be applied to the departed (n. 530). An exception should more probably be made if the matter concerns one who has elicited the heroic act of charity; for he enjoys the privilege of applying to the departed all indulgences which he gains (n. 550).

II. Concerning the various titles from which a dying person can acquire a right to the said indulgence, it is useful to note these things:

1. It is to be advised that the dying person strive to make several titles his own; for it can happen that the conditions required for some title are not fulfilled, while the conditions established for another title are fulfilled; whence it happens that, with several titles in place, the hope of gaining the indulgence is increased. There is added the fact that several titles can occur without the intervention of a priest, and that the conditions to be fulfilled for different titles especially promote the disposition required for gaining the indulgence.

When an indulgence is granted under the customary conditions, there are required: confession, communion, invocation of the Name of Jesus by mouth, or, if that cannot be done, in the heart, and

prompt acceptance of death in satisfaction for sins.

2. The principal titles are:[2]

a) The Apostolic blessing at the point of death, concerning which we spoke at length in n. 530 sq.

b) Enrollment in most confraternities.

In order that the indulgences be gained, the customary conditions are for the most part required (n. 494).

c) Enrollment in an Order, religious Congregation, or Third Order; this holds at least for most Congregations and Third Orders.

For a member of an Order and of a Third Order, confession and communion are required, or, if these cannot be done, a penitential invocation of the Holy Name by mouth, or, if that is impossible, in the heart.

d) Use of a cross or another object to which Papal indulgences are attached.

In order that someone acquire the indulgence: 1. he should carry the object upon himself or keep it decently in his house; 2. he should fulfill the customary conditions.

e) Use of a crucifix, that is, a cross with the image of Christ crucified, to which is attached a plenary indulgence at the point of death *toties-quoties*.[3]

In order that the indulgence be gained, the dying person: 1. should kiss or in some way touch the crucifix;[4] 2. should fulfill the customary conditions.

f) Recitation of the acts of faith, hope, and charity.[5]

It is required only that someone has frequently elicited the said acts in life; it does not matter by what formula he has done this.

g) Recitation of the prayer: Lord my God, from now on I accept from your hand with a calm and willing mind whatever kind of death shall have pleased You, with all its distresses, punishments, and pains.[6]

It is required that, on whatever day he wishes, after confession and communion have been received, by reciting the said act with charity he accept death from God.

h) Sometimes the Supreme Pontiff grants by name a plenary indulgence to a dying person, with no condition established.

[1] Sacred Congregation of Indulgences, January 23, 1901, to II (*Collectio*, n. 2100).

[2] Cf. *N. K. Stemmen*, 1922, p. 72.

[3] *Toties-quoties*, whose meaning in this case is that any one of Christ's faithful constituted at the point of death may be able to acquire a plenary indulgence through the use of this crucifix (Holy Office, June 10, 1914); in what sense this decree is to be understood was declared and confirmed by the declaration of the Sacred Penitentiary, June 23, 1929 (*A.A.S.* 1929, p. 510 sq.).

[4] Holy Office, January 11, 1914.

[5] *Raccolta*, I, p. 18; Sacred Congregation of Indulgences, January 22, 1756.

[6] *Raccolta*, I, p. 148; Sacred Congregation of Indulgences, March 9, 1904.

Scholion II. On *Toties-Quoties* Indulgences

562 I. A *toties-quoties* indulgence is here understood as a plenary indulgence which on the same day can be acquired as often as the work enjoined, usually a visitation of a determinate church with prayer according to the mind of the Supreme Pontiff, is repeated.

II. Especially the following *toties-quoties* indulgences can be acquired, certain conditions being observed: 1. on the feast of the Most Holy Trinity;[2] 2. on the feast of the Most Holy Sacrament;[3] 3. on the last Sunday of the month of June;[4] 4. on the feast of the Blessed Virgin Mary of Mount Carmel;[5] 5. on Portiuncula or the following Sunday;[6] 6. on the feast of the Blessed Virgin Mary of the Seven Sorrows in the month of September, or on the Sunday of the solemnity;[7] 7. on the feast of the Most Holy Rosary or the Sunday of the solemnity;[8] 8. on the Commemoration of All the Faithful Departed.[9]

[1] Cf. *N. K. Stemmen* 1923, p. 68.

[2] Sacred Congregation of Indulgences, August 10, 1904.

[3] Sacred Congregation of Indulgences, July 30, 1906; December 10, 1907.

[4] Sacred Congregation of Indulgences, August 8, 1906; from the audience of Pius X, January 26, 1908; cf. *Collectio precum piorumque operum*, pp. 78-79.

[5] Brief *Quo magis*, May 16, 1892.

[6] Motu proprio, June 9, 1910; Holy Office, May 26, 1911.

[7] Sacred Congregation of Indulgences, September 27, 1888.

[8] Sacred Congregation of Indulgences, July 7, 1885.

[9] Holy Office, June 25, 1914.

Treatise VI. On Extreme Unction

(St. Thomas, *Supplement*, q. 29-32; St. Alphonsus, *Theologia Moralis*, lib. VI, n. 706-733; *Homo Apostolicus*, tr. 17, n. 1-13.)[1]

We shall speak first of Extreme Unction considered in itself, then of its ministration, and finally of the reception of Extreme Unction.

[1] Cf. Billuart, *De Extrema Unctione*, sole dissertation; Schmitz, *De effectibus sacramenti Extremae Unctionis*; Kern, *De sacramento Extremae Unctionis tractatus dogmaticus*; Heimbucher, *Die heilige Oelung*.

Dissertation I. On Extreme Unction Considered in Itself

563 Extreme Unction can be defined: the sacrament by which a sick person, through an anointing with blessed oil and the prayer of the priest, is relieved according to the soul, and, if it is expedient for the soul, also, at least sometimes, according to the body (cf. St. Thomas, *In IV Sent.*, dist. 23, q. 1, a. 1, 2, 3, 4; q. 2, 1 and 2; St. Alphonsus, VI, 706). It is also called simply anointing, or the anointing of the sick, the sacrament of those departing, etc.

With this definition given, we shall treat first of the existence, then of the essence, then of the effects, and finally of the necessity of Extreme Unction.

Part I. On the Existence of Extreme Unction

564 I. Extreme Unction is a true sacrament; this proposition is of faith from the Council of Trent: "If anyone says that Extreme Unction is not truly and properly a sacrament instituted by Christ our Lord, and promulgated by blessed James the Apostle; ... let him be anathema."[1]

Note. It is disputed at what time Extreme Unction was instituted. Some have thought that the anointing performed by the Apostles, of which Mark speaks,[2] was Extreme Unction. But this opinion must be rejected, because the minister of that sacrament is a priest; the Apostles, however, were constituted priests afterwards, namely at the Lord's Supper. Most hold that this sacrament, which is the complement of Penance, was instituted after Christ's resurrection together with Penance.

[1] Session 14, canon 1.

[2] "And they anointed with oil many sick persons and healed them" (Mark 6:13).

565 II. Extreme Unction, even in the case in which several anointings and prayers are used, is only one sacrament; otherwise the dogma concerning the sevenfold number of the sacraments would not stand. This, however, is explained in different ways by different authors. According to some, the diverse anointings and prayers taken together signify and produce one complete effect; but the effect is produced either by parts, as Scotus teaches,[1] or after the last anointing has been performed, as St. Thomas holds (*Supplement*, q. 30, a. 1, ad 3; cf. St. Alphonsus, VI, 707, qu. 2). According to others, the first anointing together with the partial form signifies and effects the entire effect, while the other anointings are regarded only as sacramentals (n. 570).

[1] According to Mastrius, Scotus supposes that the individual actions have their own partial effects. For Scotus says, *In IV Sent.*, dist. 23, at the end, ad 2, that this sacrament is indeed one by unity of integrity, but not by unity of indivisibility, just as its effect is not one indivisibly, because it is not the remission of one venial sin, but one by the unity of the full remission of all venial sins (Gaude, in St. Alphonsus, VI, 707).

Part II. On the Essence of Extreme Unction

Section I. On the Remote Matter

566 I. For validity, so that it be indubitable here, there is required: 1. olive oil; 2. blessed either by a Bishop or by a presbyter who has obtained delegated faculty to bless it; and this 3. with the special blessing of the oil of the sick. From the preceding, olive oil and a blessing performed by a Bishop or by a delegated presbyter are certainly required; the special blessing is probably required.

1. Olive oil is certainly required. This is clear: 1. from the words of St. James: "anointing him with oil."[1] But oil spoken of simply is olive oil. 2. From the Council of Florence.[2] 3. From the consensus and practice of the Eastern and Western Church (St. Alphonsus, VI, 709; cf. canons 937 and 945).

2. A blessing performed either by a Bishop or by a presbyter who has obtained delegated faculty to bless the oil is certainly required; in other words, a blessing performed by a simple priest who has not been delegated is not sufficient. This is clear from the response of the Holy Office, which, with Gregory XVI approving, responded to the question whether in a case of necessity a parish priest could use oil blessed by himself for the validity of the sacrament of Extreme Unction: "Negatively, according to the form of the decree of Thursday before the Most Holy Father, January 13, 1611."[3] The same Holy Office, on May 15, 1878, declared: "Oil blessed by a presbyter who has not been furnished with a special faculty by the Holy See is matter wholly unfit for the Sacrament of Extreme Unction, and cannot validly be used even in extreme necessity." This is clear besides from the matters by which it will immediately be proved that, in itself, a blessing made by a Bishop is required, and therefore that a simple priest in himself lacks this faculty and needs delegation (cf. canon 945). Hence, for the sake of completeness, further observe:

a) In itself, a blessing made by a Bishop is required. This is clear 1. from the Council of Trent;[4] 2. from the Council of Florence;[5] 3. from the decree of the Holy Office, approved by Paul V.[6]

b) The Supreme Pontiff can confer upon a simple priest the power of consecrating the oil. This is clear from the Decree of Clement VIII, *Sanctissimus Dominus*;[7] from the Constitution of Benedict XIV, *Etsi pastoralis*;[8] from the declaration of the Holy Office cited above;[9] from canon 945; and from the fact that priests of the Eastern Church and the Italo-Greeks enjoy and use this faculty.[10]

c) It is doubtful whether even a Bishop, in himself, that is, without delegation of the Supreme Pontiff, can confer upon a simple priest the faculty of consecrating the oil.

3. It is altogether doubtful whether for validity the special blessing is required, or whether the blessing by which the chrism of Confirmation or the oil of catechumens is consecrated is sufficient (cf. canon 945). Hence in a case of necessity the sick person can, or even must, be anointed, conditionally of course, with the chrism of Confirmation or with the oil of catechumens. If afterwards the oil of the sick can be had, the sacrament should be repeated conditionally (St. Alphonsus, VI, 709, dub. 2).

[1] James 5:14.

[2] Denzinger-Bannwart, n. 700.

[3] September 14, 1842 (*Collectio de Propaganda Fide*, n. 956).

[4] Session 14, *De sacramento extremae unctionis*, cap. 1.

[5] Denzinger-Bannwart, n. 700.

[6] January 13, 1611 (*Collectio de Propaganda Fide*, n. 956, note).

[7] August 31, 1595.

[8] May 26, 1742, § 4.

[9] May 15, 1878.

[10] Cf. Kern, op. cit., p. 124 sq.

567 II. For liceity there is required: 1. that matter certainly valid be used; 2. that the oil have been blessed on the Lord's Supper, on the most recent Thursday before Easter (canon 734, § 1).[1] "Therefore let the parish priest," says the Roman Ritual,[2] "have the sacred Oil of the sick, which each year, on Thursday in the Lord's Supper, blessed by the Bishop, is to be renewed, the old having been burned; nor should the old be used unless necessity urges" (cf. the cited canon). If the blessed oil seems insufficient, "other unblessed olive oil should be added, even repeatedly, but in a smaller quantity" (canon 734, § 1).[3] Thus the admixture can be made several times, even if finally the quantity of unblessed oil is greater, provided that in each admixture it is smaller.[4] Nevertheless, on Thursday in the Lord's Supper it is not permitted to bless part of the Holy Oils in order at once to mix that part with unblessed oils.[5] Besides, note:

a) Old oils are not to be used unless necessity urges (canon 734, § 1).

b) The parish priest must request the holy oils from his Ordinary; and he should carefully keep the oil of the sick in a clean and decently adorned place, in a silver or tin vessel, and should not retain it at home unless because of necessity or another reasonable cause, with the license of the Ordinary having been obtained (canon 946, joined with 735). A reasonable cause is, for example, a greater distance of the parish house from the church.[6]

[1] On Thursday in the Lord's Supper, threefold oil is blessed by the Bishop, namely: 1. the oil of the sick; 2. the oil of catechumens; 3. chrism, which consists of olive oil and balsam. The oil of the sick is marked on the vessel with the letters O. I. or with the letter I alone; the oil of catechumens with the letters O. C. or the letter O alone; chrism with the letters Ch. or the letter C alone.

[2] Title V, cap. 1, n. 3.

[3] Roman Ritual, loc. cit.

[4] Pius VI, April 1, 1794; Sacred Congregation of the Council, September 25, 1862.

[5] Sacred Congregation of Rites, December 7, 1744, n. 2883; January 28, 1910 (*A.A.S.* 1910, p. 118).

[6] Sacred Congregation of Rites, *Decreta authentica*, n. 2650, to the third factual case; 3276, ad 5; 3739, ad 2; 3779, ad 7.

Section II. On the Proximate Matter

568 I. For validity, so that it be indubitable here, these suffice: 1. anointings of the different senses together with partial forms; 2. in a case of necessity, a single anointing in one sense with the prescribed shorter form, which will be cited immediately. It is said:

1. Anointings of the different senses together with the particular forms suffice. Moreover, they suffice even if the anointing of a paired part, for example of one eye, etc., is omitted.

2. In a case of necessity, a single anointing in one sense with the prescribed shorter form suffices. This is clear: 1. from canon 947, § 1; 2. from the Roman Ritual;[1] 3. from a decree of the Holy

Office approved by Pius X.[2]

The decree states: "When this Supreme Congregation was asked that one short formula be determined in the administration of the sacrament of Extreme Unction in a case of imminent death, the Most Eminent and Reverend Father General Inquisitors, after the matter had been most maturely weighed and after the vote of the Reverend Consultors had been had, decreed: In a case of true necessity the form is sufficient: 'Through this holy anointing may the Lord forgive you whatever you have committed. Amen.'" The decree indeed explicitly speaks only of the abbreviated form, but implicitly signifies that the single anointing corresponding to it is sufficient. Besides, note:

a) Likewise outside necessity a single anointing in one sense with the prescribed shorter form seems sufficient: both because, with respect to validity, a distinction is not readily to be admitted; and because St. James[3] speaks only of anointing the sick person, without mention of the parts of the body. Finally, this is supported by the very great variety which, with respect to the number and place of anointings, has prevailed in the Greek and Latin Church.[4]

b) Whether a single anointing in one sense together with the particular form suffices for validity is not beyond doubt. If it suffices, the later anointings seem to be regarded as sacramentals, which plainly express the effect of Extreme Unction. If it does not suffice, it must be said that the effect is produced in the last necessary anointing according to these words of St. Thomas: "When there are many actions ordered to the same effect, the last is formal with respect to all the preceding and acts in virtue of them; and therefore in the last action grace is infused, which gives the sacrament its effect" (*Supplement*, q. 30, a. 1, ad 3).

[1] Title V, cap. 1, n. 21.

[2] April 24, 1906.

[3] James 5:14.

[4] Kern, op. cit., p. 131 sq.

569 II. For liceity outside the case of necessity there is required: 1. that the members to be designated be anointed, and this 2. in the prescribed order; 3. by the minister's own hand, that is, with the right thumb, no instrument being used; and 4. in the manner of a cross (canon 947, joined with the Roman Ritual).

1. Members to be anointed. The organs of the five senses must be anointed, namely the eyes, ears, nostrils, mouth, and hands (canon 947, § 1, joined with the Roman Ritual, title V, c. 1, n. 15). The anointing of the kidneys is always to be omitted (canon 947, § 2).[1] The anointing of the feet can be omitted for any reasonable cause (canon 947, § 3). If someone is mutilated in some member, the part nearest that place is anointed, with the same form of words.[2] If someone lacks a sense itself, for example hearing, or has always lacked it, nevertheless the organ is anointed. With respect to paired organs, the anointing should be made separately on each organ, but under one form, beginning from the right; except the lips, which are anointed with a single anointing.

The anointing of the organs of the five senses is prescribed under grave obligation. Likewise the anointing of each of the paired organs seems to oblige under grave obligation, so that only a grave cause excuses, for example the difficulty of turning the sick person and reaching the paired organs (St. Alphonsus, VI, 710).

2. The prescribed order obliges, so that every inversion is a sin; indeed an inversion of at least several anointings seems to be grave (St. Alphonsus, VI, 710). Now, considering the prescribed order, the following are anointed:

a) The eyes, over both closed eyelids.

b) The ears, at the lower parts of the auricles.

c) The nostrils, over each nostril, and indeed from the side, lest sneezing be excited.

d) The mouth, over each closed lip; with a single anointing by which both lips are anointed; but if this cannot conveniently be done, it is sufficient to anoint one lip.

e) The hands, in the middle of the palms; but the hands of a priest are anointed on the outside.

f) The feet, on the upper part or on the soles according to the prevailing custom.[3]

3. The anointings should be made by the minister's own hand, that is, with the right thumb;[4] not with another finger nor with a brush or similar instrument: a contrary custom, if it prevails anywhere, cannot be observed.[5] Nevertheless, in a case of grave necessity, for example if contagion is to be feared from contact, as if some sick person is suffering from leprosy, plague, or smallpox, it is permitted to use a brush or small rod[6] (St. Alphonsus, VI, 710).

4. In the manner of a cross, as the Roman Ritual has it.[7]

5. Finally, it is very much recommended that for each anointing the thumb be dipped in the oil, all the more because some doubt whether one drop suffices for all the anointings (St. Alphonsus, VI, 709, dub. 4).

[1] In place of the kidneys, in some dioceses the anointing of the breast was permitted. Now, with the anointing of the kidneys forbidden, the anointing of the breast also is to be omitted.

[2] Roman Ritual, title V, cap. 1, n. 19.

[3] Sacred Congregation of Rites, August 27, 1836, n. 2743.

[4] Roman Ritual, title V, c. 2, n. 8.

[5] Sacred Congregation of Rites, May 9, 1857, n. 3051.

[6] Sacred Congregation of Rites, May 9, 1857, ad II, n. 3051.

[7] Roman Ritual, title V, c. 2, n. 8.

570 III. For liceity in a case of necessity a single anointing in one sense, or more rightly on the forehead, with the prescribed shorter form suffices, with the obligation remaining of supplying the individual anointings when the danger has ceased (canon 947, § 1). It is said:

1. In a case of necessity. But a case of necessity is present: 1. when there is some danger that the sick person may die before the individual anointings have been performed; 2. when several persons must be anointed and it is feared that, if each is anointed in the ordinary manner, someone may die without Extreme Unction; 3. when, if the individual anointings are performed, danger of contagion can arise or increase; nevertheless, if the danger arises from contact, it should be forestalled by use of a brush or small rod; 4. when a longer ministration exposes the sacrament to danger of irreverence, as can happen, for example, in anointing an insane person.

2. When the danger has ceased, the individual anointings must be supplied. That is, they must be supplied if the danger on account of which the single anointing was used has ceased. Hence they must be supplied if the sick person has survived; if the danger has ceased that one of several persons to be anointed may die without Extreme Unction; if the danger of contagion has ceased, for example because a brush has been brought by which the individual anointings can be performed.

c) The individual anointings must be supplied; and indeed absolutely, not conditionally, and, as seems most probable, always. I said absolutely, for thus the Holy Office expressly states.[1] I said always, because both canon 947, § 1, and the Holy Office[2] and the Roman Ritual[3] state without any restriction that the anointings are to be supplied, provided, however, that the danger of death continues. But the reason why they are prescribed to be supplied is that the sick person not be deprived of the sacramentals which seem to be contained in the anointings to be supplied and which plainly express the effect of Extreme Unction (n. 570).

Note 1. Not all agree in defining the nature of the anointings to be supplied. Some have thought that the sacrament is iterated in the supplied anointing. This, however, is not satisfactory, both because in that opinion the anointings would have to be supplied conditionally, since it is doubtful whether Extreme Unction can validly be repeated in the same danger, a doubt which is not considered removed either by the decrees cited above or by the Code; and because the iteration of the sacrament in the same danger is severely prohibited by the Code itself.

Others judge that the supplies are parts which with the preceding anointing constitute one whole, whether they are considered as partial sacraments or as the perfection or extension of the sacramental sign itself. But neither does this opinion seem correct, both because it supposes that the preceding anointing lacks the perfection of the sacrament, which is admitted with difficulty, and because, once this opinion is admitted, the anointings cannot be supplied if the moral union between them and the earlier anointing has ceased.

Others teach that the supplies are integral parts of the sacrament. But then also moral union between them and the essential part seems to be required; and if that is lacking, the supplies would have to be omitted.

These things being posited, it remains to be said, as it seems, that sacramentals, or ceremonies very efficacious by reason of the accompanying prayers of the Church, are contained in the supplied anointings.[4]

Note 2. What has been said about the anointings to be supplied after a single anointing is also to be applied to anointings neglected in the ordinary ministration, for example through forgetfulness; these therefore must likewise be supplied. If, however, it is feared that, because of the space of time, the required union is lacking, the sacrament is in itself to be repeated conditionally.

[1] March 9, 1917.

[2] January 31, 1907.

[3] Title V, cap. 1, n. 21.

[4] Cf. *Nederlandsche Katholieke Stemmen*, 1917, p. 241; 1928, p. 92.

Section III. On the Form and on the Union of Matter and Form

571 I. The ordinary form in the Latin Church is the prayer prescribed by the Roman Ritual for the individual anointings, namely: "Through this holy Unction, and His most tender mercy, may the Lord forgive you whatever you have committed through sight, or through hearing, etc. Amen."[1] That the words "and His most tender mercy" are not required for validity is gathered from the form to be used in a case of necessity, in which the aforesaid words are omitted. Nevertheless, outside a case of true necessity, the omission is held to be gravely illicit (St. Alphonsus, VI, 711, dub. 2).

Among the Orientals this or a similar form is used: "Holy Father, physician of souls and bodies, who sent Your only-begotten Son, Our Lord Jesus Christ, healing every disease and freeing us from death, heal also Your servant N. from the bodily infirmity detaining him, and give him life through the grace of Your Christ, by the intercessions of N. N. and of all the Saints. Amen."

[1] Title V, cap. 1, n. 20. From the new editions of the Roman Ritual, the word "Amen" is to be said by the priest.

572 II. "In a case of necessity a single anointing in one sense, or more rightly on the forehead, suffices with this shorter form: 'Through this holy Unction may the Lord forgive you whatever you have committed. Amen.'" Thus the Roman Ritual,[1] canon 947, § 1, and the Decree of the Holy Office.[2] As it is useful to note in passing, everyone is under obligation to hold the aforesaid shorter form by memory.

Note. As is gathered from the words of St. James,[3] it is required for the essence of the form that it be deprecatory formally, or according to sense (St. Thomas, *Supplement*, q. 29, a. 8; St. Alphonsus, VI, 711, dub. 1). But nothing seems to prevent a form that is grammatically indicative from being formally deprecatory, namely from the intention of praying to God, an intention, I say, sufficiently manifested by the very nature of the action.

[1] Loc. cit., n. 21.

[2] April 24, 1906.

[3] James 5:14 sq.

573 III. With respect to the union of matter and form, it is sufficient to have noted: For validity, the union which we described in the treatise on the Sacraments in general suffices (n. 22). With respect to liceity, these words of the Roman Ritual are to be observed: "While the priest anoints the eyes, ears, and other members of the body which are paired, let him take care that, in anointing one of them, he does not complete the form of the Sacrament before he has anointed both members of this kind."[1]

[1] Title V, cap. 1, n. 18.

Scholion. On the Special Character of Extreme Unction

574 Extreme Unction is primarily a sacrament of the living, secondarily a sacrament of the dead (St. Alphonsus, VI, 731). I said:

I. Extreme Unction is primarily a sacrament of the living, that is, in itself and primarily it is ordered to second grace, or to the increase of grace. For 1. St. James and the Council of Trent set forth first grace as an effect of Extreme Unction only conditionally; by this it is suggested that the said sacrament is not primarily ordered to that effect; this being posited, it remains that we say that it is

primarily ordered to second grace, that is, to the increase of grace. 2. If Extreme Unction were primarily ordered to conferring grace, and not to the increase of grace, the sacrament of Penance would not be, for all those who have fallen after Baptism, a necessary means of salvation to be employed in fact or in desire. It would be sufficient for the sick to have recourse to Extreme Unction. The Roman Catechism teaches the same: "For this sacrament was not instituted in the first place for the remission of graver crimes, but Baptism alone and Penance by their own power effect this."[1]

II. Extreme Unction is secondarily a sacrament of the dead, that is, also in itself, but only secondarily, it is ordered to first grace. I said in itself; for St. James[2] and Trent,[3] whose words are cited in the note, because they expressly state that sins are remitted through Extreme Unction, seem to suggest that the said sacrament by its nature is ordered also to that effect. There is added the fact that the form of the sacrament also expresses the remission of sins, indeed expresses that alone. I said only secondarily; this follows from the things by which we proved that Extreme Unction is primarily ordered to second grace. Therefore this sacrament differs from the other sacraments of the living, which confer first grace only accidentally.

Corollary I. But if you ask further what, with respect to the remission of mortal sins, those words "in itself, but secondarily" imply when Extreme Unction is being discussed, and what those words "accidentally" imply when the other sacraments of the living are being treated, it must be said thus: If someone constituted in mortal sin receives a sacrament of the living, Christ in Extreme Unction intends to infuse sanctifying grace in order to remit sin; while in the other sacraments of the living He intends to infuse sanctifying grace for another end proper to each sacrament.

Corollary II. As to the mode by which Extreme Unction remits sins, it must be said that mortal sins are remitted directly; concerning venial sins, it is disputed whether they are remitted directly or indirectly (p. 210).

[1] Part 2, c. 6, q. 14.

[2] "If," he says, "he be in sins, they shall be forgiven him" (James 5:15).

[3] "It wipes away offenses, if there are any to be expiated, and the remains of sin" (Session 14, cap. 2).

Part III. On the Effects of Extreme Unction

575 The primary effect, to which all the other effects are reduced, is disputed. According to the Scotists, Extreme Unction is ordered to the final remission of venial sins in the dying person who is now incapable of helping himself; from this remission of venial sins follows the relief of sorrow and sluggishness, which are effects of sin. They argue from the form of the sacrament, which seems directly destructive of sin. According to St. Thomas (*Supplement*, q. 30, a. 1) and St. Alphonsus (VI, 721, 731), it is ordered primarily to helping and strengthening the soul of the sick person, or to healing his spiritual infirmity, which is left in us from original and actual sin and which must especially be healed in the last struggle. But sins are remitted secondarily, namely insofar as they obstruct spiritual strengthening. This opinion is supported by the words of St. James, who seems to mention the remission of sins as a secondary effect: "And the prayer of faith shall save the sick man, and the Lord shall raise him up; and if he be in sins, they shall be forgiven him."[1] In particular, the following are enumerated:

I. Sanctifying grace, in itself and primarily second grace, or the increase of grace; likewise in itself but secondarily first grace, as follows from the things said above (n. 574).

II. Sacramental grace, which consists in this, that the sanctifying grace which Extreme Unction increases is ordered to this: that the sick person not be cast down by illness, but on the contrary be strengthened in illness, and, having been strengthened, vigorously fight against the last temptations and readily bear the final pains; and it brings with itself a right to actual graces to be received in order to those effects. Now, that the sacramental grace of this sacrament is what we have described is supported first by these words of St. James: "And the Lord shall raise him up," that is, shall stir him up and strengthen him.[2] Then the Council of Florence says: "The effect of this sacrament is the healing of the mind and, insofar as it is expedient, also of the body."[3] And the Council of Trent says: "Our most merciful Redeemer, who wished that at every time there be provided for His servants salutary remedies against all the weapons of all enemies, just as in the other sacraments He prepared the greatest helps by which Christians could preserve themselves whole, while they lived, from every graver harm of the spirit, so by the Sacrament of Extreme Unction He fortified the end of life as by a certain strongest protection. For although our adversary seeks and seizes occasions throughout the whole of life so that he may in any way be able to devour our souls, nevertheless there is no time at which he more vehemently strains every nerve of his cunning to destroy us utterly and, if he can, to disturb us even from confidence in the divine mercy, than when he perceives that the end of life is impending for us."[4] Tradition is added, whose testimonies Kern brings forward (St. Thomas, *Supplement*, q. 30, a. 1, ad 2; St. Alphonsus, VI, 731).[5]

III. The remission of mortal sins; this is clearly gathered from the words of St. James and Trent cited above (St. Thomas, *Supplement*, q. 30, a. 1; St. Alphonsus, VI, 731). It is required, however, that the sick person be attrite, at least habitually. But this also suffices, since that cannot be demanded which already of itself remits mortal sins, namely contrition.

IV. The remission of venial sins. For St. James and the Council of Trent do not distinguish between mortal and venial sins. Besides, there is no reason to exclude venial sins; indeed, since lesser offenses are more easily remitted, there is rather reason to include them. Nevertheless they are not remitted unless the sick person is at least habitually attrite for them.

V. The remains of sins, as the Council of Trent cited above expressly states (St. Thomas, *Supplement*, q. 30, a. 1, ad 2; St. Alphonsus, VI, 731). "But the remains of sin here are not called dispositions left from acts, which are certain begun habits, but a certain spiritual weakness existing in the mind itself; when it has been removed, even if the same habits or dispositions remain, the mind cannot be inclined to sin in the same way" (St. Thomas, loc. cit.; St. Alphonsus, loc. cit.).

VI. The remission of punishments, which by some is also referred to the remains of sins of which we have just spoken, more or less fully according to the disposition of the recipient. Thus it is taught not improbably: for since the end of this sacrament is also the consummation of the Christian life, as the Council of Trent speaks,[6] or the final disposition of the soul so that it may enter glory, it also remits temporal punishment; but, because Extreme Unction works by way of medicine, whose effect depends on the disposition of the subject, a greater or lesser remission of punishment is given according as the disposition of the subject is better or less good.

VII. Health of the body. This is clear both from the words of the Council of Florence cited above and from the Council of Trent, according to which the anointed person "sometimes obtains health of body, where it is expedient for the salvation of the soul."[7] Besides, note:

1. Extreme Unction does not confer health of body if it is not expedient for the salvation of the soul. "The operative reason," says St. Thomas, "never induces a secondary effect except insofar as it is expedient for the principal effect; therefore from this sacrament bodily healing does not always follow, but when it is expedient for spiritual healing" (*Supplement*, q. 30, a. 2). But it is disputed whether this sacrament confers health whenever it is expedient for the soul, or only sometimes, that is, according to the order of divine wisdom and providence, as is said. Some deny that it always produces that effect whenever it profits the soul. They deduce that this happens only sometimes from the words of the Council of Trent cited above. Others teach the contrary, and think that the sense of the words of the Council of Trent is this: "sometimes, namely, where it is expedient for the salvation of the soul."

2. Extreme Unction confers health not by way of miracle, but insofar as spiritual strengthening overflows into the body, and brings with it a right that the means of recovering health be directed by the special Providence of God. "The unction," as the Council of Trent teaches, "raises up and confirms the soul of the sick person, exciting in him great confidence in the divine mercy; by this confidence the sick person, being relieved, bears the inconveniences and labors of illness more lightly, resists more easily the temptations of the devil lying in wait for his heel, and sometimes obtains health of body, where it is expedient for the salvation of the soul."[8] And St. Thomas teaches that in Extreme Unction grace is conferred "not only so that it may remove guilt, but also the remains of guilt and the infirmity of the body" (*Supplement*, q. 29, a. 5), so that healing according to the holy Doctor must be called an effect of the grace conferred. Hence they are deprived of the aforesaid effect who defer reception of the sacrament so long that health cannot be expected without a miracle (St. Alphonsus, VI, 714).

[1] James 5:15.

[2] James 5:15.

[3] Denzinger-Bannwart, n. 700.

[4] Session XIV, *De extrema unctione*, Prooemium.

[5] Op. cit., p. 238.

[6] Session XIV, doctrine on the Sacrament of Extreme Unction.

[7] Session XIV, *De extrema unctione*, cap. 2.

[8] Loc. cit.

Part IV. On the Necessity of Extreme Unction

576 I. Necessity of means must be denied, both because of canon 944, which denies it, and because of the reasons for which we denied the necessity of means of Confirmation (n. 116).

577 II. Necessity of precept. 1. There is an obligation of receiving Extreme Unction. This is deduced first from canon 944: "It is lawful for no one ... to neglect it." Then he who neglects a special means, instituted by Christ, by which the sick person is fortified and strengthened in those most serious moments of life on which eternity proximately depends, seems to sin against charity toward himself.[1]

2. The obligation is quite probably only light. I understand the obligation in itself, because one who neglects Extreme Unction can accidentally sin gravely, for example by reason of scandal or contempt.[2] But in itself a grave obligation is quite probably lacking. The reason is that such an obligation is not established either from the nature of this sacrament, "which is not necessary for salvation, but only useful" (St. Alphonsus, VI, 733), or from a positive precept, because it is not clear that the words of St. James, "let him bring in the priests," are to be understood of a precept and not only of counsel; nor from the precept of charity toward oneself, "for charity does not oblige under grave precept to that which is better" (St. Alphonsus, loc. cit.). Finally, the Code does not settle this controversy, neither insofar as it concerns divine law, which it does not intend to interpret,[3] nor insofar as the ecclesiastical Legislator imposes a grave precept in canon 944. If he had intended that, he would certainly have used clearer and weightier words.

Objection. The Council of Trent declares: "Now, as regards the prescription of those who ought both to receive and to minister this sacrament," etc.

Response. The Council does not intend to urge the obligation of reception, but rather to signify to whom the reception and to whom the ministration of the sacrament belongs.

[1] Cf. Council of Trent, session 14, *De sacramento extremae unctionis*, at the beginning and cap. 2.

[2] Cf. Council of Trent, loc. cit., cap. 3.

[3] Cf. Preface.

Dissertation II. On the Ministration of Extreme Unction

578 I. The ministering person. 1. Every priest, and only a priest, validly administers Extreme Unction (canon 938, § 1). This is of faith from the Council of Trent.[1] It can, moreover, as is clear from the Tradition and practice of the Church, be ministered both by one and by several priests.[2] But if several minister the sacrament, each should take care that he himself pronounce the respective form for the matter applied by himself. In the Latin Church it must be ministered by one alone.

But if the minister fails while ministering, and another is immediately present, the latter should continue where the other stopped. If a longer delay, for example a quarter of an hour, has intervened, the other should repeat conditionally the anointings performed by the first, namely because of doubt whether the union which perhaps is required between the particular anointings is present; then he should complete the others (St. Alphonsus, VI, 724).

Note. A priest cannot validly confer Extreme Unction on himself, as is deduced from the constant tradition and usage of the Church (n. 21).

2. The Ordinary and the parish priest of the place in which the sick person is staying licitly minister this sacrament; for that reason they are called the ordinary ministers of Extreme Unction. Besides, in a case of necessity, and likewise with the permission, either given or reasonably presumed, of the same parish priest or local Ordinary, any other priest can minister this sacrament (canon 938, § 2). In addition, the prescriptions of canons 397, 3°, and 514, §§ 1-3, remain firm; see these in the treatise on the Holy Eucharist, n. 164.

[1] Session 14, *De sacramento extremae unctionis*, canon 4.

[2] In the Greek Church Extreme Unction is conferred by seven, or at least by three, priests (Papp-Szilagyi, *Enchiridion iuris ecclesiastici orientalis*, p. 2, § 81). Cf. Sacred Congregation of Propaganda Fide, March 23, 1844 (*Collectio*, n. 818).

579 II. Obligation of ministering. 1. The ordinary minister is bound: 1. from justice and under grave obligation to minister Extreme Unction to subjects who ask for it, and indeed in good time; 2. under grave obligation to use prudent diligence so that subjects who are negligent about salvation may be warned in good time (St. Alphonsus, VI, 714, 729; cf. canon 939). As to the extent to which the ordinary minister is bound even with danger to life, see the treatise on the Sacraments in general, n. 34. Besides, these words apply to him before others: "With every zeal and diligence care must be taken that the sick receive it while they are fully in possession of themselves" (canon 944).

2. Any priest in a case of necessity is bound from charity to procure Extreme Unction for a sick person (canon 939). A case of necessity as taken here is already present if the ordinary minister is lacking and there is danger in delay. But the obligation in itself is light; accidentally it is grave if either the reason of grave scandal is added, or the sick person is probably in the state of mortal sin and will not be saved securely enough by confession, for example because he is deprived of the senses. That is, for receiving Extreme Unction fruitfully, attrition suffices, while for confession accusation is also required (St. Alphonsus, VI, 729).

3. Those who from charity or piety are bound to provide for the salvation of the sick person are likewise, in themselves, bound under light obligation to take care that the sick person receive Extreme Unction; under grave obligation in the case in which other priests are bound under grave obligation to minister it, as was explained under 2.

580 III. Things to be observed in ministering. 1. The Oil of Extreme Unction should be carried to the sick in the simple manner prescribed by the Roman Ritual,[1] not solemnly with surplice and lights,[2] unless the Holy Eucharist is carried at the same time. But if the latter is not carried at the same time, the minister, for example the sacristan, or the priest himself, should carry the surplice with him.

2. In the ministration itself, the following are prescribed under grave obligation: 1. sacred vestments, namely surplice and stole; to omit either is quite probably only venial; 2. the prayers assigned by the Ritual for the priest. Urgent necessity excuses from the foregoing.

3. It is prescribed under light obligation that a minister be used, and that he be male. If a male is lacking, a woman seems able to answer.

4. A lighted candle seems to be only of counsel, unless the priest needs it, since it is said to be lit "so that it may provide light to the one anointing." Likewise it seems to be counsel rather than a true precept that those standing by recite the Penitential Psalms and the Litanies. Finally, it is not established that it is prescribed under sin that, contrary to ancient custom, Extreme Unction be ministered after Viaticum (St. Alphonsus, VI, 716, 726-728).

[1] Title V, cap. 1, n. 13, and cap. 2, n. 2.

[2] Sacred Congregation of Rites, January 23, 1606, n. 106.

Dissertation III. On the Reception of Extreme Unction

We must speak first of the person receiving, then of the manner of receiving Extreme Unction, and finally of the repeated reception of Extreme Unction.

Part I. On the Person Receiving

581 I. In order that someone be capable of receiving Extreme Unction, it is required: 1. that he be baptized; 2. that he be or have been in possession of reason; 3. that his health be gravely afflicted, and indeed at least to that degree from which death not rarely follows within a time not very long; but such a degree also suffices, at least for validity. It is said:

1. That he be baptized (cf. n. 38).

2. That he be or have been in possession of reason; hence canon 940, § 1 indeed states that Extreme Unction cannot be given except after the use of reason has been attained, but does not add that actual or habitual use of reason is required.[1] The reason seems to be that the gravely sick person who neither has nor has had the use of reason is, and was, and will be, at least in himself, incapable of actual strengthening, to which the sacramental grace of Extreme Unction gives a right (St. Alphonsus, VI, 718). I said "and will be incapable," as a perpetually insane person. I said "and will be, at least in himself, incapable," as a gravely sick infant, who in himself will either recover or die before the use of reason, while accidentally it will happen that he is going to prolong the grave illness until he will attain the use of reason, and thus will be capable of spiritual strengthening. Therefore little children and the perpetually insane cannot be anointed. But adults who have lucid intervals, or who at least were not perpetually insane, are capable; likewise those who are delirious;[2] likewise children as soon as they have reached the use of reason (St. Alphonsus, VI, 720).

In doubt whether the sick person has attained the use of reason - understand: whether he either enjoys the use of reason or at some time enjoyed its use - the sacrament should be ministered conditionally (canon 941), for example: "if you are capable."

Question. Is one who has never sinned personally capable of Extreme Unction?

Response. It seems that it must be affirmed, because he is capable of the primary effect of the sacrament, that is, strengthening of soul. That it is not required that someone have sinned after Baptism follows from the fact that the Holy Office[3] and the Sacred Congregation of Propaganda Fide[4] responded that a pagan who becomes gravely sick immediately after receiving Baptism is to be anointed.

It is disputed whether the Blessed Virgin Mary was capable of Extreme Unction. It seems that it must be denied, because Extreme Unction strengthens by way of spiritual medication. Hence the Council of Florence, as we have already noted, teaches: "The effect of this Sacrament is the healing of the mind." But the Blessed Virgin Mary was incapable of strengthening of this kind.

3. That health be gravely afflicted, and indeed at least to that degree from which death not rarely follows within a time not very long; but such a degree also suffices, at least for validity. I said:

a) That health be gravely afflicted, whether from disease taken in the stricter sense, or from a similar cause, for example from a wound, from difficult childbirth, from poison swallowed, or from old age. That this is required is proved first by the words cited above of St. James, who advises the sick person to summon the priests, who will save him and comfort his depressed spirit; these things you would scarcely apply to one suffering from a slight illness. Then Benedict XIV in the Bull *Ex quo primum*, §

46, teaches that Extreme Unction is to be ministered "only to faithful persons gravely sick." Then the Council of Trent teaches that this sacrament was instituted by Christ so that He might "fortify the end of life as by a certain strongest protection" (p. 437). Finally, the whole rite of Extreme Unction does this one thing, that it commends to the divine mercy the sick person constituted in danger of death[5] (St. Thomas, *Supplement*, q. 32, a. 2; St. Alphonsus, VI, 713, dub. 2).

b) That health be afflicted at least to that degree from which death not rarely follows within a time not very long, or at least to that degree that death not very remote must be feared. This is deduced from the fact that several ecclesiastical documents expressly state that Extreme Unction is not to be conferred except on those who are in danger of death or whose death is feared. Thus, for example, canon 940, § 1: "Extreme Unction cannot be given except to a faithful person who, after attaining the use of reason, is in danger of death by reason of infirmity or old age." Likewise the decree of Eugene IV in the Instruction to the Armenians: "This sacrament must not be given except to a sick person whose death is feared." But these things in their obvious sense signify the state described by us (St. Thomas, loc. cit.; St. Alphonsus, loc. cit.).

c) Such a degree also suffices, at least for validity. This is drawn from the fact that the Sacred Congregation of Propaganda Fide responded[6] "Affirmatively" to the question: "Sometimes Missionaries encounter someone suffering from hectic fever, that is, a kind of consumption, or from another illness, who, experience being the guide, is going to live for several more months, but will die within the year: it is asked whether in such a case the Missionary can minister Viaticum and Extreme Unction to him, because when the time of receiving them is actually at hand, the Missionary will not be able to be present in the same place, either because of great distance or because of another impediment." I said at least for validity, because from the response cited it does not follow that, in itself or in ordinary circumstances, the sacrament is licitly conferred in a case in which death is judged to be fairly distant; therefore further observe: as soon as the state just described is present, the sacrament is indeed conferred validly; but with respect to liceity, take the following:

a) If death is judged to be fairly far away, as in the case just set forth and resolved by the Sacred Congregation of Propaganda Fide, one may doubt whether the sacrament is already in itself licitly conferred.

b) If death is indeed judged to be more at hand, but not yet imminent, the sacrament is licitly conferred, although its conferral can be deferred.

c) If death seems imminent, Extreme Unction must be conferred;[7] nor is it permitted to wait until the sick person begins to lack the full use of reason. "The reason," says St. Alphonsus, "is that thus he is deprived of the richer fruit which he would have received if he had received the sacrament while he was in possession of reason, since then he would have disposed himself more for it. Likewise because he is deprived of spiritual strength for resisting the devil and for bearing the inconveniences of illness. Likewise because, if the sick person perhaps were in mortal sin and had received the sacrament while in possession of reason, by the help of attrition he perhaps would have obtained grace, of which otherwise he is deprived. Finally, because by virtue of this sacrament he perhaps would have obtained health of body, if it had been conferred at a suitable time; for although this sacrament by a certain supernatural power also works bodily health if it is expedient for the salvation of the soul, as Trent says, nevertheless it does not work by way of miracle, but in a certain ordinary way, namely by helping natural causes, as the Doctors commonly say. All these things at least when

taken together seem to bring grave harm to the sick person" (VI, 714). Hence canon 944: "With every zeal and diligence care must be taken that the sick receive it while they are fully in possession of themselves." And the Roman Catechism says: "They sin most gravely who are accustomed to observe that time for anointing the sick person when, all hope of recovery now having been lost, he begins to lack life and senses."[8]

[1] Cf. Roman Ritual, title V, cap. 1, n. 8.

[2] Cf. Roman Ritual, loc. cit., n. 11.

[3] May 10, 1703 (*Collectio*, n. 256, ad 8).

[4] September 26, 1821 (*Collectio*, n. 768).

[5] Kern, op. cit., p. 294.

[6] February 20, 1801 (*Collectio*, n. 651).

[7] Cf. Council of Trent, session 14, *De extrema unctione*, Prooemium and cap. 3; Roman Ritual, title V, cap. 1, n. 5.

[8] Part 2, cap. 6, n. 9.

582 Corollary I. Extreme Unction cannot be conferred on those whose death is imminent from a merely external cause, for example "on those about to enter battle, or about to undertake navigation, or a journey, or other dangers, or on criminals soon to be punished with the final penalty."[1] Nor can it be ministered when the danger of death is not yet present but will arise shortly, for example from the dangerous surgical operation itself about to be undergone, or from the difficult childbirth itself about to follow; otherwise, if someone is already actually in danger.

Corollary II. A woman in childbirth who "labors in childbirth with only common pains will indeed not be able to be anointed, even if she gives birth for the first time, or at another time had been in danger of death; because then she is not yet laboring under a dangerous infirmity" ... "But otherwise, if the woman has already begun to be distressed by very grave torments, so that she is already actually in proximate danger of death; because then she is truly already dangerously sick" (St. Alphonsus, VI, 713, dub. 3). The old cannot be anointed because of advanced age alone; otherwise if there is added such weakness of the vegetative functions that health must be called gravely afflicted. Hence canon 940, § 1 speaks of old age by reason of which someone is in danger of death. And the Roman Ritual states: "Extreme Unction is to be ministered to those who fail because of old age and seem day by day about to die, even without another infirmity."[2]

Those about to undergo a dangerous operation, but not yet constituted in danger of death, cannot be anointed before the operation; nor can the same be anointed as soon as they have been deprived of the senses by chloroform, unless the state of the sick person induced by the chloroform is regarded as gravely dangerous. If the disease is lethal, and physicians can avert the danger of death by the operation to follow, the sick person can be anointed if he does not wish to undergo the operation; if he wishes to suffer it, the matter seems doubtful.

But if it is rightly feared that someone, for example a person condemned to death, is going to die from fear, he is certainly validly anointed if fear has so afflicted his health that, even if the fear vanished, nevertheless grave danger would persist. Otherwise he seems able to be anointed only doubtfully validly, because it is doubted whether fear can really be called a disease.

Corollary III. A merely estimated danger of death does not suffice; for the things by which we proved that danger of death is required, in their obvious sense, signify a truly existing danger and not merely an estimated one. I add these things: suppose that someone lying on the ground, according to bystanders, is in danger of death and is anointed by a priest. A physician arrives and declares that he is well, but completely drunk. Who would say that he had been validly anointed?

Corollary IV. When it is doubted whether the sick person is really in danger of death, or whether he is dead, this sacrament should be ministered conditionally (canon 941). As to the extent to which one apparently dead can be conditionally absolved and anointed, this has been set forth in the treatise on Penance, n. 477.

[1] Roman Ritual, title V, c. 1, n. 9.

[2] Title V, cap. 1, n. 5.

583 II. Once the requisites for the capacity of receiving Extreme Unction have been posited, it must be given, and indeed absolutely, not only to those who here and now ask for it, but also "to sick persons who, when they were in possession of their mind, asked for it at least implicitly or would probably have asked for it, even if afterwards they lost the senses or the use of reason" (canon 943).[1] But "this sacrament is not to be conferred on those who, impenitent, contumaciously persevere in manifest mortal sin; but if this is doubtful, it is to be conferred conditionally" (canon 942). It is said:

1. They asked for it at least implicitly; these words certainly comprehend those who had, and did not retract, an implicit will or intention in the stricter sense, for example the will of dying as a Christian (p. 33). With respect to implicit intention in the most general sense - for example the will of employing the means of salvation - the matter seems doubtful and not settled by the Code (p. 33).
2. Or would probably have asked for it; for one who, in possession of himself, would probably ask for Extreme Unction is presumed to have had, and not retracted, an explicit will or intention of receiving Extreme Unction, or at least an implicit intention in the stricter sense.
3. This sacrament is not to be conferred on those who contumaciously persevere in manifest mortal sin.

What if someone rejected the priest up to the deprivation of the senses?

Response 1. If he did not certainly reject him from an evil will, but perhaps because he was not sufficiently conscious of the danger, with also an indifferent spirit being added, Extreme Unction can be conferred.

Response 2. If he certainly rejected the priest from an evil will, considering the reverence due to the sacrament, it is better, as it seems, not to anoint him, unless the deprivation of the senses endures longer, or the dying person gives a sign which with some probability can be regarded as a declaration of a changed will.

4. But if this, that is, contumacy, is doubtful, it is to be conferred conditionally, namely, considering the more obvious sense, under the condition: "If you are now not contumaciously persevering in mortal sin." Nevertheless, it can seem to someone that this is the sense of the canon: "If you are doubtful about the contumacy, the sacrament is to be conferred conditionally," the determination of the condition being left undecided; this being posited, the canon does not prevent the condition

"if you are capable," etc., from being added. Besides, it is certainly lawful to minister the sacrament "according to the mind of the Church."

[1] Roman Ritual, title V, cap. 1, n. 11.

Scholion. On the Anointing of Baptized Non-Catholics

584 We speak of baptized non-Catholics who are in good faith, or at least not certainly in bad faith. Now:

I. Outside the danger of death, baptized non-Catholics cannot licitly be anointed, according to what was said in the treatise on Penance (n. 478).

II. In danger of death. We distinguish between non-Catholics who admit Extreme Unction and those who reject it.

1. Those who admit Extreme Unction, as for example schismatics, can be anointed as follows:

a) If they are already deprived of the senses, scandal having been removed, they can be anointed according to what was set forth in the treatise on Penance (n. 478).

b) If they are not deprived of the senses, in themselves they cannot be anointed; accidentally they seem able to be anointed according as we spoke about the granting of absolution (n. 478).

2. Those who reject Extreme Unction should not be anointed; nevertheless I would not condemn one who conditionally anoints them, according to what was said in the treatise on Penance (n. 478).

Corollary I. In doubt whether the person to be anointed is baptized, or validly baptized, first he must be baptized or rebaptized conditionally.

Corollary II. Prudence, considering the common good, can readily prohibit a non-Catholic from being anointed. Besides, as we already noted in the treatise on Penance, one who assists a dying non-Catholic should strive to bring him to acts of contrition and charity, so that he may be saved more securely.

Corollary III. Having set forth those things which regard the subject of Extreme Unction, it is useful to state briefly to which dying persons deprived of the senses Extreme Unction can be conferred. Now it can be conferred: 1. on Catholics, even if they have not fulfilled religious duties or have been deprived of the senses in the act of sin; 2. on those whom, after an examination has been made if the occasion allows, you suspect with some probability to be Catholics; 3. on apostates; 4. on heretics who admit Extreme Unction, or have shown an inclination toward the Catholic Church; likewise, others add, on those who do not admit Extreme Unction and have not shown the said inclination, unless, however, prudence prohibits them from being anointed.

From those enumerated, only those are excepted who here and now certainly persevere contumaciously in mortal sin.

Part II. On the Manner of Receiving Extreme Unction

585 With respect to both the valid and licit reception of Extreme Unction, we refer to those things which we noted in the treatise on the Sacraments in general. It is useful, however, to complete in a few words those things which regard licit reception. Now:

I. For licit reception the state of grace is required. For the reverence due to the sacrament requires a state which corresponds to the end to which it is primarily ordered. But Extreme Unction is primarily ordered to increasing grace. Therefore the state of grace must already be present. If, however, someone attrite and in good faith receives the sacrament, he recovers grace (n. 6).

II. The state of grace can be recovered, by one who is in mortal sin, by reason of Extreme Unction either through confession or through perfect contrition; but by reason of Communion, if this is placed before Extreme Unction, it must be recovered through confession (n. 43). But Communion - although at most only under light obligation - is to be placed before Extreme Unction, according to these words of the Roman Ritual: "From the general custom of the Church it is to be observed that, if time and the condition of the sick person permit, the Sacraments of Penance and Eucharist be given to the sick before Extreme Unction"[1] (St. Alphonsus, VI, 716).

Note 1. If the one to be anointed is excommunicated, he should be freed from excommunication before he is absolved from sins and given holy Communion and Extreme Unction.

Note 2. If the sick person suffers from frenzy or insanity, care must be taken that he do nothing against the reverence of the sacrament, for example, if necessary, by binding or firmly holding the sick person (St. Alphonsus, VI, 732).

[1] Title V, cap. 1, n. 2.

Part III. On the Repeated Reception of Extreme Unction

586 The Council of Trent[1] declares: "But if the sick recover after receiving this Unction, they will be able to be helped again by the aid of this Sacrament when they fall into another like danger of life." And canon 940, § 2 says: "In the same infirmity this sacrament cannot be repeated, unless the sick person after receiving the Unction has recovered and has fallen into another danger of life." So also the Roman Ritual.[2] With these things premised, I say:

I. Extreme Unction can be repeated in another infirmity; in other words, it can be repeated: 1. as often as someone after an infirmity has been driven out, or after health has been recovered, is again dangerously sick; 2. as often as in the same infirmity the danger of death has vanished and afterwards arises again (St. Thomas, *Supplement*, q. 33, a. 2; St. Alphonsus, VI, 715). This follows from the Council of Trent and canon 940, § 2 cited above. The reason is that Extreme Unction was instituted precisely for the danger of death; hence it can at least then be repeated when the danger is repeated.

Question. Can Extreme Unction be repeated if a grave danger is increased, or if, while a danger endures, another disparate danger is added?

Response. It seems that it must be altogether denied; for the Council of Trent above and canon 940, § 2 require that the sick person, after he has recovered, become gravely sick again. Some indeed permit Extreme Unction to be repeated if the sick person, after the same grave danger has endured for a long time, is in much graver danger. They allege as reason that in this hypothesis the danger, according to common estimation, is morally considered another danger. But even this opinion cannot be reconciled with the words of the Council of Trent and the cited canon.

Objection. Canon 940, § 2 declares: "In the same infirmity this sacrament cannot be repeated." But in the hypothesis posited a new infirmity or new danger is added.

Response. From the cited words of the Council of Trent, and likewise from the words of the canon which follow the opposed words, it follows that by "the same infirmity" is understood the same lethal condition of the sick person; this condition is aggravated by a new infirmity or new danger. Meanwhile the sacrament continues to confer helps against the new illness.

Corollary. As often as Extreme Unction according to what has been said is licitly repeated, so often also it must be repeated. This seems to be commonly admitted if someone after recovering health becomes dangerously sick again; not so if in the same illness the danger of death vanished and afterwards arises again. But since the obligation is founded, as it were, in the danger of life, likewise the obligation of repeating seems to be present as often as the danger is repeated.

II. Extreme Unction cannot licitly be repeated in the same infirmity; whether it can validly be repeated is doubtful. Kern[3] and others affirm, especially because for several centuries in a great part of the Church there prevailed the use of repeating the sacrament seven times[4] in the same danger. Others deny or doubt; and to the argument of their adversaries they respond that it seems doubtful whether the said repetition of which Kern speaks was regarded as a repetition of the sacrament. That is, according to some,[5] all the anointings taken together were regarded as one sacrament; according to others,[6] the repeated anointings, that is, those which followed the first ministration, were like sacramentals strengthened by liturgical prayers.

Question. Does a most grave cause excuse from the prohibition, for example if someone after receiving Extreme Unction has certainly or probably sinned gravely, and, not yet having confessed, is deprived of the senses?

Response. I think that in the proposed case the sacrament can be repeated conditionally, namely because in this way provision is made for the salvation of the dying person much more securely than through absolution.

III. In doubt whether the danger was absent, a sick person who again becomes gravely sick can be anointed again, and indeed conditionally if grave doubt persists; absolutely if it is sufficiently established that the danger was absent. Nevertheless, commonly it will not be sufficiently established unless the sick person has been better for a notable time, for example for several weeks (cf. St. Alphonsus, VI, 715).

Practical Note.

[1] Session 14, *De extrema unctione*, cap. 3.

[2] Title V, cap. 1, n. 8.

[3] Op. cit., p. 338 sq.

[4] That is, here the anointings were repeated for seven continuous days; there seven priests, one after another, performed the complete sacramental rite.

[5] Schmid, in *Zeitschrift fur katholische Theologie*, t. XXV, p. 258 sq.

[6] De Smet, in *Collationes Brugenses*, 1910, p. 192 sq.

587 It is useful to note two practical things:

I. Especially through Extreme Unction provision is made for the salvation of the dying person, above all of one deprived of the senses. That is: 1. attrition suffices for Extreme Unction; for Penance confession is also required; 2. habitual attrition suffices for Extreme Unction; the same cannot be said quite so absolutely about Penance (n. 41); 3. Extreme Unction received without attrition can revive; Penance received in that way is received invalidly, so that there can be no question of reviviscence.

II. Care must be taken that Extreme Unction be given in good time, both so that the sick person may sooner receive the spiritual fruits of the sacrament, and so that, if it is expedient for the soul, he may also recover bodily health.

Treatise VII. On Order

(St. Thomas, *Supplement*, q. 34-40; St. Alphonsus, *Theologia Moralis*, lib. VI, n. 734-830; *Homo Apostolicus*, tr. 17.)[1]

[1] Cf. Benedict XIV, *De Synodo dioecesana*, lib. 8, c. 9-11 and lib. 12, c. 3 and 4; Many, *De sacra ordinatione*; Gasparri, *De sacra ordinatione*; Wernz-Vidal, *Ius canonicum*, t. V; Pesch, *Praelectiones dogmaticae de Ordine*.

588 I. By the institution of Christ there exists in the Church a twofold state, namely that of clerics and that of lay persons. Now "those who have been assigned to the divine ministries by at least the first tonsure are called clerics" (canon 108, § 1).

II. Clerics "are not all in the same grade, but among them there is a sacred hierarchy in which some are subordinated to others" (canon 108, § 2). The aforesaid hierarchy is called the hierarchy of Order.[1]

III. The distinct grades of the hierarchy of Order are counted as eight from the Council of Trent,[2] namely Porter, Lector, Exorcist, Acolyte, Subdiaconate, Diaconate, Presbyterate, and Episcopate.[3]

1. "Porter is the order by which there is conferred upon someone a special power of opening and closing the door of the church, and of admitting the worthy and excluding the unworthy" (St. Alphonsus, VI, 735).
2. "Lector is the order by which there is conferred upon someone a special power of reading psalms and lessons from the pulpit in church, and of catechizing or instructing the people in matters of faith" (St. Alphonsus, loc. cit.).
3. "Exorcist is the order by which there is conferred upon someone a special power of casting out demons" (St. Alphonsus, loc. cit.).
4. "Acolyte is the order by which there is conferred upon someone a special power of serving the subdeacon in solemn Mass, by lighting candles, preparing and handing to him the cruets of wine and water" (St. Alphonsus, loc. cit.).
5. "Subdiaconate is the order by which there is conferred upon someone the power of serving the deacon in solemn Mass and solemnly chanting the Epistle" (St. Alphonsus, loc. cit.).
6. "Diaconate is the order by which there is conferred upon someone a special power of immediately assisting the presbyter in solemn Mass and solemnly chanting the Gospel" (St. Alphonsus, loc. cit.).
7. "Presbyterate is the order by which there is conferred upon someone a special power of consecrating the Body and Blood of Christ, and also of absolving from sins and feeding subjects by work and doctrine" (St. Alphonsus, loc. cit.).
8. "Episcopate is the order by which there is conferred upon someone a special power of confirming the faithful and ordaining the ministers of the sacraments, taking 'ministers' more broadly, that is, not only for those who confect the sacraments, but also for those who minister by office to those confecting them, and also of consecrating things pertaining to divine worship" (St. Alphonsus, VI, 735).

a) Tonsure is not an order, but a preparation for them, or "it is a solemn ecclesiastical rite, consisting in a slight cutting of the hair with certain words, celebrated by a suitable minister, signifying by the

institution of the Church that a baptized male is transferred from the lay state into the lot of the Lord and the clerical state" (St. Alphonsus, loc. cit.).

b) Episcopate and Presbyterate are often designated by the one name of Priesthood; hence Bishops are called priests of the first order, presbyters priests of the second order. Therefore many enumerate only seven orders. Now the priesthood, which, as was said, includes Episcopate and Presbyterate, the Diaconate, and the Subdiaconate are called major or sacred Orders; the others are called minor Orders.

c) "In the following canons," so says canon 949, "by the name of major or sacred orders are understood presbyterate, diaconate, subdiaconate; but by the name of minor orders, acolytate, exorcistate, lectorate, porterate." And canon 950 says: "In law the words 'to ordain,' 'order,' 'ordination,' 'sacred ordination,' comprehend besides episcopal consecration the orders enumerated in canon 949 and the first tonsure itself, unless something else is drawn from the nature of the matter or from the context of the words."

IV. Episcopate, Presbyterate, and Diaconate are of divine institution. But the Episcopate by divine law is a grade distinct from the Presbyterate and superior to it.[4] Subdiaconate and the minor orders do not seem to be of divine institution.

1. That the Episcopate and Presbyterate, together with the office of certain ministers, are of divine institution, the Council of Trent defined in these words: "If anyone says that in the Catholic Church there is not a hierarchy instituted by divine ordination, which consists of Bishops, Presbyters, and Ministers, let him be anathema."[5] Canon 108, § 3 agrees.
2. That Bishops are superior to presbyters, the Council of Trent likewise teaches, although it does not expressly say "by divine law": "If anyone says that Bishops are not superior to Presbyters, or that they do not have the power of confirming and ordaining, or that the power which they have is common to them with Presbyters, let him be anathema."[6]
3. That the minor orders are not of divine institution is proved especially from this, that in the most ancient documents, where the different grades of the Hierarchy are discussed, only Episcopate, Presbyterate, and Diaconate are enumerated.[7]

With these things premised, we shall speak first of Order considered in itself, then of its ministration, then of the reception of Order, and finally of certain matters which regard both ministration and reception.

[1] The ecclesiastical hierarchy taken generally is: the body of clerics who, according to various grades, enjoy sacred power in the Church. It is distinguished into the hierarchy of Order and the hierarchy of Jurisdiction, according as the sacred power concerns the ministry of divine worship, for example the dispensation of the sacraments, etc., or the governance of the faithful.

[2] Session 23, canons 2 and 4.

[3] Among the Greeks only four Orders are conferred: two major, namely Priesthood and Diaconate, and two minor, namely Subdiaconate and Lectorate. But the Maronites have the order of Cantorate, to which tonsure is attached; and the Armenians have four minor orders just as the Latins do.

[4] Bishops are superior to presbyters both by reason of teaching and governance and by reason of Order. The first is proved in the treatise on the Church; the second is discussed here.

[5] Session 23, canon 6.

[6] Session 23, canon 7.

[7] Gasparri, *De sacra ordinatione*, n. 41.

Dissertation I. On Order Considered in Itself

Part I. On the Existence of the Sacrament of Order

589 Here dogmatic theologians first inquire whether Order, taken generally, is a sacrament; then to which grades the character of a sacrament belongs. Now:

I. Order, or sacred Ordination, is a true and properly so-called sacrament of the New Law; this proposition is of faith from the Council of Trent: "If anyone says that Order, or sacred Ordination, is not truly and properly a sacrament instituted by Christ the Lord, or that it is a certain human fiction devised by men unskilled in ecclesiastical matters, or that it is only a certain rite of choosing ministers of the Word of God and of the Sacraments, let him be anathema."[1]

II. With respect to the diverse grades of Order, the character of a sacrament belongs to the Presbyterate and Diaconate, and very probably to the Episcopate; the Subdiaconate more probably, and the minor Orders almost certainly, are not sacraments. It is said:

1. Presbyterate is a sacrament. This is proximate to faith from these words of the Council of Trent: "If anyone says that through sacred Ordination the Holy Spirit is not given, and that therefore Bishops say in vain: Receive the Holy Spirit; or that through it a character is not imprinted; or that he who was once a priest can become a layman again, let him be anathema."[2]

Christ instituted the Presbyterate, with respect to the power of consecrating and offering the true Body and Blood of the Lord, at the Last Supper. "If anyone says," so says the Council of Trent, "that by those words, 'Do this in commemoration of Me,' Christ did not institute the Apostles as priests, or did not ordain that they and other priests should offer His Body and Blood, let him be anathema."[3] But with respect to the power of remitting and retaining sins, He instituted it after the resurrection, when He handed this power to the Apostles in these words: "Receive the Holy Spirit. Whose sins you shall forgive, they are forgiven them; and whose sins you shall retain, they are retained."[4]

2. Diaconate is a sacrament. It is the very common opinion of theologians, and so certain that it cannot be denied without temerity.[5]

3. Episcopate is a sacrament distinct from Presbyterate. This is today the common and very probable opinion (St. Alphonsus, VI, 738).[6]

Christ instituted the Episcopate after His resurrection and before the ascension, as theologians commonly admit (St. Alphonsus, *Opera dogmatica*, 7, p. 123, fourth, and p. 124, sixth).

4. Subdiaconate and the minor orders do not seem to be sacraments, because they do not seem to have been instituted by Christ (cf. St. Alphonsus, VI, 737).[7]

In writings left to us from antiquity, the first mention of these orders, as of a matter known to all, occurs in St. Cornelius, Pope, around the year 252; he speaks thus about Novatian: "Therefore that defender of the Gospel was ignorant that there ought to be one Bishop in the Catholic Church, in which it was not hidden from him - for how could it be hidden? - that there were forty-six Presbyters, seven Deacons, seven Subdeacons, forty-two Acolytes, and fifty-two Exorcists and Lectors together with Porters."[8] Anastasius Bibliothecarius also relates in the history of Pope St. Caius, who held the See of Peter from the year 283 to 296: "He established that all Ordinations in the Church should ascend thus: if someone deserved to be a Bishop, he should be ordained Porter, Lector, Exorcist, Sequens (Acolyte), Subdeacon, Deacon, Presbyter, and thereafter Bishop."[9]

III. Although the character of a sacrament belongs to several Orders, nevertheless it must simply be said that there is only one sacrament of Order. For "the division of Order is not of an integral whole into its parts, nor of a universal whole, but of a potestative whole, whose nature is this: that the whole according to its complete notion is in one, while in the others there is some participation of it. And so it is here. For the whole fullness of this Sacrament is in one order, namely the priesthood; but in the others there is a certain participation of order. And therefore all orders are one sacrament" (St. Thomas, *Supplement*, q. 37, a. 1, ad 2).

[1] Session 23, canon 3.

[2] Session 23, canon 4.

[3] Session 22, canon 2.

[4] John 20:22-23.

[5] Cf. Pesch, op. cit., n. 615.

[6] Cf. Pesch, op. cit., n. 614.

[7] Pesch, op. cit., n. 592.

[8] Epistle to Fabian of Antioch, c. 3.

[9] *Historia de vitis Romanorum Pontificum*, c. 29.

Part II. On the Essence of the Sacrament of Order

There will also be discussion of the essence of Orders which are not sacraments.

590 I. The essence, or matter and form, of Orders which are not numbered among the sacraments. 1. The matter of the minor Orders, according to the opinion of all, is the handing over of the instruments;[1] the form is the words which accompany the respective handing over.

2. The matter of the Subdiaconate[2] according to some is the handing over of the empty chalice with the paten, while the form is the correlative words; according to others, the handing over of the chalice with the paten and of the book of Epistles, and the form the respective words; according to a very few, finally, all the things prescribed in the ordination constitute the matter and form.

Corollary I. According to the more common opinion, to the handing over of the instruments there must correspond for validity an acceptance made by physical contact, so that moral acceptance, for example by a nod, does not suffice. The reason is that the word "touching," which the Pontifical uses, designates physical touch. Nevertheless, it does not obstruct validity that the acceptance is made by a hand covered with a glove.

Corollary II. Once the almost morally certain opinion is admitted which does not hold the minor Orders to be sacraments and teaches that they are of ecclesiastical institution - once, I say, this opinion is admitted - the Supreme Pontiff can sanate in the root all defects, even substantial ones. There are also those who think that they are certainly validly conferred if the essentials have been observed according to a probable interpretation, since the Church is considered to supply insofar as there is need. But these things cannot practically be applied to the Subdiaconate, since the opinion which denies the character of a sacrament to that Order is indeed very probable, but still is not certain.

[1] In the Greek Church, imposition of hands is performed outside the church.

[2] The source note marker is attached to the Subdiaconate heading; the surrounding note text gives no further substantive detail beyond the preceding observation.

591 II. The essence, or matter and form, of Orders which are sacraments.

1. Matter and form of the Diaconate. In the ordination of a Deacon: 1. "The Pontiff, extending his right hand, places it upon the head of each one to be ordained, ... saying to each: Receive the Holy Spirit, for strength, and for resisting the devil and his temptations, in the Name of the Lord."[1] 2. The Pontiff continues, holding his right hand extended, even to the end of the Preface: "Send forth upon them, we ask, O Lord, the Holy Spirit," etc. 3. Lastly, he hands to all the book of the Gospels, saying: "Receive," etc. Now:

a) The matter of the Diaconate according to some is only the imposition of the right hand; according to others it is only the handing over of the instruments; according to still others it is each ceremony (St. Alphonsus, VI, 748, 737).

Corollary. In order that the matter be indubitable, the last opinion must be followed. In addition, in the imposition of the hand, physical touch is required, at least so that every doubt be forestalled, although mediated touch suffices, for example through a hand wrapped in a glove or over the small cap of the ordinand.[2]

b) The form of the Diaconate according to some consists only in the words "Receive the Holy Spirit," etc., which the Bishop pronounces while imposing the right hand on each; according to others it is only the preface or eucharistic prayer; according to others it is the words "Receive power," which the Bishop pronounces while handing to all the book of the Gospels; according to still others it is both the words "Receive the Holy Spirit," the preface, and the words "Receive power" (St. Alphonsus, VI, 748, 737).

Corollary. In order that the form be indubitable, the last opinion must be followed. In addition, if the Diaconate has been doubtfully validly conferred, provision should be made for convalidation (cf. n. 594).

[1] Roman Pontifical, p. 41.

[2] Holy Office, June 22, 1892.

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2. Matter and form of the Presbyterate. In the ordination of a Presbyter: 1. The Bishop "at the same time imposes both hands upon the head of each one to be ordained successively, saying nothing. The same is done after him by all the Priests who are present." This is called by many the first imposition. 2. Then "both the Pontiff and the priests hold their right hands extended over them"; this extension is called by many the second imposition, but it should rather be called a continuation of the first. While the Pontiff holds his hand extended, he says: "Let us pray, dearest brethren," etc. Afterwards "the Pontiff, having laid aside the miter, turned toward the altar, says: Let us pray. And the ministers: Let us bend the knees. Response: Arise. And immediately, turned toward the ordinands, he says: Hear us, we ask," etc. Then, with hands extended before the breast, he says the Preface. 3. The Pontiff "hands to each one successively the chalice with wine and water and the paten placed over it with the host, and they, the ordinands, receive it between the index and middle fingers, and touch the cup of the chalice and the paten at the same time, the Pontiff saying to each: Receive the power to offer Sacrifice to God and to celebrate Masses, both for the living and for the dead, in the Name of the Lord." 4. Finally, he places both hands upon the heads of the ordinands, saying: "Receive the Holy Spirit. Whose sins you shall forgive, they are forgiven them, and whose sins you shall retain, they are retained."[2] This is called the last imposition. Now:

a) The matter of the Presbyterate according to some is only the imposition of hands upon each; according to others, only the extension of the hand toward all; according to others, the imposition of hands upon each and the extension of the hand, which extension is regarded as a continuation of the first imposition, so that both constitute one imposition; according to others, only the handing over of the instruments; according to others, both the imposition of hands upon each, the extension of the hand, and the handing over of the instruments; others hold that the power of sacrificing is conferred in the handing over of the instruments, and the power of absolving in the last imposition of hands (St. Alphonsus, VI, 749). Now:

a) It is most probable that the imposition of hands alone is the matter of the Presbyterate; this opinion Cardinal van Rossum solidly proves.[3] Nevertheless, as we said, it is further disputed whether the imposition of hands upon each alone, or the subsequent extension of the hand, or both, constitutes the matter.

b) Those who hold also either the handing over of the instruments alone as matter, more commonly require physical touch of those instruments, although mediated touch, or touch performed by a veiled hand, suffices (St. Alphonsus, VI, 742, 743). Three things must be touched: the chalice, the paten, and the host; and, so that all anxiety be forestalled, care must be taken that each be touched. Nevertheless, for validity these suffice: 1. the touch of the chalice and host, the paten not being touched;[4] 2. the touch of the chalice and paten, the host not being touched[5] (St. Alphonsus, VI, 751, 752). Almost the same seems to have to be said of the touch of the paten and host.[6] It is more doubted: 1. whether the touch of the chalice alone, or of the paten alone, or of the host alone suffices; 2. whether the chalice and paten must be consecrated; 3. whether the paten and chalice without host and wine suffice[7] (St. Alphonsus, VI, 750).

b) The form of the Presbyterate consists in the words which correspond to the matter; but in designating the form, authors differ according to the diversity of the matter which they admit. Of those who hold only the imposition of hands as the matter, some place the form in the words alone which are said during the extension of the hand which follows the imposition of hands upon each, in other words, in the prayer "Let us pray, brethren," etc.; others in the prayer "Hear us," etc. alone; others in the Preface alone; others in the prayer "Hear us," etc. and the Preface; others in the prayer "Let us pray, brethren," etc., and the prayer "Hear us," etc. and the Preface.

Corollary. In order that the Presbyterate be conferred certainly validly, there are required: 1. imposition of hands upon each; 2. extension of the hand toward all together with the exhortation "Let us pray, brethren," the prayer "Hear us," and the following Preface; 3. handing over of the consecrated chalice and paten with bread and wine, together with the accompanying words; 4. physical touch of the chalice, paten, and host, or at least of the chalice and host, or of the chalice and paten; 5. imposition of hands at the end of Mass with the words "Receive the Holy Spirit. Whose sins," etc.

[1] Cf. G. Cardinal van Rossum, *De essentia sacramenti Ordinis*.

[2] Roman Pontifical.

[3] *De essentia sacramenti Ordinis*, p. 62 sq.

[4] Holy Office, July 25, 1866; November 22, 1871; June 9, 1875; July 22, 1892.

[5] Holy Office, responses just cited.

[6] Holy Office, March 17, 1897; cf. Sacred Congregation of Rites, December 3, 1661, n. 1221.

[7] Sacred Congregation of the Council, February 11, 1708; Holy Office, July 6, 1898; January 11, 1899.

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3. Matter and form of the Episcopate. In the ordination of a Bishop: 1. The Consecrator, with the assisting Bishops helping, places the open book of the Gospels upon the neck and shoulders of the one to be consecrated, saying nothing. 2. The Consecrator and the assisting Bishops touch the head of the one to be consecrated with both hands, saying: "Receive the Holy Spirit." When this has been done, the Consecrator, standing, with the miter laid aside, says: "Be propitious, O Lord," etc. 3. The Consecrator, with hands extended before the breast, says the Preface. 4. The Consecrator hands the closed book of the Gospel to the consecrated one, saying: "Receive the Gospel," etc.

a) The matter of the Episcopate according to some is only the imposition of the hands of the Consecrator; according to others, only the imposition of the three Bishops; according to others, the imposition of hands and of the book of the Gospels upon the neck and shoulders of the one to be consecrated;[1] according to a very few, besides the things enumerated, the handing over of the book of the Gospels is also required.

b) The form of the Episcopate according to very many is only the preface said or sung by the consecrating Bishop; according to others it consists in the words of the Consecrator alone pronounced in the imposition of hands, namely "Receive the Holy Spirit"; according to others, the same words pronounced by the three Bishops; according to others, the words cited and the prayer "Be propitious," etc.; according to others, the cited words, the prayer "Be propitious," etc., and the following Preface; according to a very few, even the words pronounced in the handing over of the book pertain to the form.

Corollary. In order that the Episcopate be conferred certainly validly, all things are required which with some probability are said to pertain to the matter or form.

[1] Roman Pontifical. In the imposition of the book the Consecrator says nothing; but those who hold it to be partial matter refer also to the imposition of the book the words to be pronounced in the imposition of hands.

Scholion. On Correcting Defects of Ordinations

594 I. Obligation of correcting defects. Commonly there is an obligation of correcting defects: 1. if the ordination was doubtfully valid, in other words, if the defect concerned something certainly or probably essential; 2. if it concerned something accidental which is of the greatest moment. I said commonly; for after receiving a higher Order there is no obligation of correcting defects, even essential ones, admitted in the conferral of lower Orders. The reason is that one who receives a higher Order is considered eminently to receive the lower ones. Nevertheless: 1. a doubtfully valid ordination to the Diaconate, as being an Order of greater moment and a sacrament, seems to have to be convalidated even after the Presbyterate has been received; since the Holy Office[1] resolved that ordination to the Diaconate had to be repeated with respect to a priest whose head the Bishop, while conferring the Diaconate, had not physically touched. 2. Likewise a doubtfully valid ordination to the Presbyterate must be repeated even after the Episcopate has been received; both because the Presbyterate is an Order of the greatest moment and a sacrament, and because it is very doubtful whether the Episcopate contains the Presbyterate, indeed whether the Episcopate is validly conferred on one who is not a priest (St. Alphonsus, VI, 793).[2]

II. Manner of correcting defects. 1. If the defect concerned something certainly or probably essential, commonly the whole ordination must be reiterated. I said commonly, because there are exceptions, for example if in the ordination of a presbyter the last imposition was omitted; in that case it suffices to supply it, as we shall immediately explain.

2. If the defect concerned something accidental, there is no obligation of supplying it, unless it concerns an accidental element of very great moment. In this matter such an element is judged to be the anointing of the hands; but not the imposition of the hand of the presbyters. Nor is there sufficient certainty about others. Besides, from the response of the Holy Office: nothing is to be supplied if in place of the oil of catechumens the oil of Holy Chrism was used (St. Alphonsus, VI, 758).

[1] January 20, 1875 (*Collectio*, n. 1431).

[2] Besides, canon 1004 is to be observed: If someone, already promoted to some orders in an eastern rite, has obtained from the Apostolic See an indult of receiving higher orders in the Latin rite, he must first receive in the Latin rite the orders which he did not receive in the eastern rite.

595 Corollary I. The whole ordination must be repeated: 1. if in the ordination of a Deacon or Presbyter the first imposition was omitted; 2. if in it physical contact did not take place;[1] 3. if the second imposition of hands was omitted by the Bishop, that is, the one which follows the first, in which nothing is said;[2] 4. if the handing over of the instruments was omitted, or the respective words were not added or were substantially corrupted;[3] 5. if the chalice was handed over without wine or the paten without the host;[4] 6. if it is doubted whether the ordinand physically touched the instruments or one of those instruments whose touch, according to what was said on p. 456, is regarded as necessary with some probability.

Corollary II. It suffices to supply the defect if in the ordination of a Presbyter the third imposition of hands was omitted, or if the form corresponding to that imposition was essentially corrupted.[5]

Corollary III. Nothing is to be repeated: 1. if the Bishop after the first imposition, duly performed, "did not hold his hands extended over the ordained person also through the interval which intervenes between the first and second imposition of hands";[6] 2. "if the Bishop, after physical touch of the heads of the ordinands, had his hand extended over the ordinands at least immediately before the recitation of 'Let us pray,'" etc.[7]

[1] July 22, 1874 (*Collectio*, n. 1421).

[2] Holy Office, July 4, 1900 (*Collectio*, n. 2086); May 7, 1902 (*Collectio*, n. 2140).

[3] Holy Office, November 30, 1898; cf. response of the Holy Office, July 19, 1899 (*Collectio*, n. 2058).

[4] Holy Office, June 20, 1886; September 1, 1892; July 6, 1898 (*Collectio*, n. 2008); January 11, 1899 (*Collectio*, n. 2032).

[5] Sacred Congregation of Rites, May 22, 1841, n. 2836; Holy Office, March 4, 1874.

[6] Sacred Congregation of Rites, June 14, 1893, n. 3307.

[7] Holy Office, September 12, 1877 (*Collectio*, n. 1482); November 30, 1898.

596 III. Time for correcting defects. "As often as an ordination must be repeated or some rite supplied, whether absolutely or conditionally, this can be done even outside the times and secretly" (canon 1007).

Note 1. "Even if someone could rest in the first ordination on account of some opinion considered morally certain, nevertheless he will not sin if, while the opposite opinion of others stands for the nullity of the sacrament, he is ordained again conditionally for greater peace of soul; and the Bishop also can licitly do this for his benefit. And the reason seems to be that anxiety itself about the doubt, provided it is vehement, is a just cause for repeating ordination conditionally" (St. Alphonsus, VI, 751). Nevertheless one must beware of scruples, which easily creep in; that is, the anxious and agitated ordinand, after such a great series of actions, easily doubts whether he duly performed something. But ordinarily doubts of this kind should be rejected at once, and to this end it should be considered that both the Bishop and the ministers carefully attend lest anything be omitted either by the one ordaining or by the one being ordained, especially from those things which perhaps are required for validity.

Note 2. If some doubt arises about the validity of an ordination, recourse must be had to the Sacred Congregation of the Sacraments, which, if the doubt is connected with dogmatic doctrine, will remit the matter to the Holy Office. Religious should approach the Sacred Congregation of Religious, which will have recourse to the Sacred Congregation of the Sacraments. If the discussion concerns a case of conscience, the Sacred Penitentiary should be approached.

Part III. On the Effects of the Sacrament of Order

597 The effects of the sacrament of Order are:

I. Sanctifying grace: in itself second grace, accidentally first grace (n. 6).

II. Sacramental grace, which consists in this: that the sanctifying grace which the sacrament of Order confers is both directed to this, that the ordained lead a life congruent with their state and faithfully fulfill the ministries annexed to it, and gives a right to actual graces to be obtained in order to those effects.

III. Character. 1. The existence of character is clear from what was said in n. 8. But from the fact that character is imprinted through the sacrament of Order, it is deduced that through all Orders which are sacraments, and therefore through Diaconate, Presbyterate, and Episcopate, character is imprinted. It is disputed, however, whether those individual Orders imprint a distinct character, or only one character, which is enlarged through the following Orders.

2. The effect of the character is that a man receives the power of confecting and administering sacred things and is deputed to them. Nevertheless, character and power do not differ in reality, but consist in the same real quality. But what kind of power is conferred by the individual Orders is sufficiently clear from what was said in n. 588.

Dissertation II. On the Ministration of Order

We shall speak first of the person ministering, then of the liceity of ministering.

Part I. On the Person Ministering

598 I. The ordinary minister of sacred ordination is a consecrated Bishop (canon 951); namely, in this sense, that, once his consecration is posited, he always confers Orders validly. It is disputed only whether a Bishop acts validly who, without an apostolic dispensation, consecrates a Bishop without two other assisting Bishops. That such a manner of acting is illicit is clear both from canon 954 and from the Roman Pontifical; nevertheless it seems altogether to be said that it is valid. For so Pius IV in the Brief of August 11, 1562, the Holy Office,[1] and the Sacred Congregation of Propaganda Fide.[2] There is added the fact that only one of the Bishops in the Roman Pontifical is called the consecrator, and that in the other sacraments also one minister suffices.

Corollary. Ordinations performed by Jansenist, Old Catholic, and Russian Bishops are valid. But the ordinations of Anglicans are invalid by defect of minister, form, and intention, as Leo XIII authentically declared.[3]

[1] March 13, 1669 (*Collectio*, n. 177).

[2] May 18, 1695 (*Collectio*, n. 239).

[3] Constitution *Apostolicae curae*, September 13, 1896.

599 II. The extraordinary minister of sacred ordination is one who, although he lacks the episcopal character, has received from law or from the Apostolic See by a special indult the power of conferring some Orders (canon 951). Now this power has been conferred by law as follows:

1. Cardinals, from their promotion in Consistory, enjoy the faculty of conferring first tonsure and minor Orders, provided the one to be promoted has dimissorial letters from his proper Ordinary (canon 239, § 1, 22).
2. A Vicar and Prefect Apostolic, an Abbot or Prelate nullius, if they lack the episcopal character, can nevertheless, in their own territory and only while they hold office, confer first tonsure and minor Orders both on their own secular subjects according to the norm of canon 956,[1] and on others who exhibit the dimissorial letters required by law; ordination performed by them outside these limits is null (canon 957, § 2).
3. A Provicar and Proprefect, and others to whom the care of a vicariate or prefecture has devolved according to the norm of canon 309, enjoy the faculty with which the Vicar or Prefect was endowed (canon 310, § 2).
4. A regular Abbot of governance, even without a territory nullius, can confer first tonsure and minor Orders, provided the one to be promoted is subject to him by force of at least simple profession, and he himself is a priest and has legitimately received the abbatial blessing. Outside these limits, ordination conferred by him, every contrary privilege having been revoked, is null, unless the one ordaining is endowed with the episcopal character (canon 964, 1°).

Question. Can the Supreme Pontiff confer on a simple priest the power of ministering the Subdiaconate and Diaconate?

Response 1. With respect to the Subdiaconate, it is commonly admitted: both because it is not a sacrament; and because Pope St. Gelasius, in his letter to Bishop Lucianus,[2] seems to teach this implicitly; and because Supreme Pontiffs have several times put this doctrine into practice.[3]

Response 2. With respect to the Diaconate, there is dispute. Some affirm it, relying on the Bulls of which there will be discussion presently. Others deny it, and they respond to the things alleged by their opponents: 1° the Bull of Innocent VIII directed to the Cistercian Abbots (1489), at least insofar as it grants the faculty of conferring the Diaconate, does not seem genuine;[4] 2° the Bull of Boniface IX to the Augustinian Abbot of the monastery of St. Osyth in the province of London (1400), by which, besides the faculty of ministering the Subdiaconate and Diaconate, the faculty of ministering the Presbyterate was also conferred, was revoked by him in the year 1403.[5] There is added that the said Bull probably conferred nothing else except permission to receive Orders independently of the Bishop of London, so that the matter concerned not the power of Order but the power of jurisdiction.

[1] Cf. p. 462.

[2] Migne, *Patrologia Latina* LIX, p. 50 (in VI).

[3] Cf. Many, *De S. Ord.*, p. 146.

[4] Cf. Gasparri, *De Sacr. Ordin.*, t. II, p. 85; Wernz, *Ius Decretalium*, II, p. 48; Pastor, *Geschichte der Papste*, III, p. 253.

[5] Cf. Gillmann, *Zur Lehre der Scholastik vom Spender der Firmung und des Weihesakraments*, p. 137; Sagmuller, *Kirchenrecht*, I, p. 202 (ed. 1914); *Dictionnaire de theologie catholique*, s.v. Ordre, la theologie moderne, col. 1386.

Part II. On the Liceity of Ministering

600 First note these special points prefaced by the Code: 1° No one may promote to a higher Order one ordained by the Roman Pontiff without the faculty of the Apostolic See (canon 952). 2° Episcopal consecration is reserved to the Roman Pontiff in such a way that no Bishop may consecrate anyone as Bishop unless the pontifical mandate has first been established (canon 953). The consecrating Bishop, however, must employ two other Bishops who assist him in the consecration, unless there has been a dispensation from the Apostolic See in this matter (canon 954). The dispensation is given in such a way that two priests from the more worthy assist the consecrating Bishop.

Besides those special points, this principle holds with respect to the liceity of ministering Orders: In order that someone who enjoys the power of ordaining may licitly minister Orders, it is required that he either be the Superior of the one to be ordained, or have received dimissorial letters from the Superior of the one to be ordained in this matter (canon 955, § 1); and these things also hold if first tonsure is in question (canon 950; Pontifical Commission).[1] Having noted this principle, we shall speak separately about the ordination of seculars and of religious.

[1] February 17, 1930 (*A.A.S.* 1930, p. 195, ad I).

601 I. Ordination of seculars. The Code states: Each one is to be ordained by his proper Bishop, or with that Bishop's legitimate dimissorial letters (canon 955, § 1). Therefore a Bishop licitly ordains: 1° his own subject, unless this subject is of an oriental rite, in which case he cannot licitly ordain him without an apostolic indult; 2° another's subject who presents to him legitimate dimissorial letters received from his proper Bishop. Here, however, there are equated with a Bishop the Vicar and Prefect Apostolic, the Provicar and Proprefect, and others to whom the care of a vicariate or prefecture has devolved according to the norm of canon 309, and an Abbot or Prelate nullius (canon 957; canon 310, § 2). If, however, they lack the episcopal character, their power of validly ordaining is limited, as we said in n. 599.

But in order that the requisites for licit ordination may be clearer, something fuller must be said both about the proper Bishop and about dimissorial letters.

1. The proper Bishop, as regards the ordination of seculars, is only the Bishop of the diocese in which the one to be promoted has either: 1° domicile together with origin;[1] or 2° simple domicile without origin, but after an oath has been emitted by which the one to be promoted confirms his intention of remaining perpetually in the diocese; or 3° simple domicile without origin and without oath, namely if it is a question of promoting to Orders a cleric who has already been incardinated in the diocese by first tonsure, or of promoting a student who is destined for the service of another diocese according to the norm of canon 969, § 2, or of promoting a professed religious, of whom canon 964, n. 4 treats[2] (canon 956).

2. Dimissorial letters are letters by which a Bishop or competent Superior sends a subject to the minister of ordination so that he may be ordained by him. Now:

a) Dimissorial letters for seculars can be given, so long as they retain jurisdiction in the territory, by: 1° the proper Bishop, after he has legitimately taken possession of his diocese, although not yet consecrated; 2° the Vicar General, yet by special mandate of the Bishop; 3° with the consent of the Chapter, the Vicar Capitular after a year from the vacant see; within the year, however, only for those

constrained by reason of a benefice received or to be received, or by reason of some certain office for which, on account of the necessity of the diocese, provision must be made without delay; 4° the Vicar and Prefect Apostolic, an Abbot or Prelate nullius, although they lack the episcopal character, even for major Orders (canon 958, § 1); 5° the Provicar and Proprefect Apostolic who has assumed the whole governance (canon 310, § 2, compared with canon 958, § 1, 4°; Pontifical Commission).[3]

Note. The Vicar Capitular is not to grant dimissorial letters to those who have been rejected by the Bishop (canon 958, § 2).

Those enumerated above likewise can give dimissorial letters: 1° for non-exempt religious; 2° for exempt religious professed with temporary vows and to be promoted to major Orders. For their ordination is governed by the law of seculars (canon 964, 4°).

b) Dimissorial letters are not to be granted unless all testimonies which are required by law have first been obtained (canon 960, § 1); for what testimonies are required by law, see n. 650. Furthermore, note: If after dimissorial letters have been given by the Ordinary new testimonies are necessary according to the norm of canon 994, § 3 (n. 650), an outside Bishop is not to ordain before he has received them (canon 960, § 2). But if the one to be promoted has spent time sufficient to contract an impediment according to the norm of the same canon 994 (n. 650) in the very diocese of the ordaining Bishop, this Bishop is to collect the testimonies directly (canon 960, § 3).

c) Dimissorial letters can be sent by the proper Bishop, likewise by the others enumerated under a), even by a Cardinal suburbicarian Bishop,[4] to any Bishop having communion with the Apostolic See, with the sole exception, apart from an apostolic indult, of a Bishop of a rite different from the rite of the one to be promoted (canon 961); likewise dimissorial letters can be sent to those who, according to what was said on p. 462, are equated with a Bishop.

Note. The proper Bishop is not to dismiss his subjects to another unless a just cause prevents him from ordaining them himself (canon 955, § 2).

[1] The place of origin of a son, even a neophyte, is that in which, when the son was born, the father had domicile, or, in the absence of domicile, quasi-domicile; or, if the son is illegitimate or posthumous, the mother. If it is a question of the son of vagabonds, the place of origin is the very place of birth; if of an exposed child, it is the place in which he was found.

[2] Cf. n. 602.

[3] July 20, 1929, ad I (*A.A.S.* 1929, p. 573).

[4] Before the Code a Cardinal suburbicarian Bishop could direct dimissorial letters only to the Cardinal Vicar of the City.

602 II. Ordination of religious. 1. A regular Abbot of governance, even without a territory nullius, can confer first tonsure and minor Orders, provided the one to be promoted is subject to him by force of at least simple profession, and he himself is a priest and has legitimately received the abbatial blessing. Outside these limits, ordination conferred by him, every contrary privilege having been revoked, is null, unless the one ordaining is endowed with the episcopal character (canon 964, 1°).

2. Exempt religious can licitly be ordained by no Bishop without dimissorial letters from their proper major Superior (canon 964, 2°). But:

a) The said Superiors can grant dimissorial letters to those professed with temporary vows only for first tonsure and minor Orders (canon 964, 3°); but to those professed with perpetual vows, also for

major Orders.

b) Dimissorial letters from a religious Superior must be sent to the Bishop, or quasi-Bishop, for example a Prefect Apostolic and so on, of the diocese, or quasi-diocese, in which the religious house is situated, to whose family the ordinand belongs (canon 965). Only then can the Superior send dimissorial letters to another Bishop, when the diocesan Bishop has given permission, or is of a different rite from the religious to be ordained, or is absent, or is not going to have an ordination at the next legitimate time, or finally when the diocese is vacant and is not ruled by someone endowed with the episcopal character (canon 966, § 1). But it is necessary that in individual cases this be established for the Bishop who is to ordain from an authentic testimony of the episcopal Curia (canon 966, § 2). Religious Superiors should take care not to send a subject to be ordained to another religious house in fraud of the diocesan Bishop, or deliberately defer the granting of dimissorial letters to that time when the Bishop will be absent or will have no ordinations (canon 967).

Note. The privilege of receiving Orders from any Catholic Bishop must have been granted to religious nominally and directly, not by communication, after the Council of Trent, as Benedict XIV had decreed in the Constitution *Impositi nobis*.[1]

c) A religious Superior in his dimissorial letters must testify not only that the one to be promoted has emitted religious profession and belongs to the family of the religious house subject to him, but also about studies completed and about the other things required by law (canon 995, § 1); for what testimonies are required by law, see n. 650. For the rest, the Bishop, after receiving these dimissorial letters, does not need other testimonial letters (canon 995, § 2).

3. The ordination of: 1° non-exempt religious; 2° exempt religious professed with temporary vows and to be promoted to major Orders is governed by the law of seculars, every indult granted to Superiors to give dimissorial letters to those professed with temporary vows for major Orders having been revoked (canon 964, 4°).

4. Novices are not to be promoted to Orders during the novitiate (canon 567, § 2).

[1] February 27, 1747.

603 III. Points to be noted concerning the ordination both of seculars and of religious. 1. He who can give dimissorial letters for receiving Orders can also confer those same Orders himself, if he has the necessary power of Order (canon 959).

2. Any Bishop, after receiving legitimate dimissorial letters, licitly ordains another's subject, provided he himself can in no way doubt the genuine trustworthiness of the letters (canon 962).

3. Dimissorial letters can be limited or revoked by the grantor himself or by his successor, but once granted they are not extinguished when the right of the one giving them is dissolved (canon 963).

Dissertation III. On the Reception of Order

We shall treat first of the person receiving Orders, then of admission and preparation for the reception of Orders, and finally of the manner of receiving Orders.

Part I. On the Person Receiving Orders

604 The subject capable of receiving ordination is every baptized male who has not yet received it (canon 968, § 1).

It is said every, even infants and those perpetually without use of reason. "By the concordant judgment of theologians and canonists," says Benedict XIV, "it has been determined that this ordination is to be considered valid but illicit, provided it labors under no substantial defect of matter, form, and intention in the ordaining Bishop; the contrary opinion, which has rare followers and which has never pleased the supreme tribunals and Congregations of the City, not being heeded."[1] It was disputed only to some extent whether the Episcopate can validly be received before the use of reason has been acquired. Today, however, this is commonly admitted (cf. St. Thomas, *Supplement*, q. 39, a. 2).

Nevertheless, an infant ordained in this way without his own will is bound by no obligations of clerics unless, fully master of his mind after completing the sixteenth year, he has ratified the ordination.[2]

Nor, in order that someone be capable of receiving a higher Order, is it required that he have received a lower Order. An exception, however, according to the much more common opinion, is the Episcopate, which cannot validly be conferred if the priesthood has not already been received (St. Alphonsus, VI, 793).

[1] Instruction *Eo quamvis tempore*, § 20, May 4, 1745.

[2] Benedict XIV, cited Instruction, § 28 sq.; Constitution *Anno vertente*, § 7 sq., May 19, 1750.

Part II. On Admission and Preparation for the Reception of Orders

605 I. No one from among seculars is to be ordained who, in the judgment of his proper Bishop, is not necessary or useful for the churches of the diocese. Yet the Bishop is not prohibited from promoting his own subject who is destined in the future, after legitimate excardination and incardination, for the service of another diocese (canon 969).

II. First tonsure and Orders are to be conferred only on those who have the purpose of ascending to the Presbyterate and whom one may rightly conjecture will someday be worthy priests (canon 973, § 1). Yet an ordained man who refuses to receive higher Orders can neither be compelled by the Bishop to receive them, nor be prohibited from the exercise of the Orders received, unless he is held by a canonical impediment or some other grave cause stands in the way, in the judgment of the Bishop (canon 973, § 2).

III. The Bishop is to confer sacred Orders on no one unless from positive arguments he is morally certain about that person's canonical suitability; otherwise he not only sins most gravely, but also commits himself to the danger of communicating in another's sins (canon 973, § 3). It is said from positive arguments; therefore it does not suffice that nothing is opposed, or that the ordinand has not committed a sin which can be juridically proved. For the rest, these things do not suffice for acquiring moral certainty.

Nor is one to depart from these things on account of a shortage of priests. "Care must be taken," says Benedict XV in his letter to the Bishops of Bolivia,[1] "lest those less worthy also be admitted to the priesthood by reason of necessity... Therefore we must weigh not how many, but what kind of sacred ministers we take up; and, after trying all the things which prudence may suggest for fostering the pursuit of the priesthood among youth, let us diligently commend the matter to God, in whose hand it is." Add these words of the Fourth Lateran Council: "It is better... to have fewer ministers, but upright... and useful ones, than more who... will be of no avail."[2] Likewise these words of St. Thomas: "God never so deserts His Church that suitable ministers sufficient for the necessity of the people cannot be found, if the worthy were promoted and the unworthy repelled. Even if as many ministers could not be found as there now are, it would be better to have a few good ministers than many bad ones" (*Supplement*, q. 36, a. 4, ad 1).

But if applicants are superabundant, the Bishop, in order to guard against idleness, should choose the better ones and leave aside the less suitable; and, with the things that must be observed being observed, religious Superiors also can apply these things with respect to those whom they foresee will be almost useless in religion for undertaking priestly offices.

IV. The proper Bishop or major religious Superior can forbid his clerics ascent to Orders for any canonical cause, even occult, and even extrajudicially, with the right of recourse to the Holy See remaining intact, or also to the Moderator General if it is a question of religious whose ascent has been forbidden by the Provincial Superior (canon 970).

V. Care must be taken that those aspiring to sacred Orders be received into the Seminary from tender years; but all are bound to remain there at least through the entire curriculum of sacred theology, unless the Ordinary has dispensed in particular cases for a grave cause, his conscience being burdened. Those who aspire to Orders and legitimately remain outside the Seminary are to be

commended to a pious and suitable priest, who is to watch over them and form them to piety (canon 972).

[1] August 4, 1918.

[2] Chapter 27.

Part III. On the Manner of Receiving Orders

Section I. On the Requisites for Valid Reception

606 I. In infants and those perpetually without use of reason, no intention is required; this follows from the fact that they are incapable of eliciting an intention and yet, if they are ordained, they receive ordination validly (n. 604).

II. In adults intention or consent is required; habitual intention suffices. But it is disputed to some extent whether consent to the very Order to be received is required, or whether it suffices that the ordinand consent to the application of the external rite, although he does not wish to receive the Order (n. 40).

One who consents through grave fear, for example compelled by threats or terror, is indeed validly ordained; but as canon 214 has it: "A cleric who, compelled by grave fear, receives a sacred Order and afterward, once the fear has been removed, has not ratified the same ordination at least tacitly by the exercise of the Order, while nevertheless intending by such an act to subject himself to clerical obligations, is to be reduced to the lay state by sentence of a judge, after the coercion and the lack of ratification have been legitimately proved, without any obligations of celibacy and of the canonical hours. But coercion and lack of ratification must be proved according to the norm of canons 1993-1998."[1] These things, as is clear, do not pertain to him whom fear impressed from within, for example fear that, if the lay state is chosen, he will lead a miserable life, has led to Orders.

[1] Cf. *A.A.S.* 1931, p. 120 and p. 457 sq., where there are: 1° the remedy for preventing ordinations from fear; 2° the rules to be observed in processes concerning the nullity of sacred ordination or of the burdens inhering in sacred Orders.

Section II. On the Requisites for Licit Reception

607 In order that someone licitly receive Orders, he must be endowed with certain requisites, and be immune from irregularity or some other impediment (cf. canon 968, § 1). But those who are held by irregularity or some other impediment, even if it arose after ordination and even without their own fault, are prohibited from exercising the Orders received (canon 968, § 2). We shall speak first about the positive requisites, then about irregularities and the other impediments from which the ordinand must be immune.

Chapter I. On the Positive Requisites

608 *(n. 608 stands at the heading Chapter I. On the Positive Requisites.)*

609 608-609. Canon 974 states: "In order that someone may licitly be ordained, that is, receive tonsure and Orders, there are required: 1° received sacred Confirmation; 2° morals congruent with the Order to be received; 3° canonical age; 4° due knowledge; 5° reception of the lower Orders; 6° observance of interstices; 7° a canonical title, if it is a question of major Orders. As regards episcopal consecration, the prescription of canon 331 is to be observed." We shall speak of each, omitting those things which pertain to episcopal consecration, after first saying certain things about vocation, about the state of grace, and about the intention of ascending to the Presbyterate, and adding some things about the intention with which Orders are to be received.

I. Vocation;[1] concerning which it is useful to establish the following.

1. At least some vocation must be admitted altogether, so that it is licit for no one to approach ordination merely of his own accord. This is clear from these words of Sacred Scripture: "Nor does anyone take the honor to himself, but he who is called by God as Aaron was";[2] these words some, considering the context, understand of ecclesiastical vocation, others of divine vocation.

2. A twofold vocation is required, ecclesiastical, that is, proceeding from the Bishop, and divine.

a) No one denies that ecclesiastical vocation is required. For the rest, the Cardinal Secretary of State on July 2, 1912, signified that Pius X approved the judgment pronounced by the Commission of Cardinals concerning the work of Lahitton; and this judgment declared that the work *La vocation sacerdotale* was in no way to be reproved, indeed that in many respects it was outstandingly to be praised, for example "insofar as it maintains: 1° that no one ever has any right to ordination antecedently to the election of the Bishop," etc.[3]

b) Divine vocation also is required. For: 1° Canon 1353 enacts: "Let priests, especially pastors, take care that boys who show signs of ecclesiastical vocation be guarded with special care from the contagion of the world, be formed to piety, be imbued with the first studies of letters, and that the seed of divine vocation in them be fostered." And canon 1357, § 2 states: "Above all let the Bishop strive frequently to visit the Seminary personally, and to acquire for himself a fuller knowledge of the character, piety, vocation, and progress of the students, especially on the occasion of sacred ordinations." But by these words ecclesiastical vocation cannot be signified, since it has not yet taken place. There is added the authority of the Holy Fathers and Doctors of the Church. Thus, for example, St. Cyprian,[4] St. Cyril of Alexandria,[5] St. Bernard,[6] St. Thomas (p. 3, q. 27, a. 4), and St. Alphonsus (VI, 802) teach.

Nor is opposed the judgment pronounced by the Commission of Cardinals concerning the work of Lahitton, which praises the said work "insofar as it maintains: 1° (that which we have already noted) that no one ever has any right to ordination antecedently to the free election of the Bishop; 2° that the condition which must be attended to on the part of the one to be ordained, and which is called priestly vocation, by no means consists, at least necessarily and by ordinary law, in some internal aspiration of the subject or invitations of the Holy Spirit toward entering the priesthood; 3° but on the contrary, that nothing more is required in the ordinand, in order that he be duly called by the Bishop, than right intention together with suitability placed in those gifts of grace and nature, and proved through that probity of life and sufficiency of doctrine, which produce a founded hope that he will be able rightly to undertake the offices of the priesthood and holily observe its obligations." But these things are well composed with the opinion which admits divine vocation, if it is said that in the foregoing the discussion concerns those things which must be attended to by the Bishop in order that he may duly call someone to Order; it suffices to attend to the signs of divine vocation. There is added that right intention cannot be had without the grace of God; and, strictly speaking, this already suffices for us to be able to speak of divine vocation.

3. The signs of divine vocation are right intention and suitability. Right intention consists in the will of embracing Orders with a view to the glory of God and the salvation of souls (St. Alphonsus, VI, 802). Suitability is constituted by due knowledge and due probity of life, of which there will be discussion in nn. 613 and 615.

Sometimes extraordinary signs of divine vocation are present, when, namely, God manifests it in a miraculous way, as happened in St. Paul, or by unusual movements of grace.

Corollary I. One who does not follow a recognized vocation cannot be excused from sin, since, deprived of the special graces especially annexed to vocation, he exposes himself to grave danger of departing from the way of salvation (cf. the things said by St. Alphonsus about the religious state, IV, 78).

Corollary II. One who embraces the clerical state without vocation seems to sin gravely. The reason is that he undertakes obligations so difficult that they are scarcely observed without special helps, without a founded hope of receiving those helps (St. Alphonsus, V, 803).[7]

Corollary III. It is unlawful to force anyone in any way, for any reason, to the clerical state, or to turn away from the same state one who is canonically suitable (canon 971).

[1] Cf. Lahitton, *La vocation sacerdotale*; Jansen, in *Ned. Kath. Stemmen*, 1911, p. 324 sq.; 1912, p. 270 sq.; Hurtaud, *La vocation au sacerdoce*; Vermeersch, *De vocatione religiosa et sacerdotali*.

[2] Heb. 5:4; cf. 1 Tim. 3:10; Roman Catechism, p. II, c. 7, q. 3.

[3] *A.A.S.* 1912, p. 485.

[4] Epistle 55 to Pope Cornelius, n. 5, Migne, t. 3, col. 803.

[5] *De adoratione in Spiritu et veritate*, book II, Migne, t. 182, col. 585.

[6] Sermon 58, *In Cantica*, n. 3, Migne, t. 183.

[7] Cf. Roman Catechism, p. 2, c. 7, qq. 3 and 4.

610 II. The state of grace is required under grave obligation in receiving Orders which are sacraments; with respect to the others, there is not a grave obligation.

611 III. The intention of ascending to the Presbyterate (canon 973, § 1); the direct grave obligation is not sufficiently established, but one who receives a major Order without the said intention commonly gravely deceives his Superiors.

612 IV. Received sacred Confirmation, which canon 974, § 1, 1° prescribes, and concerning which the Council of Trent says: "Let those not be initiated by first tonsure who have not received the Sacrament of Confirmation."[1] Now the obligation of receiving Confirmation before first tonsure is quite probably only slight, because the Council of Trent, from which the Code is not judged to depart, speaks more mildly. Nor do the words of the Sacred Congregation of the Council[2] seem to be pressed too much, since it declares that one who has received first tonsure or Orders without being confirmed, as one badly promoted, cannot ascend to other Orders nor receive benefices without dispensation of the Apostolic See.

[1] Session 23, cap. 4, *De reformatione*.

[2] September 27, 1601.

613 V. Morals congruent with the Order to be received (canon 974, § 1, 2°; cf. canon 973); by these are understood especially piety, chastity, and sobriety, exercised, of course, through acts which do not merely present the external appearance of virtue. Therefore the said virtues are prescribed also by ecclesiastical law. Likewise they are prescribed by the moral law, and indeed, especially with respect to sobriety and chastity, under grave obligation: both by reason of the sacred and most worthy office,

and by reason of the danger lest the ordained man, deprived also of the assistance of conjugal life, fall into many sins and be a grave scandal to others (St. Alphonsus, VI, 63 sq.; *Homo Apostolicus*, last tract, n. 16, 17). St. Thomas says thus: "Through Sacred Order someone is deputed to the most worthy mysteries, by which service is rendered to Christ Himself in the sacrament of the altar, for which a greater interior sanctity is required than the religious state requires" (2.2, q. 184, a. 8). And elsewhere: "One who is entangled in some vice ought not to be admitted to the ministry of Order" (*Supplement*, q. 35, a. 1, ad 3). Again: "For the suitable execution of Orders not just any goodness suffices, but excellent goodness is required" (*Supplement*, q. 35, a. 1, ad 3). And: "Those who are applied to the divine mysteries ought to be perfect in virtue" (In 4 Sent., d. 24, q. 3, a. 1). And: "Interior perfection is required for this, that someone worthily exercise acts of this kind" (2.2, q. 184, a. 6; cf. q. 189, a. 1, ad 3).

How greatly Bishops and other ecclesiastical Superiors must attend to morals congruent with the Order to be received is gathered from innumerable ecclesiastical documents, of which it is pleasing to bring forward the principal ones. Innocent III, in his Decretal which begins *A multis*, *De Aetat. et Quantit.*, enacts: "Let no one be permitted to approach sacred Order unless he is either a virgin or is of proved chastity." The Council of Trent says: "Let Bishops know... that not every individual established in that age must be assumed to these Orders, but only those who are worthy, and whose proved virtue is old age."[1] The Roman Catechism says: "In him who is to be created a priest, integrity of life and morals ought greatly to be commended."[2] The same things are inculcated by Benedict XIV in his Encyclical *Ubi primum*,[3] Leo XIII in the Encyclical *Etsi nos*,[4] in his letter to the Bishops of Prussia,[5] and in his Encyclical to the Bishops of Italy,[6] and Pius X in the Motu proprio *Sacrorum Antistitum*.[7]

Corollary I. The things we have said about the moral law hold perfectly indeed for the priesthood alone, but less perfectly also for the Subdiaconate, and a fortiori for the Diaconate; and this all the more because today hardly anyone receives a major Order without being about to ascend to the priesthood.

Corollary II. Definitive judgment about the required morals belongs to the Bishop. Hence canon 1357, § 2: "Above all let the Bishop strive frequently to visit the seminary personally, carefully to watch over ecclesiastical instruction, and to acquire for himself a fuller knowledge of the character, piety, vocation, and progress of the students, especially on the occasion of sacred ordinations." A grave obligation also falls on Superiors, Directors, and confessors to keep the unworthy from Orders, with the things that must be observed being observed. "Whoever," says Leo XIII in his Encyclical to the Bishops of Italy,[8] "in the course of education shall have shown inclinations less suited to a priestly vocation, let them be sent away; and in admitting clerics to Sacred Orders the greatest weighing must be applied." And the Sacred Congregation of Bishops and Regulars, in the norms for the seminaries of Italy, stated: "Besides the spiritual director of the students, certain learned and pious priests shall be designated for hearing their confessions; mindful of their grave obligation and according to the track of approved authors, they will provide counsels and lights to their penitents in their doubts, imposing the obligation of withdrawing from the ecclesiastical state on those who have shown themselves not to be called" (n. 2).[9]

Corollary III. One habituated in vice, for example of lust or drunkenness, is bound under grave obligation to desist from receiving sacred Order until he has put on morals congruent with the Order, indeed until for a notable time, for example for six months, he has conducted himself as amended, so

that he must be said to have put on different morals and can form moral certainty that he will fulfill the obligations annexed to the Order. Except the case, however not easily to be presumed, in which someone is healed by an extraordinary impulse of grace (St. Alphonsus, VI, 802). So also the Venerable Paul Segneri, Leonard of Port Maurice, and innumerable others; cf. also the norms of the Sacred Congregation of Bishops and Regulars cited above.

For the rest, with respect to sins of lust, one must proceed more severely if the sins are with persons of the other sex than if they are solitary; still more severely if the discussion concerns sins with persons of the same sex. If the latter arise from a passing passion, greater hope of amendment shines forth; but if they proceed from an abnormal and permanent passion - in which case affection toward the other sex is lacking - hope of amendment is to be regarded as practically none.

In doubt whether morals congruent with the Order to be received are present, ordination should be deferred, unless, all things considered, it is better to persuade the ordinand to abstain from receiving Sacred Orders.

[1] Session 23, cap. 12, *De reformatione*.

[2] Part II, c. VII, q. 28.

[3] December 3, 1740.

[4] February 25, 1884.

[5] January 6, 1886.

[6] December 8, 1902.

[7] September 1, 1910.

[8] December 8, 1902.

[9] In *Monitor ecclesiasticus* 1910, p. 123.

614 VI. Canonical age for tonsure and minor Orders is not directly established; but, as canon 976, § 1 states: "No one, whether secular or religious, is to be promoted to first tonsure before the theological course has been begun." With respect to major Orders, canon 975 enacts: "The Subdiaconate is not to be conferred before the twenty-first year has been completed; the Diaconate before the twenty-second has been completed; the Presbyterate before the twenty-fourth has been completed." In doubt whether someone has arrived at the required age, he cannot receive the Order, because the prohibition of receiving it, as the prior thing, is of the better condition (St. Alphonsus, VI, 799; t. I, n. 229).

615 VII. Due knowledge is imposed both on religious and on seculars. Now:

1. No one, whether secular or religious, is to be promoted to first tonsure before the theological course has been begun (canon 976, § 1).
2. The Subdiaconate is not to be conferred except at the end of the third year of the theological course; the Diaconate, except when the fourth year has begun; the Presbyterate, except after the middle of that same fourth year (canon 976, § 2).
3. The theological course must have been completed not privately, but in schools instituted for this according to the plan of studies determined by canon 1365 (canon 976, § 3).

4. In order that someone can be promoted to the Episcopate, he must be endowed with the degree of doctor or at least licentiate in sacred theology or canon law in some university or Institute of studies approved by the Holy See, or at least be truly expert in those same disciplines; but if he belongs to some religious institute, he must have from his major Superiors either a similar title or at least a testimony of true expertise (canon 331, § 1, 5°).

616 VIII. Reception of lower Orders; namely, Orders are to be conferred gradually, so that ordinations by leap are altogether prohibited (canon 977; cf. Council of Trent).[1] The prohibition of receiving Orders by leap is grave, as is clear both from the gravity of the words which the cited canon and Council of Trent use, and from the attached penalty (cf. canon 2374).

[1] Session 23, canon 2 and cap. 11, 14, *De reformatione*.

617 IX. Observance of interstices is chiefly prescribed so that "those promoted may exercise themselves in the Orders received, according to the prescription of the Bishop" (canon 978, § 1), and may always show themselves more suitable for receiving the Presbyterate;[1] these words, however, are not to be understood as of strict precept. These interstices are to be observed:

1. The interstices between first tonsure and the Ostiariate, or between the individual minor Orders, are entrusted to the prudent judgment of the Bishop (canon 972, § 2). Nevertheless it is not licit: 1° to confer first tonsure together with any of the minor Orders; nor 2° to confer all minor Orders at the same time (cf. canon 978, § 3). Yet a contrary custom is not reproved, as happens in those cases of which we shall now speak.
2. Between the Acolytate and the Subdiaconate at least one year must intervene; between the Subdiaconate and the Diaconate, and likewise between the Diaconate and the Presbyterate, at least three months, unless the necessity or utility of the Church, in the judgment of the Bishop, requires otherwise (cf. canon 978, § 2). The year of interstices can be computed either ecclesiastically, for example from one Saturday within the Octave of Pentecost to another, or civilly, for example from the first day of March to the same day of the next following year.

As is clear from the cited canon, the Bishop can dispense from interstices for a cause of public necessity or utility, not only seculars but also religious; and because no limitation is added, he can even grant that Orders be conferred on continuous days. Seculars and non-exempt religious are dispensed by the proper Bishop; exempt religious by him who legitimately ministers Orders to them. Nevertheless, without the special permission of the Roman Pontiff it is never licit: 1° to confer minor Orders with the Subdiaconate; 2° to confer two sacred Orders on one and the same day, any contrary custom being reproved (cf. canon 978, § 3).

Note. Regulars enjoy the privilege of receiving Orders without observing interstices. Some indeed deny this, because Gregory XIII, who granted to the Society of Jesus the privilege of receiving Sacred Orders on individual Sundays and on three feast days even continuous, stated that this privilege was incommunicable. But it is more truly and more commonly affirmed; because other Pontiffs gave to other Orders so broad a communication of the privileges of the Society of Jesus that it also contains this privilege; for example, Urban VIII, by the Constitution *Redemptoris nostri*,[2] to the Order of the Most Holy Trinity; Alexander VIII, by the Constitution *Inscrutabili*,[3] to the Order of Blessed Mary of Mercy (cf. St. Alphonsus, VI, 797, dub. 3; *De privilegiis*, 9). Moreover Ferraris[4] reports that Clement VIII[5] granted to the Congregation of St. John the Evangelist in Lusitania the same dispensation from

interstices, without a clause excluding communication; and the other Regular Orders certainly participate in this privilege. Then Leo XII, by the Constitution *Plura inter*,[6] granted anew to the Society of Jesus the faculty of receiving Orders "with interstices by no means observed," with no exclusionary clause added.

Objection. After Trent the practice became established in the Roman Curia of not granting indults except with an added or understood condition that the days of ordination should be feast days, and indeed interposed days, not continuous ones.[7]

Response: "This limitation commonly regarded only indults granted to ordinands, but not privileges granted to Regulars or even sometimes to Bishops. But the addition of such a condition again proves that privileges which had previously been granted without such clauses are not subject to the aforesaid limitations."[8]

[1] Council of Trent, cap. 11-13, *De reformatione*.

[2] March 22, 1634, n. 2.

[3] July 28, 1690.

[4] *Interstitia*, n. 14-16.

[5] November 23, 1596.

[6] July 11, 1826.

[7] Cf. Decree of Innocent XII, December 14, 1693; Giraldi, II, 95.

[8] Aertnys-Damen, II, 578; cf. Sacred Congregation of Rites in one Marianopolitan case, May 18, 1883 (n. 587 in the old collection), not taken up in the authentic collection, n. 3574.

618 X. Canonical title, if it is a question of major Orders. A title of support is understood, that is, a guarantee by which provision is made for the suitable and of itself perpetual support of the ordinand. It is required, however, if it is a question of receiving major Orders (canon 974, § 1, 7°),[1] lest perhaps the ordained man be forced to provide for himself by begging or in some other way which cannot be reconciled with the dignity or offices of the state. "One ordained in sacred Orders, if he loses the title, is to provide another for himself, unless, in the judgment of the Bishop, provision has otherwise been made for his suitable support" (canon 980, § 1). "But those who, apart from an apostolic indult, knowingly ordain their own subject in sacred Orders without a canonical title or permit him to be ordained, must themselves and their successors provide the necessary sustenance to the same needy person, until provision has otherwise been made for his suitable support" (canon 980, § 2). Finally, if a Bishop has ordained someone without a canonical title with an agreement that the ordained man not ask sustenance from him, this agreement lacks all force (canon 980, § 3). With respect to the required title, observe:

1. For secular clerics the canonical title is the title of benefice, and, failing that, of patrimony or pension. This title must be both truly secure for the whole life of the ordained man and truly sufficient for his suitable support, according to the norms to be given by Ordinaries for the different necessities and circumstances of places and times (canon 979). If not even one of the titles just assigned is available, it can be supplied by the title of service of the diocese, and, in places subject to the Sacred Congregation of Propaganda Fide, by the title of mission (canon 981, § 1). Now:

a) The title of benefice is that which is founded in a benefice; but a benefice actually obtained and peacefully possessed is required. But resignation of the benefice by whose title the cleric was ordained is null unless express mention is made that the cleric had been promoted by that title and had substituted for it another legitimate title of ordination, by grant of the Ordinary (canon 1485).

b) The title of patrimony is that which is founded in patrimony. By the name of patrimony here are understood goods possessed by the ordinand and sufficiently free from mortgage or other burden. "It is indifferent whether the patrimony is constituted in stable and certain fruitful goods, or in things which are equated with immovables. Thus a lay chaplaincy can be a title of patrimony, provided those who enjoy the right of naming have pledged their good faith, with the authority of the Bishop interposed, that they will not revoke the chaplain until provision has been made for him by a suitable benefice or patrimony."[2]

c) The title of pension is that which is founded in a pension. By the name of pension is understood a stipend of support assigned to the ordinand and to be supplied to him annually, whether from ecclesiastical benefices or from other goods. Hence also a personal pension.[3]

Note. As formerly, so also now the insufficiency of one title can be supplied by another title.[4]

d) The title of service of the diocese and of mission carries with it that the ordinand, by interposing an oath, devotes himself perpetually to the service of the diocese or mission, under the authority of the local Ordinary for the time being. The Ordinary must confer on the priest whom he has promoted by the title of service of the church or mission a benefice, office, or subsidy sufficient for his suitable support (canon 981).

2. For religious, the title is established as follows:

a) For Regulars the canonical title is solemn religious profession, or the title, as it is called, of poverty (canon 982, § 1); note that solemn profession alone is a title for Regulars.

b) For religious of perpetual simple vows, whether emitted in an Order or in a religious Congregation, the title is that of the common table, of the Congregation, or another similar title, according to the norm of the constitutions (canon 982, § 2); that is, as the legitimate constitutions have established or will establish in the future.

c) Other religious, that is, religious of temporary vows, whether emitted in an Order or in a religious Congregation, and likewise novices, as regards the title of ordination, are governed by the law of seculars (canon 982, § 3). The title of the common table does not belong to these religious, because they are not yet devoted to religious life, and therefore lack the right of receiving perpetual support from the goods of the religious institute.

[1] Council of Trent, session 21, cap. 2, *De reformatione*.

[2] Gasparri, n. 606.

[3] Aertnys-Damen, II, 590; cf. St. Alphonsus, VI, 817.

[4] Cf. Benedict XIV, *Quaestiones canonicae*, 46.

619 XI. Right intention; concerning this it suffices to have observed these things:

1. A merely natural intention, that is, one resting on a natural motive alone, does not suffice, so that someone can be excluded for that cause.

2. An intention at least predominantly or equally supernatural suffices to this extent, that one approaching with an intention of this kind cannot be kept away.

Chapter II. On Irregularities and Other Impediments

(St. Alphonsus, *Theologia Moralis*, book VII, c. 5; *Homo Apostolicus*, tr. 19, c. 3.)

We shall speak first about irregularities and impediments in general, then about irregularities and impediments in particular, and finally about the cessation of irregularities and impediments.

Article I. Irregularities and Impediments in General

620 I. Notion. An irregularity is a canonical impediment of itself perpetual, which prohibits the reception and exercise of Orders (cf. canons 968 and 983). It is called an impediment:

1. Canonical, that is, established by ecclesiastical law.
2. Of itself perpetual, that is, one which is not removed except by dispensation; and by this reason it differs from a simple impediment.
3. Of the reception and exercise of Orders. But by the name Orders here first tonsure also comes (canon 950). The reception and exercise of Orders are prohibited, but not the exercise or acts of jurisdiction alone, such as to dispense, to absolve from a censure, to give the faculty of absolving from sins (St. Alphonsus, VII, 342). Finally, the functions of the Acolytate are no longer prohibited, since today they are permitted even to laymen.
4. It prohibits; but it does not render the reception and exercise of Orders invalid. The prohibition, however, is grave, as is drawn both from the nature of the thing and from the grave penalties to be imposed on a transgressor (canon 2374).

A simple impediment is a canonical impediment of itself temporary, which prohibits the reception and exercise of Orders (cf. canons 968 and 987). It is called of itself temporary, that is, one which can cease without dispensation or by the fact itself.

Note. Irregularities and impediments have been established so that provision may be made for the reverence due to Orders, but not by way of penalty, except perhaps secondarily if it is a question of an irregularity from delict (St. Alphonsus, *Homo Apostolicus*, tr. 17, n. 73).

621 II. The origin of irregularities is ecclesiastical law (canon 983); the same holds for simple impediments. Moreover, the cited canon sufficiently signifies that irregularity is introduced by written law alone, not by custom.

622 III. Interpretation; concerning it observe:

1. Laws which constitute an irregularity or impediment, as restricting rights, are subject to strict interpretation (cf. canon 19).
2. Only the baptized are bound by the said laws; this, however, does not prevent a fact which had place before baptism from being able to induce irregularity after baptism, as if someone had been insane before baptism. The impubes are not exempt from the law.

3. In doubt of law - that is, in doubt whether the law has been passed or extends itself to some case - the law does not urge. In doubt of fact - that is, in doubt whether the fact which carries an irregularity or impediment with it took place, or was such as is supposed by the law - the law likewise does not urge; for it is a question of doubt of a fact founding a prohibiting law (St. Alphonsus, VII, 422, 432; t. I, n. 228);[1] moreover, in the latter doubt the Bishop can dispense for precaution (cf. canon 15).

4. Ignorance of irregularities, whether from delict or from defect, and of impediments, does not excuse from them (canon 988).

[1] Sacred Congregation of the Council, June 27, 1857 (*A.S.S.* I, p. 350).

623 IV. Multiplication. Irregularities and impediments are multiplied from their different causes, but not from the repetition of the same cause, unless it is a question of irregularity from voluntary homicide (canon 989). It is said:

1. From their different causes; as if someone is illegitimate and perpetrates homicide. Yet note that formally different causes suffice, and that several formally different causes can be contained in one and the same physical act; as if someone by the same blow were to kill another and attempt to take his own life.

2. Unless it is a question of irregularity from voluntary homicide. Procurement of abortion does not come under the name of homicide; for canon 985, 4° distinguishes this from homicide, and the law is of strict interpretation. But craniotomy and similar cruel killings of an infant are comprehended under that name.

Article II. Irregularities in Particular

Of irregularities, some are from defect, others from delict.

§ I. Irregularities from Defect

624 By force of canon 984 the following are irregular from defect:

I. From defect of birth: "Illegitimates, whether the illegitimacy is public or occult, unless they have been legitimated or have professed solemn vows" (cited canon, n. 1). Now:

1. Who are illegitimate, see in the treatise on matrimony.

2. Irregularity from defect of birth is removed: 1° by legitimation, about which later; 2° by dispensation (n. 644); 3° by solemn religious profession. This removes the irregularity, but does not legitimate; hence an illegitimate person solemnly professed cannot be constituted major Superior in his Religion (canon 504).

Note. Illegitimates cannot be admitted into the Seminary (canon 1363, § 1); nevertheless legitimation by the subsequent marriage of the parents suffices.[1]

[1] Pontifical Commission, July 13, 1930 (*A.A.S.* 1930, p. 365).

625 II. From defect of body: "Those defective in body who cannot safely by reason of weakness, or decently by reason of deformity, perform the ministry of the altar. Yet to impede the exercise of an

Order legitimately received, a graver defect is required; nor because of this defect are acts prohibited which can rightly be placed" (cited canon, n. 2°). Therefore the following are irregular:

1. Those who by reason of weakness cannot safely perform the ministry of the altar. To this class belong: 1° those lacking the index finger or thumb, that is, the customary fingers with which the host is broken; likewise those who have hands so trembling that there is danger of spilling the Blood; likewise those lacking either arm or either hand; 2° the deaf who cannot hear the responding minister; but deafness supervening upon the priesthood does not stand in the way of the celebration of Mass; 3° the mute, likewise those stammering so much that they cannot pronounce whole words, or cannot except with great difficulty, so that they provoke laughter; 4° the blind, likewise the partially blind, who cannot read except very large characters; but not one who lacks only one eye, provided it is not the left eye, or the eye of the Canon, and provided the deformity is removed by a glass eye.[1] But if the eye of the Canon is lacking, a dispensation can be given if the other eye is sufficiently fit for reading the Canon without deformity (St. Alphonsus, VII, 404-409).

2. Those who by reason of deformity cannot decently perform the ministry of the altar. To this class belong: 1° those deprived of a conspicuous member, unless the deformity is removed by an artificial member. Those who lack the three rear fingers are irregular for receiving Orders, but not for exercising them; 2° those having a conspicuous member very deformed, whether the deformity arises from nature or from disease, for example from leprosy. Deformity of the legs can ordinarily be sufficiently covered by a cassock; 3° the monstrous, such as pygmies, the very hunchbacked, and hermaphrodites; yet the latter defect does not induce irregularity if it is occult and the male sex prevails. Likewise those notably limping are irregular (St. Alphonsus, VII, 410-412).

Note 1. Since all Orders, even first tonsure, are ordered to the priesthood, one excluded from the priesthood must also be regarded as excluded from the other Orders.

Note 2. To impede the exercise of an Order legitimately received a graver defect is required than to impede the reception of an Order (canon 984, 2°). Moreover, one who by reason of some defect is impeded from some exercise of an Order received is not therefore impeded from acts which can rightly be placed (canon 984, 2°); so that, for example, a blind priest can well hear confessions.

Note 3. In doubt whether some defect stands in the way of the reception or exercise of an Order, the Ordinary should be consulted (St. Alphonsus, VII, 414).

[1] With respect to partially blind priests, the Sacred Congregation of Rites established the following on January 12, 1921:

1. A partially blind priest, or one laboring under such weakness of visual power, whether accidentally or habitually, that he can read only very large type, can obtain from the Supreme Pontiff or the Sacred Congregation of Rites, unless the Bishop has been furnished with an apostolic faculty, a dispensation to celebrate either the votive Mass of the Blessed Virgin Mary or the Mass which they call the daily Mass of the Dead.

2. The conditions added in the instrument of a privilege of this kind are not mere matters of rituality and style, but obligatory in conscience.

3. If in the privilege it is said: Provided the petitioner is not entirely blind, and meanwhile he becomes blind, then he must abstain from celebrating Mass until he has obtained a new indult; and once this has been obtained, he is bound under grave obligation to use the assistance of another priest, although perhaps this obligation was not expressly added in the indult. After these things noted by the Sacred Congregation, the rules to be followed in celebration follow (*A.A.S.* 1921, p. 154-156).

626 III. From defect of mind: "Those who are or have been epileptic, insane, or possessed by a demon; but if after receiving Orders they have become such and it is certainly established that they are now free, the Ordinary can again permit his subjects the exercise of the Orders received" (canon 984, 3°).

1. Epilepsy must be taken in the strict sense, so that it does not comprehend a certain disease of the stomach which carries with it certain signs of epilepsy. Furthermore, if the disease supervenes upon the priesthood and recurs rarely, for example only once in a month, without emission of sounds, foaming, and notable contraction of the body, the priest will be able to celebrate privately, with a fasting priest joined to him who may complete the Mass when the disease comes on (St. Alphonsus, VIII, 399). There are also those who judge that one who had been freed from epilepsy before puberty is not irregular. But this opinion is with difficulty composed with the words of the law, which states absolutely: "Those who are or have been epileptic."
2. Insanity is understood which flows from a permanent cause; but an insane person is irregular even if he has lucid intervals.
3. Possession by a demon; concerning which, see t. I, n. 700.
4. Just as those healed cannot receive Orders without the permission of the Holy See, so neither can they receive a higher Order without the same permission.
5. Under the name of Ordinary, of which the cited canon speaks, come both the Ordinary of the place and the major Superior in an exempt clerical religion (canon 198, § 1).

627 IV. From defect of sacrament: "Bigamists, namely those who have successively contracted two or more valid marriages" (canon 984, 4°). "It is said: from defect of sacrament, because he who has married two wives cannot aptly signify the union of Christ with the Church, His one spouse" (St. Alphonsus, VII, 436). This irregularity, at least with respect to some major Orders, is of apostolic origin, according to these words of St. Paul: "Therefore a Bishop must be irreproachable, the husband of one wife... Let deacons be husbands of one wife."[1]

For irregularity it suffices that several marriages have been validly contracted; it is not required, however, that they have been consummated.

Note. One who before Baptism successively contracted several valid marriages seems, after Baptism has been received, to become irregular.

[1] 1 Tim. 3:2, 12.

628 V. From defect of reputation: "Those who are marked by infamy of law" (canon 984, 5°). It is called an irregularity from defect, because the infamy itself which induces irregularity is not a delict. What infamy of law is and who contract it, see in the treatise on ecclesiastical penalties.

629 VI. From defect of mildness: "The judge who has pronounced sentence of death" (canon 984, 6°). If a capital sentence has been established collegially, those judges are irregular who agreed to the capital penalty, not the others who cast a contrary vote. Furthermore this irregularity is not to be extended to a region where sentence of death, although pronounced, is nevertheless no longer carried into execution; nor to the case in which a leader in war orders someone to be killed without any military council having been held, because he does not proceed as judge. Nor are jurors irregular, since they pronounce sentence only about the truth of the fact, but do not establish the penalty.

Moreover, from defect of mildness the following is irregular: "Those who have undertaken the office of executioner and their voluntary and immediate ministers in the execution of a capital sentence" (canon 984, 7°). Among these are not counted: 1° soldiers who kill the enemy in battle, or by command of the leader or of a military council kill a guilty person, because they are not said to have undertaken the office of executioner; 2° those who, for example, erect the scaffold or lead the one condemned to death to the place of punishment, because they are not immediate ministers of the executioner; but indeed those who, for example, place the head of the condemned man under the machine, etc. (St. Alphonsus, VII, 461-468).

§ II. Irregularities from Delict

630 Preliminary points. In order that a delict may produce irregularity, it is required that it be a grave sin, perpetrated after baptism, except the case of which under II, and external (canon 986). It is said sin:

1. Grave; hence whatever excuses from mortal sin also excuses from irregularity. Of this kind is ignorance of the very law prohibiting the act. Grave fear, even only relatively such, necessity, indeed even grave inconvenience, generally excuse from observing a merely ecclesiastical law, and therefore bring it about that one is immune from irregularity who, from grave fear, necessity, or by reason of grave inconvenience, places an act forbidden by ecclesiastical law alone (cf. canon 2205, § 2).
2. Perpetrated after baptism; since it is not fitting that account be taken of a sin which is judged to have been entirely destroyed by baptism.

Now by force of canon 985, the following are irregular from delict:

631 I. Apostates from the faith, heretics, schismatics (canon 985, 1°); concerning whom there was discussion in t. I, n. 492. One who is a heretic in good faith does not contract irregularity; but since good faith is judged to be absent for the external forum, a dispensation is needed.

632 II. Those who, except in a case of extreme necessity, have allowed baptism to be conferred on them by non-Catholics in any way (canon 985, 2°). It is said:

1. By non-Catholics; under this name come heretics, schismatics, and, according to some, even unbelievers, since they, equally with heretics and schismatics, are truly non-Catholics. Others, and indeed most, exclude unbelievers.
2. In any way, that is, whether some rite, heretical or Catholic, was employed, or was not employed.
3. Have allowed, that is, those who asked, or at least permitted, that baptism be conferred on them by a non-Catholic.

633 III. Those who have dared to attempt marriage or to place only the civil act, either themselves being bound by the matrimonial bond, or by sacred Order, or by religious vows even simple and temporary; or with a woman bound by the same vows or joined in valid marriage (canon 985, 3°). Those attempt marriage who, conscious of a diriment impediment, approach the minister of the Church; those place the civil act who enter into civil marriage, as it is called. It is said have dared; hence, since the words of the law are judged to contain nothing useless, any diminution of imputability seems to exempt from irregularity (cf. canon 2229, § 2); except, however, diminution of imputability which flows from ignorance of the irregularity (canon 988). Therefore the following are irregular:

1. Those who, themselves bound by the matrimonial bond or by sacred Order or by religious vows, even simple and temporary, have dared to attempt marriage or place only the civil act.
2. Those who, although not bound by the matrimonial bond or by sacred Order or by religious vows, have dared to attempt marriage or place only the civil act with a woman bound by religious vows, even simple and temporary, or joined in valid marriage.

634 IV. Those who have perpetrated voluntary homicide or procured the abortion of a human fetus, the effect following, and all cooperating (canon 985, 4°).

1. Homicide is understood as committed positively and with grave fault; not, however, as merely permitted, although without sufficient cause.
2. What is understood by procurement of abortion, see in the treatise on ecclesiastical penalties.
3. The words the effect following and cooperators are referred both to homicide and to procurement of abortion. With respect to the effect, it is required that this follow from the force inflicted, not from care perhaps omitted. As regards cooperators, just as the old law, so also the new law is judged to regard only positive cooperators, or those who by command, counsel, consent, or help cooperate in homicide or procurement of abortion; likewise those who by false testimony or unjust sentence cooperate in homicide; finally those who voluntarily fight in an unjust war. This last point is said theoretically, since scarcely ever is there sufficient certainty about the injustice of a war. Negative cooperators are immune from irregularity, even if from justice they are bound to impede homicide or procurement of abortion (St. Alphonsus, VII, 367-376).

635 V. Those who have mutilated themselves or others, or have attempted to take their own life (canon 985, 5°). Mutilation is understood as the cutting off of a member, but not merely its weakening or wounding. But a cutting off of a member objectively and subjectively gravely culpable is required; when this is had, we explained in t. I, n. 526.

636 VI. Clerics exercising the medical or surgical art forbidden to them, if death follows therefrom (canon 985, 6°). It is required that the cleric gravely offend against the law which prohibits him the medical or surgical art, and that death follow from the art exercised as from its cause; hence irregularity is absent if death, for example, is to be attributed to the bad treatment of another physician who had been called in.

637 VII. Those who place an act of Order reserved to clerics constituted in sacred Order, either lacking that Order, or prohibited from its exercise by a canonical penalty, whether personal, medicinal or vindicative, or local (canon 985, 7°). The matter concerns an act of Order - not of mere jurisdiction

- and of the greater or sacred Order. Considering the tenor of the canon, it seems to make no difference whether the act is placed solemnly or not, that is, with or without the insignia proper to the Order. Yet if it is placed solemnly, grave matter will more easily be had, which in the case, as in every irregularity from delict, is required. Now the following contract irregularity:

1. All, both clerics and laymen, who place an act of sacred Order while lacking the Order whose act they place; as if a simple priest were to ordain a cleric.
2. All, both clerics and laymen, who place an act of sacred Order from whose exercise they are prohibited by a canonical penalty, whether personal, medicinal or vindicative, or local; as if a priest were to celebrate in an interdicted place. But it is required that someone be impeded from the exercise of Order by force of a contracted penalty, not by a mere prohibition. Hence one who, for example, was ordained by a non-Catholic in good faith and exercises the Order without dispensation, is not irregular, although, until he has received dispensation, he is prohibited from the exercise of the Order so received.

Corollary I. The following are irregular: a priest who ministers Confirmation or performs consecrations, etc.; likewise a deacon who celebrates Mass, sacramentally absolves, or ministers Extreme Unction; likewise a subdeacon who solemnly baptizes or in solemn Mass, although without stole, acts as deacon or with stole sings the Gospel; likewise a minor cleric who in solemn Mass acts as subdeacon, that is, does all those things which are proper to the subdeacon, or with maniple sings the Epistle. But if he sings the Epistle without maniple, although he assists clothed in a tunicle, yet not doing those things which are proper to the subdeacon, he does not contract irregularity, because such assistance was declared licit by the Sacred Congregation of Rites.[1] Three things are proper to the subdeacon: to pour water into the chalice before the offertory; to touch the chalice or remove and replace the pall; to wipe the chalice after the ablution.

Corollary II. The following are not irregular: a priest who hears confessions without jurisdiction, because he does not place an act of Order which he lacks; nor a priest who, lacking the required faculty, grants a dispensation, because he places an act of mere jurisdiction; nor a deacon who solemnly baptizes or distributes the Holy Eucharist without the required commission, because, since the Order of Diaconate is ordered in some way to the said acts, he does not place an act of Order which he lacks; nor a minor cleric who without the insignia proper to the Order exercises a higher minor Order, apart from the Exorcistate; nor, as is clear, an inferior cleric who in solemn Mass without maniple fulfills several parts of the subdeacon which, namely, are permitted to him; nor finally, as is likewise clear, a layman who exercises the Acolytate or Lectorate according to today's approved practice.

Note. The Sacred Consistorial Congregation, by the decree *Magni semper*,[2] established certain laws for priests emigrating from Europe or from the shores of the Mediterranean to America or the Philippine Islands. If they rashly violate these, according to n. 16 of the same decree they remain suspended from divine things by the fact itself; and by violating this censure they fall into irregularity, absolution from which is reserved to the same Sacred Congregation, that is, to the Holy See.[3]

[1] March 19, 1906 (*A.S.S.* XXXIX, p. 119).

[2] December 30, 1918.

[3] Vermeersch-Creusen, *Epitome*, II, n. 258.

Article III. Impediments in Particular

638 The following are simply impeded:

I. Children of non-Catholics, so long as the parents remain in their error (canon 987, 1°).

1. By the name children are understood only descendants in the first degree; and this now also holds if the father is non-Catholic.[1]
2. Under the name of non-Catholics come heretics and schismatics; most authors exclude unbelievers.
3. It suffices that either parent be non-Catholic, even if the mixed marriage was contracted with dispensation.[2]
4. The impediment ceases by the conversion of the parents. It is disputed whether it ceases by the death of the parents; but it seems to be denied, because that had no place in the old law, from which in doubt there must be no departure.

[1] Pontifical Commission, July 14, 1922 (*A.A.S.* 1922, p. 528).

[2] Pontifical Commission, October 16, 1919 (*A.A.S.* 1919, p. 478).

639 II. Men having a wife (canon 987, 2°). Without dispensation these cannot receive even a minor Order or tonsure itself, even if they are perpetually separated. But a married man who without apostolic dispensation has received major Orders, although in good faith, is prohibited from the exercise of those Orders (canon 132, § 3). Now:

1. A dispensation is not granted to a married man unless the wife consents and is prepared to enter religion or to emit a vow of chastity, at least for the time of the life of her consort, or unless the wife has perpetually lost the right to the conjugal debt.[1]
2. A spouse who has received sacred Order is prohibited from the use of marriage (canon 1114).

[1] Ecclesiastical law, c. 4-6 X, 3, 32; Decree of Gratian, C. 27, q. 2, c. 19-26.

640 III. Those who hold an office or administration forbidden to clerics and for which they must render accounts, until, after the office and administration have been laid aside and the accounts rendered, they have become free (canon 987, 3°). Such an office is discharged, for example, by treasurers and depositaries of public money, notaries, tutors, curators (St. Alphonsus, III, 838). After an Order has been received, offices of this kind can be accepted only with the permission of the Ordinary (cf. canon 139, § 3).

641 IV. Slaves in slavery properly so called, before liberty has been accepted (canon 987, 4°).

V. Those who are bound by civil law to ordinary military service, before they have completed it (canon 987, 5°).

1. Those who by the law itself are called to care for the sick are not said to be bound to military service.
2. Annual exercises to which citizens are bound after ordinary service has been completed do not pertain to ordinary military service.[1]

3. Those are also judged still bound by law to military service who perhaps will be called to military service, but are not yet called, either because they are unequal in age, or because they have been declared temporarily unfit.[2]

[1] Sacred Congregation of Religious, January 1, 1911 (*A.A.S.* 1911, p. 37).

[2] Pontifical Commission, June 2-3, 1918 (*A.A.S.* 1918, p. 344-345).

642 VI. Neophytes until, in the judgment of the Ordinary, they have been sufficiently proved (canon 987, 6°). Those are called neophytes who were converted to the faith in adult age and recently baptized; but not heretics recently converted to the faith who had at least probably been validly baptized. The establishment of this impediment corresponds to these words of St. Paul: "Therefore a Bishop must be... not a neophyte, lest, being lifted up into pride, he fall into the judgment of the devil."[1]

[1] 1 Tim. 3:2-6.

643 VII. Those who labor under infamy of fact, while it endures, in the judgment of the Ordinary (canon 987, 7°). When infamy of fact is contracted, see in the treatise on ecclesiastical penalties (cf. canon 2293, § 3).

Article IV. Cessation of Irregularities and Impediments

Certain irregularities, for example that which arises from defect of body (n. 625), and likewise simple impediments, cease when the cause ceases. The irregularity which is from defect of birth ceases either by legitimation or by solemn religious profession (n. 624). But all irregularities and all simple impediments can cease through dispensation; about this more must be said.

644 I. Power of dispensing. 1. Ordinaries can by themselves or through another dispense their subjects from all irregularities arising from occult delict, excepting that which arises from voluntary homicide or abortion, or another brought to the judicial forum (canon 990, § 1). Now under the name of Ordinaries come both Ordinaries of places and major Superiors of an exempt clerical religion (canon 488, 8°). An irregularity is brought to the judicial forum when the party is either summoned to court or cited, or spontaneously presents himself before the judge (canon 1711).

2. Any confessor can dispense from irregularities arising from delict in more urgent occult cases - excepting, however, voluntary homicide or abortion and others brought to the judicial forum - in which the Ordinary cannot be approached and danger of grave harm or infamy threatens, but only for this purpose, that the penitent may licitly be able to exercise Orders already received (canon 990, § 2). Under the name of confessor comes everyone who enjoys sacramental jurisdiction. But he can dispense those to whom his jurisdiction extends, and this, as is now commonly admitted, even outside confession.

3. By common privilege: 1° Regular Prelates, with respect to their subjects, enjoy the same faculty which belongs to Bishops by common law, according to what was said under 1.[1] 2° Regular confessors possess a similar faculty with respect to seculars (St. Alphonsus, VI, 355; *De privilegiis*, n. 104).

4. By proper or communicated privilege, Regular Ordinaries can dispense all their own from every irregularity. This power, which is sometimes reserved to the Superior General, is valid only for the

internal forum alone, if the irregularity has arisen from voluntary homicide.[2] Indeed every year, on Monday after the first Sunday of Lent, local Superiors of Regulars, by themselves or through confessors to whom they have committed this, can dispense their subjects, even novices, living within the cloister under obedience, in every irregularity contracted on any occasion or from any cause.[3] So Vermeersch-Creusen.[4]

Yet note that, if it is a question of enormous excess or defect, recourse must be had to the Holy See, according to the norm of the ancient law stating: In a general grant there do not "come those things which someone would not likely grant in particular."[5]

Note. The Sacred Consistorial Congregation, in the Decree *Redeuntibus*, established these things:

"1° To all Ordinaries of places and of religious there is granted the faculty of dispensing from irregularity from defect of body with their priests returning from military service, as often as from the written testimony of the master of ceremonies who has subjected the priest to examination it is plainly established that he can, without another's help, observe with decorum all the necessary rites prescribed in the celebration of Mass; the conscience of the same Ordinaries being burdened concerning this. But in graver or doubtful cases, and as often as it is a question of those not promoted to the priesthood, recourse must be had to the Holy See.

"2° Likewise to all Ordinaries there is granted the faculty of dispensing, at least for precaution, from the irregularity which formerly was called by canonists from defect of mildness, as often as priests, clerics, and students of seminaries or religious institutes have fallen into it not from their own act but from necessity, namely compelled to take up arms and perhaps to inflict death or mutilation. But as often as it is a question of clerics in sacred Orders who, not compelled by necessity of the laws, have offered themselves of their own accord to take up arms, or have taken them up, recourse must be had to the Holy See for dispensation, with the prescription of canon 188, n. 6° remaining firm."[6]

Finally the same Sacred Congregation responded affirmatively to the doubt: "Whether clerics in sacred Orders assigned to the assistance of wounded or sick soldiers, who from this ministry preferred of their own accord to pass over to fighting military service, yet without inflicting death or mutilation, are bound, according to the mind of the Decree *Redeuntibus*, to obtain a dispensation from the Holy See in order to be restored to the exercise of sacred ministry."[7]

Since it is not clear that a true irregularity is had in the foregoing, a dispensation is not required except for precaution; or, too, the word dispensation can be taken in a broader sense, namely for permission; and this permission is prescribed so that someone who perhaps became unworthy in war may not exercise ecclesiastical functions.

[1] Sixtus IV, Constitution *Regimini universalis*, August 31, 1474, n. 14; Julius II, Constitution *Virtute conspicuos*, July 28, 1506, n. 27; Paul III, Constitution *Licet debitum*, October 18, 1549, n. 27; Gregory XIV, Constitution *Illius qui*, September 21, 1591, n. 27; Leo XII, Constitution *Plura inter*, July 11, 1826, n. 2.

[2] Cf. Pius V, Constitution *Dum ad Congregationem*, June 13, 1571.

[3] Cf. Paul III, Brief *Exponi nobis super*, March 12, 1545.

[4] *Epitome Iuris Canonici*, II, 261.

[5] Rule 81 in VI; cf. Clement IV, Constitution *Virtute conspicuos*, July 21, 1265, n. 11.

[6] October 25, 1918 (*A.A.S.* 1918, p. 481).

[7] March 28, 1919 (*A.A.S.* 1919, p. 177).

645 II. Petition for dispensation. In prayers for dispensation from irregularities and impediments, all irregularities and impediments must be indicated; indeed, if it is a question of irregularity from voluntary homicide, even the number of delicts must be expressed (canon 991). In the case in which recourse must be had to the Holy See, the prayers should be directed to the Congregation of the Holy Office, if it is a question of irregularities arising from delict against the Faith, against Baptism, against Matrimony, except the single case in which someone not yet a cleric attempted marriage with a woman joined in valid marriage, and against Order, if it is a question of those who have been dismissed by the Holy Office with a canonical penalty or censure and have violated it, or of the impediment of children born of non-Catholics and of neophytes. In other cases the prayers should be directed, for seculars, to the Congregation for the Discipline of the Sacraments; for religious, to the Sacred Congregation of Religious; but for all occult cases recourse can be had to the Sacred Penitentiary.

646 III. Interpretation of dispensation. 1. A general dispensation is valid - besides for the irregularities and impediments expressed - also for those concealed in good faith, with the exception of irregularity from voluntary homicide or abortion, from cooperation in the aforesaid, and from another brought to the judicial forum; there is also excepted the case in which a number of homicides lower than the number of delicts has been expressed, although in good faith. In this case the dispensation is altogether invalid, or effects nothing, whether it is a question of a general dispensation or of a particular one (canon 991, §§ 1 and 2).

2. A general dispensation for Orders is valid also for major Orders; and the dispensed person can obtain non-consistorial benefices, even with cure of souls,[1] but cannot be nominated Cardinal of the Holy Roman Church, Bishop, Abbot or Prelate nullius, or major Superior in an exempt clerical religion.

[1] Ecclesiastical benefices are called: 1° consistorial, those which are usually conferred in Consistory; the rest non-consistorial; 5° with cure of souls or without cure of souls, according as they have care of souls annexed or not (canon 1411, 1°, 5°).

647 IV. Manner of dispensing. A dispensation granted in the non-sacramental internal forum is to be committed to writing; and there must be a record of it in the secret book of the Curia (canon 991, § 4). For the rest, it does not matter in what form the dispensation is granted; therefore this or a similar form can be used: I dispense you in the irregularity, or irregularities, which you have contracted for this or that cause (St. Alphonsus, VII, 353).

Dissertation IV. On Those Things which Regard Both the Ministration and the Reception of Order

Following the Code, we shall treat first of those things which must precede sacred ordination, then of the rites and ceremonies, next of the time and place of sacred ordination, and finally of the notation and testimony of ordination performed.

Part I. On Those Things which Must Precede Ordination

In setting out those things which must precede ordination, account must be taken both of the Code and of the Instruction of the Sacred Congregation of the Sacraments[1] and of the Sacred Congregation of Religious.[2] The matters to be attended to regard the petition of the ordinand, inquiries, testimonies to be brought forward, examination, denunciations, and spiritual exercises.

[1] December 27, 1930 (*A.A.S.* 1931, p. 120 sq.).

[2] December 1, 1931 (*A.A.S.* 1932, p. 74 sq.).

648 I. Petition of the ordinand. All, both seculars and religious, who are to be promoted to Orders are to disclose their purpose before ordination at an opportune time, either personally or through others, to the Bishop or to another who in this matter acts in the place of the Bishop (canon 992); and these things are determined more fully in the cited Instructions as follows:

1. Secular ordinands:

a) As the time approaches in which candidates are going to receive first tonsure and minor Orders, they themselves are to present, at least two months beforehand, to the rector of the seminary a written petition, composed and signed by their own hand, in which they candidly signify that with a wholly free and spontaneous will they ask for first tonsure and afterward minor Orders. The said petition, to which there must be added an attestation concerning Baptism received and the sacrament of Confirmation received, is presented to the Bishop by the same rector of the Seminary, together with his personal information about the petitioner's suitability for the clerical state.

b) Before the Subdiaconate, likewise before the Diaconate and Presbyterate, they must write with their own hand a declaration, confirmed by oath, in which they acknowledge that they approach the Order with complete freedom and that they have duly considered all burdens annexed to it. The tenor of the declaration to be written and confirmed is found in *A.A.S.* 1931, p. 127.

2. Religious ordinands:

a) While they are still in the novitiate, before profession of temporary vows, which must altogether precede promotion to tonsure and minor Orders, they are to present to the Superior a written petition in which, in express words, they give testimony concerning their vocation to the religious and clerical state, and at the same time disclose a firm purpose of perpetually binding themselves to the clerical service in the religious state. The said petition and declaration are to be preserved in the archive.

b) Before the Subdiaconate, and in Orders of solemn vows before the emission of those vows, they must present to the Superior a testimony subscribed by their own hand and confirmed by the faith of an oath before the Superior; the tenor of the said testimony is found in *A.A.S.* 1932, p. 80.

649 II. Inquiries. 1. With respect to secular ordinands, the Instruction of the Sacred Congregation of the Sacraments prescribes:

a) Before the conferral of first tonsure and minor Orders, the Ordinary will remit the candidate's petition to the rector of the Seminary or to another, with a mandate of inquiring into the suitability and qualities of the petitioner. To this end, the rector will hear the prefects and teachers of the students not only separately, but also convoked together. Furthermore, the pastor of the candidate

and of his family should be heard; likewise others, if it is judged opportune, according to the norms added to the Instruction. Finally, the mind of the candidates must be explored individually by the proper Bishop or, if he is impeded, by the Vicar General, or by the rector of the Seminary, or even by those who are deputed to protect the discipline of the whole seminary.

b) Before the Subdiaconate a new investigation is to be instituted, which, however, taking account of the inquiry already previously instituted, is to inquire concerning the candidate's morals and his moral qualities.

c) Before the Diaconate and Presbyterate it is usually sufficient to keep before one's eyes the inquiries already performed, unless meanwhile new circumstances must be weighed which force one to doubt the sincere purpose of the candidate, or his moral suitability for observing the burdens and carrying out the obligations received with Sacred Orders. But if the Bishop, before someone is initiated to the Diaconate or to the priesthood, has as certain from the confessions of the one to be promoted or from other certain indications and proofs received, that he is truly destitute of a sacred vocation, he should not omit to approach the Holy See, candidly and plainly reporting the state of the matter, or the arguments by which a vehement doubt is fostered concerning the suitability of the subdeacon or deacon for bearing greater burdens worthily and faithfully. The matter is indeed of such great moment that the conscience of Ordinaries remains gravely burdened by this obligation, so that the danger may be removed of imposing hands on a deacon or priest who is unequal to sustaining the most grave burden of Sacred Orders.

2. With respect to religious ordinands the Sacred Congregation of Religious prescribes:

a) Before the minor Orders, the Superiors of religious are to institute an inquiry concerning each candidate, and are not to allow anyone to ascend to Orders so long as the requisites in the one to be promoted have not been established for them by careful scrutiny. In order to obtain this more certainly, they should seek the testimony of the Master of spirit and of others to whom, because of special frequency with the students, it has fallen to know well their life and morals. Concerning the inquiries made and the result of the scrutiny, a proper document is to be drawn up and preserved in the archive. Finally, the Superior himself, either by himself or through another endowed with knowledge and prudence and suited to gaining the confidence of the young men, should take care to question them, so that at last he may be made more certain that they freely and knowingly desire Orders in the religious state.

b) Before the Subdiaconate the Superiors must institute a new inquiry concerning the aforesaid. In order to accomplish this, they should again inspect the documents of the inquiry already performed and preserved in the archive, and compare new testimonies concerning morals and spiritual qualities with the old, so that they may well know how the young men have conducted themselves from first profession, both in religious discipline and in progress in clerical studies.

c) Before the Diaconate and Presbyterate there is no need to require such broad information and new testimonies; nevertheless Superiors should keep watch and see whether, in the interval from the conferral of one sacred Order to another, new things have happened which either disclose a doubtful vocation to the priesthood, or show none at all. In this case, after a very diligent investigation has been performed and the counsel of prudent men has been used, let them entirely forbid the reception

of the new Order, and report the matter to this Sacred Congregation, by which, for individual cases, what shall have seemed more opportune in the Lord will be decreed.

650 III. Testimonies to be brought forward. 1. Seculars or religious who, as pertains to ordination, are governed by the law of seculars, are to bring forward from canon 993:

a) The testimony of the last ordination, or, if it is a question of first tonsure, of Baptism and Confirmation received.

b) Testimony concerning studies completed, required for the individual Orders according to the norm of canon 976 (n. 615).

c) The testimony of the rector of the Seminary, or of the priest to whom the candidate was commended outside the Seminary, concerning the good morals of the same candidate.

d) Testimonial letters of the Ordinary of the place in which the one to be promoted has stayed for so much time that he could have contracted a canonical impediment there. Now the time in which the one to be promoted could have contracted a canonical impediment is, regularly, for soldiers three months after puberty, and for others six months after puberty; but the ordaining Bishop, according to his prudence, can require testimonial letters even because of a shorter time of residence, and also because of time which preceded puberty. If the Ordinary of the place has not sufficiently known the one to be promoted either by himself or through others, so that he can testify that during the time in which he stayed in his territory he contracted no canonical impediment, or if the one to be promoted has wandered through so many dioceses that it becomes impossible or too difficult to seek all testimonial letters, let the Ordinary provide at least through a supplementary oath to be made by the one to be promoted. If after testimonial letters have been obtained and before the ordination has been performed, the one to be promoted has again stayed in the same territory for the aforesaid space of time, new testimonial letters of the Ordinary of the place are necessary (canon 994).

e) Testimonial letters of the religious major Superior, if the one to be promoted is enrolled in some religious institute.

2. Religious who are not governed by the law of seculars must likewise bring forward testimonial letters, namely dimissorial letters which also contain testimonies, according to these words of canon 995: "The religious Superior also, in his dimissorial letters, must testify not only that the one to be promoted has emitted religious profession and belongs to the family of the religious house subject to him, but also concerning studies completed and the other things required by law. The Bishop, after receiving these dimissorial letters, does not need other testimonial letters."

651 IV. Examination. 1. Each one to be promoted, whether secular or religious, must undergo a previous and diligent examination concerning the very Order to be received. But those to be promoted to sacred Orders are also to make trial in other treatises of sacred theology (canon 996, §§ 1 and 2).

2. It belongs to Bishops to establish by what method, before what examiners, and in what treatises of sacred theology those to be promoted must make trial (canon 996, § 3). Under the name of Bishops here also come an Abbot or Prelate nullius, a Vicar and Prefect Apostolic (canon 957, § 1).

3. This examination, whether for secular clerics or for religious, is received by the local Ordinary who ordains by proper right, or gives dimissorial letters; however, for a just cause, he can also commit it to the Bishop who is to ordain, if that Bishop is willing to undertake this burden (canon 997, § 1). But the Bishop who ordains another's subject, whether secular or religious, with legitimate dimissorial letters by which it is asserted that the candidate was examined according to the norm of § 1 and found suitable, can acquiesce in this attestation, but he is not bound to do so; and if according to his conscience he judges that the candidate is not suitable, he is not to promote him (canon 997, § 2). It is said:

a) For religious. Regulars are not excepted; but a privilege by which some are exempted from episcopal examination has remained intact.

b) Who ordains by proper right; namely, by force of canons 956, 957 (n. 601), and 965 (n. 602). The reception of the examination then also belongs to the Bishop of the diocese in which is situated the religious house to whose family the ordinand belongs, when it is a question of religious who can be dismissed by Superiors to any Bishop.

c) Or gives dimissorial letters: namely, according to canon 958 (n. 601); but not one who gives them by force of canon 964, 2° and 3°, because he does not come under the name of local Ordinary (canon 198, § 2).

d) But the Bishop, etc.; under which name here too come an Abbot or Prelate nullius, a Vicar and Prefect Apostolic (canons 215, § 2; 957, § 1).

652 V. Denunciations. 1. The names of those to be promoted to the individual sacred Orders, except religious of perpetual vows, whether solemn or simple, are to be publicly announced in the parochial church of each candidate (canon 998, § 1). But the publication is to be made on a feast day of precept in church during the solemnities of Masses, or on another day and hour when a greater attendance of the people is had in church (canon 998, § 2); but the Ordinary, according to his prudence, can both dispense from this publication for a just cause, and command that it be performed also in other churches, and substitute for the publication a public posting at the doors of the church for several days, among which at least one feast day is comprehended (canon 998, § 3). Now the parochial church is the parochial church of the parish in which the candidate has domicile or quasi-domicile, or, if he is a vagabond, actually stays. If someone has several proper parishes, publication is to be made in several parochial churches.

2. If within six months the candidate has not been promoted, the publication is to be repeated, unless something else seems right to the Ordinary (canon 998, § 2).

3. All the faithful are bound by obligation to reveal to the Ordinary or pastor before sacred ordination impediments to sacred Orders, if they know any (canon 999).

4. To the pastor who performs the publication, and also to another if this seems expedient, the Ordinary is to entrust the task of diligently inquiring from trustworthy persons concerning the morals and life of the ordinands, and of transmitting to the Curia testimonial letters referring to the investigation itself and the publication. The same Ordinary should not omit to make other inquiries, even private ones, if he has judged this necessary or opportune (canon 1000).

653 VI. Spiritual exercises. 1. Those who are to be promoted to first tonsure and minor Orders are to spend at least three entire days in spiritual exercises; but those who are to be promoted to sacred Orders, at least six entire days. But if some within a half-year are to be promoted to several major Orders, the Ordinary can reduce the time of exercises for ordination to the Diaconate, yet not below three entire days (canon 1001, § 1). If some receive major Orders at a short interval, spiritual exercises for six entire days are always to be set before the sacred Order which is first to be conferred; before the other Orders, at least one day, if this can be done.[1]

2. If, after the exercises have been completed, sacred ordination is deferred beyond a half-year for any cause, the exercises are to be repeated; otherwise the Ordinary is to judge whether they are to be repeated or not (canon 1001, § 2). Ordinary is understood as the Ordinary of the place, and, if it is a question of an exempt clerical religious institute, the major Superior (canon 198).

3. Religious should perform these spiritual exercises in their own house or in another according to the prudent judgment of the Superior; seculars, however, in the Seminary or in another pious or religious house designated by the Bishop (canon 1001, § 3).

4. The Bishop is to be made certain of the spiritual exercises performed by testimony of the Superior of the house in which they were performed; or, if it is a question of religious, by attestation of the major Superior (canon 1001, § 4).

[1] Sacred Congregation for the Discipline of the Sacraments, April 27, 1928 (*A.A.S.* 1928, p. 359).

Part II. On the Rites and Ceremonies of Sacred Ordination

654 I. In conferring any Order whatever, the minister is to observe exactly the proper rites described in the Roman Pontifical or in other ritual books approved by the Church, which it is licit in no way to omit or invert (canon 1002).

II. The Mass of ordination or of episcopal consecration must always be celebrated by the minister of ordination or consecration himself (canon 1003).

III. If someone, already promoted to some Orders in the oriental rite, has obtained from the Apostolic See an indult for receiving higher Orders in the Latin rite, he must first receive in the Latin rite the Orders which he has not received in the oriental rite (canon 1004).

IV. New priests must recite the Mass together with the Bishop, beginning from the Oblation, or from the words *Suscipe Sancte Pater*. Those things which are sung by the Bishop are read by them.[1] Concerning the intention to be formed by them, see the treatise on the Holy Eucharist, n. 160.

V. All promoted to major Orders are bound by the obligation of receiving Holy Communion in the ordination Mass itself (canon 1005). Therefore those promoted to minor Orders are not bound by the obligation. For the rest, priests are certainly bound under grave obligation, since it is a question of completing the sacrifice by them; with respect to the others, the grave obligation is not sufficiently established (St. Alphonsus, VI, 801).

VI. The obedience which priests promise to the Bishop in ordination is understood as that which is owed according to the canons. Nevertheless, there remains for them the liberty of embracing the religious state, unless the Church would suffer grave detriment from the departure (St. Alphonsus, VI, 828),[2] or the ordinand, by institution of the Holy See, is bound by oath to devote his work to the good of his diocese or of the missions (canon 542, 1°).

VII. Finally, the minister of ordination at the end enjoins these things on the ordained: "Let each one promoted to first tonsure or to the four minor Orders say once the seven penitential psalms with the Litanies, versicles, and prayers. Those promoted to the Subdiaconate or Diaconate, the nocturn of that day. But those ordained to the Presbyterate, after your first Mass, say three other Masses, namely one of the Holy Spirit, another of Blessed Mary ever Virgin, and the third for the faithful departed." Now that by these words a true obligation is imposed seems to be deduced from the very tenor of the words and from the accurate assignment of the matter; but a grave obligation is not sufficiently signified (St. Alphonsus, VI, 829). For the rest, note:

1. By the Nocturn of that day is understood the single Nocturn of the feria or the first Nocturn of Sunday or of a feast, according as the ordination took place on a feria, feast, or Sunday; nevertheless the Bishop can also assign another Nocturn instead of the first.[3] For the Nocturn the Psalms with antiphons suffice, without readings, invitatory, and hymn.[4]
2. The Masses to be said must be votive Masses, unless a feast of the Blessed Virgin Mary occurs or the Mass to be said is of the Holy Spirit. They must be said, moreover, as soon as it is licit for them to be said. But since only the quality of the Mass is prescribed, the application is free and therefore a stipend can be received for them (St. Alphonsus, VI, 829).

[1] Sacred Congregation of Rites, November 12, 1831, ad 11, n. 2682; September 20, 1749, n. 2404.

[2] Benedict XIV, Constitution *Ex quo dilectus*, January 14, 1747.

[3] Sacred Congregation of Rites, June 27, 1899, n. 4042.

[4] Sacred Congregation of Rites, July 10, 1893.

Part III. On the Time and Place of Sacred Ordination

655 I. Time. 1. Episcopal consecration must be conferred within the solemnities of Masses, on a Sunday or on the birthday of the Apostles (canon 1006, § 1).

2. Ordinations in sacred Orders are to be celebrated within the solemnities of Masses on the Saturdays of the Four Times, on the Saturday before Passion Sunday, and on Holy Saturday (canon 1006, § 2). Yet if a grave cause intervenes, the Bishop can have them also on any Sunday or feast day of precept (canon 1006, § 3). A feast day of precept is understood, whether local or universal, even if it is not in force in the place of ordination; suppressed feast days are excluded, since in reality they are not feast days of precept.

3. First tonsure can be conferred on any day and hour; minor Orders on individual Sundays and double feasts, yet in the morning (canon 1006, § 4).

4. A custom against the times of ordinations prescribed in the preceding paragraphs is reproved; and these are also to be observed when a Bishop of the Latin rite, by apostolic indult, ordains a cleric of an oriental rite, or conversely (canon 1006, § 5). Now Regulars enjoy, whether directly or by force of communication, the privilege of receiving Orders, even sacred Orders, outside the times established by law.[1]

It is disputed, however, whether the privilege must be restricted to Sundays and feast days of precept, or can be extended to all days. Some teach that the privilege must be taken in the restricted sense, both because "in a general grant those things do not come which someone would not likely grant in particular";[2] and because from the responses of Sacred Congregations it is drawn that the words outside the times, where there is discussion of a faculty or indult, and therefore by parity of reason also where there is discussion of a privilege, must be taken in this sense: that nevertheless a Sunday or feast day of precept must be chosen,[3] yet a revoked feast is not excluded.[4] The said responses, as being particular and not published, indeed do not directly bind all others; nevertheless they seem to bind them indirectly, insofar as the sense of the privilege is drawn from them. Others judge that the privilege is extended to all days, since on the one hand the obvious sense of the words outside the times manifestly favors the more benign opinion, and on the other hand the sense of the privilege is not drawn with sufficient certainty from the said responses of the Sacred Congregations, which are particular and not published, nor expressly speak about privilege. While the doubt stands, since it is a question of a privilege, we adhere in practice to the more benign opinion (cf. canon 68).

It is further disputed what sort of feast days are understood if some privilege is expressly restricted to feast days. Some think that any double feast is also understood, both because days of this kind also come under the name feast in the Liturgy. But more probably only feast days of precept are understood, yet including revoked feasts. The reason is that only these are called feast days in Canon Law, as is drawn both from the Council of Trent[5] and from several responses of Sacred Congregations[6] (St. Alphonsus, VI, 797, dub. 4; *De privilegiis*, n. 116).

[1] Sixtus IV, Constitution *Sedes Apostolica*, February 1, 1476; Pius V, Constitution *Religionis zelus*, March 30, 1571.

[2] Rule of Law 81 in VI.

[3] Cf. Gasparri, cited work, nn. 52 and 72.

[4] Sacred Congregation of Rites, November 2, 1831; Sacred Congregation of Propaganda Fide, July 19, 1838 (*Collectio*, n. 873).

[5] Session 24, cap. 1, *De reformatione*.

[6] In *Nouvelle Revue Theologique* 1883, p. 387, 495; cf. Aertnys-Damen, II, 578, qu. 2°.

656 II. Place. 1. A Bishop outside his proper territory, without the permission of the Ordinary of the place, cannot confer Orders in whose conferral pontificals are exercised, with the prescription of canon 239, § 1, n. 15 remaining intact[1] (canon 1008). Now to exercise pontificals in law is to perform sacred functions which, from liturgical laws, require pontifical insignia, that is, the staff and miter (canon 337, § 3). But pontifical insignia are required in the conferral of first tonsure and minor Orders when they are conferred within the solemnities of Masses.

2. General ordinations are to be publicly celebrated in the cathedral church, the canons of the church being called and present; but if in another place of the diocese, the clergy of the place being present, the more worthy church, insofar as it can be done, should be approached. But the Bishop is not prohibited, if a just cause persuades, from having particular ordinations also in other churches and likewise in the oratory of the episcopal house, or of the Seminary, or of a religious house (canon 1009, §§ 1 and 2). General ordinations are those which, for all suitable persons who desire to be ordained, take place at the times established by law, that is, on the Saturdays of the Four Times, on the Saturday before Passion Sunday, and on Holy Saturday (canon 1006, § 2); likewise, as some add, considering canon 1006, § 3, on any Sunday or feast day of precept.[2] Particular ordinations are those which are done outside the times established by law, or at least are not conferred for all suitable persons who desire to be ordained.

3. First tonsure and minor Orders can also be conferred in private oratories (canon 1009, § 3).

[1] Considering the cited canon, Cardinals enjoy the faculty of performing pontificals with throne and baldachin in all churches outside the City, after the Ordinary has been forewarned, if the church is a cathedral.

[2] Vermeersch-Creusen, *Epitome Iuris Canonici*, II, 270.

Part IV. On the Notation and Testimony of Ordination Performed

657 I. When the ordination has been completed, the names of the individual ordained persons and of the ordaining minister, the place and day of ordination, are to be noted in a special book, to be diligently kept in the Curia of the place of ordination, and all the documents of the individual ordinations are to be accurately preserved (canon 1010, § 1).

II. To each of the ordained there is to be given an authentic testimony of the ordination received; those who have been promoted by an outside Bishop with dimissorial letters are to show it to their proper Ordinary for the notation of the ordination in a special book to be preserved in the archive (canon 1010, § 2).

III. Furthermore, the local Ordinary, if it is a question of those ordained from the secular clergy, or the major Superior, if of religious ordained with his dimissorial letters, is to transmit notice of the celebrated ordination of each subdeacon to the pastor of baptism, who is to note it in his book of the baptized (canon 1011).

Scholion. On Penal Sanctions

658 The following are established:

I. With respect to the minister. They incur by the fact itself suspension for a year from conferral of Orders, reserved to the Apostolic See: 1° those who have ordained another's subject without the dimissorial letters of the proper Ordinary; 2° those who have ordained their own subject, who stayed elsewhere for so much time that he could have contracted a canonical impediment there, without due testimonial letters; 3° those who have promoted someone to major Orders without a canonical title; 4° those who, without prejudice to legitimate privilege, have promoted a religious belonging to a family which is outside the territory of the ordaining Bishop himself, even with dimissorial letters of the proper Superior, unless it has been legitimately proved that some one of the cases occurs of which in canon 966[1] (canon 2373).

II. With respect to the subject. 1. They contract by the fact itself suspension from divine things, reserved to the Apostolic See, who presume to receive Orders from one excommunicated, suspended, or interdicted after a declaratory or condemnatory sentence, or from a notorious apostate, heretic, or schismatic; but one who in good faith has been ordained by any of these persons lacks the exercise of the Order thus received until he is dispensed (canon 2372). Dispensation from this suspension must be sought from the Holy Office, but it is scarcely, or hardly at all, granted.

2. One who maliciously approaches Orders without letters, or with false dimissorial letters, or before the canonical age, or by leap, is by the fact itself suspended from the Order received; but one who does so without testimonial letters, or while held by some censure, irregularity, or other impediment, is to be punished with grave penalties according to the circumstances of things (canon 2374).

III. With respect to minister and subject. 1. A Bishop consecrating someone as Bishop, the assisting Bishops or, in place of Bishops, the assisting priests, and the one who receives consecration without an apostolic mandate, are suspended by the law itself until the Apostolic See has dispensed them (canon 2370).

2. All, even those increased with episcopal dignity, who knowingly have promoted to Orders through simony or have been promoted, or have ministered or received other sacraments, are suspected of heresy; clerics, furthermore, incur suspension reserved to the Apostolic See (canon 2371).

IV. With respect to others. 1. A Vicar Capitular granting dimissorial letters for ordination against the prescription of canon 958, § 1, n. 3,[2] by the fact itself lies under suspension from divine things (canon 2409).

2. Religious Superiors who, against the prescription of canons 965-967,[3] have presumed to send their subjects to an outside Bishop to be ordained, are by the fact itself suspended for a month from the celebration of Mass (canon 2410).

[1] Cf. n. 602.

[2] Cf. n. 601.

[3] Cf. n. 602.

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. Betrothals[1] 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:

α) 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:

α) 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 resolutory 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).

669

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 resolutory,[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 irrescindable, 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 place[1] 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 XI[8] 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 quality[2] 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 judges[3] 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:

α) 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 irrescindable, 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:

α) 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 past[1] or the present[2] 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 necessary[3], 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:

α) 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 base[6] 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 reproved 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 appositis 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. *Ebenburtigkeit*.

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 accessorily, 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 Office[4] 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 XIII[7] 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 XI[9] 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 III[6] 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 law[10] 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 Pontiffs[23] 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 Fide[2] 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 Jesus[19] 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 Trent[4] 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 invalid[5] (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

Office[6] 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 infancy[1] 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 Commission[5] 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 Ritual[3] 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 Office[1] 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 firm[1] (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 Ritual[4] 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 impedient 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 impedient and diriment. An impedient 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, impedient 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 impedient 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 impedient 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 Office[1] 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 XIII[1] 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 vow[2] 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 impedient 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 Fide[11] 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 Office[15] 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 Office[16] 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 Dioecesana*, 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 itself 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 law[3] 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 spermatozoids 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 atrophied[7] 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 Sacraments[11] 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 hermaphrodites[13] 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 sister[2] (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, 1922[2] - 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 fur 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 natural[2] 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 72[3] 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 tacitly[1] 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

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      1
      2 Luke
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1 Rose 1 1 (1) Mark 1 1 (2) Andrew ..... X ..... Clara 2

3 Mary

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           (3) Lucius 3
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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, Urgrossvater*) and Great-great-grandmother (*bet-overgrootmoeder, trisnonna* or *trisavola, trisaieule, grand great-grandmother, Urgrossmutter*).

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-grandson[1] (*abnepote, bisarriere petit-fils, grand great-grandson, Ururenkel*) and Great-great-granddaughter[1] (*abnepote, bisarriere petite-fille, grand great-granddaughter, Ururenkelin*).

III. In the equal collateral line.

1. Brother and sister.[2]
2. *Patrueles* = 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 XIII[3] for Indians and Negroes[4] 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 Office[1] 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*).

Fratria = 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 Brixiensis 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 marriage[3] (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 fur 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 Sacraments[3] 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 matrimoniis 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 impedient. 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 composition[1] 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 required[5] (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 impedient 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 offspring[2] (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.

Book IV. On the Sanction of Christian Life, or on Ecclesiastical Penalties

(St. Alphonsus, *Theologia Moralis*, book VII, nn. 1-340; *Homo Apostolicus*, tract 19, nn. 1-71).[1]

After in special moral theology we have treated of the due cultivation of virtues and of the principal means of obtaining the graces necessary for exercising this cultivation, there remains to be explained in what way the Church strives to sanction the observance of virtues and of means, or to coerce transgressions of precepts by established penalties. First and by way of preliminary, however, we will speak of those things which the Church punishes, or of delicts; then of the penalties by which she punishes delicts.

[1] Wernz, *Ius Decretalium*, VI; Hollweck, *Die kirchlichen Strafgesetze*; Chelodi, *Ius poenale*; Sole, *De delictis et poenis*; Lega, *De delictis et poenis*; Noldin-Schoenegger, *De poenis ecclesiasticis*; Vermeersch-Creusen, *Epitome Iuris Canonici*, III, n. 382 sq.

Treatise I. On Delicts

We will treat first of delict considered in itself; then of the juridic effects of delict; to these we will add a scholion on attempted delict.

Dissertation I. On Delict Considered in Itself

Part I. Summary Exposition

846 I. Nature. By the name of delict in ecclesiastical law is understood an external and morally imputable violation of law to which there has been added at least an indeterminate canonical sanction (canon 2195, § 1). By these words are indicated the three constitutive parts of a delict, namely: 1° violation of a canonically sanctioned law (the legal part); 2° external violation (the objective or social part); 3° morally imputable violation (the formal or subjective part).

1. Violation of law, that is, of a natural law or divine-positive law or ecclesiastical law. To the external and morally imputable violation of a canonically sanctioned precept the same things are applied which are said of delicts, unless something else appears from the circumstances (ibid., § 2). Moreover, violation of a canonically sanctioned law is required, because otherwise the Law does not speak of delict, but of mere transgression (cf. canon 2222, § 1).
2. External; for only an external sin violates, by reason of damage, as it is said, that is, either scandal or material damage, the social order of the Church, which alone merely ecclesiastical legislation regards. That an external but occult act, such as the secret utterance of heresy, is not perceived in the social order and therefore perhaps inflicts no damage on society, is incidental.
3. Morally imputable. What moral imputability is, see volume I, n. 58. By this property canonical delict differs from civil delict, which admits merely juridic fault. When and to what extent a delict is imputable will be said in Part II.

II. Quality and quantity. The quality of a delict is to be taken from the object of the law (canon 2196). Laws differ specifically according to the diverse formal motives from which they were issued; wherefore delicts differ specifically according to the diverse formal motive of the penal laws violated (cf. *Theologia Fundamentalis*, p. 299). The quantity of a delict must be measured not only from the diverse gravity of the law injured, but also from the greater or lesser imputability or damage inflicted (canon 2196), that is, from the three constitutive parts of the delict (cf. p. 703).

III. Division. From canon 2197 a delict is:

1. Public, if it has already been divulged, or happened or exists in such circumstances that it can and must prudently be judged that it will easily be divulged; that is, if it is such that it is about to become known, at least as an external fact, even if not as imputable, with the character and purpose of the persons who know the delict considered.
2. Notorious by notoriety of law, after the sentence of a competent judge which has passed into a judged matter,[1] or after the confession of the delinquent made in court according to the norm of canon 1750.[2]
3. Notorious by notoriety of fact, if it is publicly known and committed in such circumstances that it can be concealed by no tergiversation and excused by no suffrage of law.
4. Occult, which is not public; materially occult, if the delict itself is hidden; formally occult, if its imputability is hidden.

Note. A delict which injures only the law of the Church, by its nature only ecclesiastical authority prosecutes, with the help of the secular arm sometimes being required where the same authority has judged this necessary or opportune; a delict which injures only the law of civil society, by proper right

and with the prescription of canon 120 preserved, civil authority punishes, although the Church is also competent over it by reason of sin; a delict which injures the law of both societies can be punished by each power (canon 2198). But in delicts of mixed forum Ordinaries should regularly not proceed when the guilty person is a layman and the civil magistrate, taking action against the guilty person, provides sufficiently for the public good (canon 1933, § 3).

[1] From canon 1902, a matter is considered judged: 1° by a double conforming sentence; 2° by a sentence not appealed within the useful time, or which, although appealed before the judge *a quo*, was deserted before the judge *ad quem*; 3° by a single definitive sentence from which no appeal is given according to the norm of canon 1880.

[2] Canon 1750 declares: The assertion concerning some fact, in writing or orally, made by one party against himself and for the adversary before a judge, either spontaneously or when the judge interrogates, is called a judicial confession.

Part II. Fuller Exposition

A fuller exposition of delict consists in a fuller explanation of the principal element by which delict is constituted, namely, imputability.

847 I. The formal causes of imputability are: 1° the malice of the delinquent; 2° the fault of the delinquent, whether in ignorance of the law or in omission of the diligence required so that the law may be observed (canon 2199).

1. Malice here is the deliberate will of violating the law; to it is opposed, on the part of the intellect, defect of knowledge, and on the part of the will, defect of liberty. Once the external violation of law has been posited, malice is presumed in the external forum until the contrary is proved (canon 2200).

Corollary I. Those who actually lack the use of reason are incapable of delict (canon 2201, § 1). The reason is that deliberation is absent.

Corollary II. Those habitually insane, although at times they have lucid intervals or seem sane in certain reasonings or acts, are nevertheless presumed incapable of delict (canon 2201, § 2). The reason is that deliberation in them is presumed to be absent until it is proved to be present.

Corollary III. A delict committed in voluntary drunkenness does not lack some imputability (canon 2201, § 3). This is clear if drunkenness does not wholly take away the use of reason; but if it wholly takes it away, the delict is imputed if it was foreseen at least in some measure (vol. I, n. 60). Besides, the imputability of a delict committed in voluntary drunkenness is less than when the same delict is committed by one who is fully master of himself, unless, however, drunkenness was sought precisely for perpetrating or excusing the delict. But when law is violated in involuntary drunkenness, imputability is wholly absent if drunkenness wholly takes away the use of reason; it is diminished if it takes it away only in part. The same should be said of other similar disturbances of mind (canon 2201, § 3), for example from morphine.

Corollary IV. Weakness of mind diminishes the imputability of a delict, but does not wholly remove it (canon 2201, § 4).

2. Ignorance of the violated law influences the imputability of the transgression in this way:

a) Inculpable ignorance removes the imputability of the transgression and consequently the delict (canon 2201, § 1).

b) Culpable ignorance diminishes imputability more or less according to the culpability of the ignorance itself (cited canon). Nevertheless, concerning affected ignorance it is disputed whether it increases or diminishes imputability (vol. I, n. 32).

Note 1. Ignorance of the penalty alone does not remove the imputability of the delict, but diminishes it somewhat (canon 2202, § 2).

Note 2. Those things which are established concerning ignorance, whether of the law or of the penalty, also hold concerning inadvertence[1] and concerning error[2] (canon 2202, § 3); likewise concerning ignorance of fact, for instance if someone strikes a cleric whom he certainly or probably holds to be a layman.

Note 3. Ignorance, or inadvertence or error concerning law or penalty or fact, is generally not presumed (canon 16, § 2).

3. Omission of due diligence. If someone has violated the law from omission of due diligence, the imputability is diminished in the manner to be determined from the circumstances by a prudent judge; but if he foresaw the matter and nevertheless omitted the cautions for avoiding it which any diligent person would have used, the fault is proximate to malice (canon 2203, § 1). Moreover, a fortuitous case which cannot be foreseen, or which when foreseen cannot be met, exempts from any imputability (canon 2203, § 2).

[1] It is actual ignorance in one who enjoys habitual knowledge.

[2] It is positive ignorance, or ignorance joined with the admission of what is false.

848 II. The causes modifying imputability are enumerated by the Code:

1. Minority. Minor age, unless something else is established, diminishes the imputability of a delict, and the more so the closer it approaches infancy (canon 2204). Moreover, moral persons (canon 100, §§ 1 and 2) are equated with minors also as regards imputability (cited canon, § 3).
2. Physical force which takes away every faculty of acting altogether excludes delict (canon 2205, § 1).
3. Grave fear, even only relatively grave, necessity, and even grave inconvenience, usually wholly remove delict if there is question of merely ecclesiastical laws. The said causes indeed diminish the imputability of the delict but do not remove it if the act is intrinsically evil or tends toward contempt of the faith or ecclesiastical authority or toward damage of souls (canon 2205, §§ 2 and 3).
4. Just defense. The cause of legitimate defense against an unjust aggressor, if due moderation is observed, wholly removes delict; otherwise it only diminishes imputability, as also does the cause of provocation (canon 2205, § 4), namely, one who provokes the aggressor also exceeds the moderation of defense. Besides, in excess of defense, not so rarely all fault is lacking.
5. Passion, if it has been voluntarily and deliberately excited or nourished, rather increases imputability; otherwise it diminishes it more or less according to the diverse heat of passion; and it wholly removes imputability if it precedes and impedes every deliberation of mind and consent of will (canon 2206).
6. Besides other aggravating circumstances,[1] a delict is increased: 1° according to the greater dignity of the person who commits the delict or who is offended by the delict; 2° from abuse of authority or office for perpetrating the delict (canon 2207).
7. Falling again into delict. A recidivist in the sense of the law is one who, after condemnation, again commits a delict of the same kind and in such circumstances of matters and especially of time that his pertinacity in evil will can prudently be conjectured (canon 2208, § 1). Moreover, one who has offended several times, even in a different kind, increases his culpability (canon 2208, § 2).

[1] Therefore the enumeration is not taxative.

849 III. Imputability of cooperators. In order that cooperation be canonically imputed, some malice or fault and some external influence upon the external fact of the delict are required. Concerning malice

and fault, let the things said above be applied; concerning external influence, it must be noted that this is physical or moral, necessary or non-necessary, principal or accessory, positive or negative. Moreover, according to the varying influence upon the delict, the imputability of cooperators is varied as follows:

1. Those who with a common plan of delinquency physically concur together in a delict are all held guilty in the same way, unless the circumstances increase or diminish the culpability of someone (canon 2209, § 1).
2. In a delict which by its nature demands an accomplice, as for example a duel, each party is culpable in the same way, unless something else appears from the circumstances (canon 2209, § 2).
3. Of themselves, both the one mandating, who is the principal author of the delict, and others who induce to the consummation of the delict by persuading, consenting, or morally influencing in some other way, or who concur in this in any way whatever, for instance by physically cooperating, contract imputability not less than the executor of the delict, if the delict would not have been committed without their work (canon 2209, § 3), that is, if their influence was necessary.
4. If the influence of the aforesaid persons was not necessary but only rendered the delict easier, as one which would have been committed even without their concurrence, it carries with it lesser imputability (canon 2209, § 4).
5. One who has fully withdrawn his influence in perpetrating the delict by an opportune retraction is freed from all imputability, even if the executor nevertheless perpetrated the delict for other causes proper to himself; if he has not withdrawn it fully, retraction diminishes culpability but does not remove it (canon 2209, § 5). It is said "by an opportune retraction," namely one which is made at an opportune time and in an efficacious way. It is disputed whether retraction reinforced by arguments sufficiently destroys the influence of clothed counsel. It is probably affirmed (vol. I, n. 1000); wherefore in the case the executor must be judged to offend for causes proper to himself. But if the influence cannot be withdrawn unexpectedly, nevertheless an inculpably inefficacious retraction removes culpable participation in the consummated delict and consequently the imputability of this; but the culpable attempt of the delict remains (cf. n. 851), and, if the case bears it, some imputability for the damage and scandal which followed (canons 2213, § 3; 2235).
6. One who concurs in a delict only by neglecting his office is held by imputability proportioned to the obligation by which he was bound to impede the delict by his office (canon 2209, § 6).
7. Praise of a perpetrated delict, participation in its fruits, concealment and harboring of the delinquent, or other acts following upon a delict already fully completed: 1° can constitute new delicts, if namely they are punished by a penalty in law; besides, 2° they carry with them the imputability of the perpetrated delict if agreement had been made with the delinquent concerning those acts before the delict (canon 2209, § 7).

Dissertation II. On the Juridic Effects of Delict

850 I. From delict, with canon 2210 considered, there arises:

1. A penal action for declaring or inflicting a penalty and for seeking satisfaction.
2. A civil action for repairing damages, if the delict has inflicted damage on anyone. The canonists treat of these matters more broadly according to canons 1552-1959, on trials; only let canon 2210, § 2 be noted: The same judge in a criminal trial can at the instance of the injured party call the civil action to examination and define it.

II. All who concur in a delict according to the norm of canon 2209, §§ 1-3 (n. 849, 1, 2, 3), are held by obligation in solidum of repairing the expenses and damages which have befallen any persons whatever from the delict, although they have been condemned by the judge pro rata (canon 2211).

Scholion. On Attempted Delict

851 I. Notion. Whoever posits or omits acts which by their nature lead to the execution of a delict, but does not consummate the delict, commits an attempt of delict, whether because he deserted his plan or because he could not complete the delict on account of insufficiency or ineptitude of the means (canon 2212, § 1). It is said "acts which by their nature lead"; wherefore merely preparatory acts, such as buying poison or removing impediments, are not an attempt of delict. For this, namely, there is required the execution of the delict itself begun, as is said in canon 2213, § 3. If, all acts having been posited or omitted which by their nature lead to the execution of the delict and suffice for completing the delict, the effect has not followed from another cause, apart from the will of the agent, the attempt of delict is called by its proper name a frustrated delict (canon 2212, § 2). Finally, to the attempt of delict there approaches, and is juridically equated, the action of one who has tried to induce another to commit a delict, but ineffectively (canon 2212, § 3). Moreover, an attempted delict is not always a delict, but only if the attempt of delict is fined by a particular penalty in the law (ibid., § 4). Nevertheless, even a simple attempt of delict and a frustrated delict can be punished by force of canon 2235, as will be said below.

II. The imputability of attempt is less than that of the delict; however, it grows the more it approaches consummation (canon 2213, § 1). Likewise, a frustrated delict is more culpable than a simple attempt of delict (canon 2213, § 2). But one who spontaneously desists from the execution of the delict begun is freed from all imputability, if no damage or scandal has arisen from the attempt (canon 2213, § 3); otherwise this is imputed to him. Likewise, the execution of the delict begun, which by force of the legal sanction is a delict, is imputed also as such (canon 2212, § 4); wherefore, notwithstanding cessation from executing the deed, a penalty *latae sententiae* has already been contracted.

Treatise II. On the Penalties of Delict

We will treat first of penalties in general; then of penalties in species; then of penalties established for individual delicts.

Dissertation I. On Penalties in General

852 I. To the Church belongs the right, and that native and proper, and independent of any human authority, of coercing delinquents subject to her by penalties, both spiritual and even temporal (canon 2214, § 1). This is drawn from Sacred Scripture;[1] from the practice of the Apostles[2] and of the Church, even as regards temporal penalties;[3] from the Council of Trent;[4] from the nature of the Church, which is a perfect society and therefore enjoys legislative power. But legislative power carries with it coercive power, or the power of sanctioning laws, since without it legislative power would be unsuitable for securely attaining the end.

II. In the use of coercive power, the warning of the Council of Trent should be kept before one's eyes:[5]

"Let Bishops and other Ordinaries remember that they are pastors, not beaters, and that they ought so to preside over those subject to them that they do not dominate over them, but love them as sons and brothers, and labor by exhorting and warning to deter them from illicit things, lest, when they have offended, they be forced to coerce them with due penalties. Nevertheless, if it should happen that they sin in something through human frailty, that precept of the Apostle is to be observed by them, that they reprove, entreat, and rebuke them in all goodness and patience, since often benevolence does more toward correcting than austerity, exhortation more than threat, charity more than power. But if, on account of the gravity of the delict, the rod will be necessary, then rigor is to be used with meekness, judgment with mercy, severity with gentleness, so that discipline, salutary and necessary for the peoples, may be preserved without harshness, and those who have been corrected may be amended, or, if they are unwilling to come to their senses, others may be deterred from vices by the salutary example of action taken against them" (canon 2214, § 2).

With these things noted beforehand, we will speak first of the notion, division, imposition, and interpretation of penalties; then of the Superior having the power of punishing; then of the subject liable to the power of punishing; finally of the remission of penalties.

[1] Matthew 18:17-18.

[2] 1 Corinthians 5:3-5; 2 Thessalonians 3:14, etc.

[3] Whether the Church can punish certain most grave delicts with death or mutilation is disputed. More commonly it is denied, nor in her own forum has she ever used this power.

[4] Session 7, canon 14; session 14, canon 4; session 25, chapter 14, etc.

[5] Session 13, chapter 1.

Part I. On the Notion, Division, Imposition, and Interpretation of Penalties

853 I. Notion. An ecclesiastical penalty is the privation of some good, inflicted by legitimate authority for the correction of the delinquent and the punishment of the delict (canon 2215). It is said:

1. Of some good, that is, either spiritual or temporal or mixed, as a benefice is.
2. For the correction of the delinquent and the punishment of the delict. The amendment of the delinquent is not always the primary end of an ecclesiastical penalty, although the Church always ultimately intends the salvation of souls, and consequently also the amendment of delinquents. But proximately, besides amendment, she intends: to repair the injured order by taking vengeance concerning the delict; to render the delinquent incapable of further damage; to effect that others may have fear.

II. Division. Penalties are distinguished:

1. By reason of the primary end, into medicinal penalties or censures, vindicative penalties, and penal remedies and penances (canon 2216). Medicinal penalties or censures primarily intend the amendment of the delinquent. Vindicative penalties primarily regard vengeance concerning the delict. Penal remedies intend to forestall true delicts or further delicts; hence they either suppose only a transgression which nevertheless does not reach the nature of a delict, or regard a delict perhaps to be perpetrated, but not one already perpetrated. Especially under this head they are not penalties in the proper sense.
2. By reason of determination, a penalty is called determinate if it is established taxatively in the law itself or precept; indeterminate if it is left to the prudent judgment of the judge or Superior, whether by preceptive or facultative words (canon 2217, § 1, 1°).
3. By reason of the mode by which it is inflicted, a penalty is called *latae sententiae* if a determinate penalty has been added to the law or precept in such a way that it is incurred by the very fact of the delict committed, that is, without a condemnatory sentence or a new precept of infliction; nevertheless, a declaratory sentence is sometimes added, as will be said below. It is *ferendae sententiae* if it must be inflicted by a judge or Superior (canon 2217, § 1, 2°), namely through a condemnatory sentence or in the manner of a particular precept. It is clear that an indeterminate penalty is always *ferendae sententiae*.
4. By reason of the author, a penalty is called *a iure*, by law, if a determinate penalty is established in the law itself, whether it is *latae sententiae* or *ferendae*; *ab homine*, by man, if it is issued in the manner of a particular precept or by a condemnatory judicial sentence, even if established in the law. Wherefore a determinate penalty *ferendae sententiae*, added to a law, before the condemnatory sentence is only *a iure*; afterward it is at once *a iure* and *ab homine*, but is considered as *ab homine* (canon 2217, § 1, 3°). On this consideration depends the competence of remitting the penalty, as will be explained. A penalty *latae sententiae* to which a declaratory sentence has been added remains *a iure*.

The question whether a penalty established neither by law nor in the manner of a particular precept, but by a general precept, is *a iure* or *ab homine* is not solved by the Code. The more common opinion

holds that it is *a iure*; and this is therefore also preferable, because it is the more benign interpretation (cf. canon 2219, § 1).

Note. A penalty is always understood as *ferendae sententiae*, unless it is expressly said that it is *latae sententiae* or contracted *ipso facto* or *ipso iure*, or unless other similar words are used (canon 2217, § 2).

III. Imposition of penalty. 1. In decreeing penalties, an equitable proportion with the delict is to be observed, with account taken of imputability, scandal, and damage; wherefore there must be considered not only the object and gravity of the law, but also the age, knowledge, training, sex, condition, state of mind of the delinquent, the dignity of the person who is offended by the delict or who commits the delict, the intended end, the place and time in which the delict was committed, whether the delinquent acted from an impulse of passion or on account of grave fear, whether he repented of the delict and himself strove to avoid its evil effects, and other similar things (canon 2218, § 1).

2. Not only those things which excuse from all imputability, but also those which excuse from grave imputability, likewise excuse from any penalty, both *latae* and *ferendae sententiae*, even in the external forum, if the excuse is established for the external forum (canon 2218, § 2), that is, proved.

3. A penalty should not be inflicted in the case of equal mutual injury; for, as canon 2218, § 3 has it: Mutual injury is compensated, unless one party must be condemned on account of the greater gravity of the injury inflicted by the same party, with the penalty diminished if the case bears it.

IV. Interpretation of penalty. In penalties the more benign interpretation is to be made (canon 2219, § 1). And canon 19 says: Laws which establish a penalty are subject to strict interpretation. Hence:

1. In a doubt of law concerning the existence of a penalty, namely, whether a certain penal law regards the fact perpetrated here and now, that penalty, if it is *latae sententiae*, is not incurred; if *ferendae*, it should not be inflicted. In a doubt of law concerning the quality of the penalty, namely, whether the law contains a penalty *latae* or *ferendae sententiae*, the penalty should be understood as *ferendae sententiae*; whether it is *a iure* or *ab homine*, it should be understood as *a iure*.[1] In a doubt of law concerning the quantity of one penalty, namely, whether the law prescribes a graver or a lighter penalty, the milder one should rather be decreed. In a doubt of law concerning the number of penalties, namely, whether one penalty or several penalties are to be applied, only one penalty is to be applied. But if it is doubted whether a penalty inflicted by a competent Superior is just or not, the penalty must be observed in each forum, except in the case of an appeal in suspensive. But a manifestly unjust penalty, as regards substance, and therefore manifestly invalid, is to be sustained in neither forum. On a doubt of fact, see n. 858.

[1] A doubt of law in this matter exists concerning a general penal precept, as was said above.

Part II. On the Superior Having the Power of Punishing

854 Ecclesiastical penal law treats only of a Superior who enjoys jurisdiction to be exercised in the external forum of the Church.[1] Moreover, insofar as this jurisdiction regards penalties, it is distinguished as twofold: non-judicial or voluntary, and judicial or necessary. The former in Penal Law confers the power of establishing penalties and applying them outside trial; the latter furnishes the power of applying, according to the norm of Law and indeed in trial, legitimately established penalties (cf. canon 2220, § 1).[2] With these things noted, we will speak first of the Superior having non-judicial jurisdiction, then of the Superior having judicial jurisdiction.

[1] In the internal forum the Church judges by a power not proper, but vicarious.

[2] Nevertheless you should not understand these things as if one who enjoys non-judicial jurisdiction of himself lacks judicial jurisdiction.

Section I. On the Superior Having Non-Judicial Jurisdiction

855 I. Superiors enjoying non-judicial jurisdiction are all and only those who possess the power of issuing laws or imposing precepts (canon 2220, § 1). Of this kind is, for example, the Ordinary of the place; but not the Vicar General without a special mandate. Whether or not a religious Superior also enjoys non-judicial jurisdiction depends on the question whether or not he can impose precepts by power of jurisdiction;[1] concerning this compare vol. I, n. 108.

II. Scope of non-judicial jurisdiction. 1. A Superior enjoying non-judicial jurisdiction can attach penalties to a law or precept issued by himself or by his predecessors (canon 2220, § 1). Besides, those who enjoy legislative power can furthermore, within the limits of their jurisdiction and on account of peculiar circumstances, fortify with a fitting penalty both divine law and ecclesiastical law issued by a higher power and in force in the territory, or aggravate the penalty established by law (canon 2221).

2. Even if no penalty has been annexed to a law, nevertheless a legitimate Superior enjoying non-judicial jurisdiction can, even without previous threat of a penalty, punish transgressions of the law with some just penalty if scandal perhaps given or the special gravity of the transgression bears this; otherwise the guilty person cannot be punished unless he has first been warned with the threat of a penalty *latae* or *ferendae sententiae* in the case of transgression and nevertheless, with grave fault according to canon 2218, § 2, has violated the law (canon 2222, § 1). The same must be said concerning inflicting a penalty graver than that indicated by statute or threat; namely, it cannot be inflicted except in a case of scandal or special gravity.

3. Even if it is only probable that a delict has been committed, or if the penal action for a certainly committed delict is prescribed (cf. canon 1703), nevertheless the same legitimate Superior has not only the right but also the office of not promoting a cleric concerning whose suitability there is no certainty, and, for avoiding scandal, of prohibiting the cleric the exercise of the sacred ministry or even of removing the same from office according to the norm of law. All these things in the case do not have the character of penalty (canon 2222, § 2). Otherwise, in the case of a merely probable delict (canon 2233, § 1) or of a prescribed penal action (canon 1703), he cannot inflict a penalty.

4. Finally, the same legitimate Superior can apply a penalty: either 1° outside trial by precept according to these words of canon 1933, § 4: Penance, penal remedy, excommunication, suspension, and interdict, provided the delict is certain, can also be inflicted in the manner of a precept outside trial; or 2° in trial by judicial sentence. Moreover, in order that a delict fall under criminal trial, it must be public (canon 1933, § 1); but when one must proceed against clerics according to canons 2168-2194, this is to be done outside trial, although the delicts are public (canon 2225).

Note. If a penalty *latae* or *ferendae sententiae* has been inflicted in the manner of a particular precept, it should ordinarily be declared or imposed in writing or before two witnesses, with the causes of the penalty indicated, preserving the prescription of canon 2193 (canon 2225), that is, unless "suspension from informed conscience" is inflicted (cf. n. 888).

[1] He can do this without doubt by dominative power; to this power also belongs coercive or punitive power. But this power of punishing is not touched upon in ecclesiastical Penal Law.

Section II. On the Superior Having Judicial Jurisdiction

856 First recall that judicial jurisdiction must be exercised in trial. Moreover:

I. In applying penalties, the judge cannot increase a determinate penalty unless extraordinary aggravating circumstances demand this (canon 2223, § 1). Thus the general rule. More specifically:

II. If the penalty is *ferendae sententiae*, these things are to be observed:

1. If the law in establishing a penalty *ferendae sententiae* uses facultative words, it is committed to the prudence and conscience of the judge to inflict it or, if the penalty was determinate, to temper it (canon 2223, § 2).
2. But if the law uses preceptive words, ordinarily the penalty must be inflicted; but it is committed to the conscience and prudence of the judge or Superior: 1° to defer the application of the penalty to a more opportune time, if greater evils are foreseen to be going to come from too hasty punishment of the guilty person; 2° to abstain from inflicting the penalty if the guilty person has been perfectly amended and has repaired the scandal, or has been sufficiently punished or is foreseen to be going to be punished by penalties sanctioned by civil authority; 3° to temper the determinate penalty, or in its place to employ some penal remedy or enjoin some penance, if a circumstance is given which notably diminishes imputability, or if indeed amendment of the guilty person is had or chastisement has been inflicted by civil authority, but the judge or Superior besides judges some milder punishment opportune (canon 2223, § 3; cf. canon 2309, § 4).[1]

Note. When a determinate vindicative penalty has been inflicted by condemnatory sentence, the judge can sometimes suspend its execution according to the norm of canon 2288 (n. 889). Hence in canon law the institution of "conditional condemnation" is assumed.

III. If the penalty is *latae sententiae*, it is indeed contracted at once; but sometimes there is given a sentence which is called declaratory, by which it is authoritatively declared that the delict has been perpetrated and consequently that the penalty has been contracted.[2] Moreover, to declare a penalty *latae sententiae* is generally committed to the prudence of the Superior; but whether at the instance of the party whose interest it is, or when the common good so requires, a declaratory sentence must be given (canon 2223, § 4).

IV. Concerning the number of penalties the Code establishes:

1. Ordinarily there are as many penalties as delicts (canon 2224, § 1). Moreover, even with ecclesiastical Penal Law considered, one commits a multiple delict: 1° who violates diverse penal laws, whether by one act or by several; but not one who once violates a law issued by several Superiors; 2° who violates a penal law through morally distinct acts (vol. I, n. 253 sq.).

It is disputed: 1° concerning him who violates a penal law through one morally single act, physically multiple, toward diverse persons, for example, one who from the same purpose steals successively but without moral interruption from several persons; 2° concerning him who violates a penal law through one morally single act, physically multiple, several times perfectly consummating the delict itself, for example, one who from the same impulse of passion several times commits carnal sacrilege by copula with the same person;[3] 3° concerning him who violates a penal law through one single physical act toward diverse persons, for example, one who by one physical act kills several clerics. But since, where there is question of penalties, the more benign side prevails, in disputed cases penalties are not to be multiplied.

2. If, however, on account of the number of delicts, there would be an excessive accumulation of penalties to be inflicted, it is left to the prudent judgment of the judge either to inflict the gravest penalty of all, with some penance or penal remedy added if the matter bears it, or to moderate the penalties within equitable bounds, with account taken of the number and gravity of the delicts (canon 2224, § 2).

3. Finally, if a penalty has been constituted both for an attempt of delict and for the consummated delict, when the latter has been admitted, only the penalty established for the consummated delict must be inflicted (canon 2224, § 3). It is said "inflicted"; for when, on account of the attempt, a penalty has already been contracted, and after a moral interruption the delict is consummated, the penalty established for this delict is also contracted. Otherwise, however, if the attempt and consummation coalesce into one.

Note. If a penalty is declared or inflicted by judicial sentence, the prescriptions of the canons concerning the pronouncing of a judicial sentence are to be observed; but if, as was already noted on p. 714, a penalty *latae* or *ferendae sententiae* has been inflicted in the manner of a particular precept, it should ordinarily be declared or imposed in writing or before two witnesses, with the causes of the penalty indicated, preserving the prescription of canon 2193 (canon 2225).

[1] If the delinquent did not commit grave sin, procedure can be taken against him only through a penal remedy so that true delicts may be forestalled, or some penance can be imposed on him.

[2] The usefulness of this is well demonstrated by the illustrious Wernz (op. cit., n. 62): "First, in certain penalties an obligation is induced in others toward the guilty person," for example, not receiving the Sacraments from him, "or at least the guilty person is deprived of certain rights which have reference to others. This obligation toward the guilty person cannot be urged, nor must the exercise of his rights be denied or impeded, unless the penalty incurred by him is certainly established" in the external forum; besides, because it would not be equitable that an occult delinquent should have to betray himself by observance of the penalty, the obligation of observing this penalty often does not press without a declaratory sentence.

[3] Sometimes one delict consists in a continuous stretch, for example concubinage, bigamy.

Part III. On the Subject Liable to the Power of Punishing

We shall see first who are subject to a penal law or precept, and to what extent; then what is required for someone actually to contract a penalty *latae sententiae*; next, what is required for someone to be able to be punished here and now with a penalty *ferendae sententiae*; finally, what, of what kind, and how great is the obligation of observing a penalty.

857 I. Subjects of a penal law or precept. One who is bound by a law or precept is liable to the penalty annexed to the law or precept, unless he is expressly exempted (canon 2226, § 1). To what extent someone is bound by a law or precept, especially a traveler and a vagrant, see vol. I, n. 126 sq. Nevertheless:

1. If after the perpetrated delict the penal law is changed, the law more favorable to the guilty person must be applied (ibid., § 2).
2. If after the perpetrated delict either the violated law or the attached penalty ceases through a later law, even a penalty inflicted or incurred ceases immediately; but a censure already contracted is excepted (ibid., § 3), because otherwise the end of the censure would not be attained.
3. A penalty, whether contracted or inflicted, binds the guilty person everywhere in the world, even when the right of the Superior has been resolved, unless something else is expressly provided (ibid., § 4); yet a penalty does not always extend itself to all places (cf. canons 2281, 2282). If, however, when the right of the Superior has been resolved, his precept also ceases, to which a penalty had been added, the penalty also must be said to cease, unless it is a censure already contracted.
4. Finally, certain persons are not wholly subject to penal law; namely, although they have committed a delict, a penalty can be inflicted or declared against those mentioned in canon 1557, § 1, only by the Roman Pontiff (canon 2227, § 1), that is:

a) "Against those who hold the supreme sovereignty of peoples and their sons and daughters, or those who have the right of immediately succeeding to the sovereignty." Physical persons are understood: monarchs, presidents of a republic, or others who exercise true sovereignty, and their spouses; not, however, moral persons, even though they have legislative power, nor Ministers of State.[1] Therefore the former do indeed contract a penalty *latae sententiae* of common law, as established by the Roman Pontiff, but against them it cannot be declared except by the Roman Pontiff.[2]

b) Against Cardinals; who furthermore, unless they are expressly named, are not comprehended under a penal law (canon 2227, § 2).

c) Against Legates of the Apostolic See, concerning whom what was said under a) is valid.

d) Against Bishops, even titular ones, who furthermore are excepted from penalties *latae sententiae* of suspension and interdict, unless they are expressly named. Therefore they do indeed contract an excommunication *latae sententiae* of common law, but the same applies as under a).

Note 1. Exempt religious are not bound by diocesan penal statutes unless, while illegitimately living outside the house, they have offended against a particular law of the diocese (canon 616, § 1); if they have offended while legitimately living outside the house, even if they have returned, they can

nevertheless be punished by the local Ordinary (canon 616, § 2); finally, they are subject to the coercive power of the local Ordinary in all things in which religious are subject to him (cf. canon 619 and canon 2269, § 2), unless special privileges stand in the way.

Note 2. By force of canon 1, this Penal Law does not regard the Oriental Church; judicial controversies to be handled in judicial order which concern it are, by force of canon 257, § 3, remitted by the Congregation for the Oriental Church to a tribunal assigned by that Congregation, unless there is question of delicts reserved to the Congregation of the Holy Office (canon 247, § 2).

[1] Cf. Noval, op. cit., p. 37.

[2] Nor do penalties *latae sententiae* of particular law bind them, because "to be inflicted" is also said of a penalty *latae sententiae* inflicted in the manner of a precept (cf. canon 2225).

858 II. Requisites for someone actually to contract a penalty *latae sententiae*.

1. Requisites on the part of the delict. A penalty established by law is not incurred unless the delict has been perfect in its own kind according to the property of the words of the law (canon 2228). This condition regards the external part of the delict (n. 846); when the attempt of a delict is punished in law, consummation in the genus of attempt is required. Finally it must be observed that the property of the words requires strict interpretation; for example, the delict of homicide, which is punished by law, is not present unless death has followed. In doubt, whether of the external fact or of imputability, the penalty is not incurred, because from a doubtful cause no one is deprived by a certain right (cf. canon 2232, § 1: "who is conscious to himself of the delict").
2. Requisites on the part of the delinquent regard the formal part of the delict, or imputability. Therefore first recall that grave imputability is required[1] (canon 2218, § 2), but does not always suffice, for someone to be liable to a penalty. With these things attended to, certain things are noted or even established by the Code, of which some are general and regard ignorance and similar things which influence imputability; others concern the impubescent and cooperators.

a) General matters. alpha) Affected ignorance either of the law or of the penalty alone excuses from no penalties *latae sententiae* (canon 2229, § 1).

beta) If the law has the words: has presumed, has dared, knowingly, studiously, rashly, has acted deliberately, or other similar words which require full knowledge and deliberation, any diminution of imputability, whether on the part of the intellect or on the part of the will, exempts from penalties *latae sententiae* (canon 2229, § 2). It is said any diminution of imputability; hence even ignorance of the penalty, unless it is affected (cf. canon 2202, § 2); likewise even light fear.

gamma) If the law does not have those words:

1° Crass or supine ignorance of the law, or even of the penalty alone, exempts from no penalty *latae sententiae*. Ignorance of the law, or even of the penalty alone, which was not crass or supine excuses from medicinal penalties *latae sententiae*; but if the imputability of the delict is grave, it does not excuse from vindicative penalties *latae sententiae* (canon 2229, § 3, 1°, compared with canon 2218, § 2).

2° Drunkenness, omission of due diligence, weakness of mind, or impulse of passion, if, notwithstanding the diminution of imputability, the action is still gravely culpable, do not excuse from penalties *latae sententiae* (canon 2229, § 3, 2°).

3° Grave fear, if the delict tends toward contempt of the faith or of ecclesiastical authority or toward public harm of souls, in no way exempts from penalties *latae sententiae* (canon 2229, § 3, 3°). With these things attended to, grave fear outside the enumerated cases excuses from penalties *latae sententiae*, at least on account of doubt; the doubt is introduced by canon 2218, § 2.

Note. Although the guilty person according to the norm of § 3, n. 1, is not bound by censures *latae sententiae*, nevertheless this does not prevent him, if the matter bears it, from being affected by another congruous penalty or penance (canon 2229, § 4).

b) Impubescent persons are excused from penalties *latae sententiae*, and are to be corrected rather by educational punishments than by censures or other graver vindicative penalties; but pubescent persons who have induced them to violate the law or have concurred with them in the delict according to the norm of canon 2209, §§ 1-3 (n. 849), themselves indeed incur the penalty established by law (canon 2230). Note that an irregularity from delict can nevertheless be contracted by impubescent persons (canon 985).

c) Cooperators. If several have concurred in perpetrating a delict, although only one is named in the law, those also who are mentioned in canon 2209, §§ 1-3, are bound, unless the law has expressly provided otherwise, by the same penalty; the others, however, are not likewise bound, but are to be punished with another just penalty according to the prudent judgment of the Superior, unless the law establishes a particular penalty against them (canon 2231).

Question. To what extent, if there is question of a penalty *latae sententiae*, is a declaratory sentence required?

Response. A penalty *latae sententiae*, whether medicinal or vindicative, binds the delinquent who is conscious to himself of the delict by the fact itself in both forums; nevertheless, before a declaratory sentence, the delinquent is excused from observing the penalty whenever he cannot observe it without infamy, and in the external forum no one can exact from him the observance of that same penalty, unless the delict is notorious, the prescription of canon 2223, § 4, remaining firm (canon 2232, § 1; n. 856).

A declaratory sentence carries the penalty back to the moment of the committed delict (canon 2232, § 2); this is practical, for example, in the case of restitution to be made of fruits received, which therefore must be computed from the moment of the perpetrated delict (cf. canon 2280).[2]

[1] At least insofar as the defect of grave imputability excuses from any penalty in the internal forum, and also in the external forum if the defect is proved for the external forum (cited canon).

[2] On the contrary, if someone incurs excommunication *latae sententiae* and before the sentence acquires an office, after the sentence the acquisition is not rendered invalid, as Cerato thinks, p. 20; for only acquisition after the sentence is invalid (cf. canons 2265, § 1, 2°; 2266; 2296, § 2).

859 III. Requisites for someone to be able to be punished here and now with a penalty *ferendae sententiae*. No penalty can be inflicted unless: 1° it is certainly established that the delict has been committed; 2° it is certainly established that the delict has not been legitimately prescribed; 3° the guilty person, if there is question of inflicting a censure, persists in contumacy (canon 2233). It is said:

1. It is certainly established that the delict has been committed; but by what method the fact and imputability of the delict must be judged, see in the Code, book IV, title XIX, on criminal trial.

2. It is certainly established that the delict has not been legitimately prescribed. How a delict is prescribed is explained by canon 1703, compared, however, with canon 1555, § 1.[1]

3. If there is question of inflicting a censure, the guilty person is to be rebuked and warned to withdraw from contumacy, with a suitable time for repentance granted, if in the prudent judgment of the same judge or Superior the case bears this; if contumacy persists, the censure can be inflicted (canon 2233, § 2). What contumacy is, see n. 862. Formerly at least three warnings were prescribed, though for a just cause one sufficed (cf. now canons 649, 660). Under present law, however, it is left to the prudence of the Superior how many warnings he gives and also at what interval of time he gives them. Moreover, warnings are required for the validity of the censure; hence a censure *ferendae sententiae* cannot validly be applied to a delinquent unless after warnings he remains contumacious. On the canonical form cf. canon 2143.

Note 1. One who has committed several delicts must not only be punished more gravely, but also, if in the prudent judgment of the judge the matter bears it, must be subjected to vigilance or to another penal remedy (canon 2234).

Note 2. A frustrated delict or an attempt of delict, unless they are punished by law as distinct delicts, can be punished with a fitting penalty according to their gravity, unless the delinquent is freed from all imputability because he spontaneously desisted from the execution of the delict begun, and no harm or scandal followed from the attempt (canon 2235, compared with canon 2213, § 3).

[1] What the Superior can and must do in defect of this and of the prior condition, see n. 855; cf. canon 2222, § 2.

860 IV. Obligation of observing the penalty. A penalty seems to oblige from the motive of the law to which the sanction has been added. Moreover, the obligation is grave of its kind. Nevertheless, fear of extrinsic and proportionate harm excuses; hence, if the delict is not notorious, even infamy excuses from observing a penalty *latae sententiae*, for then infamy is an extrinsic inconvenience.

Part IV. On the Remission of Penalties

861 I. The act of remission. Medicinal penalties are remitted through absolution, vindicative penalties through dispensation (canon 2236, § 1).

II. Competent person. Remission of a penalty in general can be granted by him who issued the penalty, or by his competent Superior or successor, or by him to whom this power has been committed (canon 2236). It is said competent Superior, because superiority of precedence of itself does not include power over the jurisdiction of an inferior (cf. canon 271; canon 2236, § 1). Furthermore, the power of exempting from a law also carries with it the power of remitting a penalty annexed to the law (canon 2236, § 2). But a judge who by office applies a penalty constituted by a Superior cannot remit it once it has been applied (canon 2236, § 3). As to those to whom the power of remitting a penalty, whether as ordinary or as delegated, has been committed, we note from the Code:

1. The Ordinary can, by ordinary power, and hence also through one habitually delegated: 1° in public cases remit penalties *latae sententiae* established by common law, except: a) cases brought to the contentious forum; b) censures reserved to the Apostolic See; c) penalties of incapacity for benefices, offices, dignities, functions in the Church, active and passive voice, or deprivation of these, perpetual suspension, infamy of law, deprivation of the right of patronage and of a privilege or grace granted by the Apostolic See (canon 2237, § 1); 2° in occult cases, remit the same penalties, except censures reserved to the Apostolic See in the most special or special manner (canon 2237, § 2).
2. What any confessor or even any priest can do by a power delegated by law, see n. 865.
3. Besides, delegated power by privilege strictly so called is often given to Nuncios and others for remitting penalties, but only medicinal penalties. Concerning the privilege broadly so called of Cardinals regarding reserved censures, it is stated in its place.

Finally, there are those who can absolve from penalties with this single effect: that toward those punished they can use some privilege of dispensing, according to canon 66, § 3: "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" (cf. canon 200, § 1). This is called absolution for the effect.

III. Mode of remitting. 1. For validity it is required that remission of a penalty not be extorted by force or grave fear (canon 2238). Moreover, error renders the act invalid if it concerns that which constitutes the substance of the act or falls upon a condition *sine qua non* (canon 104).

2. A penalty can validly be remitted to one present or absent, absolutely or under condition, in the external forum or in the internal forum only (canon 2239, § 1). It is said:

a) To one present or absent; nevertheless remission made in the internal-sacramental forum requires the person to be absolved or dispensed to be present.

b) Absolutely or under condition; even under a suspensive condition, for example: I remit the penalty, which will have effect when you have made restitution. Remission can also be granted unto

reincidence, for example: if then you do not make restitution, you will fall again into the penalty which now I effectively remit.

c) In the external forum or in the internal forum only; concerning the effect of remission in the internal forum only, see canon 2251 (p. 730, V, 2).

3. Although a penalty can also be remitted orally, nevertheless if it was inflicted in writing, it is expedient that its remission also be granted in writing (canon 2239, § 3).

Note. A delinquent can not only be freed from a penalty through remission, but also can escape a penalty to be inflicted through prescription of the penal action, concerning which see canon 1703 (canon 2240).

Dissertation II. On Penalties in Species

According to the norm of the Code, here there will be discussion both of penalties taken in the proper sense, medicinal as well as vindicative, and of disciplinary means, or penal remedies and penances.

Part I. On Medicinal Penalties, or on Censures

We shall speak first of censures in general, then of censures in species.

Section I. On Censures in General

We shall treat first of the notion, multiplication, and division of censure; then of reservation; finally, of remission of censure.

Chapter I. On the Notion, Multiplication, and Division of Censure

862 I. Notion. Censure is a penalty by which a baptized man, delinquent and contumacious, is deprived of certain spiritual goods or goods annexed to spiritual things, until, withdrawing from contumacy, he is absolved (canon 2241, § 1). It is said:

1. Baptized, because the Church lacks jurisdiction over the non-baptized; against heretics and schismatics she can issue censures.
2. Delinquent and contumacious; these things will be explained more fully under II.
3. Until, withdrawing from contumacy, he is absolved. Namely, censure is a medicinal penalty, and therefore primarily intends the amendment of the guilty person; hence as soon as the delinquent withdraws from contumacy, he must be absolved (St. Alphonsus VII, 1).

Note. Censures, especially those *latae sententiae*, and most of all excommunication, are not to be inflicted except soberly and with great circumspection (canon 2241, § 2), "since, as the Council of Trent says,[1] experience teaches that if it is struck rashly or for light matters, it is rather despised than feared, and produces ruin rather than salvation."

II. A fuller exposition of the notion will show what things are required on the part both of the delict and of the delinquent, so that the penalty of censure may be decreed; and what things are required so that the delinquent may be absolved.

1. Requisites on the part of the delict. By censure there is punished only an external delict (n. 846), grave (n. 858), consummated (n. 858; St. Alphonsus VII, 31-34, 36; canon 2242, § 1). Note that a grave delict is required not only as to the external act, but also as to the internal act, so that whatever excuses from mortal sin also excuses from censure (n. 858), at least in the internal forum, because in the external forum malice is presumed.
2. The requisite on the part of the delinquent is contumacy (cited canon). Moreover:

a) If there is question of censures *ferendae sententiae*, one is contumacious who, notwithstanding the warnings mentioned in canon 2233, § 2 (n. 859), does not desist from the delict or refuses to do penance for the perpetrated delict with due reparation of damages and scandal (canon 2242, § 2).[2]

b) But to incur a censure *latae sententiae*, transgression of the law or precept to which the penalty *latae sententiae* is annexed suffices, unless the guilty person is excused from it by a legitimate cause (cited canon). It is disputed whether, in a case in which there is question of a censure which is not incurred unless the effect has followed, a transgression morally persisting until the effect has followed is required, so that the censure is not contracted by him who repents of the transgression before the effect. St. Alphonsus (VII, 40) and others affirm this, because a censure does not seem to be

contracted by one who, at the moment at which according to the law it is contracted, is already no longer contumacious.

Note. Censure can also be issued against unknown delinquents (canon 2242, § 1), provided, however, that they are somehow determined; as happens, for example, in establishing censures *latae sententiae*. But a censure issued against an uncertain or indeterminate person would be invalid, for example: "I excommunicate one of the three authors of this crime."

3. The requisite for a delinquent to be absolved is that contumacy has ceased. Moreover, contumacy must be said to have ceased when the guilty person has truly repented of the committed delict and at the same time has given congruous satisfaction for damages and scandal, or at least has seriously promised it; but to judge whether the repentance is true, the satisfaction congruous, or the promise of the same serious or not, belongs to him from whom absolution from the censure is sought (canon 2242, § 3). Therefore the one absolving can sometimes require cautions, so that he may be certain of the serious conversion of the penitent.

Question. When does censure produce its effect, and to what extent is appeal or recourse admitted concerning a censure inflicted or threatened?

Response 1. Censures inflicted by judicial sentence carry execution with them as soon as they have been issued, and from them there is no appeal except in devolutive effect; likewise from censures inflicted in the manner of a precept there is recourse, but in devolutive effect only[3] (canon 2243, § 1).

Response 2. But appeal or recourse from a judicial sentence or precept threatening censures, even censures *latae sententiae* not yet contracted, suspends neither the sentence or precept nor the censures, if there is question of a matter in which law does not admit appeal or recourse even with suspensive effect; otherwise it suspends the censures, the obligation of observing what is commanded by the sentence or precept nevertheless remaining firm, unless the guilty person has lodged appeal or recourse not only from the penalty, but also from the sentence or precept itself (canon 2243, § 2).

III. Multiplication of censure. Since by several titles someone can be deprived of the same good, "not only diverse censures, but even a censure of the same species, can be multiplied in the same subject" (canon 2244, § 1). Moreover, according to the adage, as many penalties as delicts, the Code establishes:

1. A censure *latae sententiae* is multiplied: 1° if diverse delicts, each of which carries a censure with it, are committed by the same or by distinct action (p. 716, IV, 1, 1°); 2° if the same delict, punished with a censure, is repeated several times, so that there are several distinct delicts (p. 716, IV, 1, 2°); 3° if a delict, punished with diverse censures by distinct Superiors, is committed once or several times (canon 2244, § 2, 1°, 2°, 3°).
2. A censure *ab homine* (inflicted) is multiplied if several precepts, or several sentences, or several distinct parts of the same precept or sentence, each inflicts its own censure (canon 2244, § 3).

IV. Division. Censure, as was said of penalty in general (n. 853), is determinate or indeterminate, *latae* or *ferendae sententiae*, *a iure* or *ab homine*. Besides, censures are divided:

1. By reason of the deprivation of goods, into excommunication, suspension, and interdict; concerning these separately below.

2. By reason of the power of remitting, some are reserved, others non-reserved (canon 2245, § 1). We shall speak specifically of reservation.

[1] Session 25, chapter 3.

[2] An unknown delinquent must be warned by edict before a censure is inflicted, according to the norm of canon 1724, compared with canon 1720, 1 and 2 (cf. also canon 1717, 3).

[3] Recourse extends more broadly than appeal, since the former can be extrajudicial, but the latter cannot in present Law.

Chapter II. On Reservation of Censure

863 I. Notion of reservation. Reservation of censure is its evocation to the judgment of the Superior; therefore it limits the inferior's power of absolving (canon 893, §§ 1 and 2).

II. Power of reserving. Those same persons can reserve censures who can issue them (cited canon). Nevertheless, "if a censure is reserved to the Apostolic See, the Ordinary cannot issue another censure reserved to himself for the same delict" (canon 2247, § 1). In addition, canon 2246, § 1, admonishes: "Let no censure be reserved unless with attention to the peculiar gravity of the delicts and to the necessity of providing more suitably for ecclesiastical discipline and of healing the consciences of the faithful."

III. Reserved censures. 1. A censure *ab homine* (inflicted)[1] is reserved, and indeed to him who inflicted the censure or issued the sentence, or to his competent superior, or successor, or delegate (canon 2245, § 2).

2. Censures *latae sententiae*, established by law or by precept, are reserved if this is expressly said in the law or precept (canon 2245, § 4). Moreover, among censures reserved by law, some are reserved to the Ordinary, others to the Apostolic See (canon 2245, § 2). Among those reserved to the Apostolic See, some are reserved simply, others in a special manner, others in a most special manner (canon 2245, § 3).

IV. Interpretation of reservation. Reservation receives strict interpretation (canon 2246, § 2). Therefore reservation is not had in doubt whether the requisites are present so that it must be applied.

V. Effect of reservation of censure with respect to sin. Reservation of a censure impeding reception of the sacraments (n. 864) imports the reservation of the sin to which the censure is annexed (canon 2246, § 3). But a sin of this kind is said to be reserved by reason of the censure, not by reason of itself; hence, "if someone is excused from the censure or has been absolved from it, the reservation of the sin ceases entirely" (cited canon).

VI. Limits of reservation. Reservation of a censure in a particular territory does not exert its force outside the boundaries of that territory, even if the censured person goes out of the territory to obtain absolution; but a censure *ab homine* is reserved everywhere, so that the censured person can nowhere be absolved without the due faculties (canon 2247, § 2).

[1] Inflicted; for a censure *latae sententiae* added to a particular precept is indeed *ab homine*, but is not always reserved, as is said under III, 2.

Chapter III. On Remission of Censure

864 I. The act of remitting. Any censure, once contracted, is removed only by legitimate absolution (canon 2248, § 1). Besides, note:

1. A censure removed through absolution does not revive except in the case in which a burden imposed under penalty of reincidence has not been fulfilled (canon 2248, § 3).
2. If someone is held by several censures, he can be absolved from one, the others in no way being absolved (canon 2249, § 1).
3. One seeking absolution must indicate all cases; otherwise the particular absolution is valid only for the case expressed. But if the absolution, although a particular petition had been made, was general, it is valid also for cases withheld in good faith, except for a censure reserved to the Apostolic See in the most special manner, but not for those withheld in bad faith (canon 2249, § 2).
4. Regarding the connection of remission of censure with sacramental absolution, observe:

a) If there is question of a censure which does not impede reception of the Sacraments, for example of suspension, the censured person, duly disposed and withdrawing from contumacy, can be absolved from sins, the censure remaining firm (canon 2250, § 1).

b) But if there is question of a censure which impedes reception of the Sacraments, the censured person cannot be absolved from sins unless he has first been absolved from the censure (canon 2250, § 2). It is said cannot be absolved, that is, cannot be absolved licitly; but he is absolved validly unless the penitent knows that he cannot be licitly absolved and therefore is indisposed. If the censure is reserved, the sin to which the censure is annexed is also reserved; nevertheless, since it is not reserved by reason of itself, the confessor does not lack jurisdiction over it; hence absolution, even granted in bad faith, directly absolves the penitent even from the reserved sin, unless again the penitent knows that he cannot be licitly absolved and therefore is indisposed (St. Alphonsus VII, 158, 159).

865 II. Power of absolving. 1. In ordinary circumstances absolution can be granted as follows:

a) From a non-reserved censure, in the sacramental forum, any confessor can absolve; outside the sacramental forum, anyone who has jurisdiction over the guilty person in the external forum can absolve (canon 2253, n. 1).

b) From a censure *ab homine*, he who inflicted the censure or issued the sentence, or his competent Superior, or successor, or delegate, can absolve; moreover, he can grant absolution even if the guilty person has transferred his domicile or quasi-domicile elsewhere (canon 2253, 2°).

c) From a censure reserved by law, he who constituted the censure or to whom it is reserved can absolve, as can their successors or competent superiors or delegates. Therefore:

alpha) From a censure reserved to the Bishop or Ordinary, any Ordinary can absolve subjects; but the local Ordinary can absolve also travelers.[1]

beta) From a censure reserved to the Apostolic See, both the Apostolic See itself can absolve, and others who have obtained from it the power of absolving, whether general if the censure is reserved

simply,[2] or special if it is reserved in a special manner, or finally most special if it is reserved in a most special manner (canon 2253, n. 3).

Note. Cardinals, by force of privilege, validly absolve any penitents whatever throughout the world from all sins and censures, even reserved ones, except only censures reserved to the Apostolic See in the most special manner and those which are annexed to the revelation of the secret of the Holy Office (canon 239, § 1, 1° and 2°).[3] - The canon penitentiary, both of a cathedral church and of a collegiate church, obtains by law ordinary power, which however he cannot delegate to others, of absolving even from sins and censures reserved to the Bishop, in the diocese even outsiders, and diocesan persons even outside the territory of the diocese (canon 401, § 1). - Finally, a priest chosen by a Cardinal as confessor for himself and his household can absolve them from the same sins and censures from which Cardinals can absolve (canon 239, § 1, 2°). The same must be said, also as concerns cases reserved to the local Ordinary, of the priest whom the Bishop has chosen as confessor for himself and his household (canon 349, § 1, 1°).

2. In more urgent cases any confessor in the sacramental forum can absolve from censures *latae sententiae* reserved in any manner whatever, with the burden imposed under penalty of reincidence of having recourse, the name withheld, to the Superior and of standing by his commands (canon 2254, § 1). It is said:

a) In more urgent cases. A case is urgent if censures *latae sententiae* cannot be observed externally without danger of grave scandal or infamy, or if it is hard for the penitent to remain in the state of grave sin for the time necessary for the competent Superior to provide (cited canon).

b) From censures *latae sententiae* reserved in any manner whatever; therefore it is doubted whether the faculty extends itself to a censure *ab homine*, contracted by force of a particular precept, if it is *latae sententiae*. Now this seems to have to be denied; for if it extended itself to that censure, surely, just as in canon 2252, both it would be expressly named and mention would explicitly be made of it in the recourse to be instituted after absolution.

c) With the burden imposed, under penalty of reincidence, of having recourse. Moreover, recourse must be made within a month, at least by letter and through the confessor, if this can be done without grave inconvenience (cited canon).

d) To the Superior, that is, to the Sacred Penitentiary or to the Bishop or another superior endowed with the faculty (cited canon). But notice that recourse can then be made even to the Bishop only if he is endowed with the faculty.[4] Recourse cannot be made to just any subdelegate.[5]

e) And of standing by his commands; this likewise seems imposed under penalty of reincidence.[6]

Note 1. Nothing prevents the penitent, even after absolution accepted as above, and after recourse also has been made to the Superior, from approaching another confessor endowed with the faculty, and from obtaining absolution from him after the confession at least of the delict with the censure has been repeated. Once that absolution has been obtained, he may receive commands from the same confessor, without being bound thereafter to stand by other commands subsequently arriving on the part of the Superior (canon 2254, § 2).

Note 2. But if in some extraordinary case this recourse is morally impossible, then the confessor himself, except in the case of a censure contracted from true or fictitious absolution of an accomplice,

can grant absolution without the burden mentioned above, nevertheless imposing those things which must be imposed by law, and imposing a congruous penance and satisfaction for the censure, so that the penitent, unless within a congruous time to be fixed beforehand by the confessor he has done penance and given satisfaction, falls back into the censure (canon 2254, § 3).

It is said: But if... this recourse is morally impossible. Moreover, it is morally impossible: 1° when "neither the confessor nor the penitent can send a letter to the Sacred Penitentiary and it is hard for the penitent to approach another confessor";[7] indeed, 2° when only the confessor can write, but it is morally impossible for the penitent to return to him, and it is hard to approach another confessor.[8]

It is said: Except in the case of a censure contracted from absolution of an accomplice. Hence the confessor cannot grant absolution to a priest offending in this way without the burden of having recourse; therefore the obligation remains until it has been fulfilled. But if both the confessor and the penitent here and now cannot satisfy the obligation physically or morally - suppose on account of sickness or inability to write - the penitent is excused until the impediment has ceased (n. 414).

For the formula of having recourse, see n. 415.

3. In danger of death, from whatever cause it proceeds, all priests, although not approved for confessions, validly and licitly absolve any penitents whatever from any sins or censures, however reserved and notorious, even if an approved priest is present; except, only as to liceity, the case of absolution of an accomplice when another priest is present (canon 882). Nevertheless:

a) Those who, placed in danger of death, have received absolution from some censure *ab homine* or from a censure reserved to the Apostolic See in the most special manner from a priest lacking the special faculty, are bound by the obligation of having recourse (canon 2252).

b) Recourse must be made to him who issued the censure, if there is question of a censure *ab homine*; to the Sacred Penitentiary or to the Bishop or another endowed with the faculty, if there is question of a censure *a iure* (cited canon).

c) Recourse obliges under penalty of reincidence (cited canon); moreover, it seems to press from the time of recovered health. Finally, one must stand by the commands received in the recourse (cited canon), and indeed, as it seems, under penalty of reincidence.[9]

Note. If one absolved from a reserved censure *ab homine* should prefer after recovered health to seek absolution again, for example from a delegate (canon 2245, § 2), rather than to have recourse to him who issued the censure, this is certainly licit for him.

4. Finally, regarding absolution from censure, let these things be noted concerning supplied jurisdiction:

a) In common error or in a positive and probable doubt, whether of law or of fact, the Church supplies for both the external and internal forum (canon 209).

b) When the power of absolving for the internal forum has been granted, an act placed through inadvertence after the time has elapsed or the number of cases has been exhausted is valid (canon 207, § 2).

c) If a confessor, ignorant of the reservation, absolves a penitent from censure and sin, the absolution from the censure is valid, provided it is not a censure *ab homine* or a censure reserved to the Apostolic

See in the most special manner (canon 2247, § 3).

[1] Regular confessors have this power, but delegated by force of privilege, even those who are not Ordinaries or local Ordinaries.

[2] Ordinaries have this ordinary power in occult cases, as was said in n. 861.

[3] From canon 239, § 1, 2°, it seems to follow that Cardinals cannot delegate this power; otherwise this number 2° would be superfluous; indeed, because the privileges of canon 239 are to be judged personal (cf. *II Monitor ecclesiasticus* 1919, p. 308).

[4] Pontifical Commission, November 12, 1922, to VIII (*A.A.S.* 1922, p. 663).

[5] Cf. Holy Office, December 19, 1900.

[6] Response of the Holy See, March 30, 1892, to 3 (*A.S.S.* XXIV, p. 746).

[7] Holy Office, November 9, 1898 (*Collectanea*, n. 2023).

[8] Holy Office, September 5, 1900, compared with June 7, 1899 (*Collectanea*, nn. 2095, 2052). The danger that letters may be opened does not excuse from recourse, since inconveniences are sufficiently forestalled by suppression of the name and pronoun.

[9] Response of the Holy See, March 30, 1892, to 3 (*A.S.S.* XXIV, p. 746).

866 III. Obligation of absolving. Absolution cannot be denied as soon as the delinquent has withdrawn from contumacy according to the norm of canon 2242, § 3 (n. 862); moreover, the one absolving from a censure can, if the matter bears it, inflict a congruous vindicative penalty or penance for the perpetrated delict (canon 2248, § 2).

867 IV. Form of absolving. Absolution from censure in the sacramental forum is contained in the accustomed form of absolution from sins, prescribed in the ritual books;[1] in the non-sacramental forum it can be given in any manner whatever, but for absolution from excommunication it is regularly fitting to use the form handed down in the same books[2] (canon 2250, § 3).

[1] "May Our Lord Jesus Christ absolve you," etc.

[2] Roman Ritual, title III, chapter 3, n. 7: "May Our Lord Jesus Christ absolve you; and I, by His authority and by the authority committed to me by our most holy Lord the Pope (if he was delegated by the Pope), or: by the most reverend Bishop N., or by such-and-such Superior, absolve you from the bond of excommunication into which you have fallen (or: have been declared to have fallen), because of such-and-such deed (or: such-and-such cause, etc.); I restore you to the communion and union of the faithful, and to the holy Sacraments of the Church, in the name of the Father, and of the Son, + and of the Holy Spirit. Amen."

868 V. Effect of absolution in relation to the forum for which it is valid. 1. If absolution from censure is given in the external forum, it affects both forums (canon 2251).

2. If in the internal forum, the absolved person, scandal having been removed, can bear himself as such also in acts of the external forum; but unless the granting of absolution is proved or at least legitimately presumed in the external forum, the censure can be urged by Superiors of the external forum, whom the guilty person must obey, until absolution has been obtained in that same forum (cited canon).

Section II. On Censures in Species

869 Preliminary Note I. Censures are: 1° excommunication; 2° interdict; 3° suspension (canon 2255, § 1).

Preliminary Note II. Excommunication can affect only physical persons, and therefore, if at any time it is issued against a moral body, it is understood to affect the individuals who have concurred in the delict;[1] interdict and suspension can also affect a community as a moral person; excommunication and interdict can also affect lay persons; suspension, clerics only; interdict, also a place; excommunication is always a censure; interdict and suspension can be either censures or vindicative penalties, but in doubt they are presumed to be censures (canon 2255, § 2).

Preliminary Note III. In the canons which follow:

1° By the name divine offices are understood functions of the power of order which, by the institution of Christ or of the Church, are ordered to divine worship and can be performed by clerics alone (canon 2256, 1°). Mass, the chanting of the hours in choir, a public procession, solemn blessings and consecrations, Benediction with the Most Holy Sacrament, and other things of that kind are enumerated; a sermon also is a divine office, but no one is ever prohibited from assisting at it; cf. canon 2275, canon 2259, § 1.

2° By the name legitimate ecclesiastical acts are signified: to hold the office of administrator of ecclesiastical goods; to act as judge, auditor and relator, defender of the bond, promoter of justice and of the faith, notary and chancellor, messenger and apparitor, advocate and procurator in ecclesiastical causes; to hold the office of sponsor in the sacraments of baptism and confirmation; to cast a vote in ecclesiastical elections; to exercise the right of patronage (canon 2256, 2°).

[1] Concurrence according to the norm of canon 2231 seems to be intended.

Chapter I. On Excommunication

870 I. Notion. Excommunication is a censure by which someone is excluded from the communion of the faithful, with the effects which are enumerated in the canons which follow and which cannot be separated (canon 2257, § 1). That exclusion from ecclesiastical communion, that is, from participation in the goods whose dispensation has been committed to the Church, is among the greatest penalties, and is to be inflicted only with great circumspection (canon 2241, § 2); when it is inflicted or declared in judgment, it is reserved to a collegiate tribunal of three judges (canon 1576, § 1, 1°). It is also called anathema, especially if it is inflicted with the solemnities which are described in the Roman Pontifical[1] (canon 2257, § 2).

[1] Roman Pontifical, title *The Order of Excommunicating and Absolving*.

871 II. Division. Although on the one hand the effects of excommunication are inseparable from one another, and therefore cannot be separated at the judgment of the one inflicting the penalty, nevertheless by the law itself the effects of excommunication are increased after a condemnatory or declaratory sentence. Furthermore, for the benefit of the faithful the distinction between tolerated and to-be-avoided excommunicates has been introduced (cf. canon 2258, § 1).

1. Tolerated persons are those with whom it is permitted to the faithful to communicate fully in profane matters,[1] and in some sacred matters according to the rules to be handed down. This toleration is for the benefit of the faithful, because exclusion from the communion of the faithful of itself also includes civil communication with them.

2. To-be-avoided persons are those whom the baptized are bound to avoid both in profane and in sacred matters within the limits established by law. But no one is to be avoided unless: a) he has laid violent hands on the person of the Roman Pontiff, and he is to be avoided by the fact itself (canon 2343, § 1, 1°); b) he has been excommunicated by name by the Apostolic See, the excommunication has been publicly denounced, and in the decree or sentence it is expressly said that he must be avoided (canon 2258, § 2).

[1] Saving the natural law, which commands that the danger of perversion be avoided.

872 III. Nine effects are enumerated; moreover, the following are prohibited according to the norm of law:

1. Assistance at divine offices. Assistance is twofold, active and passive. One actively assists who in some way participates in the celebration of divine offices; hence even an inferior minister or one reciting in public psalmody. But singers and organists are not judged to concelebrate. One passively assists who is present but does not participate in the celebration. Therefore:

a) Any excommunicated person lacks the right of assisting, whether actively or passively, at divine offices, but not at the preaching of the word of God (canon 2259, § 1). Nevertheless he himself cannot preach. Moreover, an occult tolerated person by any assistance of itself sins only venially, or even, according to many, not at all, if there is question of passive assistance. A tolerated person after sentence, or one otherwise notorious, sins lightly by passive assistance; gravely by active assistance, if the matter is grave. A to-be-avoided person sins gravely by any assistance, if the matter is grave (St. Alphonsus VII, 173, 175, 177).

b) Regarding the expulsion of an excommunicated person, note:

alpha) Not only a to-be-avoided person, but also anyone after declaratory or condemnatory sentence, or otherwise notoriously excommunicated, is to be repelled from active assistance (canon 2259, § 2).

beta) A tolerated person can be repelled from passive assistance, since he lacks the right of assisting, but he need not be repelled. A to-be-avoided person must be expelled, or, if he cannot be expelled, the office must cease, provided this can be done without grave inconvenience (cited canon). Hence St. Alphonsus (VII, 177), concerning the Sacrifice of the Mass, says: "If he (the to-be-avoided person) cannot be expelled, the office must be omitted, even on a feast day; and the celebrant, if the Canon has not yet begun, must break off the Mass; if he has begun the Canon, he can, the others departing, either proceed with the sacred action or break it off, on account of the probability of each opinion;[1] if he has consecrated, the minister alone remaining, he must proceed up to Communion inclusive and complete the rest in the sacristy or another decent place," connected with the church.

Corollary I. Ignorance which is not gravely culpable, grave fear, and in general a grave extrinsic inconvenience excuses from observing the things set forth.

Corollary II. Prohibited passive assistance contains for the excommunicated person a dispensation from the precepts of hearing Mass, going to choir, and paschal confession. The last of these, however, presses the obligation of seeking absolution from the censure. Nevertheless he is bound privately, and if he is to be avoided, alone, to recite the canonical hours, if he is a cleric or a regular according to canon 610, § 3.

Corollary III. An excommunicated person is not prohibited from entering the Church at a time when the divine offices are not being celebrated, in order to pray privately (St. Alphonsus VII, 174).

2. Reception of sacraments and sacramentals.

a) Any excommunicated person cannot licitly receive the sacraments (canon 2260, § 1); but generally he receives them validly. I have said generally, for regarding the sacrament of Penance the things said in n. 864 are valid.

b) An excommunicated person after declaratory or condemnatory sentence[2] cannot licitly receive sacramentals. An occult tolerated person and one notorious by fact are not prohibited; but sacramentals do not profit these persons either, at least from the impetration of the Church, in whose prayer they do not participate. But exorcism can be performed licitly and validly by legitimate ministers upon any excommunicates (canon 1152). Likewise they seem always validly to receive constitutive sacramentals; for minor orders this follows from canon 968, § 1.

3. Ecclesiastical burial. This consists in the transfer of the body to the church, obsequies celebrated over it in the same church, and its deposition in a place legitimately deputed for burying the faithful departed (canon 1204). Now this ecclesiastical burial must be denied only to an excommunicated person after condemnatory or declaratory sentence, unless before death he has given some signs of penitence (canon 1240, § 1, 2°). Furthermore, to one excluded from ecclesiastical burial there must be denied both any funeral Mass, even an anniversary one, and other public funeral offices (canon 1241); concerning a private Mass to be celebrated for him, cf. n. 208. If the body of an excommunicated person after sentence, or of a to-be-avoided person, contrary to the statutes of the canons, has obtained burial in a church or cemetery, it must be exhumed by permission of the Ordinary, if this can be done without grave inconvenience and the body can certainly be distinguished from other bodies (canons 1172, § 1, 4°; 1175; 1207; 1242).

But if prohibited ecclesiastical burial is stubbornly demanded by others, even with grave threats, nevertheless "care must be taken that all things be done according to the norm of the sacred canons; but insofar as this cannot be obtained without danger of disturbances and scandal, the pastor, neither by himself nor through other priests, is to concur in any way in the funeral rites and burial."[3]

4. Confection and administration of sacraments and sacramentals. An excommunicated person is prohibited from licitly confecting and administering the Sacraments and Sacramentals, saving the exceptions which follow (canon 2261, § 1):

a) The faithful can, for any just cause, seek Sacraments and Sacramentals from an excommunicated person, especially if other ministers are lacking; and then the excommunicated person who is requested can minister them and is held by no obligation of inquiring into the cause from the one requesting (canon 2261, § 2).

b) But from excommunicated persons to be avoided, and also from other excommunicated persons after a condemnatory or declaratory sentence has intervened, the faithful can seek, in danger of death alone, both sacramental absolution according to the norm of canon 882 (n. 370) and 2252 (p. 729), and also, if other ministers are lacking, the other Sacraments and Sacramentals (canon 2261, § 3).

As regards validity: Sacraments are always validly ministered by any persons possessing the required power of order, unless special jurisdiction is required for this; likewise Sacramentals, unless a special

faculty is required for them. But an excommunicated person cannot enjoy this faculty, as will be said below at canon 2263, although he validly uses it.

5. Participation in indulgences, etc. An excommunicated person does not become a participant in indulgences, suffrages, and public prayers of the Church (canon 2262, § 1). It is said:

a) Indulgences, whether those which are applied to the living by an act of jurisdiction, or those which are granted to the dead by way of suffrage.

b) Suffrages; by this name here there seem to be understood prayers and liturgical rites which are performed by sacred ministers, either alone or together with the faithful, for a deceased person or for all the departed.

c) Public prayers of the Church, that is, those which are poured forth by sacred ministers, either alone or together with the faithful, in the name of the Church, such as canonical recitations of the divine office, Litanies, etc.

Nevertheless, the following are not prohibited: 1° the faithful praying privately for an excommunicated person; 2° priests applying Mass privately and with scandal removed for him; but, if he is to be avoided, only for his conversion (canon 2262, § 2). Besides, by way of exception, the Church prays for these persons on Feria VI in Parasceve, in the prayer for heretics and schismatics.

6. The exercise of some acts, functions, and privileges, namely by force of canon 2263:

a) An excommunicated person is removed from legitimate ecclesiastical acts within the limits defined by law in their proper places (cf. canon 2256, n. 2; n. 869, prelim. III, 2°).

b) He cannot act in ecclesiastical causes except according to the norm of canon 1654.

c) He is prohibited from discharging ecclesiastical offices or functions, strictly so called, canon 145, and from enjoying privileges previously granted by the Church. Therefore he does not lose functions, unless he is to be avoided, cf. below canon 2266, and privileges. Privileges are understood as personal privileges, strictly or broadly so called, granted to a physical person, or to a religious institute or generally to a moral person for the benefit of physical persons; not, however, privileges of the clerical state (canon 123) or others granted principally for the benefit of the religious institute itself or of the moral person, for example the privilege of exemption; and indeed granted by any ecclesiastical law or Superior. Moreover, besides rights, habitual faculties are numbered with privileges, which are granted either in perpetuity or for a predefined time or a certain number of cases (canon 66, § 1); for example, the faculty of dispensing in matrimonial impediments, or the special faculty of attaching indulgences to sacred things by a blessing. An excommunicated person would indeed use these faculties validly, but illicitly.

7. Exercise of jurisdiction of the internal and external forum. An excommunicated person before sentence exercises jurisdiction validly but illicitly, unless he is requested by the faithful for a just cause. After sentence he exercises it invalidly and illicitly, unless he is requested according to the norm of canon 2261, § 3 (p. 734); then he acts validly and licitly. Therefore excommunicated persons who have not been requested illicitly or invalidly issue laws, delegate others, etc. (St. Alphonsus VII, 185). Nevertheless note that sometimes the invalidity of the act of jurisdiction does not prevent the validity of the external act placed, for example in the distribution of Sacraments.

8. Exercise and acquisition of some special rights. By force of canons 2265 and 2266:

a) An excommunicated person before sentence:

alpha) Validly, but illicitly, exercises the right of electing, presenting, and nominating.

beta) Validly, but illicitly, acquires dignities, offices, strictly so called, benefices, ecclesiastical pensions, or another function, broadly so called, in the Church.

gamma) Validly, but illicitly, is promoted to Orders, even minor ones, and first tonsure (canons 950; 968, § 1).

b) An excommunicated person after sentence:

alpha) Illicitly and invalidly exercises the right of electing, presenting, and nominating.

beta) Illicitly and invalidly acquires dignities, offices, strictly so called, benefices, ecclesiastical pensions, or another function, broadly so called, in the Church.

gamma) Validly, but illicitly, is promoted to Orders, even minor ones, and first tonsure.

delta) He cannot validly obtain any pontifical grace,[4] unless mention of the excommunication is made in the pontifical rescript.

epsilon) He remains deprived of the fruits of the dignity, office, benefice, pension, or function, if he has any in the Church.

c) A to-be-avoided person suffers the same effects as an excommunicated person after sentence; but in addition he remains deprived of the dignity itself, office, benefice, pension, or function.

9. Communion in profane matters. The faithful must avoid communion in profane matters with an excommunicated person to be avoided, unless there is question of a spouse, parents, children, servants, subjects, and generally unless a reasonable cause excuses (canon 2267). From the latter words it follows that the prohibition presses only under light sin. Nevertheless note canon 2338, § 2: those rendering any assistance or favor to an excommunicated person to be avoided in the delict on account of which he was excommunicated incur by the fact itself an excommunication simply reserved to the Apostolic See.[5]

[1] See, nevertheless, how the parallel case is resolved in canon 1173, § 2.

[2] The things which are valid concerning an excommunicated person after sentence must also be understood concerning a to-be-avoided person, although condemned by decree of the Apostolic See, but not concerning one notorious by fact.

[3] Sacred Penitentiary, December 10, 1860 (*A.S.S.* I, p. 563, question 21).

[4] There are also dispensations and privileges, according to canon 36, § 2; cf. the Order to be observed in the Sacred Congregations, September 20, 1908, Part II, chapter III, n. 6. If mention of the penalty is made, absolution for the effect is added.

[5] One gives favor who, although he becomes in no way a participant in the continued delict, nevertheless procures for the delinquent some material or moral advantage on account of it (Chelodi, op. cit., p. 80, 2).

873 IV. Violation of excommunication is a grave or light sin according as the excommunicated person places an act excluded by excommunication of grave or light importance. In addition, a cleric excommunicated in sacred orders, who places an act of order reserved to clerics constituted in sacred

order, is irregular (canon 985, 7°). Finally, if someone, with hardened spirit, has wallowed for a year in the censure of excommunication, he is suspected of heresy (canon 2340, § 1).

Chapter II. On Interdict

874 I. Notion. Interdict is a censure by which the faithful, remaining in the communion of the Church, are prohibited from the sacred things which are enumerated in the canons which follow (canon 2268, § 1). It is said censure, but it can besides be inflicted as a vindicative penalty (n. 890). It is said sacred things; these are divine offices, Sacraments and Sacramentals, or ecclesiastical burial. Furthermore, those personally interdicted sometimes cannot exercise certain rights. The effects of interdict can be separated, so that it is left to the judgment of the Superior which privations he commands, unless it is an interdict established by common law.

875 II. Division. Interdict is: 1° personal or local;[1] 2° general or particular, according as the subjects of the penalty differ.

1. Interdict is personal when the use of sacred things is directly interdicted to the persons themselves; local, when the use of sacred things is indirectly interdicted to persons, because in certain places the dispensation or reception of sacred things is forbidden (cf. canon 2268, § 2).

2. It is general when it is issued against a group of persons, and is a general personal interdict; or against some territory, whose sacred and profane places it affects, and is a general local interdict. It is particular when it is issued against particular persons expressly designated, and is a particular personal interdict; or against particular sacred places, namely churches, altars, cemeteries, and is a particular local interdict.

Finally, a personal interdict can be issued at the same time both against a community as such and against the individual delinquent persons of some community, so that the interdict is at once general and particular.

[1] Formerly there existed a mixed or ambulatory interdict, which held any place during the presence of the interdicted person; now it has been abolished.

876 III. Author. 1. A general interdict against a diocese, whether against the territory or against the people, can be issued only by the Apostolic See or at its mandate (canon 2269, § 1).

2. A general interdict against a parish, and also any particular interdict against subject persons or places, can be issued by a Bishop (cited canon). A religious Superior cannot issue a local interdict, because his jurisdiction is only personal.

877 IV. Interpretation. 1. When a city is interdicted, accessory places, even exempt ones, and the cathedral church itself also remain interdicted; when a church is interdicted, contiguous chapels are interdicted, but not the cemetery; when a chapel is interdicted, the whole church is not interdicted, nor, when a cemetery is interdicted, is the church contiguous to it interdicted, but all oratories erected in the cemetery are interdicted (canon 2273).

2. A personal interdict follows the persons who are held by the interdict everywhere, so that in whatever place they suffer the effects of the penalty (canon 2269, § 2); but a general personal interdict does not hold infants and others not liable to penal law, nor arriving persons, travelers, and vagrants; but it does hold the innocent, and even the absent, who, for example by domicile,

are members of the community. Furthermore, from the common and more benign interpretation, when the people are interdicted, the clergy are not of themselves judged interdicted; and also conversely, so that when the clergy are interdicted, the non-interdicted people can call other clerics. Likewise, when the clergy are interdicted, religious are not judged interdicted unless they have a secular benefice (St. Alphonsus VII, 331).

3. A local interdict does not press outside the interdicted place; but in the interdicted place all, even outsiders or exempt persons, a special privilege excluded, must observe it (cited canon). The reason is that it directly affects the territory, but indirectly the persons; nevertheless for the innocent and travelers, or even for infants, such an interdict does not have the character of a penalty, but of a disciplinary privation. The same is valid concerning the innocent in a personal interdict.

878 V. Effects of a local interdict. A local interdict, whether general or particular, prohibits in the place any divine office or sacred rite, with the following exceptions (canon 2270, § 1):

1. In every local interdict: 1° All sacraments and sacramentals can be ministered to the dying, with the things to be observed being observed; the chief of these are that the ministers not be impeded and solemnities be omitted (canon 2270, § 1, compared with canon 2271, 2°). 2° A local interdict is suspended on the day of the Nativity of the Lord, Easter, Pentecost, the Most Holy Body of Christ, and the Assumption of the Blessed Virgin Mary into heaven,[1] and only the conferral of orders and the solemn nuptial blessing are prohibited (canon 2270, § 2). It is said on the day, so that the octave is excluded.

2. In a general local interdict, unless the decree expressly provides something else:

a) Clerics, provided they themselves are not personally interdicted, are permitted to perform privately all divine offices and sacred rites in any church or oratory, with closed doors, in a subdued voice, and without bells being rung (canon 2271, 1°).

b) But in the cathedral church, parochial churches, or in the church which is the only one in the town, and in those alone, there are permitted: the celebration of one Mass, reservation of the Most Holy Sacrament, administration of baptism, Eucharist, and penance, assistance at marriages, with the nuptial blessing excluded, funeral obsequies of the dead, any solemnity nevertheless being forbidden, the blessing of baptismal water and of sacred oils, and the preaching of the word of God. In these sacred functions, however, chant and pomp in sacred furnishings and the sound of bells, organs, or other musical instruments are prohibited; and sacred Viaticum is to be carried privately to the sick (canon 2271, 2°).

3. In a particular local interdict:

a) If the altar or chapel of some church has been interdicted, no sacred office or sacred rite is to be celebrated in them (canon 2272, § 1).

b) If the cemetery has been interdicted, the bodies of the faithful can indeed be buried there, but without any ecclesiastical rite (canon 2272, § 2).

c) If the church or oratory of some Chapter has been interdicted, and the Chapter has not been interdicted, because then nothing is permitted to it, the Chapter is permitted to perform all divine offices and sacred rites of its function privately, according to canon 2271, 1°, in any church or oratory,

even in its own interdicted church or oratory, unless the decree of interdict commands that in another church or oratory the conventual Mass be celebrated and the canonical hours be publicly recited (canon 2272, § 3, 1°).

d) If the parochial church has been interdicted, it is permitted to perform in it all the things which above, canon 2271, 2°, were said concerning the cathedral church and other parochial churches under a general interdict, unless the decree of interdict substitutes another church for it during the time of the interdict (canon 2272, § 3, 2°).

[1] Furthermore in Spain on the day of the Immaculate Conception of the Blessed Virgin Mary by privilege of Leo X.

879 VI. Effects of personal interdict. Those personally interdicted by force of canon 2275:

a) Cannot celebrate divine offices or assist at them, except the preaching of the word of God; those passively assisting need not be expelled; but interdicted persons after a condemnatory or declaratory sentence has been issued, or otherwise notoriously interdicted, are to be repelled from active assistance which carries with it some participation in celebrating divine offices (cited canon, 1°).

b) They are prohibited from ministering and confecting Sacraments and Sacramentals, unless the interdicted person before sentence has been requested by the faithful, who may seek this for a just cause, especially if other ministers are lacking; or unless after sentence he has been requested in danger of death, either to absolve the faithful sacramentally, although another priest is present, or to give the other Sacraments and Sacramentals if other ministers are lacking.

c) They are prohibited from receiving the Sacraments; and after sentence they also receive Sacramentals illicitly, except exorcism (canon 1152); but an interdicted person also receives Sacramentals validly, because he communicates with the prayer of the Church.

d) They are also held by the prescription of canon 2265; therefore the things said on p. 735, 8, a) and b), alpha-delta, are to be applied to them.

e) After sentence they are deprived of ecclesiastical burial (cf. canon 1204), unless before death they have given some signs of penitence; and under the same restriction there must be denied to them both any funeral Mass, even an anniversary one, and other public funeral offices.

f) Finally, after sentence, a pastor or local Ordinary assists at marriage invalidly, whether by himself or through another (canon 1095). Before sentence he assists even licitly.

880 VII. Effects of an interdict issued because a community or college has perpetrated a delict. An interdict of this kind can be issued either against the individual delinquent persons, or against the community as such, or against the delinquent persons and the community (canon 2274, § 1). Now:

1. If the interdict has been issued against the individual delinquent persons, those persons, but not the innocent, are personally interdicted, and therefore are held by the things set forth under VI (canon 2274, § 2).
2. If the interdict has been issued against the community as such, the community or college cannot exercise any spiritual right which belongs to it (canon 2274, § 3). Spiritual rights are judged to be: the right of electing, presenting, conferring benefices, celebrating the divine office by office,[1] etc.; but not the right of administering goods and similar things.

3. If the interdict has been issued against the delinquents and against the community, the effects assigned under 1 and 2 are cumulated (canon 2274, § 4).

[1] For example, celebrating the conventual Mass and reciting the canonical hours in common, if there is question of a Chapter interdicted as such (canon 2272, § 3, 1°).

881 Question 1. To what extent does interdict redound upon the innocent?

Response 1. One who is subject to a local interdict, without having given cause for it and without being prohibited by another censure, can, if he is duly disposed, receive the Sacraments without absolution from the interdict or any other satisfaction; and indeed, in the interdicted place itself, those sacraments which are licitly administered there (canon 2276; cf. canon 2271, n. 878), or in another non-interdicted place, the other sacraments. Likewise he can freely go to other places so that he may assist at divine offices and be freed from the other privations of the local interdict.

Response 2. An innocent person, if an interdict is issued against the individual delinquents of the community of which he is a member, undergoes the effects of those personally interdicted only indirectly, because he cannot receive sacraments or other things from them. He himself is free in all things, and not even for the external forum does he need absolution in order to receive the Sacraments (canon 2276).

Response 3. An innocent person, being subject to an interdict against a community as such, cannot exercise the common rights of the community; but because he is not held by the censure, since it supposes a delict, he does not need absolution in order to receive the Sacraments (canon 2276).

Response 4. If the things placed under responses 2 and 3 are cumulated, the things said there are to be observed (cited canon).

Note. Those who have given cause for a local interdict or for an interdict against a community or college are by the fact itself personally interdicted (canon 2338, § 4).

Question 2. What does interdict from entrance into the church import?

Response. Interdict from entrance into the church, which is a certain part of a special personal interdict, does not deprive one of those goods which we indicated under VI, but from canon 2277 it carries with it the prohibition that one celebrate divine offices in church or assist at them, except preaching, or have ecclesiastical burial. Therefore he can, provided he is duly disposed, receive the Sacraments, even in church, when divine offices are not being celebrated; or celebrate divine offices or assist at them outside the church, taken in the strict sense according to canon 1161. But if he assists, actively or passively, in church, he need not be expelled; nor if he is buried in a sacred place is it necessary that the body be removed.

In present Law it is established in only three cases (canon 2329; canon 2338, § 3; canon 2339); it can be issued as a vindicative penalty.

882 VIII. Cessation of interdict. It is proper to interdict that, besides the modes common to all penalties, it also ceases when the interdicted place has been destroyed or the interdicted community extinguished. But it is clear of itself that absolution given in the internal forum never touches the local interdict itself, or a general personal interdict as such. One who without fault is subject to an interdict against a community is freed by the fact itself from this interdict when he ceases to be a member of the community; nor does he need absolution.

883 IX. Violation of interdict is a grave or light sin according as the act excluded by interdict is of grave or light importance (cf. St. Alphonsus VII, 336).

Chapter III. On Suspension

884 I. Notion. Suspension is a censure by which a cleric is prohibited from office or benefice, or from both (canon 2278, § 1). It is said:

1. Censure; but it can be inflicted as a vindicative penalty (canon 2255, § 2).
2. Cleric, because he alone is the subject of suspension; and indeed suspension can be issued against a community and members at the same time.
3. Office; this is understood strictly so called (canon 145, § 2), and is defined: a function constituted stably by divine or ecclesiastical ordination, to be conferred according to the norm of the sacred canons, carrying with it at least some participation in ecclesiastical power, whether of order or of jurisdiction (canon 145, § 1). But because the effects of suspension are maximally divisible (canon 2278), a cleric can by suspension be prohibited even from only part of the power either of order or of jurisdiction, as will be explained.
4. Benefice; moreover, an ecclesiastical benefice is defined as a juridic entity constituted or erected in perpetuity by competent ecclesiastical authority, consisting of a sacred office and the right of receiving revenues from the endowment annexed to the office (canon 1409). But in the penalty of suspension from benefice only the right of receiving revenues is considered, insofar as it is distinguished from the annexed office, as will also be clear below.

885 II. Division. Suspension can be distinguished into total and partial, according as it comprehends all or not all the effects of suspension. Partial suspension is chiefly divided into suspension from office alone and from benefice alone. Suspension from office is either from office simply or from some part of the office, for instance from jurisdiction, from divine things, etc.; these things will be clearer from what will be said concerning the effects of suspension.

886 III. Effects. The effects of suspension can be separated, but unless something else is established, suspension generally issued comprehends all the effects which are enumerated in the article on suspension; otherwise one must speak of suspension from office or from benefice, which comprehends only the effects of one or the other species. Regarding the effects in species, these things are established:

1. Suspension from office simply,[1] no limitation having been added, forbids every act both of the power of order and of jurisdiction, and also of mere administration belonging by office, except the administration of the goods of one's own benefice (canon 2279, § 1). For the administration of the goods of a benefice can be taken away only by an express clause, as is noted in canon 2280.

By force of canon 1095, a pastor or local Ordinary suspended from office, after sentence, assists at marriage invalidly, whether by himself or through another; before sentence he certainly assists validly, but perhaps illicitly by himself, because it seems to be an act of administration belonging by office. For the same reason other acts seem to be prohibited, such as the administration of Viaticum, solemn Baptism, etc. Preaching is not an act of jurisdiction strictly so called, nor, as it seems, of

administration; but perhaps it is prohibited to one suspended from office as the exercise of the magisterium which belongs to him from granted jurisdiction.

2. Suspension from office partially carries these things with it:

a) Suspension from jurisdiction generally forbids every act of the power of jurisdiction for both forums, ordinary as well as delegated (canon 2279, § 2, 1°).[2] Jurisdiction is to be taken in the strict sense, so that it does not comprehend acts which require only mission or permission (canons 1328, 848, 748); likewise assistance at the contracting of marriage is not an act of true jurisdiction.

b) Suspension from divine things forbids every act of the power of order which someone obtains either through sacred ordination or through privilege (canon 2279, § 2, 2°). It is said through privilege, for instance the privilege of ministering Confirmation (canon 782, § 3).[3]

c) Suspension from orders forbids every act of the power of order received through ordination (cited canon, 3°), whether major or minor. "One thus suspended can exercise all acts of jurisdiction which do not require the actual use of order; therefore a Bishop suspended from orders only can approve Confessors, although he himself cannot absolve from sins";[4] namely, he acts illicitly or invalidly according to canon 2284.

d) Suspension from sacred orders forbids every act of the power of order received through ordination in sacred orders (cited canon, 4°); the same applies as under c).

e) Suspension from exercising a certain and definite order forbids every act of the designated order; moreover the suspended person is also prohibited from conferring the same order and from receiving a higher order and exercising it after it has been received after suspension (cited canon, 5°).

f) Suspension from conferring a certain and definite order forbids conferring that order, but not an inferior or higher one (cited canon, 6°).

g) Suspension from a certain and definite ministry, for example hearing confessions, or office, for example one with care of souls, forbids every act of that same ministry or office (cited canon, 7°).

h) Suspension from pontifical order forbids every act of the power of episcopal order (cited canon, 8°), for example the blessing of holy oils, conferral of Orders, even Tonsure, consecration of a church, Confirmation, etc.; but a Pontifical Mass is permitted.

i) Suspension from pontificals forbids the exercise of pontifical acts (cited canon, 9°), namely of those sacred functions which by liturgical laws require the pontifical insignia, that is, the staff and miter (canon 337, § 2). One suspended in such a way is indirectly prohibited from exercising acts of order which cannot be exercised without pontificals. Therefore this suspension directly or indirectly prohibits: Pontifical Mass and Vespers, solemn assistance at Mass, conferral of Orders, Tonsure excepted, which probably can be conferred without staff and miter, consecration of a Bishop, blessing of an Abbot, solemn blessing and consecration of virgins, blessing and coronation of kings, blessing or consecration of a church bell, consecration of a church, altar, sacred vessels, solemn blessing of the cornerstone and cemetery, solemn reconciliation of a church and cemetery, solemn Confirmation.[5]

3. Suspension from benefice deprives one of the fruits of the benefice, except habitation in the benefice buildings, but not of the right of administering the benefice goods, unless the decree or sentence of suspension expressly takes away from the suspended person the power itself of

administering and assigns it to another (canon 2280, § 1). Fruits are understood as all temporal revenues which remain after the necessary expenses of the benefice have been deducted, namely for Mass obligations, taxes, etc. What things are comprehended in the fruits of the benefice depends on its very erection, according to canon 1410; therefore the question cannot generally be solved, as several authors today have retained from the old law, whether, for example, daily distributions are comprehended in the fruits; rather, what the law is will have to be gathered from the custom of places and from the express will of the one issuing the penalty.[6] See also canon 1412.

One suspended in such a way retains the right of administering the benefice goods, unless the decree or sentence of suspension expressly takes away the administration itself from the suspended person and assigns it to another (canon 2280, § 1). But if the suspended person truly needs it, he can retain those things which are necessary for his sustenance, if his penalty is vindicative; for this seems to be the benign mind of the Superior (cf. the parallel case, canon 2303, § 2); but not if the penalty is a censure, because its duration depends on the conversion of the delinquent (cf. St. Alphonsus VII, 316, doubt 1).

The suspended person must restore fruits illicitly received (cf. canon 2232, §§ 1 and 2); and, if need be, he can also be compelled to this restitution by canonical sanctions (canon 2280, § 2).

4. Suspension generally issued, or suspension from office or from benefice:

a) If it has been issued by the local Ordinary, it affects all offices or benefices which the cleric has in the diocese of the suspending Superior, unless something else appears (canon 2281); but the local Ordinary cannot suspend a cleric from a determinate office or benefice which is found in another diocese (canon 2282). It is expressly said: from a determinate office or benefice, because special suspensions, for example from orders, bind the guilty person everywhere (canon 2226, § 4); but if there is question of suspension from jurisdiction, only insofar as this depends on the Superior who inflicted the penalty.

b) If it is *latae sententiae*, imposed by common law, it affects all offices or benefices in whatever diocese they are possessed (canon 2282).

Note. The things which canon 2265 establishes concerning excommunication are also applicable to suspension (canon 2283). Hence to anyone suspended there are to be applied the things said on p. 735, n. 8, a) and b), alpha-delta.

5. If the censure of suspension which forbids administration of Sacraments and Sacramentals has been incurred, this prohibition does not press when, before sentence, he has been requested by the faithful, who may seek this for a just cause, especially if other ministers are lacking; or when, after sentence, he is requested in danger of death, either to absolve the faithful sacramentally, although another priest is present, or to give the other Sacraments and Sacramentals if other ministers are lacking. Besides, the things said on p. 734, 4, are to be applied, except the last clause, which is added from canon 2263 (canon 2284).

If the censure of suspension which prohibits an act of jurisdiction in the internal or external forum has been incurred, the things said under 6 are valid; nevertheless an act of jurisdiction is sometimes also invalid, namely if a declaratory or condemnatory sentence has been issued, or if the Superior declares that he revokes the jurisdiction itself; and when this last has taken place, even in danger of

death only the faithful can seek from the suspended person an act of jurisdiction, which then is valid and licit, always saving canon 884 on absolution of an accomplice (canon 2284).

6. If a community or college of clerics has committed a delict, suspension can be issued either against the individual delinquent persons, or against the community as such, or against the delinquent persons and the community (canon 2285, § 1). Moreover:

a) If the first, the canons of this article are to be observed (canon 2285, § 2), that is, the canons explained in this chapter.

b) If the second, the community is prohibited from the exercise of the spiritual rights which belong to it as a community (canon 2285, § 3). One who ceases to be a member of the suspended community is freed from suspension by the fact itself, and does not need absolution.

c) If the third, the effects are cumulated (canon 2285, § 4).

[1] Sometimes the prohibition does not press, namely when the suspended person is requested according to canon 2284, concerning which see below pp. 768-769, note 3.

[2] What happens if the suspended person is requested by the faithful will be said below; in the same place there will be discussion of the validity of prohibited acts (canon 2284).

[3] See again the limits of canon 2284.

[4] Aertnys-Damen, op. cit., II, 1023.

[5] Solemn is rather often added, because a simple priest can sometimes be delegated to perform several functions in a simpler manner without pontificals (canons 1156; 1163; 1170, § 2; 1205, § 1; 1207). Cf. also canon 294, § 2, as to which functions it is not licit for a Bishop to perform without pontificals, except Confirmation and Tonsure.

[6] Chelodi, op. cit., p. 51.

887 IV. Violation of suspension is a grave or light sin according as the suspended person places an act excluded by suspension of grave or light importance. In addition, a suspended person prohibited from the exercise of Sacred Order, who places an act of Order reserved to clerics constituted in Sacred Order, is irregular (canon 985, 7°).

Scholion. On Suspension from Informed Conscience

888 I. Notion. Suspension from informed conscience is suspension from office, whether total or partial, which is inflicted by the Ordinary by simple decree, by an extrajudicial way and without prior canonical warnings (cf. canons 2186, § 1; 2187). It is not licit to use this extraordinary remedy if the Ordinary can, without grave inconvenience, proceed against the subject according to the norm of law (canon 2186, § 2).

II. Mode of proceeding. A decree of this kind is to be given in writing, unless circumstances demand otherwise, with the day, month, and year designated; and in it:

1. It must be expressly said that the suspension is issued from informed conscience, or from causes known to the Ordinary himself;
2. The time of duration of the penalty must be indicated; moreover, the Ordinary should abstain from inflicting it in perpetuity. But it can be inflicted even as a censure, provided that in this case the cause for which the suspension is imposed is made known to the cleric;

3. The acts which are prohibited must be clearly indicated, if the suspension is inflicted not in whole but in part (canon 2188).

Note. If a cleric is suspended from an office in which another must be substituted in his place, for example, an administrator in the care of souls, the one who is substituted is to receive a wage from the fruits of the benefice to be determined according to the prudent judgment of the Ordinary (canon 2189, § 1). A suspended cleric, if he feels burdened, can seek diminution of the pension from the immediate Superior who in the judicial way would be the judge of appeal (canon 2189, § 2).

III. The cause for proceeding in this way is a delict of the cleric: 1° so grave that it must be coerced by a penalty of this kind; 2° morally certain; that is, from investigations conducted the Ordinary must have gathered proofs of such a kind as make him certain that the cleric truly perpetrated the delict (canon 2190). Moreover, concerning the delict observe:

1. A just and legitimate cause is an occult delict (canon 2191, § 1; n. 846).
2. On account of a notorious delict, suspension from informed conscience can never be issued (canon 2191, § 2); but suspension from informed conscience is valid if from several delicts only one was occult (canon 2192).
3. In order that a public delict (n. 846) can be punished by suspension from informed conscience, it is necessary that some one of the following circumstances occur: 1° if upright and serious witnesses indeed disclose the delict to the Ordinary, but can by no means be induced to give testimony about it in trial, nor can the delict be proved in judicial process by other proofs; 2° if the cleric himself prevents, by threats or other means used, a judicial process from being instituted or, once begun, from being completed; 3° if impediments to carrying out the judicial process and issuing the sentence arise from adverse civil laws or from grave danger of scandal (canon 2191, § 3).

IV. Disclosure of the cause to the guilty person. 1. In the case of a censure, that is, of a medicinal penalty, the cause for which this suspension is imposed is to be made known to the cleric, so that he may know in what matter he is to be corrected and, once corrected, can seek absolution.

2. In the case of a vindicative penalty, it is left to the prudent judgment of the Ordinary whether to disclose or withhold from the cleric the cause of the suspension, or the delict, pastoral solicitude and charity nevertheless being used, so that, if he has judged that the delict should be made known to the cleric, the penalty, from the paternal admonitions which he has interposed, may serve not only for the expiation of guilt, but also for the amendment of the delinquent and the removal of the occasion of sin (canon 2193).

V. Recourse from a censure is given only in devolutive effect (canon 2243, § 1), but from a vindicative penalty also in suspensive effect (canon 2287).

If a cleric lodges recourse from a suspension inflicted on him, the Ordinary must send to the Apostolic See the proofs by which it is established that the cleric truly perpetrated the delict which can be punished by this extraordinary penalty (canon 2194).

Part II. On Vindicative Penalties

Section I. On Vindicative Penalties in General

889 I. Notion. Vindicative penalties are those which tend directly to the expiation of the delict, so that their remission does not depend on the cessation of the delinquent's contumacy (canon 2286).

II. Division. A vindicative penalty is distinguished:

1. By reason of the privation, into spiritual or mixed, or even merely temporal, because sometimes it deprives one of merely temporal goods; otherwise than a censure (n. 862).
2. By reason of the subject, into one common to all the faithful or special to clerics.
3. Finally, just as censure, so also a vindicative penalty is *latae* or *ferendae sententiae*, *a iure* or *ab homine*, determinate or indeterminate.

Note 1. From inflicted vindicative penalties there is given appeal or recourse in suspensive effect, unless something else is expressly provided in law (canon 2287).

Note 2. In canon law the so-called conditional condemnation is assumed; for canon 2288 establishes: if the guilty person is such that for the first time after a life laudably passed he has offended, it is remitted to the prudence of the judge to suspend the execution of the ordinary penalty inflicted by condemnatory sentence; yet on this condition, that if the guilty person within the next three years commits another delict of the same or another kind, he undergo the penalty due to each delict (canon 2288). With the three years having passed without crime, the guilty person is free from the effect of the condemnation. Nevertheless this conditional condemnation is not admitted: 1° in penalties of degradation, deposition, deprivation of office or benefice; 2° if the necessity of repairing scandal presses (cited canon).

III. Cessation. A vindicative penalty is ended:

1. By its expiation (canon 2289), and this mode corresponds to its nature.
2. By dispensation (cited canon); for this there is required a cause proportionate to the gravity of the penal law, because dispensation in a vindicative penalty is against the intention of the law; it is certainly also required that the guilty person be amended and that he have repaired damages and scandal according to his powers. Nor, when the dispensation sought has been denied, can the guilty person appeal, but only for a grave cause have extrajudicial recourse to the Superior.

Dispensation can be granted by: 1° him who issued the penal law or penalty; 2° his competent Superior or successor; 3° the person to whom the power of dispensing from the penalty or from the penal law has been committed (canons 2236; 2237; 2290). Moreover, this power has been committed as follows:

a) The Ordinary, by force of canon 2237, can by ordinary power: 1° in public cases remit vindicative penalties *latae sententiae* established by common law, except cases brought to the contentious forum, and penalties of incapacity for benefices, offices, dignities, functions in the Church, active and passive voice, or deprivation of these, perpetual suspension, infamy of law, deprivation of the right of patronage and of a privilege or grace granted by the Apostolic See; 2° in occult cases remit vindicative penalties *latae sententiae* established by common law and reserved in any manner whatever.

b) Any confessor can in the sacramental forum, in more urgent occult cases, namely, if from observance of a vindicative penalty *latae sententiae* the guilty person would betray himself with infamy and scandal: 1° suspend the obligation of observing the penalty, with the burden imposed of having recourse at least within a month by letter and through the confessor, if this can be done without grave inconvenience, the name withheld, to the Sacred Penitentiary or to the Bishop endowed with the faculty, and of standing by his commands; 2° dispense, if in some extraordinary case the aforesaid recourse is impossible, nevertheless imposing those things which by law must be imposed and imposing congruous penance and satisfaction for the penalty, so that the penitent, unless within a congruous time to be fixed beforehand by the confessor he has done penance and given satisfaction, falls back into the penalty (canon 2290, § 2, compared with canon 2254, § 3); that is, reincidence, although by its own nature it regards censures, nevertheless of itself does not prevent a Prelate from dispensing from a penalty under the condition that the dispensed person, if he does not perform something, is again bound by the bond of the same penalty.[1]

[1] Lega, op. cit., n. 135.

Section II. On Common Vindicative Penalties

890 From canon 2291, the vindicative penalties which can affect all the faithful according to the gravity of delicts, in the Church, especially,[1] are:

I. A local interdict and an interdict against a community or college, in perpetuity or for a predefined time or at the good pleasure of the Superior.

II. An interdict from entrance into the church, in perpetuity or for a predefined time or at the good pleasure of the Superior.

III. Penal transfer or suppression of an episcopal or parochial see; concerning this notice: 1° penal suppression or transfer of an episcopal see is reserved to the Roman Pontiff; 2° but that of a parochial see cannot be decreed by local Ordinaries except with the counsel of the Chapter (cf. canons 248, § 3; 1421; 1428).

IV. Infamy of law; concerning this note:

1. Infamy is either of law or of fact (canon 2293, § 1). Infamy of law is that which is established in cases expressed by common law (canon 2293, § 2). Infamy of fact is contracted when someone, on account of a perpetrated delict or on account of depraved morals, has lost good reputation among upright and serious faithful, the judgment concerning which belongs to the Ordinary (canon 2293, § 3).[2] Neither affects the delinquent's blood-relatives or affines; nevertheless infamy of fact arising from the deed of household members or blood-relatives with whom an irremovable pastor lives can be for him a canonical cause of removal (canon 2293, § 4).
2. One who labors under infamy of law is not only irregular from defect, but besides is incapable of obtaining benefices, pensions, offices, and ecclesiastical dignities, of performing legitimate ecclesiastical acts,[3] of exercising an ecclesiastical right or function, and finally must be barred from exercising ministry in sacred functions (canon 2294, § 1). One who labors under infamy of fact, as long as it endures in the judgment of the Ordinary, is simply impeded from receiving orders, and must also be repelled from ecclesiastical dignities, benefices, and offices strictly so

called, from exercising sacred ministry, and from legitimate ecclesiastical acts (canon 2294, § 2); nevertheless he is not incapable, and therefore he validly acquires and acts.

3. Infamy of law ceases only by dispensation granted by the Apostolic See; infamy of fact ceases when, all circumstances having been weighed and especially by long amendment of the guilty person, good reputation among upright and serious faithful has been recovered in the prudent judgment of the Ordinary (canon 2295).

V. Deprivation of burial; concerning this observe:

1. What both ecclesiastical burial and deprivation of it import was said on p. 733.
2. All baptized persons are to be granted ecclesiastical burial unless they are expressly deprived of it by law (canon 1239, § 3). Catechumens who without any fault of their own die without baptism are to be numbered with the baptized (canon 1239, § 2).
3. Those who have died without baptism are not to be admitted to ecclesiastical burial (canon 1239, § 1); yet in them this does not have the character of a penalty. But by way of penalty, from canon 1240, § 1, the following are deprived of ecclesiastical burial, unless before death they have given some signs of penitence:[4]

a) Notorious apostates from the Christian faith, or those notoriously attached to a heretical or schismatic sect, or to a Masonic sect or other societies of the same kind.

b) Excommunicated or interdicted persons after condemnatory or declaratory sentence; from this it is clear that deprivation of ecclesiastical burial depends not only on common law, but also on particular law, for the Ordinary can establish these penalties.

c) Those who have killed themselves by deliberate plan; this plan is presumed in doubt, according to canon 2200, § 2.

d) Those who died in a duel or from a wound received from it.

e) Those who have commanded their body to be handed over to cremation.

f) Other public and manifest sinners, for example those who for a long time have contemned reception of the Sacraments.

Note. If some doubt occurs in the aforesaid cases, the Ordinary should be consulted if time permits; if the doubt remains, the body is to be handed over to ecclesiastical burial, yet in such a way that scandal is removed (canon 1240, § 2); cf. also the decision of the Sacred Penitentiary handed down on p. 734.

VI. Deprivation of Sacramentals.

VII. Deprivation or suspension for a time of a pension which is paid by the Church or from the goods of the Church, or of another ecclesiastical right or privilege (cf. canons 1429; 2161; 2299, § 3).

VIII. Removal from exercising legitimate ecclesiastical acts.

IX. Incapacity for ecclesiastical graces or functions in the Church which do not require the clerical state, or for obtaining academic degrees by ecclesiastical authority; concerning this notice:

1. If there is question of things for obtaining which capacity is established by common law,[5] the Apostolic See alone can inflict the penalty of incapacity (canon 2296, § 1).
2. Rights already acquired are not lost on account of supervening incapacity, unless the penalty of deprivation is added to this (canon 2296, § 2).

Note. The things said under 1 and 2 are said generally, and therefore are to be applied to incapacity, whether as it is an effect of infamy of law, or as it is a penalty common to the faithful under IX, or peculiar to clerics (canon 2298, 5°).

X. Deprivation or suspension for a time of a function, faculty, or grace already obtained.

XI. Deprivation of the right of precedence (canon 106), or of active and passive voice, or of the right of bearing titles of honor, vesture, or insignia which the Church has granted.

XII. Pecuniary fine. Pecuniary fines inflicted by common law, the expenditure of which is not predefined by the same law, and other fines established or to be established by particular law, local Ordinaries must expend for pious uses, not for the benefit of the episcopal or capitular table (canon 2297).

[1] Whence it is drawn that the enumeration is not taxative; therefore the Superior, the things to be observed being observed, can inflict a congruous penalty not contained in this series.

[2] Infamy of law alone is a true penalty, but not infamy of fact, as is also clear from the mode of cessation.

[3] "According to the norm of law" is understood (cf. canon 2263), because, for example, before sentence one infamous with infamy of law would be only illicitly a sponsor in the Sacraments, but after it invalidly (cf. canons 765, 766, 795, 796); concerning the right of patronage see canon 1470, § 4.

[4] It is not enough that one deprived of the senses has received absolution under condition, since this can be given although signs of penitence do not appear.

[5] For example, capacity for acquiring graces (canon 36).

Section III. On Vindicative Penalties Peculiar to Clerics

891 From canon 2298, the vindicative penalties which are applied to clerics alone are:

I. Prohibition of exercising the sacred ministry except in a certain church.

II. Suspension in perpetuity, or for a predefined time, or at the good pleasure of the Superior.

III. Penal transfer from an office or benefice obtained to a lower one; concerning this note: if a cleric obtains an irremovable benefice, he can be deprived of it as a penalty only in cases expressed by law; if it is removable, also for other reasonable causes (canon 2299, § 1).

IV. Deprivation of some right joined with a benefice or office; concerning this canon 2299, § 2, establishes: clerics obtaining benefices, offices, and dignities can also be prohibited for a certain time only from some ministry joined with them, for example the ministry of preaching, hearing confessions, etc.

V. Incapacity for all or for some dignities, offices, benefices, or other functions proper to clerics (cf. canon 2296).

VI. Penal deprivation of a benefice or office with or without pension; concerning this observe canon 2299, § 1, cited under III.

Note. Regarding numbers III, IV, and VI, note canon 2299, § 3: A cleric cannot be deprived of a benefice or pension by title of which he was ordained, unless provision is made from elsewhere for his honorable sustenance, saving the prescription of canons 2303, 2304.

VII. Prohibition of dwelling in a certain place or territory. The Ordinary can command as a penalty that a subject cleric remain outside a certain place or territory and dwell in a certain place or territory of his diocese; but he cannot prescribe that a cleric dwell in a certain place outside the boundaries of his diocese, unless the consent of the Ordinary of that place is added, or there is question of a house of penance or correction destined not only for diocesan clerics but also for outsiders, or of an exempt religious house, with the consent of its Superior (canon 2301). Nevertheless, both prescription and prohibition of dwelling in a certain place and placement in a house of penance or in a religious house, especially if they are going to endure for a long time, are to be imposed only in grave cases in which, in the prudent judgment of the Ordinary, these penalties are necessary for the amendment of the cleric or the repair of scandal (canon 2302).

VIII. Prescription of dwelling in a certain place or territory. See the things said under VII.

IX. Deprivation for a time of ecclesiastical habit. If a cleric gives grave scandals and, having been warned with threat of penalty, does not come to his senses, nor can the scandal be removed otherwise, he can meanwhile be deprived of the right of wearing ecclesiastical habit; this deprivation, while it endures, carries with it the prohibition of exercising any ecclesiastical ministries and deprivation of clerical privileges (canon 2300).

X. Deposition; concerning this we note:

1. Deposition, the obligations arising from the order received and clerical privileges remaining firm, carries with it both suspension from office and incapacity for any offices, dignities, benefices, pensions, functions in the Church, and also deprivation of those things which the guilty person has,[1] although he was ordained by title of them (canon 2303, § 1). But in this last case, if the cleric truly needs it, the Ordinary, according to his charity, should take care to provide for him in the better way possible, lest he be forced to beg with dishonor to the clerical state (canon 2303, § 2).
2. The penalty of deposition cannot be inflicted except in cases expressed by law (canon 2303, § 3); moreover, it must be inflicted before a tribunal of five judges (canon 1576, § 1, 2°).

The penalty of deposition is always *ferendae sententiae*; therefore a deposed person is subjected to the effects of suspension after sentence as regards the validity of acts of office.

XI. Perpetual deprivation of ecclesiastical habit is a special penalty of a deposed cleric; for if a deposed cleric does not give signs of amendment, and especially if he continues to give scandal and, having been warned, does not come to his senses, the Ordinary can perpetually deprive him of the right of wearing ecclesiastical habit (canon 2304, § 1); but only before a tribunal of five judges (canon 1576, § 1, 2°). This deprivation (canon 2304, § 2) carries with it deprivation of clerical privileges and cessation of the prescription by which the Ordinary according to his charity should take care to provide for him, if the cleric truly needs it. Nevertheless he is bound by the obligation of observing celibacy and the canonical hours.

XII. Degradation; concerning this the Code establishes:

1. Degradation contains in itself deposition, perpetual deprivation of ecclesiastical habit, and reduction of the cleric to the lay state (canon 2305, § 1). A degraded cleric in major orders is not bound to recite the canonical hours, but he is bound to observe celibacy (canons 135; 213, § 2); every degraded cleric besides is prohibited from wearing the tonsure (canon 213, § 1).
2. This penalty can be issued only because of a delict expressed in law, or if a cleric, already deposed and deprived of clerical habit, still continues to give grave scandal for a year (canon 2305, § 2). But there is not an obligation of proceeding in this way immediately after a year.[2] Besides, it must be inflicted in the same way as deposition and perpetual deprivation of ecclesiastical habit.
3. Degradation is either verbal or edictal, which is imposed by sentence alone, yet in such a way that it immediately has all its juridic effects without any execution; or real, if the solemnities prescribed in the Roman Pontifical are observed (canon 2305, § 3). But this real degradation adds no juridic effect to the penalty already inflicted.
4. Dispensation from the penalty of degradation inflicted on a cleric in major orders is reserved to the Holy See (canon 212, § 2); as regards dispensation from the penalty of deposition, the same is not established.

[1] Wherever, for it is a penalty of common law (cited canon, § 3).

[2] Against clerics in minor orders the Ordinary can proceed in an easier way, namely by decree; cf. canon 211, § 2, where the penalty of degradation is not even mentioned (cf. § 1). A cleric in minor orders dismissed in this way can be admitted again by the Ordinary according to canon 212, § 1, otherwise than a cleric in major orders (canon 212, § 2).

Part III. On Penal Remedies and Penances

These are disciplinary means of coercing delicts, which do not attain the character of penalty in the proper sense.

Section I. On Penal Remedies

892 I. Notion. A penal remedy is a canonical means of forestalling true delicts or further delicts. Because they import some penality, they suppose some transgression of law which nevertheless does not reach the character of a delict, and some fault, although not grave. The case is when a transgression for the transgressor is the occasion or danger of committing a true delict, or contains suspicion of that delict and thence scandal of the faithful, for example visits or familiarities of a cleric with persons of diverse sex.[1] Furthermore, sometimes a penal remedy is substituted for or added to a penalty, so that further delicts may be forestalled (canons 2223, § 3, 3°; 2224, § 2; 2234).

II. Penal remedies from canon 2306 are: 1° warning; 2° correction; 3° precept; 4° vigilance; this enumeration seems to be taxative.

1. Warning. Him who is in the proximate occasion of committing a delict, or upon whom, from an inquiry conducted, there falls grave suspicion of a committed delict, the Ordinary is to warn by himself or through an interposed person (canon 2307).

2. Correction. If from someone's conduct scandal or grave disturbance of order arises, there is place for correction, to be made by the Ordinary by himself or through an interposed person, even by letter, adapted to the particular conditions of the person and of the fact in question (canon 2308).

Regarding the mode of making warning and correction, the Code establishes:

a) Both warning and correction can be either public or secret (canon 2309, § 1).

b) Public correction or warning is to be made either before a notary or two witnesses, or by letter, yet in such a way that the reception and tenor of the letter are established from some document (canon 2309, § 2; cf. canon 2143, § 3).

c) Public correction can be made only against a guilty person convicted of or confessing a delict; and it is judicial if it is made by a judge sitting for tribunal or by the Ordinary before criminal process; extrajudicial if it is made in the manner of a precept outside judgment (canons 2309, § 3; 1933, § 4). The latter admits recourse; the former, appeal.

d) Judicial correction[2] either is had in place of a penalty, or is made to increase the penalty, especially if there is question of a recidivist (canon 2309, § 4).

e) Warning and correction, even if they were made secretly, must be established from some document to be preserved in the secret archive of the Curia (canon 2309, § 5).

f) Both correction and warning can be made once or several times, according to the judgment and prudence of the Superior (canon 2309, § 6).

3. A precept must accurately indicate, and this with threat of penalty in case of transgression, what the person forestalled must do or avoid. It is to be given after warnings and corrections have been

made in vain, or if it is not licit to hope for effect from them (canon 2310); therefore if there is no hope of fruit, warnings or corrections can be omitted.

4. Vigilance. If the gravity of the case bears it, and especially if there is question of one who is in danger of relapsing into the same crime, the Ordinary is to subject him to vigilance (canon 2311, § 1). Vigilance can also be prescribed to increase a penalty, especially against recidivists (canon 2311, § 2; cf. canons 2234; 2224, § 2).

[1] Wernz, op. cit., n. 253.

[2] Cf. canons 1947-1953, which we leave to canonists to explain. Judicial correction cannot be made a third time against the same guilty person (canon 1949, § 1); when it must be omitted, see canon 1948.

Section II. On Penances

893 I. Notion. Penances in the external forum are imposed so that the delinquent may either escape a penalty or receive absolution or dispensation from a contracted penalty (canon 2312, § 1). In order that a penance can be imposed, grave imputability of a committed delict is nowhere required; nor is it required that there be a delict in the proper sense. That a transgression which does not reach the character of a delict suffices is clear first from the same canon, § 2, where this is insinuated by the words delict or transgression; then from canon 1313, § 2, according to which a penance can be joined by the Ordinary to a warning; but this does not prerequire a delict. Hence by reason of scandal given or danger of delict, and in other cases where amendment, for example of a cleric, is desired, the Ordinary can oblige him especially to make spiritual exercises, since these also have the character of a preventive remedy.[1]

II. Division. Penances are public or secret insofar as they must be fulfilled in a way easily knowable by others, for example an unusual pilgrimage, or can be fulfilled secretly, for example prayers to be recited. Moreover, on account of an occult delict or transgression, a public penance is never to be imposed (canon 2312, § 2).

III. Application. Penances are to be moderated not so much according to the quantity of the delict as according to the contrition of the penitent, with the qualities of persons and the circumstances of delicts weighed (canon 2312, § 3); for just as a penalty in the proper sense regards more the delict to be coerced or vindicated, so disciplinary penance regards more the disposition of the penitent, whether to be corrected or to be confirmed.

IV. The principal penances from canon 2313, § 1, are precepts:

1. Of reciting determinate prayers.
2. Of making some pious pilgrimage or other works of piety.
3. Of observing a particular fast.
4. Of expending alms for pious uses.
5. Of making spiritual exercises in a pious or religious house for some days.

The Ordinary, according to his prudence, can add these or other penances to the penal remedy of warning and correction (canon 2313, § 2), namely so that the guilty person may show his amendment by their fulfillment.

[1] Wernz, op. cit., n. 251.

Dissertation III. On Penalties Established for Individual Delicts

I note beforehand canon 6, n. 5: As regards penalties of which no mention is made in the Code, whether they are spiritual or temporal, medicinal or, as they say, vindicative, *latae* or *ferendae sententiae*, they are to be held as abrogated.

With these things noted, we shall speak chiefly of medicinal penalties, or censures, and of those *latae sententiae*; the others come less into use for confessors. Therefore one must treat first of excommunications, then of interdicts, finally of suspensions.

Part I. On Excommunications

Section I. Excommunications Reserved to the Roman Pontiff in the Most Special Manner

The following contract this excommunication:

I. One who has thrown away the consecrated species, or has taken them away or retained them for an evil end (canon 2320). It is said:

1. Consecrated species, whether of bread or wine, whether several or one, or consecrated particles.
2. Has thrown away, suppose by throwing the species onto the ground; but one who places the consecrated species upon the pall in order to remove the pyx does not incur the excommunication.
3. Has taken away or retained for an evil end, suppose to profane them. It also suffices that someone retain species taken away by another for an evil end. But one is not excommunicated who takes away or retains the species, for example, in order to adore them at home.

Note. The delinquent is suspected of heresy, infamous by the fact itself, and if a cleric, besides, is to be deposed (canon 2320).

II. One who has laid violent hands on the person of the Roman Pontiff (canon 2343). This canon must be interpreted broadly, since it regards the privilege of the canon, as it is called, insofar as it belongs to the Roman Pontiff; see the interpretation on p. 766.

Note. The delinquent is infamous by the fact itself, and if a cleric, besides, must be degraded (canon 2343).

894 III. One absolving, or pretending to absolve, an accomplice in a base sin incurs by the fact itself an excommunication reserved to the Apostolic See in the most special manner; and this even at the article of death, if another priest, although not approved for confessions, can receive the confession of the dying person without some grave infamy and scandal going to arise, except in the case in which the dying person refuses to confess to another. One absolving or pretending to absolve an accomplice who indeed does not confess the sin of complicity, from which he has not yet been absolved, does not escape the same excommunication if he behaves in this way because he was induced to do so by the accomplice-confessor, whether directly or indirectly (canon 2367); see the interpretation of this canon in n. 412 sq.

IV. A confessor who has presumed to violate the sacramental seal directly (canon 2369, § 1). A few judge that this censure is *ferendae sententiae*, because the word has presumed seems to remain ambiguous; moreover, in penalties the more benign interpretation must be made (canon 2219, § 1; p. 712). But the contrary seems altogether to have to be admitted, both because censures reserved to the Supreme Pontiff were always *latae sententiae*, and because, if the contrary opinion were admitted, the Bishop could issue the censure of which we speak, but could not absolve from it, as reserved to the Supreme Pontiff; which cannot be admitted according to the things said on p. 727, 1, c.

What a direct violation of the sacramental seal is, see n. 428.

Note 1. A confessor who has presumed to violate the sacramental seal only indirectly (n. 418) is to be suspended from the celebration of Mass and from hearing sacramental confessions, or even, according

to the gravity of the delict, is to be declared incapable of receiving them, and in graver cases is also to be subjected to degradation (canon 2369, § 1).

Note 2. Whoever has rashly violated the prescription of canon 889, § 2,[1] is to be punished according to the gravity of the guilt with a salutary penalty, which can even be excommunication (canon 2369, § 2).

V. To this place can be referred:

1. Excommunications established for delicts which can be committed in electing the Supreme Pontiff, and which are contained in the Constitution of Pius X *Vacante Sede Apostolica*, December 25, 1904. Namely, those perpetrating delicts of this kind "can be absolved by no one, not even by the Major Penitentiary by force of any faculty, except by the Roman Pontiff, unless at the article of death" (cited Constitution, § 51).
2. The excommunication annexed to the revelation of the secret of the Holy Office (canon 239, § 1, 1°, compared with canon 243). Moreover, from the decree of the Sacred Consistorial Congregation, April 25, 1917, it follows that the same secret must be observed by those from whom information is requested concerning those to be promoted to the Episcopate.[2]

[1] That is, the interpreter and all others to whom knowledge of a confession has come in any way whatever, who by word or sign or in any other way and for any cause betray the sinner in any manner.

[2] *A.A.S.* 1917, p. 232; Aertnys-Damen, op. cit., II, n. 1044, note 2.

Section II. Excommunications Reserved to the Roman Pontiff in a Special Manner

895 This excommunication is contracted by:

I. All apostates from the Christian faith, and all and each heretics or schismatics (canon 2314, § 1, 1°, and § 2). This excommunication is reserved to the Apostolic See in a special manner only insofar as absolution is to be imparted in the forum of conscience (cited canon, § 3; cf. 3, b). Who come under the name of apostates, heretics, and schismatics, see canon 1325, § 2 and volume I, n. 492. Note, however, that it is required that apostasy, heresy, or schism be externally manifested. For the rest, observe:

1. As to apostates. Here belong both those who reject every religion, such as atheists, pantheists, naturalists, and so-called free-thinkers; and those who pass over, for example, to Judaism, Mohammedanism, or paganism; but not those who are only practically indifferent.
2. As to heretics. It is not required that someone be enrolled in some heretical sect. Those enrolled in a sect, however, are deemed, for the external forum, to have contracted the censure, although perhaps internally they are not formal heretics and therefore have not in fact contracted the censure (n. 862).
3. Schismatics. It is not required that someone be enrolled in a schismatic body; but neither is it enough that someone, even habitually, transgress special commands of the Supreme Pontiff. For the rest, note:

a) Unless they, namely apostates, heretics, or schismatics, having been warned, come to their senses, they are to be deprived of benefice, dignity, pension, office, or other function, if they have any in the Church; they are to be declared infamous; and clerics, after a repeated warning, are to be deposed

(canon 2314, § 1, 2°). If they have given their name to a non-Catholic sect or publicly adhered to it, they are *ipso facto* infamous, and clerics *ipso facto* and without any declaration lose any offices whatever, and, after a warning has been given in vain, are to be degraded (canon 2314, § 1, 3°).

b) As to absolution from the excommunication set forth, observe:

alpha) Absolution to be imparted in the forum of conscience is reserved to the Apostolic See in a special manner (canon 2314, § 2). The faculty of absolving any penitents whatever, except heretics who purposely disseminate heresy among the faithful, from any censures and ecclesiastical penalties incurred on account of heresies externalized either with no one hearing or noticing, or before others, is customarily granted through the Sheet of the Sacred Penitentiary. Nevertheless it cannot be exercised except in the act of sacramental confession and for the forum of conscience only, after a secret abjuration has first been made before the confessor. Moreover, a salutary penance is to be imposed, together with frequency of the sacraments and the obligation of repairing the scandals caused. For the forum of conscience no form of abjuration seems prescribed; hence, for example, these words of the Profession of Faith at the end suffice: "I likewise condemn and reject any heresies whatever condemned by the Church."

beta) If the delict of apostasy, heresy, or schism has in any way been brought to the external forum of the local Ordinary, even by voluntary confession, that same Ordinary, but not the Vicar General without a special mandate, can by his ordinary authority absolve in the external forum the one who has come to his senses, after an abjuration juridically performed and with the other things to be observed by law observed; and one thus absolved can then be absolved from sin by any confessor in the forum of conscience. Abjuration is held to have been juridically performed when it is made before the local Ordinary himself or his delegate and at least two witnesses (canon 2314, § 2). As to the form of abjuration, in practice the Profession of Faith which is placed at the beginning of the Code suffices.

Question: whether those doubtfully baptized or doubtfully validly baptized, who are guilty of apostasy, heresy, or schism, are subject to excommunication.

Response: They are or are not subject to the excommunication according as in fact they were validly or not validly baptized. Since this here and now is doubtful, absolution is to be granted as a precaution if they are converted to the Church. If you object that those doubtfully baptized or doubtfully validly baptized are not subject to the laws of the Church, I answer: if it concerns laws which deprive someone of some good, they are subject or not subject to them according as valid baptism did or did not take place; if the discussion is of laws which regard an act, see volume I, n. 130.

II. One suspected of heresy who, having been warned and punished according to the norm of canon 2315, has not completely amended himself within six months from the penalty contracted (canon 2315). Moreover, the following are suspected of heresy:

1. Whoever in any way willingly and knowingly helps the propagation of heresy (canon 2316).
2. Whoever communicates in divine things with heretics by actively assisting at their rites (canon 2316; p. 732).

3. Those who enter marriage with an explicit or implicit agreement that all or some of the offspring be educated outside the Catholic Church (canon 2319, § 1, n. 2, § 2).
4. Those who knowingly presume to offer their children to non-Catholic ministers for baptism (ibid., n. 3).
5. Parents, or those holding their place, who knowingly hand over their children to be educated or instructed in a non-Catholic religion (ibid., n. 4).
6. Whoever has thrown away consecrated species or has taken them away or retained them for an evil purpose (canon 2320).
7. Those appealing from the laws or mandates and decrees of the Roman Pontiff to a Universal Council (canon 2332).
8. Whoever, with hardened spirit, has wallowed for a year in excommunication (canon 2340, § 1).
9. All, even those of episcopal dignity, who knowingly through simony have promoted someone to Orders or have been promoted, or have administered or received other Sacraments (canon 2371).

Section II. Excommunications Reserved to the Roman Pontiff in a Special Manner (continued)

III. After the work has been made public, publishers of books of apostates, heretics, and schismatics which defend apostasy, heresy, or schism; likewise those defending these same books or others prohibited by name through apostolic letters, or knowingly reading or retaining them without due permission (canon 2318, § 1). First, note that it is required that the work have been made public, in other words, that it have been multiplied for fairly common use, not merely for the use of a few, say only of students; a fortiori a manuscript is excluded. For the rest, it does not matter whether the work was multiplied by type, by polygraph, or by lithograph. Next it is required that the work made public constitute a book. The word "book" is to be taken as it was formerly taken (cf. canon 6, nn. 2-4), that is, for a literary work of a certain bulk and a certain unity. It is said to be of a certain bulk, for example, to choose a middle point among the different opinions, about eighty pages in octavo. Therefore a separately published letter or sermon, small pamphlets, newspapers or periodicals,[1] are excluded; but not periodical publications, whether taken separately, provided they are of sufficient bulk, or bound in fascicles,[2] and thus constituting the required unity. Moreover, the following are excommunicated:

1. Publishers of books of apostates, heretics, and schismatics which defend apostasy, heresy, or schism. It is said:

a) Publishers, namely those properly so called, so that the author of the book as such is not included, but he is included insofar as he procures the publication (canon 2209, § 3). Nor are the owner of the workshop, the typesetters, or those turning the press excommunicated; for they do not concur in the publication formally taken, that is, in the multiplication insofar as this is ordered to fairly common use, or at least they are not such that without their work the publication would not have taken place (cf. canon 2209, § 3).

b) Of apostates, etc. Thus books of infidels or Catholics are not included, even though perhaps they defend apostasy, etc. Yet one who defends apostasy, etc., is presumed to be an apostate, etc.; nor is it

required that the author of the book be enrolled in an apostate sect, etc.

c) They defend, that is, with added arguments they defend or recommend; nevertheless it is not required that the book treat professedly of religion.

2. Those defending, or knowingly and without due permission reading or retaining, either the books mentioned under 1, or others prohibited by name through apostolic letters. As to the latter, some require that the apostolic letters have prohibited them under penalty of excommunication reserved to the Holy See. But neither the Constitution *Apostolicae Sedis*, which first established that censure, nor the cited and clear canon permits that condition to be added.

a) Defenders are, for example, those who prevent a book from being destroyed or denounced, one who praises the doctrine contained in the book, or who disapproves its condemnation; but not one who praises the style or genius of the author, or the good doctrine which is found in the book (St. Alphonsus, VII, 297).

b) Knowingly (n. 858) and without due permission reading; concerning this, observe: 1° formal reading is required, so that one who merely hears another reading is not included (St. Alphonsus, VII, 292), nor one who recites from memory what he formerly read, nor one who reads through a book while ignorant of the language; but a blind person who perceives the type with his fingers is included. 2° Reading of notable matter is required, considered either by quantity alone, as if you read two or three pages, or by quality, that is, by danger; in this case even a few lines can suffice, because in them there can be a danger of perversion (St. Alphonsus, VII, 284, 292).

c) Those retaining, namely knowingly and without due permission; moreover, for a notable time, say for three or four days (St. Alphonsus, VII, 295). For the rest, observe: it is all the same whether one retains his own book or another's; whether he retains the book with himself or with another who does not have the faculty; whether he understands the retained book or not. But one is excused who deposits the book with another who has the faculty, and does this with an agreement not to reclaim it except after permission has been obtained; likewise one who retains the book because he is awaiting either the required permission or an occasion of handing it over to the Superior (St. Alphonsus, VII, 295-298).

A bookbinder is indeed counted among those retaining, but is easily excused if he binds books for one having the faculty to read them, or has another just cause. Likewise the custodian of another's library escapes excommunication, unless he retains the books in his own room or house. Finally, where, as in religious houses, there is a common library, it is licit to keep prohibited books in a locked cabinet.

IV. One not promoted to the priestly order, if he simulates the celebration of Mass or hears a sacramental confession (canon 2322, 1°). It is said:

1. One not promoted to the priestly order. Thus the censure regards both a layman and a cleric who has not yet been raised to the priesthood, but not a priest, even though suspended or degraded.

2. If he simulates the celebration of Mass; that is, if he conducts himself in such a way that others judge that the Sacred Rite is being celebrated.

3. Or hears a sacramental confession. What sacramental confession is, see n. 430. It suffices to have heard a sacramental confession, even if absolution is omitted.

Note. If the delinquent mentioned under IV is a layman, he is to be deprived of a pension or function, if he has any in the Church, and is to be punished with other penalties according to the gravity of the fault; but a cleric is to be deposed (cited canon); each, if he has usurped other priestly functions, is to be punished by the Ordinary according to the gravity of the fault (canon 2322, § 2).

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[1] Holy Office, April 21, 1880 (*Collectanea*, n. 1533).

[2] Holy Office, January 13, 1892 (*Collectanea*, n. 1777).

V. All and each, of whatever status, grade, or condition they may be, even royal, episcopal, or cardinalitial, who appeal from the laws, decrees, or mandates of the Roman Pontiff for the time being to a Universal Council (canon 2332).

1. All and each. The excommunication regards only physical persons, not moral persons.
2. From the laws, etc., of the Roman Pontiff for the time being, but not from the laws, etc., of a Sacred Congregation, unless the ordinance was issued by the express or special mandate of the Supreme Pontiff or approved by him in specific form; nor is an appeal from the laws, etc., of a deceased Supreme Pontiff sufficient.
3. To a Universal Council, whether present or future; but an appeal to a Provincial Council or to a future Pontiff is not sufficient.

Note. Those about whom the discussion is under V are also suspected of heresy. But Universities, Colleges, Chapters, or other moral persons, by whatever name they are called, incur an interdict likewise reserved to the Apostolic See in a special manner (canon 2332).

VI. Those having recourse to lay power in order to impede letters or any acts proceeding from the Apostolic See or from its Legates, or directly or indirectly prohibiting their promulgation or execution, or on account of them injuring or terrifying either those to whom the letters or acts pertain or others (canon 2333). Under the name of the Apostolic See also come the Congregations, Tribunals, and Offices through which the Roman Pontiff is accustomed to transact the business of the universal Church (canon 7). Under the name of Legates of the Holy See are included Legates *a latere* (cf. canon 266), Nuncios and Internuncios (cf. canon 267), and Apostolic Delegates (cf. canon 267). Moreover, the following are excommunicated:

1. Those having recourse to lay power in order to impede any letters or acts proceeding from the aforesaid. It is all the same whether someone has recourse by himself or through another, in writing or by living voice. As to the lay power to which recourse is had, certainly those who enjoy power of jurisdiction are understood, such as the Government, magistrates, and judges. The same seems to be said of those having recourse to persons who possess only administrative power, such as prefects of cities; for the law does not distinguish. Finally, it is required that it concern letters or acts already issued, so that one is not excommunicated who impedes them from being issued.
2. Those directly or indirectly prohibiting the promulgation or execution of the said letters or acts. Those prohibiting are understood to be those who enjoy public authority.[1] Promulgation, however, is taken in the proper sense; hence it is carefully to be distinguished from dissemination. Execution regards all things necessary for the letters or acts to have effect, such as the preparation of instruments by notaries and their notification to the parties.

3. Those injuring or terrifying, on account of the said letters or acts, either those to whom they are directed or others, that is, those to whom their promulgation or execution pertains. It is said injuring, namely gravely, and indeed in the goods of the body. It is disputed whether those injuring in goods of fortune or of the soul, or in honor or reputation, are included. Those denying this rely on the fact that injury properly taken regards the body. Given the controversy, we follow the negative part. Those are called terrifying who inflict very grave fear on someone.

It is more commonly taught that those terrifying are not excommunicated unless the effect has followed, that is, unless the letters or acts have in fact been impeded. It is disputed concerning those injuring; but without reason is a distinction admitted between those injuring and those terrifying.

VII. Those who issue laws, mandates, or decrees against the liberty or rights of the Church (canon 2334, § 1).

1. Those issuing laws, etc.; by this expression are included those who effectively concur in making laws, etc., such as ministers who propose laws, deputies who vote for them, the prince who confirms or promulgates them; likewise rulers of provinces or cities who issue a decree, and counselors who assent to it. The censure is contracted when the law has been promulgated, the decree issued, the mandate intimated. Neither notaries who enter laws, etc., into the acts, nor judges who see that they are observed, incur the excommunication.

2. Against the liberty or rights of the Church; these words must be taken in the broadest sense. Therefore those are excommunicated who issue laws, etc., against the right, for example, of teaching evangelical doctrine (canon 1322, § 2), of educating those who desire to devote themselves to ecclesiastical ministries (canon 1352), of founding schools of any discipline whatever, not only elementary, but also middle and higher schools (canon 1375), of requiring that the faithful not publish books which it has not beforehand reviewed by its own judgment, and of prohibiting, for a just cause, books published by anyone whatever (canon 1384, § 1), of freely and independently of civil power acquiring, retaining, and administering temporal goods for pursuing its own proper ends (canon 1495, § 1), which right also belongs to individual churches and other moral persons which have been erected as juridical persons by ecclesiastical authority (canon 1495, § 2), of requiring from the faithful those things which are necessary for divine worship, for the fitting support of clerics and other ministers, and for its remaining proper ends (canon 1496), of possessing its own cemeteries (canon 1206, § 1), of coercing delinquent subjects with penalties both spiritual and temporal (canon 2214, § 1), etc.

Note. Clerics who commit the delict just described are punished with the penalty of suspension or privation of the benefice, office, dignity, pension, or function itself, if perhaps they have any in the Church; religious, however, are punished with privation of office and of active and passive voice and with other penalties according to the norm of the constitutions (canon 2336, § 1).

VIII. Those who directly or indirectly impede the exercise of ecclesiastical jurisdiction, whether of the internal or external forum, by having recourse for this to any lay power (canon 2334, § 2). For this excommunication to be incurred, it is required:

1. That the exercise of ecclesiastical jurisdiction be impeded. It is not enough to impede the exercise either of the power of order alone, or of merely administrative power, or of natural right. But it is all the same whether the exercise of jurisdiction of the internal forum or the external forum is

impeded, whether it is impeded directly, say by acting, for example, against the Bishop, or indirectly, say by vexing officials.

2. That the exercise of ecclesiastical jurisdiction be impeded by means of recourse to any lay power. Therefore this excommunication does not affect a private person who impedes without recourse, nor a Superior or judge who executes or applies the law; but it does affect a Superior who impedes by means of recourse to a higher lay power. For the rest, it does not matter whether recourse is had to legislative power or only to judicial or executive power.

3. That the effect has followed; this is indicated by the very word "impeding."[2]

Note. Clerics who commit the delict discussed are punished with the penalty of suspension or privation of the benefice, office, dignity, or pension itself according to the norm of the constitutions (canon 2336, § 1).

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[1] Formerly it was disputed whether those incurred excommunication who, by private authority, prohibited promulgation or execution. But since the legislator, aware of the controversy, did not change the wording of the law, the more benign, that is, the negative opinion, seems to be followed.

[2] Pontifical Commission, July 25, 1926 (*A.A.S.* 1926, p. 394).

IX. Whoever against the prescription of canon 120 has dared to drag before a lay judge any one of the Cardinals of the Holy Roman Church or Legates of the Apostolic See, or major Officials of the Roman Curia for affairs pertaining to their function, or his own Ordinary (canon 2341). The prescription of canon 120, insofar as it must here be kept before the eyes, establishes that Cardinals of the Holy Roman Church, Bishops, even titular ones, Legates of the Apostolic See, and major Officials of the Roman Curia cannot be summoned before a lay judge for affairs pertaining to their function without the permission of the Apostolic See, unless in some place by special concession there has been derogation at least in part from the privilege of forum (cf. volume I, n. 1153). For the rest, observe:

1. What the words "has dared" signify, see n. 858.

2. Under the name of those dragging do not come judges and other subordinate officials, but private persons who cause the persons mentioned to appear before a lay judge. Moreover, it is required that they be summoned as defendants, or that they be convened; it is not enough that they be summoned as witnesses. Finally, the major Officials of the Roman Curia, not others, must be summoned for affairs pertaining to their function.

3. Legates of the Apostolic See are Nuncios, Internuncios, and Apostolic Delegates. The major Officials of the Roman Curia are: a) the Assessor and Commissary of the Sacred Congregation of the Holy Office; b) the Assessor and Substitute of the Sacred Consistorial Congregation; c) the Prelate Secretary and Substitute of the Sacred Congregation of Rites; d) the Prelate Secretary and Substitute of the Sacred Congregation of Seminaries and Universities; e) the Regent of the Sacred Penitentiary; f) the Prelate Secretary of the Apostolic Signatura or Auditor of the Most Holy One; g) the Prelate Auditors of the Sacred Roman Rota; h) the Regent and Substitute of the Apostolic Chancery; i) the Vice-Camerlengo of the Holy Roman Church and the Auditor General of the Reverend Apostolic Camera; k) the Substitute of the Secretariat of State; l) the Chancellor of Apostolic Briefs; m) all Prelate Secretaries and Undersecretaries of the other Congregations.

4. Under the name of Ordinary, since it is not said "local Ordinary," there also seems to be included the major Superior of an exempt clerical religious institute (canon 198, § 1).

In view of the word "dragging" and canons 2228 and 2242, § 1, it seems to be required that the summoned person actually appear before the judge.

X. Whoever has laid violent hands on the person of a Cardinal of the Holy Roman Church or Legate of the Roman Pontiff, Patriarch, Archbishop, Bishop, even only a titular one (canon 2343, § 2, 1° and § 3). Violent laying on of hands imports an external injury, contained in deed and gravely sinful, whether against the body, or against liberty, say by imprisoning, or against dignity, say by tearing garments (St. Alphonsus, VII, 273). Moreover, it is required that one know the person on whom he inflicts injury to be a Cardinal, etc.

Note. Whoever has laid violent hands on the person of a Cardinal of the Holy Roman Church or Legate of the Roman Pontiff is moreover *ipso facto* infamous and is deprived of benefices, offices, dignities, pensions, and any function whatever, if he has one in the Church (canon 2343, § 2, 2° and 3°).

XI. Those usurping or detaining, by themselves or through others, goods or rights pertaining to the Roman Church (canon 2345). Usurpers are those who occupy another's thing as due to themselves. Hence thieves and robbers are not included.[1] Those detaining are those who unjustly retain a thing usurped, or received from a usurper. This excommunication, however, does not affect those who usurp or detain goods or rights pertaining to churches other than the Roman Church.

Note. If the delinquents are clerics, they are moreover to be deprived of dignities, benefices, offices, and pensions, and declared incapable of them (canon 2345).

XII. All fabricators or falsifiers of letters, decrees, or rescripts of the Apostolic See, or those knowingly using the same letters, decrees, or rescripts (canon 2360, § 1). The following are excommunicated: 1° fabricators, that is, those who compose false letters, decrees, or rescripts; 2° falsifiers, that is, those who so adulterate letters, decrees, or rescripts of the Holy See that the sense is substantially changed; 3° those using such fabricated or adulterated letters, etc., even if they do not obtain the intended effect.

Note. Clerics committing the delict mentioned under XII are moreover to be coerced by other penalties, which can extend even to privation of benefice, office, dignity, and ecclesiastical pension; religious, however, are to be deprived of all offices which they have in religion and of active and passive voice, besides the other penalties established in the proper constitutions of each (canon 2360, § 2).

XIII. Whoever by himself or through others falsely denounces a confessor for the crime of solicitation before Superiors (canon 2363). It is said:

1. By himself or through others, namely "by wickedly procuring that this be done by others."[2]
2. For the crime of solicitation; concerning this see n. 416 sq.
3. Before Superiors, that is, before those to whom the denunciation must be made, namely before the local Ordinary or the Congregation of the Holy Office (n. 427).

Note 1. The delinquent cannot in any case be absolved from the contracted censure unless he has formally retracted the false denunciation and, as far as he can, repaired the damages, if any followed from it, with a grave and long-lasting penance moreover imposed (canon 2363). Thus before absolution there is required both formal retraction before those to whom the denunciation was made, and reparation of damages, insofar as this can be provided here and now; damages, I say, which followed, for example, from the confessor's suspension. In danger of death a retraction suffices, even one drawn up by the confessor, signed by the delinquent, and afterward to be handed over to the local Ordinary or the Congregation of the Holy Office; or, if necessity does not permit that, an oral retraction before two witnesses, for example, the confessor and another person, who can afterward communicate it to the judge. Finally, in a case in which absolution cannot be deferred without danger of infamy, a written retraction left with the confessor suffices; or, if even that cannot be provided, a serious promise of satisfying the obligation as soon as possible.

Note 2. Canon 2363 cited in note 1 is closed with these words: with the prescription of canon 894 remaining firm. Moreover, in view of the cited canon, the sin of false denunciation is the single sin reserved by reason of itself; therefore it is reserved and remains reserved, even if the censure has not been contracted, say because of ignorance, or has been remitted.

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[1] Holy Office, March 9, 1870.

[2] Constitution *Sacramentum Poenitentiae*.

Section III. Excommunications Simply Reserved to the Roman Pontiff

896 This excommunication is contracted by:

I. Those making gain from indulgences (canon 2327). By force of this canon, those are excommunicated who, after receiving a price, gain profit either by granting, publishing, or causing indulgences to be published. It is required that the price have been accepted, but not that a simoniacal intention was present; it does not matter whether the price is expended on pious works. By force of this canon those are also excommunicated who, because of indulgences, sell for more objects enriched with indulgences.

Bishops also can contract this censure.

II. Those giving their name to a Masonic sect or to other associations of the same kind which machinate against the Church or legitimate civil powers (canon 2335). For the penalty to regard a certain association, it is required that it machinate against the Church or legitimate civil powers. It is disputed whether there are also required, as obtains in the Masonic sect, a strict bond by which members are united and a hidden organization. Some deny this, because they take the words "which machinate..." as merely explanatory of "of the same kind." Others affirm it, because they judge the words "of the same kind" to be taken in a broader sense, so that they also include the hidden organization which obtains in the Masonic sect. Given the doubt, we follow the milder opinion, the more so because if it were enough that an association machinated against the Church or legitimate civil powers, the legislator would certainly have omitted from the new Code the words "of the same kind," which gave occasion to the dispute. Hence canon 2335 certainly regards, besides the sect of Masons, the societies of the Carbonari,[1] Fenians,[2] Anarchists, Nihilists, and Internationalists; but not, although they are prohibited, socialist,[3] biblical,[4] clerico-liberal societies; nor the workers' societies

called Odd Fellows,[5] Sons of Temperance, Knights of Pythias, Independent Order of Good Templars (*Guttempler-Orden*)[6] and societies which promote the cremation of human corpses.[7] Moreover:

1. Clerics who have committed the delict discussed under II are punished with the penalty of suspension or privation of the benefice, office, dignity, pension, or function itself, if perhaps they have any in the Church; religious, however, with privation of office and of active and passive voice and with other penalties according to the norm of the constitutions. In addition, clerics and religious giving their name to a Masonic sect and other similar associations must be denounced to the Sacred Congregation of the Holy Office (canon 2336).
2. The confessor to whom the faculty is granted of absolving from the censure set forth should require from the delinquent those things which the Holy See is accustomed to require: that they separate themselves entirely from the prohibited society and abjure it. But in a case in which great damage would flow from this for them, they can materially sustain the enrollment, but they are bound formally to renounce the society; and therefore: 1° let them promise that never again will it be the case that they involve themselves in any act of those societies, whether secret or public, and especially that they will never again pay the required contribution; 2° let scandal be removed in the best way that can be done; 3° let them be disposed in mind to withdraw their name if and when they can do this without grave damage.[8]

In the faculties of the Sacred Penitentiary it is established: 1° let them separate themselves entirely from the prohibited society and abjure it; 2° let them denounce ecclesiastical and religious persons, if they know any enrolled in it; 3° books, manuscripts, and signs pertaining to the same, if they retain any, let them hand over into your hands, to be cautiously transmitted to the Holy Office as soon as possible, or at least, if just and grave causes demand it, to be destroyed; 4° with a grave salutary penance joined according to the measure of the faults, together with frequency of sacramental confession and the obligation of repairing the scandals caused.

III. Those presuming, without due faculty, to absolve from an excommunication *latae sententiae* reserved to the Apostolic See in a most special or special manner (canon 2338, § 1). As to the word "presuming," see what was said in n. 858. For the rest, it is required that they actually absolve from the censure; it is not enough that they merely hear the delinquent or pretend to absolve him.

IV. Those furnishing any help or favor whatever to an excommunicated person to be avoided in the delict for which he was excommunicated; likewise clerics knowingly and spontaneously communicating with the same in divine things and receiving him in divine offices (canon 2338, § 2).

1. As to the former, it should be noted that it concerns a delict already committed, and therefore help or favor furnished by which someone can persist in the delict for which he was excommunicated.
2. As to the latter, observe: 1° since the law is to be interpreted strictly, religious do not come under the name of clerics unless they have received first tonsure (canon 108); 2° those communicating in divine offices are those who perform divine things with one to be avoided; 3° those receiving in divine offices are understood to be those who, enjoying the right or office of admitting to divine offices, admit an excommunicated person to be avoided to them.

V. If anyone against the prescription of canon 120 has dared to drag before a lay judge another, that is, not his own, Bishop, even merely titular, or an Abbot or Prelate *nullius*, or one of the supreme

Superiors of religions of pontifical right (canon 2341). The prescription of canon 120, insofar as it must here be attended to, establishes that Bishops, even titular ones, Abbots or Prelates *nullius*, and supreme Superiors of religions of pontifical right cannot be summoned before a lay judge without the permission of the Apostolic See, unless in some place by special concession there has been derogation at least in part from the privilege of forum.

On the phrase "has dared," see n. 858; on the phrase "those dragging," p. 766.

Note. A cleric who, without having obtained permission from the local Ordinary, has dared to drag before a lay judge another person enjoying the privilege of forum, apart from those enumerated here and on p. 766 under IX, incurs *ipso facto* suspension from office reserved to the Ordinary; but a layman is to be punished by his own Ordinary with suitable penalties according to the gravity of the fault (canon 2341).

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[1] Cf. Constitution of Pius VII, *Ecclesiam*, September 25, 1821, and Leo XII, *Graviora*, March 13, 1825.

[2] Cf. Holy Office, January 12, 1870.

[3] Encyclical of Leo XII, *Quod Apostolici*, December 28, 1878.

[4] Constitution of Pius IX, *Qui pluribus*, 1846.

[5] *Syllabus*, § 178.

[6] Holy Office, August 20, 1894.

[7] Holy Office, August 9, 1893; Holy Office, May 19, 1886.

[8] Holy Office, March 7, 1883 (*Collectanea*, n. 1593).

Section III. Excommunications Simply Reserved to the Roman Pontiff (continued)

VI. Those violating cloister, as follows; namely, the following are excommunicated:

1. Those violating the cloister of nuns, of whatever kind or condition or sex they may be, by entering their monasteries without legitimate permission, and likewise those introducing or admitting them (canon 2342, 1°). It concerns papal cloister. The following are excommunicated: 1° those entering without legitimate permission, that is, with the whole body, not with one foot only or one step; 2° those introducing those who violate cloister by entering without legitimate permission. Those also are included who introduce impuberes, since they too can violate cloister, although they do not contract the censure. There is doubt about those introducing persons lacking the use of reason, since these, strictly speaking, do not violate cloister. Given the doubt, we follow the milder opinion; 3° those admitting. They are understood to be those who, performing the office of guarding cloister, such as the prioress and the portress, receive those who violate cloister by entering without permission; for the rest, what has just been said about those introducing applies.

Note. If clerics violate the cloister of nuns, they are moreover to be suspended for a time to be defined by the Ordinary according to the gravity of the fault (canon 2342, 1°).

2. Women violating the cloister of male regulars; likewise Superiors and others, whoever they may be, introducing or admitting them of whatever age (canon 2342, 2°). It concerns the cloister of men who have pronounced solemn vows (cf. canon 488, 2° and 7°). The following are

excommunicated: 1° women violating the cloister of male regulars; 2° those introducing, or 3° admitting, those who violate cloister by entering; also those introducing or admitting impuberes. There is doubt about those introducing or admitting persons lacking the use of reason, since these, strictly speaking, do not violate cloister; but it seems that it must be affirmed, since the canon says: of whatever age.

Note. Religious who introduce or admit are to be deprived of office, if they have one, and of active and passive voice (canon 2342, 2°).

3. Nuns illegitimately leaving the cloister against the prescriptions of canon 601 (canon 2342, 3°). The discussion is of papal cloister; it is required, however, that the nun leave with the whole body, not with one foot only or one step (St. Alphonsus, VII, 229).

VII. If anyone has presumed, by himself or through others, to convert and usurp for his own uses ecclesiastical goods of any kind, whether movable or immovable, corporeal or incorporeal, or to impede the fruits or revenues of the same from being received by those to whom they belong by law (canon 2346).

1. The disposition regards ecclesiastical goods belonging either to the universal Church or the Apostolic See, or to an ecclesiastical moral person.[1]
2. It is required either that someone, by himself or through another, usurp the said goods and convert them to his own uses, or that he impede their fruits from being received by those to whom they belong by law.

An usurper is one who occupies another's thing as due to himself.[2] Some now doubt concerning those who buy or lease goods already usurped. But "a change of the prior law is seriously doubtful, both because of the practice of the Holy See, which seems to be confirmed in the Constitution *Si unquam* of Pius XI, July 15, 1924, ad V,[3] and because of the nearly unanimous opinion of writers."[4] Hence one should not depart from the old law.

3. The excommunication persists as long as the one who has incurred the censure has not fully restored the goods themselves, removed the aforesaid impediment, and then obtained absolution from the Apostolic See (canon 2346).

Note. But if the delinquent was the patron of the same church or goods, he also exists *ipso iure* deprived of the right of patronage; but a cleric committing this delict or consenting to it is moreover deprived of any benefices whatever, is rendered incapable of any others whatever, and is suspended from the execution of his orders, even after full satisfaction and absolution, at the discretion of his Ordinary (cited canon).

VIII. Those perpetrating a duel, or simply provoking to it or accepting it, or furnishing any cooperation or favor whatever; and likewise those deliberately watching it and permitting it, or, as far as lies in them, not prohibiting it, of whatever dignity they may be (canon 2351, § 1). What a duel canonically accepted is, see volume I, n. 747. The following are excommunicated:

1. Those dueling; likewise those provoking and accepting, even if the duel did not follow.
2. Those furnishing cooperation or favor, provided the duel followed. It is required, however, that the favor or cooperation be sufficiently proximate and efficacious; hence, for example, those

commanding and counseling are excommunicated; those who deliver or post the challenge; those who accompany the duelists and thus add courage to them; physicians and confessors assisting, even with the intention of giving help to the duelists if there is need; likewise if by agreement they remain with the same intention in a nearby place or house;[5] masters of arms who instruct those about to fight in order for the duel about which agreement has been made. But not sellers of weapons, nor public drivers who lead the duelists to the agreed place.

3. Those watching deliberately are understood to be those who approach the place of the duel in order to watch, so that they intensify the fight or add splendor to it; but not those who, arriving by chance, stop, or look from afar or from a hidden place.

4. Those permitting, or not prohibiting as far as lies in them, are understood to be those who enjoy authority, whether civil or military, but not private persons.

Note. The duelists themselves and those called their seconds are moreover *ipso facto* infamous (canon 2351, § 2). Those who die in a duel or from a wound received from it are deprived of ecclesiastical burial, unless before death they gave some signs of repentance (canon 1240, § 1, 4°).

IX. Clerics constituted in sacred orders or regulars or nuns after a solemn vow of chastity, and likewise all who presume to contract marriage, even only civilly, with any one of the aforesaid persons (canon 2388, § 1).

1. Concerning the word "presuming," compare what was said in n. 858. Knowledge in the act of contracting marriage is required; hence those who contracted ignorantly remain immune from the excommunication, even if afterward the ignorance ceases and they persist in the attempted marriage.

2. The excommunication is incurred even if the marriage is invalid also because of another impediment, say consanguinity;[6] likewise through civil marriage, even though invalid because of defect of form.[7]

Note. Delinquent clerics, moreover, if warned and if they do not come to their senses within a time predetermined by the Ordinary according to the diversity of circumstances, are to be degraded (canon 2388, § 1). In addition, because of tacit renunciation admitted by the law itself, any offices whatever of the cleric are vacant *ipso facto* and without any declaration (cited canon, canon 188, 5°).

X. Those perpetrating the delict of simony in any ecclesiastical offices, benefices, or dignities whatever (canon 2392, 1°). What simony is and how many kinds there are, see volume I, n. 620 sq.

1. Since the law does not distinguish, the excommunication affects simony of both divine and ecclesiastical law, both conventional and real and confidential (cf. canon 728), but not mental or merely internal simony.

2. It is disputed whether the law includes only offices strictly so called or also those broadly so called. For the rest, Bishops also, but not Cardinals, are liable to the penalty (canon 2227, § 2).

Note 1. Delinquents remain *ipso facto* deprived forever of the right of electing, presenting, and nominating, if they have any. If they are clerics, they are moreover suspended (canon 2393, 2° and 3°).

Note 2. The simoniacal contract itself and, if simony is committed concerning benefices, offices, or dignities, the subsequent provision lack all force, although the simony was committed by a third

person, even without the knowledge of the one provided, provided this is not done in fraud of the same provided person or with him contradicting it. Therefore: 1° before any sentence of a judge, a thing simoniacally given and accepted, if it is capable of restitution and reverence due to the spiritual thing does not stand in the way, must be restored, and the benefice, office, or dignity must be resigned; 2° one simoniacally provided does not make the fruits his own; but if he has received them in good faith, it is permitted to the prudence of the judge or Ordinary to condone the fruits received to him wholly or in part (canon 729, 1° and 2°).

XI. A Vicar Capitular and all others, both of the Chapter and outsiders, who by themselves or through another have removed, destroyed, concealed, or substantially altered any document pertaining to the episcopal Curia (canon 2405). Under the name of document do not come books, precious things, and writings of lesser importance. For the rest, it is all the same whether the document was composed by the episcopal Curia or directed to it. But for the excommunication to be contracted, it is required that some damage follow from the removal, etc., of the document, or that prejudice be brought to the diocese or episcopal rights (cf. canon 435, § 3).

Note. Delinquents can also be punished by the Ordinary with privation of office or benefice (canon 2405).

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[1] Those, however, who usurp or detain ecclesiastical goods pertaining to the Roman Church incur an excommunication reserved to the Roman Pontiff in a special manner (p. 767).

[2] Holy Office, March 9, 1870.

[3] *A.A.S.* 1924, p. 311.

[4] Creusen, *Epitome*, n. 546.

[5] Holy Office, May 28, 1884.

[6] Holy Office, January 13, 1892.

[7] Holy Office, December 22, 1880.

Section IV. Excommunications Reserved to Ordinaries

First recall these words of canon 198, § 1: In law, by the name of Ordinary are understood, unless someone is expressly excepted, besides the Roman Pontiff, for his own territory each residential Bishop, Abbot or Prelate *nullius* and their Vicar General, Administrator, Vicar and Prefect Apostolic, and likewise those who, when the aforesaid are lacking, meanwhile succeed to governance by prescription of law or from approved constitutions; but for their own subjects, major Superiors in exempt clerical religious institutes.

897 Moreover, the following contract an excommunication reserved to the Ordinary:

I. Catholics: 1° who enter marriage before a non-Catholic minister against the prescription of canon 1063, § 1; 2° who are united in marriage with an explicit or implicit agreement that all or some of the offspring be educated outside the Catholic Church; 3° who knowingly presume to offer their children to non-Catholic ministers for baptism; 4° parents or those holding the place of parents who knowingly hand over children to be educated or instructed in a non-Catholic religion (canon 2319, § 1).

1. The prescription of canon 1063, § 1 is this: "Even if a dispensation has been obtained from the Church over the impediment of mixed religion, the spouses cannot, either before or after the marriage entered before the Church, also approach, whether by themselves or by proxy, a non-Catholic minister as one dedicated to sacred rites, in order to give or renew matrimonial consent." Hence it is not prohibited, indeed as § 2 has it, "it is not disapproved that, when civil law commands it, the spouses present themselves, even before a non-Catholic minister, performing only the function of a civil official, and that only for accomplishing the civil act, for the sake of civil effects." The censure is contracted, however, whether matrimonial consent is entered or renewed before a non-Catholic minister as one dedicated to sacred rites.
2. An implicit agreement is had, for example, when the Catholic party obliges himself to fulfill all the wishes of the non-Catholic party concerning religious education. The excommunication is incurred at the moment at which the marriage is contracted with the agreement, whether previously entered and not retracted or now entered.
3. On the word "knowingly" see what was said in n. 858. Since it is said "their children," for example, a midwife who offered another's offspring to a non-Catholic minister for baptism would be immune from the excommunication. For the rest, the excommunication is incurred also in a case in which baptism would probably be conferred invalidly.
4. Those holding the place of parents can be tutors or even others who are endowed with the right and office of looking after education or instruction.

Note. Those mentioned under 2, 3, and 4 are moreover suspected of heresy (canon 2319, § 2).

II. Whoever makes false relics, or knowingly sells, distributes, or exposes them to the public veneration of the faithful (canon 2326). The word "knowingly" refers to the acts of selling, distributing, and exposing to public veneration. Since it concerns false relics, one does not incur the excommunication who distributes or exposes for veneration relics whose document of authenticity has perished, or concerning whose genuineness he doubts (cf. canon 1285).

III. Whoever has laid violent hands on the person of other clerics, that is, clerics inferior to Bishops, or of religious of either sex (canon 2343, § 4). What violent laying on of hands imports, see p. 766 under X. For the excommunication to be incurred, it is required that the delinquent lay hands on the person of another, not on his own person, and that he know that person to be a cleric, religious, etc. The persons whose violent handling is punished with excommunication are:

1. Clerics, that is, those who by at least first tonsure have been assigned to divine ministries (canon 108, § 1), and have not been deprived of the privileges of clerics; hence even excommunicated, suspended, interdicted, and deposed clerics (cf. canon 2303, § 1), but not those perpetually deprived of the right of wearing ecclesiastical habit (canon 2304, § 2), the degraded (canon 2305, § 1), and all who have legitimately been reduced or have returned from the clerical state to the lay state (canon 213, § 1).
2. Religious of either sex, that is, those who have pronounced vows, whether solemn or simple, perpetual or temporary, in some religion (canon 488, 7°).
3. Male and female novices (cf. canon 614), but not postulants.

4. Members of either sex without public vows, living in common under the governance of Superiors according to approved constitutions (canon 680).

Note. The Ordinary should moreover punish the delinquent with other penalties, if the matter requires it, according to his prudent judgment (canon 2343, § 4).

IV. Those procuring abortion, the mother not excepted, the effect having followed (canon 2350, § 1).

1. Abortion is to be taken in the strict sense, that is, for the ejection of a fetus not yet viable (volume I, n. 733). Therefore the so-called acceleration of birth, the ejection of a dead fetus or a mere mole, and the expulsion of received semen, likewise embryotomy and similar illicit operations, are excluded. But no distinction is to be made between an animated and an unanimated fetus.

2. Those procuring abortion are understood to be the mother and others, whether female or male, who intend abortion and either physically cause it, or by command or by fear induced cause another to cause it. It is said, who intend abortion; hence one is immune from excommunication who, not intending abortion, for example, strikes his wife from anger, even if he foresees abortion. It is said, either by command or etc.; but if you were to deny that those commanding and those inducing fear come under the name of procurers, nevertheless one commanding, as the principal author of the delict, and one inducing fear, as inducing to the delict, are subject to the excommunication. Counselors and others concurring proximately are not counted among procurers, although as cooperators they contract the excommunication if the delict would not have been committed without their work (canon 2209, § 3). Those selling means do not ordinarily incur excommunication, both because ordinarily even without their work, namely with another selling the means, the delict would have been perpetrated, and because the concurrence is remote.

3. The effect having followed, that is, certainly followed; hence in doubt whether a fetus or a mere mole, whether a living or dead fetus, was ejected, the excommunication does not hold.

Whether one whom it repents of the committed crime before the effect follows incurs the excommunication, see p. 723.

Note 1. If the delinquent is a cleric, he is moreover to be deposed (canon 2350, § 1).

Note 2. Those who have procured the abortion of a human fetus, the effect having followed, and all cooperators, are irregular from delict (canon 985, 4°).

V. A religious, apostate from religion, incurs by the law itself an excommunication reserved to his own major Superior, or, if the religion is lay or non-exempt, to the Ordinary of the place in which he is staying (canon 2385).

1. One is called an apostate from religion who is professed from perpetual vows, whether solemn or simple, and who illegitimately leaves the religious house with the intention of not returning, or who, though having left legitimately, does not return with the intention of withdrawing himself from religious obedience (canon 644, § 1). The malicious intention mentioned in § 1 is presumed by law if the religious within a month has neither returned nor manifested to the Superior his intention of returning (canon 644, § 2).

2. The excommunication is reserved to his own major Superior if the religion is clerical exempt; if the religion is lay or non-exempt, it is reserved to the Ordinary of the place in which the

delinquent is staying (canon 2385), that is, actually staying, even if he has domicile or quasi-domicile elsewhere.

Note. A religious apostate from religion is excluded from legitimate ecclesiastical acts and deprived of all privileges of his religion; and if he returns, he perpetually lacks active and passive voice, and moreover must be punished by the Superiors with other penalties according to the gravity of the fault, according to the norm of the constitutions (canon 2385).

VI. Professed members of perpetual simple vows, both in Orders and in religious Congregations, who presume to contract marriage even only civilly, both they themselves and all who contract with them (canon 2388, § 2). Note that the excommunication does not affect professed members of temporary vows. For the rest, see p. 772 under IX.

Section V. Excommunications Not Reserved

898 The following incur an excommunication not reserved:

I. Authors and publishers who, without due permission, arrange for the books of Sacred Scripture, or notes or commentaries on them, to be printed (canon 2318, § 2).

1. The excommunication regards both the books of Sacred Scripture themselves and notes or commentaries on them. The printing of one book suffices, but not of only a part; likewise the printing of notes or of a commentary on one book, even if they present entirely correct doctrine.
2. The excommunication affects both authors and publishers who, without due permission, arrange for either books or notes or commentaries to be printed; but not the owner of the workshop, typesetters, and those who distribute what has been printed.

II. Those who have dared to command or compel that infidels, apostates from the faith, or heretics, schismatics, or others, whether excommunicated or interdicted, be handed over to ecclesiastical burial against the prescription of canon 1240, § 1, 2° (canon 2339). Excommunicated and interdicted persons are understood after a declaratory or condemnatory sentence (canon 1240, § 1, 2°). Canon 1240, § 1, however, establishes that the persons enumerated in the cited canon are to be deprived of ecclesiastical burial, unless before death they gave some signs of repentance. For the rest, note:

1. On the phrase "have dared," see what was said in n. 858.
2. The excommunication regards the handing over of the enumerated persons to ecclesiastical burial. Ecclesiastical burial consists in the transfer of the corpse to the church, the funeral rites celebrated over it in the same place, and its deposition in a place legitimately deputed for burying the faithful departed (canon 1204). A place legitimately deputed for this is understood not only as a cemetery (canon 1205, § 1), but also a blessed tomb in an unblessed cemetery (canon 1206, § 3). Moreover, for incurring the censure, deposition, even if performed with a sacred rite, in a profane place does not suffice. It is disputed: 1° whether it is enough that the deceased be placed in a sacred place without a sacred rite; 2° whether it is enough that he be placed in a sacred place and with a sacred rite, or whether it is required that all the elements contained in canon 1204 be present. Those who deny that all these are required rely on the explanations of old authors, by which they think one must stand. But the obvious sense of the law so favors the more benign

opinion that in practice we admit the opinion which requires all the elements contained in canon 1204 for excommunication.

3. The excommunication affects those commanding and compelling the enumerated persons to be handed over to ecclesiastical burial. Those commanding are those who order it by authority, whether public or private. Thus those burying or assisting at burial are not excommunicated.

Note. Those who spontaneously give burial to the persons enumerated above contract an interdict from entrance into a church reserved to the Ordinary (canon 2339).

III. All those in any way guilty, whether by giving, receiving, or furnishing consent, when the apostolic beneplacitum required in alienating ecclesiastical goods has knowingly been omitted (canon 2347, 3°).

1. The word "knowingly" refers both to those giving and to those receiving and furnishing consent.
2. The excommunication regards the perfected alienation of ecclesiastical goods for which the apostolic beneplacitum is required. Moreover:

a) Alienation now, as before, seems to be taken not only for alienation properly so called, by which bare or useful ownership of a thing is transferred to another, but also for alienation in a broader sense, by which ownership of a thing, whether bare or useful, is burdened (cf. canon 6). Alienations are: donation, sale, exchange, pledge, mortgage, imposition of a passive servitude, remission of an active servitude, compromise, settlement, lease. Perfect alienation, however, is required; hence, if in some place ownership of a sold thing is not transferred except by delivery, this must have been done for the excommunication to be incurred.

b) Ecclesiastical goods are temporal goods, whether corporeal, both immovable and movable, or incorporeal, which belong either to the universal Church and to the Apostolic See or to another moral person in the Church (canon 1497, § 1); the Sacred Congregation of the Council declared that public securities are not excluded.[1]

c) The apostolic beneplacitum is required: 1° Generally for alienating ecclesiastical goods which are either precious or exceed the value of thirty thousand lire or francs[2] (canon 1532, § 1, 1° and 2°), according to what was said and explained in volume I, n. 974. Nevertheless, bearer bonds, as they are called, can be exchanged for other bonds more safe, or at least equally safe and fruitful, with any kind of trade or negotiation excluded, and with the consent of the Ordinary, the diocesan Council of administration, and others whose interest it is (canon 1539, § 2). 2° The apostolic beneplacitum is required for leasing, if the value of the lease, considering, as it seems, the whole time for which the lease is established, exceeds thirty thousand lire or francs, and the lease is beyond nine years (canon 1541, § 2, 1°). A lease made under the condition, "If the apostolic beneplacitum is obtained," is in no way affected by the excommunication, because such a lease is not perfected before the condition is fulfilled, that is, before the beneplacitum is obtained.

3. The excommunication affects those giving, those receiving, and those furnishing consent. Those giving are understood to be those who by themselves or through others alienate goods, but not agents of those alienating, nor those who destroy or steal goods.[3] Those receiving are those for whose benefit the contract is entered. Those furnishing consent are excommunicated if their consent must be sought, which also applies to lay persons.

IV. All, shining with any dignity whatever, who in any way coerce either a man to embrace the clerical state, or a man or woman to enter religion or to emit religious profession, whether solemn or simple, whether perpetual or temporary (canon 2352).

1. The excommunication regards coercion:

a) Either to embracing the clerical state. The clerical state is embraced through reception of first tonsure (canon 108, § 1). Likewise he seems liable to the censure who would coerce someone to receive major orders (cf. canon 971).

b) Or to entering religion. Religion is a society approved by legitimate ecclesiastical authority, in which members, according to the proper laws of that same society, pronounce public vows, perpetual or temporary, though to be renewed after the time has elapsed, and thus tend to evangelical perfection (canon 488, 1°). It is all the same whether it concerns an Order or a Congregation, a clerical or lay religion, a religion of pontifical right or diocesan right. Entrance into religion is now made, as it seems to many, by admission to postulancy, and, where there is no postulancy, by admission to the novitiate. That admission to postulancy suffices seems to be drawn from the fact that the ancient law distinguished entrance into a monastery and reception of the habit, or entrance into the novitiate, and that it also punished with excommunication one who coerced someone to enter a monastery or to begin postulancy.

c) Or to emitting religious profession. One who would coerce someone both to enter religion and to emit profession would incur a twofold excommunication.

2. The excommunication affects all, even Bishops but not Cardinals (canon 2227, § 2), all, I say, coercing in any way, whether directly or indirectly, say by acting upon parents, whether by grave fear, importunate entreaties, or other means without which the effect would not have followed.

3. The excommunication is not incurred unless the effect has followed.

V. A faithful person who knowingly has omitted to denounce within a month the one by whom he was solicited, against the prescription of canon 904 (canon 2368, § 2). Canon 904 sets forth the obligation of denouncing in these words: According to the norm of the apostolic constitutions and especially of the Constitution of Benedict XIV *Sacramentum poenitentiae*, June 1, 1741, the penitent must denounce, within a month, to the local Ordinary or to the Sacred Congregation of the Holy Office, the priest guilty of the delict of solicitation in confession; and the confessor must, with his conscience gravely burdened, warn the penitent of this burden. Moreover:

1. The excommunication regards omission of the denunciation to be made by the solicited person; concerning this denunciation, see n. 416 sq.

2. The excommunication affects only the solicited persons themselves, but not those who know that another has been solicited. Moreover, it is required that the solicited person knowingly omitted the denunciation; from this it follows that there can be a cause excusing from excommunication which does not excuse from the obligation of denouncing; namely, any cause diminishing imputability excuses from this excommunication (n. 858). An impubes is indeed bound by the obligation of denouncing, but not by the excommunication, unless after attaining puberty he omits the obligation.

3. The delinquent is not to be absolved unless after he has satisfied, or has seriously promised that he will satisfy (canon 2368, § 2). One absolved who seriously promised that he would satisfy the obligation, but afterward, with his will changed, does not satisfy, does not fall back into the excommunication, although the obligation of denouncing persists.

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[1] January 17, 1906.

[2] Lest the value fluctuate too much, the value of gold money is safely attended to.

[3] Holy Office, March 2, 1870.

Part II. On Interdicts

899 Four interdicts *latae sententiae* are enumerated, namely:

I. Universities, colleges, chapters, or other moral persons, by whatever name they are called, who appeal from the laws, decrees, or mandates of the Roman Pontiff for the time being to a Universal Council, incur an interdict reserved to the Apostolic See in a special manner (canon 2332). This interdict affects the moral persons appealing; physical persons appealing in this way contract excommunication (p. 763). What an interdict issued against a moral person imports, however, see p. 740, VII and question 1.

II. They contract by the law itself an interdict from entrance into a church, until, at the judgment of the one whose sentence they have despised, they have made congruous satisfaction: those knowingly celebrating divine things or causing divine things to be celebrated in interdicted places; or admitting to the celebration of divine offices, which are forbidden by censure, clerics excommunicated, interdicted, or suspended after a declaratory or condemnatory sentence (canon 2338, § 3).[1]

1. The word "knowingly" refers to those celebrating, to those causing divine offices to be celebrated, and to those admitting. Therefore the interdict affects:

a) Those knowingly celebrating or causing divine things to be celebrated (p. 731) in interdicted places, excepting, however, those divine things which can be done according to the norm of canons 2270-2272 (n. 878).

b) Those knowingly admitting, to the celebration of divine offices forbidden by censure, clerics excommunicated, interdicted, or suspended, against whom a declaratory or condemnatory sentence has been issued. Those admitting are understood to be those who have the office and right of admitting or repelling, such as a pastor or rector.

2. The interdict is to be removed, or rather seems to cease *ipso facto*, as soon as the delinquents have made congruous satisfaction at the judgment of the one whose sentence they have despised.[2] Thus judgment concerning congruous satisfaction belongs to him who interdicted the place or issued the declaratory or condemnatory sentence against the clerics who are admitted to divine offices.

III. Those who spontaneously give burial to infidels, apostates from the faith, or heretics, schismatics, or others, whether excommunicated or interdicted, against the prescription of canon 1240, § 1 (canon 2339), contract an interdict from entrance into a church reserved to the Ordinary. What canon 1240, § 1 prescribes, see p. 750. For the rest:

1. On the word "spontaneously," compare what was said in n. 858.

2. In what sense ecclesiastical burial is taken, see p. 778.

3. Those giving burial are understood to be clerics only, namely those whose role it is to perform all those things which pertain to ecclesiastical burial.

IV. Those who gave cause for a local interdict or an interdict against a community or college contract a personal interdict reserved to no one (canon 2338, § 4). But to what penalties persons personally interdicted are liable, see n. 879.

[1] This interdict, since it is neither perpetual, nor for a predefined time, nor at the pleasure of the Superior, seems to be a medicinal penalty, not a vindicative one (cf. canon 2291, 2°).

[2] Cf. Holy Office, February 1, 1871.

Part III. On Suspensions

Of suspensions now in force by law, some are medicinal penalties or censures, others are vindicative penalties (n. 2255, § 2).

Section I. On Suspensions which Are Censures or Medicinal Penalties

900 I. Clerics, even those raised to episcopal dignity, who knowingly through simony have promoted someone to Orders or have been promoted, or have administered or received other Sacraments, incur a suspension reserved to the Apostolic See (canon 2371).

1. The discussion is of a generally issued suspension (p. 742).
2. Simony is taken as explained on p. 773.
3. Under the name of order here also come first tonsure and episcopate (canon 950).
4. The word "knowingly" refers not only to the first part, but also to "have administered or received."

Note. Delinquents, even laymen, are moreover suspected of heresy (canon 2371).

II. Those who presume to receive orders from one excommunicated, suspended, or interdicted after a declaratory or condemnatory sentence, or from a notorious apostate, heretic, or schismatic, contract *ipso facto* suspension *a divinis*, reserved to the Apostolic See (canon 2372). Under the name of order here does not come first tonsure, since it confers no power from which someone can be suspended (cf. canon 950).

Note. One who in good faith has been ordained by one of those enumerated above lacks the exercise of the order thus received until he is dispensed (canon 2372). Here it is not a question of a penalty, since delict is absent, but of mere privation. The dispensation, however, in view of general principles, belongs to the proper Ordinary of the one ordained.

III. Until he obtains absolution from the Holy See, a religious dismissed for delicts less than those mentioned in canon 670 remains *ipso facto* suspended (canon 671, 1°).

IV. A cleric who, against the prescription of canon 120, has dared to drag before a lay judge another person enjoying the privilege of forum, namely apart from Cardinals of the Holy Roman Church or Legates of the Apostolic See, or major Officials of the Roman Curia for affairs pertaining to their function, or his own Ordinary, or another Bishop, even merely titular, or an Abbot or Prelate *nullius*, or major Superiors of religions of pontifical right, contracts *ipso facto* suspension from office reserved to the Ordinary (canon 2341). The prescription of canon 120, insofar as it must here be attended to, establishes that another person besides the enumerated persons cannot be summoned before a lay judge without the permission of the local Ordinary, namely of the place in which the case is being conducted.

On the word "dragging," see p. 766.

The Ordinary to whom the suspension is reserved is the proper Ordinary of the suspended person, not the local Ordinary whose permission had to be obtained.

Note. If the delinquent is a layman, he must be punished by the Superiors with other penalties according to the gravity of the fault, according to the norm of the constitutions (canon 2341).

V. A fugitive religious, if he is in sacred orders, contracts *ipso facto* a suspension reserved to his own major Superior (canon 2386), that is, a priest, deacon, or subdeacon. Under the name of religious here also come members in societies of men who imitate the manner of life of religious, living in common under the governance of Superiors according to approved constitutions, but are not bound by the three customary public vows, nor are they properly designated by the name religious[1] (cf. canon 673, § 1).

The discussion is of a generally issued suspension (p. 742).

Note. The whole canon 2386 establishes the following: A fugitive religious incurs *ipso facto* privation of office, if he has any in religion, and suspension reserved to his own major Superior, if he is in sacred orders; but when he returns, he is to be punished according to the constitutions, and if the constitutions make no provision concerning this, the major Superior is to inflict penalties according to the gravity of the fault.

VI. The following contract a suspension reserved to no one:

1. A priest who without necessary jurisdiction has presumed to hear sacramental confessions is *ipso facto* suspended *a divinis* (canon 2366). Without necessary jurisdiction, that is, without at least probable jurisdiction (cf. canon 209). What sacramental confession is, see n. 430. It is enough, however, that someone hear a confession of this kind, even if he does not absolve the penitent.
2. A priest who without necessary jurisdiction has presumed to absolve from reserved sins is *ipso facto* suspended from hearing confessions (canon 2366). The pronouncement of the form of absolution is required, however, and mere hearing of confession or fictitious absolution is not enough.
3. Whoever maliciously approaches orders without letters or with false dimissorial letters, or before canonical age, or by a leap, is *ipso facto* suspended from the order received (canon 2374). Under the name of order here does not come first tonsure, because it confers no power from which someone can be suspended (cf. canon 950).[2] "Maliciously" is equated with the words "has presumed," etc., about which see p. 718.
4. A cleric who has presumed to resign an ecclesiastical office, benefice, or dignity into the hands of laymen incurs *ipso facto* suspension *a divinis* (canon 2400).
5. An Abbot or Prelate *nullius* who, against the prescription of canon 322, § 2, has not received the blessing, is *ipso facto* suspended from jurisdiction (canon 2402). Canon 322, § 2 establishes: Abbots or Prelates *nullius* who, by apostolic prescription or from the constitutions of their own religion, must be blessed, should receive the blessing, within three months from receiving the apostolic letters and with legitimate impediment ceasing, from the Bishop whom they prefer.
6. A Vicar Capitular who grants dimissorial letters for ordination against the prescription of canon 958, § 1, n. 3, is *ipso facto* subject to suspension *a divinis* (canon 2409). From canon 958, § 1, n. 3, the Vicar Capitular can give dimissorial letters for seculars only with the consent of the Chapter after a year from the vacant see; but within the year only to those constrained by reason of a benefice received or to be received, or by reason of some certain office for which, because of the necessity of the diocese, provision must be made without delay.

[1] Pontifical Commission, June 2-3, 1918 (*A.A.S.* 1918, p. 347).

[2] Whether the Episcopate is included, cf. Cerato, op. cit., p. 195.

Section II. On Suspensions which Are Vindicative Penalties

901 I. Until the Holy See has dispensed them, the following are suspended by the law itself: the Bishop consecrating someone as Bishop, the assisting Bishops or, in place of Bishops, the assisting priests, and the one who receives consecration without an apostolic mandate against the prescription of canon 953 (canon 2370). Canon 953 prescribes: Episcopal consecration is reserved to the Roman Pontiff, so that no Bishop may consecrate anyone as Bishop unless the pontifical mandate has first been established.

It concerns a generally issued suspension (p. 742), and one inflicted by way of vindicative penalty; this is clear from the fact that a censure or medicinal penalty is removed by absolution, but this suspension by dispensation of the Holy See (cf. canon 2236, § 1 and 2289).

The suspension among assisting priests affects only those who assist in place of Bishops, not others.

II. From canon 2373, the following *ipso facto* incur suspension for one year from the conferral of orders, reserved to the Apostolic See:

1. Those who, against the prescription of canon 955, have ordained another's subject without dimissorial letters of his own Ordinary. As to the prescription of canon 955, cf. n. 601. The suspension also affects one who confers first tonsure (cf. canon 950).
2. Those who, against the prescription of canon 993, n. 4, and canon 994, have ordained their own subject who had stayed elsewhere for so long a time that he could have contracted a canonical impediment there. Concerning the cited canons, see n. 650. The suspension also includes first tonsure (cf. canon 950).
3. Those who, against the prescription of canon 974, § 1, n. 7, have promoted someone to major orders without a canonical title (cf. n. 618).
4. Those who, without prejudice to legitimate privilege, have promoted a religious belonging to a family which is outside the territory of the ordaining Bishop, even with dimissorial letters of the proper Superior, unless it has been legitimately proved that some one of the cases occurs which are mentioned in canon 966 (cf. treatise on Order, n. 602).

Delinquents are suspended from the conferral of orders, with no order, indeed not even first tonsure and episcopal consecration, excepted (cf. canon 950).

III. A clerical religious whose profession has been declared null because of deceit committed by him, if he is constituted in major orders, remains *ipso facto* suspended until the Apostolic See has seen otherwise (canon 2387). Under the name of religious also comes a member of a society of clerical men living in common without vows; likewise under the name of profession comes the profession improperly so called, or that emitted by a member of the said society.[1]

Note. If the delinquent is constituted in minor orders, he is to be cast out from the clerical state (canon 2387).

IV. Chapters, convents, and all others to whom it pertains, admitting such elected, presented, or nominated persons before the exhibition of the letters, remain *ipso facto* suspended from the right of electing, nominating, or presenting at the pleasure of the Apostolic See (canon 2394, 3°). It concerns those who admit persons elected, presented, or nominated to an ecclesiastical benefice, office, or dignity, into possession or governance or administration of the same, before the elected, presented, or nominated persons have exhibited the necessary letters.

V. Religious Superiors who, against the prescription of canons 965-967, have presumed to send their subjects to another Bishop to be ordained are *ipso facto* suspended from the celebration of Mass for a month (canon 2410; cf. treatise on Order, n. 632). Under the name of religious Superiors also come Superiors of a society of men living in common without vows, if the society enjoys the right of granting dimissorial letters to its members.[2] Major Superiors are understood, and those exempt, to whom, namely, belongs the right of giving dimissorial letters.

The suspension is reserved to no one.

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[1] Pontifical Commission, June 2-3, 1918 (*A.A.S.* 1918, p. 347).

[2] Pontifical Commission, June 2-3, 1918 (*A.A.S.* 1918, p. 347).

Addenda

Volume I, p. 330, n. 491, line 4: let it be read thus: Positive infidelity is when an unbaptized person knows that God has spoken, and nevertheless denies or doubts that which God has manifested; privative infidelity is when an unbaptized person doubts, etc.

Volume I, p. 664, scholion: in place of "debtors," let "creditors" be read.

Volume I, p. 733, n. 1093, line 23: let it be read thus: it likewise persists, if in some region or diocese a habitual dispensation has been granted by the Holy See, say for five years, from a feast day not suppressed; because the foundation of cessation falls away.

Volume II, p. 416: in place of Article III, let Section VII be read.

Volume II, p. 417: in place of Section VII, let Section VIII be read.

Volume II, p. 498: in place of "and the form of betrothals," let "the fittingness and governance of betrothals" be read.

Volume II, p. 543: in place of can. 132, § 5, let can. 732, § 1 be read; and in place of can. 732, §§ 2 and 3, let can. 752, § 3 and can. 754, § 3 be read.

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