THE PASTOR

ACCORDING TO THE NEW CODE OF CANON LAW

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WHOSE PASTORAL AND SCHOLARLY ACHIEVEMENTS

His Holiness Pope Pius XI

HAS WORTHILY CROWNED

BY HIS ELEVATION TO THE EPISCOPAL DIGNITY

THIS VOLUME IS RESPECTFULLY DEDICATED

AS A TOKEN OF "ORA ET LABORA"

AND A CORDIAL AUGURY AD MULTOS ANNOS

BY THE AUTHOR

FOREWORD

The main subject of this book is the *pastor,* who plays a very conspicuous part in the Code. But as the pastoral office and functions are treated in nearly every one of the five books, the author soon perceived that, in order to offer a coherent and intelligent essay, it was necessary at least to outline the whole of the Code. This he endeavored to do by making, as it were, a *summary* of the Code with special reference to his main theme. The difficulty, of course, consisted in selecting all the really salient points. We cannot possibly hope to satisfy every one's expectation or taste—for tastes differ. But, what little experience we had gathered from practical mission work and friendly communications, has been embodied in this volume, which is intended for busy pastors and curates. This practical purpose may also account for the sparing use of critical apparatus. If we have sometimes, for the sake of brevity, referred to our Commentary, we may be pardoned. A Summary will ever resemble "condensed milk," and is generally meant to whet the appetite for "more." We would beg competent and conscientious critics and kind readers to keep in view the twofold end of this work, and to accept the assurance that we have written with the aim of being helpful to our well-meaning and hard-working clergy:

Ut in omnibus glorificetur Deus.

Conception Abbey, Conception, Mo.

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INTRODUCTION

The five books of the New Code of Canon Law remind the student of the time-honored number of the Decretals of Gregory IX, Boniface VIII, and Clement V. A thorough "stickler" insisted upon the verse: *Iudex, iudicium, clerus, connubia, crimen,* which indicated the matter treated in the authentic collections of the three medieval Popes. Outside of these three there was no authentic collection, not even the "divine work" of Master Gratian, the *Decretum Magistri Gratiani,* which was considered as a purely private compilation. In fact, up to the time of the promulgation of the Code there was in vogue no authentic collection besides the three mentioned, although the material had increased enormously. It was, therefore, a gigantic undertaking on the part of Pius X and his untiring Secretary of State, Cardinal Gasparri, to collect the scattered material into a well-digested volume. The work was started in 1904 and completed in 1916. The saintly Pius was not privileged to see its completion. Benedict XV promulgated the Code on Pentecost day, May 27th, 1917, and it went into force on May 19th, 1918.

Although the ancient division into five books has been retained, yet the real division points towards that of the *Institutes* of Gaius: *"Personae, res, actiones";* or that of Lancelotti's *Institutiones: "Personae, res, iudices, crimina."* The five books are, therefore, divided as follows:

Book I. General Rules (canons 1–86);
Book II. Ecclesiastical Persons (canons 87–725);
Book III. Ecclesiastical Things, or Administrative Law (canons 726–1551);
Book IV. Ecclesiastical Trials (canons 1552–2194);
Book V. Penal Code (canons 2195–2414).

Quotations from the Old Sources. Every student of Canon Law is supposed to be familiar with the manner of quoting the ancient sources, which may therefore find a place here.

1. *Decretum Gratiani:* Part I: c. 1, Dist. 101, *i.e.*, canon 1, Distinction 101.—Part II: c. 2, C. 17, q. 4, *i.e.*, canon 2, Causa 17, quaestio 4.—Part III: c. 16, Dist. 5 de consecr(tione), *i.e.*, canon 16, Distinction 5.—Causa 33, quaestio III treats *De poenitentia* and is quoted: c. 1, Dist. *7 de Poenit.*

2. The *Decretals of Gregory* IX, published in 1234, are divided into five books, each book into titles, and each title into chapters; it is quoted thus: c. 2, IX, III, 10, which means: chapter 2, Decretales Gregorii IX, book 3, title 10.

3. The *Decretals of Boniface* VIII, published in 1298, are divided the same way as the preceding, but are known as Sextus; quote: c. 2, 6°, I, 3, that is: chapter 2, *in Sexto,* book 1, title 3.

4. The *Clementinae,* published in 1317, are divided the same way, with the sigla Clem., thus: c. 4, Clem. V, 3, which means: chapter 4, *Clementinae,* book 5, title 3.

5. The *Extravagantes Ioannis XXII* consist of 14 titles and 20 chapters and are quoted thus: c. 2, Extr. Ioannis XXII, tit. I (*suscepti regiminis*).

6. The *Extravagantes Communes* are divided like the Decretals, though the 4th is "vacant," and are quoted as follows: c. un., Extr. Comm., III, 4 (*Ambitiosae*), which

means: capite unico, Extravagantes Communes, book 3, title 4.—The words put within brackets, like *Ambitiosae,* form the beginning of the papal Constitution which constitutes the source of the respective text.

THE PASTOR

BOOK I

GENERAL RULES

EXTENT AND IMPORT OF THE CODE

(CAN. 1–6)

THE Code is the law for the universal Latin Church, but leaves the *Oriental Church* unaffected, except where it expressly mentions the latter. However, as formerly, so now, the Oriental Church is concerned in matters pertaining to faith and morals, for instance, the reading of forbidden books, and in matters connected with the divine or natural law, as, for instance, the application of the Mass for the people at least sometimes during the year.

Liturgical laws, unless expressly corrected in the Code, retain their force. Hence the *Pontificale Romanum,* the *Caeremoniale Episcoporum,* the *Rituale Romanum,* and the *Missale Romanum* are still to be followed, the latter according to the latest edition.

Concordats, privileges, and *indults* hitherto granted by the Apostolic See, either to individuals or to organizations, remain intact if they are still in use and have not been revoked, provided, of course, they are not expressly repealed by the Code.

Customs expressly reprobated by the Code are not al-

lowed to revive; other centennial and immemorable customs may be tolerated by the local Ordinaries if they deem it impossible to eradicate them.

Concerning the *relation of the new to the old law,* the Code, indeed, expressly states that, for the most part, it retains the discipline hitherto in force; but it also abrogates all laws, universal as well as particular, running counter to its own provisions. As to penal laws it should be noted that none of the old penal laws remain in force. *The Code is exclusive law* in all matters of discipline, and most emphatically in all penal matters.

TITLE I

ECCLESIASTICAL LAWS

(CAN. 7–24)

Laws are enacted the moment they are promulgated. Papal laws are supposed to be promulgated by their being published in the *Acta Apostolicae Sedis;* and, as a rule, become obligatory three months after the date affixed to the number of the *Acta* in which they appear.

Laws are not personal but *territorial,* and do not affect the past, but the future. Consequently the Code, as such, is not retroactive.[1]

General laws bind all for whom they are given, *i. e.,* those who are baptized and have a sufficient use of reason. The age limit is the seventh year, completed. *Particular laws* bind only those who have a domicile or quasi-

[1] Thus marriages invalidly contracted before May 19, 1918, on account of a diriment impediment, now abolished by the Code (fourth degree of blood relationship, for instance), are not revalidated by the Code, but need a dispensation or *sanatio.* (Pont. Com., 2–3 June, 1918 (*A. Ap. S.,* Vol. X, p. 346.)

domicile in a territory, and actually reside therein. *Peregrini* are bound to observe particular laws if these bind also in their own territory, or if they concern public welfare or legal formalities.

Ignorance of nullifying or disqualifying laws does not excuse from their observance. But laws of this kind must be expressly declared such; for instance, irregularities (can. 988) and impediments.

An authentic interpretation of a law can be given only by the legislator himself, or his successor, or those to whom the power of interpretation has been given by either. Benedict XV has instituted a *Pontifical Commission for the Authentic Interpretation of the Code of Canon Law,* which enjoys the exclusive right to interpret the canons.[2] All penal laws and such as restrict human freedom require a strict interpretation.

Canon 24 is important for every priest. It says that *precepts* given to individuals oblige those for whom they are given, everywhere, but cannot be juridically enforced, and cease to bind when the lawgiver loses his authority, unless they were imposed by a legal document or in the presence of two witnesses. This canon (24), we say. is important, because it curbs arbitrary proceedings against priests.

TITLE II

CUSTOMS

(Can. 25–30)

An ecclesiastical custom derives *legal force* solely from the (at least tacit) consent of the lawgiver. Certain requisites, however, must combine in order to render a

[2] *"Cum iuris canonici,"* Sept. 15, 1917 (*A. Ap. S.*, IX, 483 f.)

custom reasonable and therefore lawful. *Unreasonable* customs are such as are expressly reprobated by the Code or contrary to divine law. Besides, *prescription,* or a certain lapse of time, is required to establish a custom so that it will amount to a law or right. Forty continuous years are necessary for a custom *beyond the law,* whilst 100 years are required to induce a custom *against a law* that is sanctioned by a clause forbidding contrary customs.

Finally, since a custom takes the place of a law, and a law, as a rule, is imposed only on autonomous societies or corporations, it follows that only a community which is capable of having an ecclesiastical law imposed on it can introduce a custom in the proper sense. Hence single parishes are not in a condition to introduce a custom; they may have observances, but not customs proper. A feast or fast that was observed in a parish from time immemorial does not bind by virtue of that observance. But if such a feast or fast has been kept in a diocese, it obliges, since a diocese is capable of having a law imposed upon it. Against the Code only such customs may be tolerated as are mentioned above (see can. 5).

TITLE III

RECKONING TIME

(Can. 31–35)

A day consists of twenty-four hours, running continuously from midnight to midnight. A week consists of seven days; a month of thirty days, and a year of 365 days. In reckoning the hours of the day, the local usage must be followed; but in the private celebration of Mass, in the private recitation of the Breviary, in receiv-

ing Holy Communion, and in the observance of fast and abstinence, though the usual local computation of time differs, one may follow either the local time, whether true or mean, or the legal time, be this regional or extraordinary. These terms call for a brief explanation.

Time is here taken as solar, not as sidereal, time, which latter is produced by a complete rotation of the earth on its axis. The length of a solar day is estimated from the departure of the sun from a given meridian to its next return to the same. This is called true or real solar time (*tempus verum*). Mean time (*tempus medium*) is reckoned by the mean sun, an imaginary sun having uniform motion, which in the general average and in the long run keeps as much in advance of the true sun as behind it; and, therefore, on a basis of perfect equality in the duration of days.

Legal time, called thus because established by law or convention, is divided into regional and extraordinary. The *regional* time or hour was introduced for reasons of convenience, by assuming one main meridian of a country or province and applying it to all places within the same. In the United States there are five different regional times, 15 degrees of longitude corresponding exactly to one hour of time.

Extraordinary time, finally, is that famous or ill-famed wartime, of which a farmer said: "They may move the clock as much as they please, but the cows don't give milk until it's time."

The Code says: If the starting point (*terminus a quo*) coincides with the beginning of day, the first day is included in the reckoning and the time or term expires with the beginning of the last day of the same number. Thus, can. 465 allows pastors a two months' vacation. Now, if the beginning of the day (*initium diei*) is

to be taken mathematically, as appears to be the intention of the legislator,[3] and a pastor begins his vacation on Aug. 15th, at twelve o'clock midnight, *i. e.*, after the clock has struck 12 on Aug. 14th, he must be back at midnight of Oct. 14/15. Or the pastor might have to assist at the profession of a religious. He should, in that case, inquire when the novitiate began. If the religious started his novitiate on Sept. 8th, at midnight, *i. e.*, immediately after the last stroke of 12, Sept. 7th, he may make profession on Sept. 8th, the Nativity of the B. V. M. If, on the other hand, the vacation was started on Aug. 15th, after midnight, the first day is not counted and the term expires when the last day of the same figure is completed, *i. e.*, the pastor may return Oct. 15th, and the profession, in the case stated above, must take place Sept. 9th, if the novitiate was begun after midnight of Sept. 8th, *i. e.*, a minute after the clock struck twelve. Formerly all legal business commenced at day-break.

Tempus utile is the term granted for the exercise or prosecution of certain rights, so that in case one should ignore it, or be unable to take advantage of it, the lapse of time would not damage or prevent him. *Tempus continuum* runs without interruption.

TITLE IV

RESCRIPTS

(Can. 36–62)

Rescripts are written answers, given by legitimate superiors, either with or without the medium of an executor, to questions proposed or favors asked for.

The *Apostolic See* as well as Ordinaries may grant re-

[3] See Lacou, *De Tempore,* 1921, p. 35, p. 41 f.

scripts to all who are not expressly forbidden to ask for them. If an *executor* is mentioned in the rescript, he has the right and duty to investigate the matter and the persons who demanded the rescript, and to ascertain the reason for it. For in all rescripts, even when not expressly stated, the condition *"si preces veritate nitantur"* is understood. Essential conditions are usually expressed by the particles *si* or *dummodo,* or others of the same kind. If the full truth is not stated in the petition, there is a *subreptio.* This does not impair the validity of the rescript, provided the *stylus curiae* was observed. The *stylus curiae* is nothing else but the form or method prescribed for each Congregation, Tribunal or Office of the Roman Court. If a falsehood has been alleged, there is an *obreptio.* An *obreptio* does not render a rescript invalid, if the sole reason, or at least one of several reasons alleged is true.

A rescript issued with the clause *motu proprio* is valid, even if subreptitious, unless the decisive reason, if there be only one, is false.

Errors affecting the name of the person to whom or by whom a rescript is issued, or the place where the beneficiary dwells, or the favor itself, do not render a rescript invalid if the Ordinary is persuaded that no doubt exists as to the identity of the person or the thing asked for.

A rescript which requires no executor is valid from the date of its issuance (*a die datae*); a rescript which demands an executor, from the date of its presentation to the grantee (*a die praesentatae*).

Rescripts must be *interpreted* according to the proper meaning of the words and common parlance, nor are they to be extended to cases not mentioned therein.

The *executor* acts invalidly if he acts before he has

received the document and determined its authenticity and integrity,—unless he has been previously informed of its contents by authority of the grantor. A mere executor cannot withhold the favor granted, whereas a voluntary or proper executor may refuse it, though he should not do so except for good reasons. If any condition or *mandate* is imposed on the executor in the rescript, he has to comply with that mandate. The execution of rescripts which affect the external forum, for instance, dispensations from public impediments, must be done in writing.

To *recall* a rescript, the revocation must be duly intimated to the petitioner. No rescript is recalled by a contrary law, unless expressly mentioned. A rescript does not lose its force by reason of the vacancy of the Holy See or of a bishopric.

A favor *denied* by one S. Congregation or Office cannot be validly granted by another without the express consent of the former. Nor can the vicar-general of a diocese grant a petition which has been refused by the Ordinary, or vice versa, since the vicar-general and the bishop constitute one court.

TITLE V

PRIVILEGES

(Can. 63–79)

Privileges are more or less permanent concessions made by the legislator against the law. They were granted anciently by popes and emperors. With the beginning of the second millennium they became more numerous, es-

pecially those of exemption, so that Gratian[4] thought it well to deal with privileges more elaborately.

Privileges are regarded as "a sore on the law," and can be directly granted only by the legitimate authority. Indirectly they may be obtained by communication and prescription. *Communication* means participation in a privilege, either fully and absolutely, or imperfectly and relatively. Full and absolute communication is called *aeque principalis* and embraces only those privileges which were imparted to the original grantee directly and forever, without special relation to a certain place, thing, or person, and with due consideration of the capability of the receiver. Thus the privileges granted to bishops in can. 349 are personal, and consequently cannot be communicated, at least not habitually.[5] Imperfect and relative communication (called *accessoria*) has this peculiarity that privileges thus acquired are increased, diminished, or lost to the second grantee in proportion to their increase, decrease, or loss in the original grantee. Thus, if an archconfraternity loses a part or all of its indulgences, they are lost to all the aggregated confraternities.

Since privileges are *perpetual,* unless the contrary is evident, they are not lost by non-use or contrary use. However, a burdensome privilege, for instance, advowson (*iuspatronatus*), may be lost by contrary prescription.

[4] See his *dictum ad c.* 16, *C.* 25, *q.* 1.

[5] When Archbishop Hanna, of San Francisco, asked whether bishops could communicate the privileges mentioned in can. 349, § 1, n. 1 (blessing of devotional articles and attaching indulgences), the S. Poenit., July 18, 1919 (*A. Ap. S.,* XI, 332), answered: *"Negative."* The answer, indeed, could not be otherwise; but it may be asked: are these articles intended only for bishops and certain religious orders?

Otherwise privileges are lost only by direct revocation intimated by the grantor, but not by a general law, unless a clause purposely and expressly recalling contrary privileges is added.

Privileges cease by *renunciation* if accepted by the competent superior. Personal privileges expire with the person; real privileges cease upon the complete destruction of the thing or place, unless the latter are resuscitated after fifty years. Privileges granted orally (*vivae vocis oraculo*) may be used by the grantee in the internal court of conscience; but in the external forum proof may be demanded.

A species of privileges are *faculties* granted forever, or for a limited time, or for a definite number of cases. Such are the quinquennial faculties issued March 17, 1922, which, however, were never published in the official *Acta* of the Holy See. These do not expire with the cessation of the bishop's authority, which may occur by death, resignation or transfer, but pass to the vicar capitular or administrator; they are also intended for the vicar-general.

The *interpretation* of privileges and faculties must be made according to the wording of the text, without extension or restriction, but always in such a way that some real favor is granted.

TITLE VI

DISPENSATIONS

(Can. 80–86)

Dispensations, *i. e.*, relaxations of the law in a particular case, may be granted by the lawgiver, his suc-

cessor or superior, and by those to whom the faculty of dispensing has been delegated. The consequence is that *Ordinaries have no power to dispense* from the common law of the Church, *i. e.,* from the laws of the *Code,* not even in particular cases, unless (a) they have received a direct [6] or indirect grant of power to dispense, and (b) in cases (can. 81) in which recourse to the Holy See is difficult *and* there is at the same time grave danger in delay *and* the dispensation requested is one which the Holy See is wont to grant. Most probably this rule may also be applied to matrimonial dispensations. In both cases (a and b) Ordinaries can grant dispensations only for a *just and reasonable cause,* otherwise they are illicit and invalid. When there is a doubt as to the sufficiency of the cause, a dispensation may be lawfully asked for, and licitly and validly granted.

Pastors or parish priests cannot dispense from either a general or a particular law of the Church, unless they have expressly received this power, which is granted them in can. 1245 concerning feast and fast in individual cases. But they have no power to dispense from the proclamation of the banns. If such a dispensation is desired, they must apply to the Ordinary, or may obtain power through communicated faculties. The Code also grants power in can. 1044, as compared with can. 1098.

Confessors may dispense penitents in all occult cases of irregularity of a very urgent nature, when the Ordinary cannot be approached and there is danger of a great loss or infamy (can. 990, § 2). Confessors also may dispense in the cases mentioned in canons 1043–1045. But dispensations, as also the faculties of dispensing in a certain case, must be *interpreted strictly.*

[6] See can. 900, 1043, 1045, 1245, 2237.

BOOK II

ECCLESIASTICAL PERSONS

A *person,* in the ecclesiastical sense of the word, is one who has received baptism in the Church of Christ. After he has reached twenty-one years, a person is of age (*major*), while below this age he is called a *minor.* Puberty for boys begins with the fourteenth year, completed, and for girls with the twelfth year, completed. *Infants* are such as have not yet completed the seventh year of age. To the same class belong all adults habitually destitute of reason.

A pastor and Ordinary becomes *one's own pastor* or Ordinary by reason of domicile or quasi-domicile. *Domicile* is determined by actual sojourn, together with the intention of never leaving the parish or diocese, or by an actual stay of ten years. *Quasi-domicile* is fixed by actual stay, combined with the intention of remaining for the greater part of the year or by a stay protracted without moral interruption to the greater part of the year. There is also a diocesan domicile or quasi-domicile. The son follows the domicile or quasi-domicile of his father, an illegitimate child shares the domicile or quasi-domicile of his mother. The wife shares that of her husband as long as she is not separated from him.

A *peregrinus* is one who has left a place though he retains his domicile or quasi-domicile there. A *vagus* is one who has no domicile or quasi-domicile. Pastors

should in no case induce persons of *another rite,* whether Latin or Oriental, to attach themselves to a rite not their own. Their own rite is established by the fact of baptism.

A wife may conform herself to her husband's rite, but not *vice versa.*

Juridical acts, in order to be valid, must be human acts, *i. e.,* performed without violence or substantial error; acts inspired by grave fear are at least rescindable, as a rule.

The expression *"audito parocho"* does not affect the validity of an act. For instance, can. 476, § 3 demands that the Ordinary appoint a curate or assistant "after having heard the pastor"; but the appointment is valid even if the pastor's advice was not followed but merely *heard.*

PRECEDENCE

Concerning *precedence* the Code establishes the following rules:

1. Cardinals precede all other dignitaries, except an apostolic legate who is sent on extraordinary occasions, for instance, to a Eucharistic Congress.

2. *Archbishops* take precedence according to the time of their promotion.

3. *Bishops,* according to the time of their promotion; no distinction is made between secular and religious bishops.

4. *The cathedral chapter,* if *in corpore.* The same rule applies (by deduction from can. 427) to our *diocesan consultors* when they are present in a body. The *vicar-general* precedes all the clergy.

5. *Prelates regular* or superiors of exempt clerical institutes. Abbots precede individual canons or consultors,

but not cathedral chapters as such, *i. e.*, when present in a body.

6. *Rural deans* take precedence over pastors and other priests.

7. *Cathedral pastors* over all other pastors and curates.

8. *Pastors* over all other priests.

9. A priest *who takes the pastor's place,* either during his absence or whilst he is disabled, precedes the assistants (curates), no matter whether or not he is a religious.

10. The *assistants* or curates precede all the rest of the clergy assigned to a parish church.

11. The *secular* clergy precede the *religious* clergy, but not in the latter's own churches, where the religious precede the secular clergy, provided the religious belong to a clerical institute.

12. *Among religious* the rules of precedence are as follows:

(a) First come the *Canons Regular;* then

(b) The *Monks,* as, for instance, Benedictines, Cistercians, etc.;

(c) The *Clerical Regulars* (with solemn vows);

(d) The *Mendicants* follow according to the time of quasi-possession. Among the *Friars Minor* the order of precedence is: Brown Franciscans, Black or Conventual Franciscans, Capuchins.

(e) *Religious Congregations:* (1) Papal institutes, (2) diocesan institutes. The same among the religious societies.

13. *Confraternities* follow in this order: (1) Tertiaries, (2) Archconfraternities, (3) Fraternities, (4) Pious Unions.

Precedence is reckoned by the distance from the pontificating or officiating minister; the closer to him the

higher the precedence. Hence the last in rank are nearest to the cross-bearer; in processions the girls should lead, the boys follow.

PART I

THE CLERGY

The distinction between clergy and laity is of divine institution, not a human invention which may be altered, or interfered with, by the secular power. The difference between bishops, priests, and ministers is also of divine right. This latter gradation constitutes the sacred *hierarchy,* by virtue of which clerics are subordinate to one another and enjoy ecclesiastical power in various degrees. There are between the three degrees mentioned others of merely ecclesiastical origin and authority. Thus *pastors,* as such, are an ecclesiastical institution, although, as far as their priestly character is concerned, they belong to the divinely established hierarchy.

The initiatory ceremony of *tonsure* raises one to clerical rank; it is no sacrament, but the stepping stone to further advancement in the clerical rank.

TITLE I

INCARDINATION IN A DIOCESE

(Can. 111–117)

There is no longer any *exeat* required for *laymen.* The bishop or Ordinary may adopt a candidate for the priesthood into his diocese, and may even defray the expenses of his secondary schooling, *i. e.,* high school and college, and for the first term of his theological course

(can. 976, § 1); but only after the *reception of the first tonsure* does the candidate become *incardinated* in the diocese into which he has been adopted.

What bishop is entitled to confer the tonsure? The *episcopus proprius,* according to can. 956, *i. e.,* he who is the candidate's bishop by reason of domicile; or, if he is prevented by a just cause, any bishop, after having received dimissorials from the ordinand's own bishop. But what if John (*ordinandus*) has relinquished his domicile and acquired no new one in the diocese of his adoption, but established a quasi-domicile in the seminary or city where the seminary is located? A quasi-domicile is insufficient to render a bishop *proprius* in the sense of can. 956. Who, then, is the *episcopus proprius?* According to a decision [1]—which, however, was never published in the *Acta Apostolicae Sedis*—the *episcopus proprius* of those who have no domicile, is the Ordinary in whose diocese the ordination takes place, provided the ordinand acquires a domicile there by taking the oath according to can. 956. However, with all due respect to that decision, it may be permitted to state that this would require at least some moments' stay in the diocese where John intends to live and work. The oath refers to the intention of remaining in the domicile forever. Now, if the ordaining bishop should happen to be the one in whose diocese the seminary is located, but not the one into whose diocese John is adopted, what then? There is a gap somewhere. The only reasonable solution appears to be that the adopting bishop is supposed to be John's own bishop, who may, therefore, either confer the tonsure himself, or request the Ordinary in whose diocese the seminary is located to do so in his stead or permit the oath to be taken by proxy.

[1] See our *Commentary,* Vol. IV, p. 424.

From the date of the reception of the tonsure, then, a cleric is incardinated in the diocese for the service of which he was promoted. This *incardination* is supposed to be *permanent and unconditional;* for the Code does not favor conditional incardination, except in case of religious (can. 641). The secular clergy must be perpetually and permanently incardinated, in order to obviate the danger of roving. Consequently, *excardination* also is permanent and absolute.

How can a priest *leave one diocese and join another?* There may be good reasons for a change, such as the climate, lack of success, some fault in the priest himself, the Ordinary's attitude towards him, etc. The Code mentions two well-known causes, *viz.:* necessity and utility, which admit of a wide interpretation. If either of these obtains, incardination is admissible. The *formalities* required are:

(a) The incardinating Ordinary must obtain written and, if necessary, secret *information* as to the cleric's parentage, life, conduct and studies, especially when there is question of incardinating men of a different language and nation; the excardinating bishop is bound in conscience to make a truthful statement regarding these matters.

(b) The clergyman to be incardinated must take an *oath* in the presence of the incardinating Ordinary or his delegate, promising to serve the new diocese perpetually.

These two *formalities are not required:* (a) When a strange bishop confers a residential benefice, such as a pastorate, curacy, or professorship on the clergyman who is to be incardinated, provided the latter's Ordinary has given his consent in writing; (b) When the clergyman receives a written *leave of permanent absence* from

his own Ordinary. In both cases excardination and incardination take effect at once.

Papers of incardination and excardination cannot be granted by a vicar-general without authorization from his Ordinary, nor by a vicar capitular or administrator, except after the episcopal see has been vacant for a year, and then only with the consent of the chapter or the diocesan consultors.

Concerning *religious,* the Code (can. 641) enacts, with regard to incardination, as follows: The bishop may receive a religious either unconditionally or on trial; if he receives him unconditionally, the religious is by that fact incardinated in the diocese; if on three years' trial, the term may be protracted for three years more. Hence the whole term of trial may last six years, but no longer. At its expiration the religious becomes *ipso facto* incardinated, unless he is previously dismissed. This new law went into effect May 19, 1918, and consequently runs from that date, no matter whether the Ordinary notifies a priest or not. Those who were adopted into a diocese before or on the date mentioned, become *ipso facto* incardinated on May 19, 1924, unless they are dismissed before that date.

TITLE II

RIGHTS AND PRIVILEGES OF THE CLERGY

(Can. 118–123)

Only clerics can obtain the power of order or jurisdiction, ecclesiastical pensions, and benefices or offices. In virtue of their exalted state the faithful owe respect to clergymen according to their rank. Every real injury

done to the clergy is looked upon as a sacrilege, punishable by excommunication, reserved to the Ordinary (can. 2343), if the injured cleric is inferior to the bishop.[2]

Pastors and all priests who do not belong to the class of Ordinaries, should not be cited before the civil court, not even as witnesses, without the permission of the Ordinary. The clergy, from immemorial times, enjoyed a privileged court (*privilegium fori;* see can. 2341).

All clergymen are exempt from *military service* and not obliged to take upon themselves any civil office unbecoming to their state. If a clergyman should become *insolvent,* enough should be left him to enable him to live decently.[3] But he is not free from the obligation of satisfying his creditors as soon as he can. Clerical privileges attached to the state cannot lawfully be foregone by individual clerics.

TITLE III

OBLIGATIONS OF THE CLERGY

The clergy, and more especially, pastors, being "the salt of the earth," should be models to laymen by leading an exemplary life. The Code admonishes the Ordinaries to see to it that clerics go to confession frequently, make

[2] This is called *privilegium canonis,* because it contains several synodal enactments embodied in one canon by the Second Lateran Council of 1139; see c. 29, C. 17, q. 4: *"Si quis suadente diabolo. . . ."*

[3] This is styled *beneficium competentiae,* transferred from the *militia terrena* to the *militia coelestis;* see c. 3, Odoardus, X, III, 23.

daily meditations, visit the Blessed Sacrament often, cultivate devotion to the Blessed Virgin by reciting the Rosary, and examine their conscience every day. At least once every three years they should make a retreat.

More *particular obligations* are the following:

1. To show *respect and obedience* towards the Ordinary;

2. To *accept any change* the Ordinary may impose, if the needs of the Church require it;

3. To study the *ecclesiastical science,* even after ordination, and to avoid profane and falsely so-called science;

4. To undergo an *examination annually* for the space of three years after ordination, unless exempted by the Ordinary for a just cause. *Religious* who are pastors or curates cannot be compelled to undergo this examen before the Ordinary or his delegate, if they have been examined by their own superiors, or their delegates, as prescribed by canons 130 and 590. If the Ordinary should attempt to force them to do so, on account of the superior's negligence, recourse may be had to the S. C. of Religious;[4]

5. To attend the *pastoral conferences* that are held several times a year. This rule binds all clergymen, secular and religious, who have charge of souls;

6. To observe *celibacy* and avoid dangerous association with women who might cause suspicion;

7. To recite the *Breviary* daily;

8. To wear the *clerical dress;*

9. To refrain from *occupations* which involve financial risk or loss of time and undermine respect for the clerical state;

10. To keep aloof from indecorous, and especially in-

[4] Commissio Pont., July 14, 1922 (*A. Ap. S.,* XIV, 526).

decent and scandalous *spectacles,* balls, and pompous feasts; also to abstain from voluntary military service;

11. Not to engage in any *business or trade,* either for themselves or for others.

The duty of *residence* will be explained later.

TITLE IV

ECCLESIASTICAL OFFICES

(CAN. 145–195)

1. *Definition:* An ecclesiastical office is a charge, permanently constituted by either divine or ecclesiastical law, and conferred according to the sacred canons, by which some ecclesiastical power, whether of orders or of jurisdiction, is communicated. If to these marks are added the essential features of a *benefice,* all that the Code prescribes concerning benefices must also be applied to offices. It is therefore appropriate to point out here what constitutes a benefice.[5]

A *benefice,* says can. 1409, is a juridical entity permanently established by competent authority, consisting of a sacred office and the right of receiving the revenues from the endowment attached thereto. This definition clearly designates the material element attached to the notion of benefice. We say, *material,* because of the revenues which are granted for the sake of the office. These revenues must be stable, for they flow from a *dos*

[5] It may not be amiss to draw attention to the letter of the Apostolic Delegate, Msgr. Bonzano, of Nov. 10, 1922, wherein it is stated that a *parish is always an ecclesiastical benefice,* whether or not it has the proper endowment, provided it be erected according to the provisions of can. 1415, 3.

or permanent endowment. In former days such an endowment consisted chiefly of *fundi,* real estate productive of fixed revenues. But the Code has widened the range of endowment, for it enumerates among the various sources of endowment any kind of property or income, contributions due from individuals or corporations, and voluntary offerings of the faithful, such as pew-rent, plate collections, subscriptions, stole fees and choir distributions (can. 1410).

2. *Appointment* to office presupposes, first and above all other things:

(a) A *vacancy* in the office to which the appointment is to be made. Vacancy may be caused by the loss of an office, and may be either *de facto* or *de iure,* or *de iure et facto.* In order to confer an office validly, the latter must be at least *de iure* vacant. No one can validly hold two *incompatible* offices at the same time. Thus no one can at the same time be pastor of two distinct parishes, unless they are properly united (can. 460). Two offices are called incompatible if the obligations attaching thereto cannot be fulfilled by any one person.

(b) Only the *competent* authority can validly confer a vacant office. Whenever an appointment is made by free collation, as is the general rule in our country, the local Ordinary is entitled to confer the office. The vicar-general, however, needs a special mandate for that purpose.

(c) The *requisites and solemnities* are the following: The candidate must possess the necessary *qualifications,* and, all things being equal, the fitter candidate should be preferred. An office connected with the care of souls can be entrusted only to priests. The time within which an office is to be filled is six months after notice of

vacancy. This also applies to pastoral offices (can. 458). As to the *manner* of making the appointment, the Code gives no general rules.

(d) To take full effect, an appointment must be followed by *taking* possession of the office, or installation, although the appointment itself conveys, as they say, the *ius in re,* not only *ad rem.*[6]

(e) The *loss of an office* may be brought about by resignation, privation, removal, transfer, or lapse of time. Here we deal only with resignation, privation, and lapse of time, because the other three modes of losing an office are best considered under removal and transfer of pastors.

A *resignation* may be tendered by any one who is in full possession of his mental faculties, provided he does so freely, without fraud, error, or simony. But the resignation, to be valid, must be accepted, and there should be a just and proportionate reason for accepting it on the side of the ecclesiastical superior. It is required that all resignations be made in writing, or in the presence of two witnesses. The Ordinary should inform the resignee of his acceptance within a month, at least as a rule.[7]

Privation of office, if not a purely administrative measure, means a penal enactment, which naturally supposes a crime, or at least a just cause.[8] To deprive one of

[6] Since our parishes are benefices, it would be proper for installation to be made by the local Ordinary or his delegate, especially the rural dean; see can. 1443–1445.

[7] The Ordinary may accept a resignation even though more than a month has elapsed after the resignation has been tendered, and the resignee may recall his resignation before it is accepted; Commissio Pont., July 14, 1922 (*A. Ap. S.*, XIV, 526 f.).

[8] If privation is to be inflicted as a *penalty,* the rules on criminal trials (can. 1933–1959) must be observed.

an *irremovable* office, the Ordinary must proceed legally, *i. e.,* by way of ecclesiastical trial, as laid down in Book IV. In case of a *removable* office, he may proceed without legal formalities, for a just reason, even though no crime may be involved. Now-a-days the administrative mode of removal is generally employed.

Lapse of time means that an office had been conferred for a certain length of time. If the Ordinary has made an appointment with the clause, *"ad beneplacitum nostrum,"* the respective office-holder loses his office as soon as the Ordinary goes out of office, whether by death, resignation, or transfer.

TITLE V

ORDINARY AND DELEGATED POWER

(CAN. 196–210)

Jurisdiction, or the public faculty to rule or govern others, may concern either the external or the internal forum. The latter (*forum conscientiae*) may be exercised in or outside of the Sacrament of Penance. *Ordinary* jurisdiction is attached to an office by law. Thus bishops enjoy the ordinary power of appointing to vacant offices. Those who possess ordinary power may delegate it to others, either entirely or in part, unless otherwise provided for. Can. 152 states that appointment to office is reserved to the local Ordinary.

Delegated jurisdiction is one entrusted to a person, more especially by reason of personal qualities. A jurisdiction delegated *by the Apostolic See* may be subdelegated either habitually or for a certain case, unless subdelegation has been expressly forbidden, or unless the

jurisdiction was given for the sake of personal qualities. Universal delegated jurisdiction (*ad universitatem causarum*) may be subdelegated in particular cases, for instance, for one special marriage case. But *subdelegated* jurisdiction cannot be further subdelegated, unless express permission has been given to do so.

A delegate who exceeds the limits of his *mandate,* either in regard to objects or persons, acts invalidly. Hence a delegation ceases to be effective as soon as the mandate is fulfilled, or the time has expired, or the delegation has been revoked, or the delegate has resigned and his resignation has been accepted.

Pastors, or their substitutes, or other priests endowed with general delegation, cannot delegate jurisdiction for hearing confessions to secular or religious priests, or extend the jurisdiction of those already approved beyond the limits of places and persons for which or for whom they had been approved, without a special faculty or mandate from the local Ordinary.[9]

The Church supplies the necessary jurisdiction (*"supplet Ecclesia"*), when a common error or positive and probable doubt, either of law or fact, arises in both the internal and the external forum. Can. 209 provides for the common good and the tranquillity of conscience.

TITLE VI

RETURN OF CLERGYMEN TO THE LAY STATE

(CAN. 211–214)

This may be brought about by a sentence or by degradation in the case of clerics in higher orders. A cleric

[9] Commissio Pont., Oct. 16, 1919 (*A. Ap. S.*, Vol XI, p. 477); see our *Commentary,* Vol. IV, p. 262.

in minor orders may be reduced to the lay state if he is unfit for the clerical state. If grave fear or compulsion are pretended, a trial is required for those in sacred orders.

THE HIERARCHY

It was logical to insert the territorial organization before dealing with the hierarchy proper; for laws are, as a rule, territorial (can. 8). Organization, too, proceeds from authority, which is here supposed to exist and to exert its influence over provinces, dioceses, or parishes.

Parishes are organized by the local Ordinaries, whilst provinces and dioceses are established by the Holy See. Parishes came into existence in the fifth century in the East, and about two centuries later in the West. Their progress was slower in cities than in the country.

What is a parish? It is a portion of the diocese which has its own church and people, and a rector entrusted with the care of souls, who holds this part of the diocese as his own territory.

Are there *canonical parishes* in America? This question has been answered affirmatively by the S. Congregatio Consistorialis.[10]

Concerning *national* or linguistically distinct *parishes,* the Code enacts that none such should, in future, be established in the same city or territory without a special

[10] The substance of the *Declaratio* of Aug. 1, 1919 (*A. Ap. S.,* XI, 346) is: Wherever the following three conditions are verified, there is a canonical parish, no matter whether its rector be removable or irremovable. The three conditions are: (1) fixed boundaries, (2) parochial residence, (3) endowment or at least a solid reason to expect sufficient support to be forthcoming. The Ordinaries may erect *subsidiary parishes* or *chaplaincies,* but

Apostolic indult. With regard to those already existing, no change is to be made without consulting the Apostolic See. The *nihil innovandum* of can. 216, § 4 is a wide term, but refers to any change in existing parishes of this character.

Does it apply also to *division?* In order to answer this query, the canons concerning division may find a place here. Can. 1427 allows *local Ordinaries to divide parishes* of any kind, provided there be a just and canonical reason, because a division (for a union or transfer) made without a canonical reason is null and void (can. 1428, § 2). A canonical reason exists when there is great difficulty on the part of the people to come to the parish church or the parish priest cannot properly attend to the spiritual needs of the parishioners because there are too many of them.[11] The formalities for division are defined in can. 1428. The local Ordinary must draw up an authentic document, summon the diocesan consultors to hear their opinion, and also ask those who are interested in the division. These formalities seem to affect the validity of the act. No recourse *in suspensivo* is admissible. Hence, if recourse is had against a division, it remains in force until a higher authority decides otherwise.

Returning to the question of national churches, Does the division of such a parish require the coöperation of the Holy See? *Our* answer, until some authentic in-

only within the limits of a canonical parish. A letter of the Apostolic Delegate, Nov. 10, 1922, says that a special decree of the Ordinary is not necessary for the erection of a parish, if this parish already had its limits assigned. In other words, those parishes which met the three conditions mentioned above at the moment the Code went into effect were automatically raised to the rank of canonical parishes.

[11] See Vol. VI of our Commentary, p. 507 ff.

terpretation ensues, is as follows: If the change means a change from one language to another, or complete amalgamation with another parish, the Holy See must be asked.

The next question is that of dismembration. *Dismemberment,* according to can. 1421, takes place when a part of the territory or the revenues belonging to one benefice are taken away and united to another benefice. Such a measure can be decreed by the local Ordinary with regard to all parishes, says can. 1527, § 1, if the territory only is to be dismembered.[12] Are our national parishes included in this general power? We hardly think so. For such a dismemberment would certainly be an innovation of the already existing national parish. Besides, if this were permissible, it would be easy to nullify can. 216, § 4, by gradually dismembering the entire territory assigned to a national parish.[13] Whether a national parish may be divided into two or more parishes of the same language must be answered in the same way. It would be an innovation, and hence requires the consent of the Apostolic See.

TITLE VII

THE SUPREME POWER AND THOSE WHO PARTAKE THEREOF BY ECCLESIASTICAL LAW

1. The *Roman Pontiff,* being the successor of St. Peter, possesses not only an honorary primacy, but supreme power of jurisdiction in the whole Church con-

[12] See a case solved by the S. C. C., Jan. 14, 1922 (*A. Ap. S.,* XIV, 229 f.), where the apparent conflict between can. 1422 and can. 1427 is solved by pointing to alienation with and without compensation.

[13] There is now no doubt that *religious parishes,* being benefices (can. 1422), cannot be divided without the consent of the

cerning matters of faith and morals as well as discipline and government.

This power is truly episcopal, ordinary, and immediate, extending to each and every church no less than to each and every pastor, and to all the faithful, and is independent of every human authority.

The Roman Pontiff, lawfully elected, obtains, by divine right, full power of supreme jurisdiction the moment he accepts office. All affairs of major import (*causae maiores*), by their nature or by positive law, are reserved to him.

If the Roman Pontiff resigns his office, the resignation is valid without regard to its acceptance by the Cardinals or any one else.

2. No *general council* can be held except by convocation of the Roman Pontiff, who presides over it, either himself or by his delegates.

3. The *Cardinals* form the senate of the Roman Pontiff and are his main counsellors and helpers in the government of the Church. They rank according to orders; bishops, priests, and deacons, and are *created* by the Pope.[14]

4. The *Roman Court* consists of Congregations, Tribunals, and Offices. There are eleven Sacred Congregations, three Tribunals, the most ancient and important of which is the Sacra Romana Rota, and four main Offices, *viz.*, the Apostolic Chancery, the Apostolic Datary, the Reverenda Camera Apostolica, and the Secretariate of State.

5. The *Legates of the Roman Pontiff* are nuncios, internuncios, or Apostolic delegates. The latter are sent

Holy See. Correct note 15, p. 509, Vol. VI of our Commentary accordingly.

[14] The title Cardinal-*elect* is a misnomer;—this for the benefit of newspaper editors.

with ordinary power to countries where the ecclesiastico-political relations do not require diplomatic representation. Besides their ordinary jurisdiction they receive special faculties.[15]

6. *Plenary and provincial councils* are convoked, with the permission of the Roman Pontiff, by the metropolitans, who should hold a provincial council at least once every twenty years. The acts and decrees of both kinds of councils should not be promulgated before the *S. C. Concilii* has examined and approved them.

7. *Metropolitans* or archbishops preside over ecclesiastical provinces. Their rights over their suffragans are limited to canonical visits in case of neglect, to ecclesiastical trials in the second instance, and to certain controversies in the first instance. They may pontificate in any church of the entire province, including those of exempt orders, and wear the pallium on this occasion.

8. *Apostolic vicars and prefects* enjoy the same rights and faculties in their respective territories as residential bishops in their dioceses, unless the Apostolic See makes reservations.

9. *Apostolic administrators* are appointed either for a limited time or permanently. Permanent administrators enjoy the same rights and honors, and are bound by the same obligations, as residential bishops. Administrators appointed for a limited period only have the same rights and duties as vicars-capitular, but are not obliged to apply the Mass for the people; their honorary prerogatives are those of Apostolic protonotaries *de numero participantium*.[16]

10. *A prelate or abbot "nullius"* presides over an ex-

[15] See Vol. I of our Commentary, p. 265 ff.

[16] As determined by the Constitution of Pius X, *"Inter multiplices,"* Feb. 5, 1905.

empt territory belonging to no diocese. If this territory has not even three parishes, such a prelacy or abbey is ruled by special laws; but if there are three or more, the prelate or abbot *nullius* enjoys the same jurisdiction as a residential bishop and is bound by the same obligations.

TITLE VIII

THE EPISCOPAL POWER AND THOSE WHO PARTAKE THEREOF

(CAN. 329–362)

Residential Bishops have the right and the obligation to govern their dioceses in spiritual and temporal matters. Although endowed with legislative, judiciary, and coercive powers, they are bound by the common law, *viz.,* the Code. Within the range of the common law they may enact laws of their own, which bind as soon as promulgated; the bishops themselves may choose the manner of promulgation.

Coadjutor Bishops are appointed by the Holy See. The letter of appointment in each case defines the powers conferred, which may be limited when the Ordinary is not entirely disabled.

One of the rights and duties of a residential bishop is to convoke *diocesan synods,* which should be held at least once *every ten years.* An administrator is not entitled to call a diocesan synod. The proper *subject-matter* of a synod are the particular needs and advantages of the clergy and people of the diocese. *Those who must be called* and are obliged to be present are: The vicar-general, the cathedral canons or diocesan consultors, the rector of the seminary, the rural deans, a deputy of col-

legiate chapters, all the pastors of the city where the synod is held (which as a rule ought to be the cathedral city), at least one pastor from every deanery, to be elected by the priests of that respective deanery who have charge of souls, governing abbots and religious superiors. Besides, the bishops may call others of the secular clergy and religious superiors, but not exempt religious.

The bishop may appoint commissions, which should prepare the matter to be laid before the synod, but *the sole legislator is the bishop himself,* and therefore the other participants have only a deliberative voice in the proceedings. A decisive vote, however, is granted to those entitled to be present in case of synodal examiners and pastors-consultors, as these, though proposed by the bishop, must be approved by the synod (can. 385).

THE DIOCESAN COURT

(CAN. 363–390)

The diocesan court consists of those persons who assist the bishop or his representative in the government of the diocese. It is made up of the vicar-general, the *officialis,* the chancellor, the *promotor iustitiae* or diocesan attorney, the defender of the marriage bond, the synodal judges and examiners, the pastors-consultors, auditors, notaries, couriers, and beadles.

The bishop is obliged to appoint a *vicar-general* when it is necessary for the good government of the diocese. The Code demands that a vicar-general be versed in theology and canon law, not less than thirty years of age of good moral character, and a prudent man. The vicar-general has the *same power as the bishop* in spiritual and temporal matters, with the exception of what

the law, or the bishop himself, reserves to the Ordinary. He *ranks* first among the clergy of the diocese and precedes the cathedral chapter in the choir as well as at chapter meetings. His authority expires with the expiration of that of the bishop. The character of the vicar-general's office renders it evident that his jurisdiction should not be entrusted to the chancellor or secretary, because the latter's office is that of a scribe, or, as they say in Rome, a *minutante*.

The *officialis* of the diocese is an important personage, for he enjoys ordinary power in judiciary matters (can. 1573).

The *chancellor's* duty is to file official documents in the archives, keep them in chronological order and properly indexed. The Code insists rigorously, and most justly, on orderly book-keeping.

Synodal examiners and pastors (not parish) *consultors,* no less than four in number, nor more than twelve, are elected at, or outside, the synod for a period of ten years, after which their office ceases. Examiners and consultors may be the same persons, but not in the same cause.

The law regarding *canons* (can. 391–422) is of little interest in our country, except in so far as the position of the diocesan chapters is held by the *diocesan consultors*. For they take the place of the cathedral chapter where such a chapter does not exist. The bishop appoints the consultors, as a rule, for a three years' term, and is, in certain matters for instance, in alienation cases, dependent on their consent. Since they are a substitute for the cathedral chapter and therefore form a body, it is evident that their advice or consent must be given *collegialiter, i. e.,* in a body. The S. Congregation of the Consistory has decided that our diocesan con-

sultors, provided there be at least five or six, are entitled to elect an administrator when a vacancy of the episcopal see occurs.[17] Of course, the election must be conducted according to the Code.[18]

A *vacancy of the episcopal see* may be brought about by the death, resignation, transfer, or removal of the incumbent. Sometimes an Apostolic administrator has already been appointed, and in this case the diocesan consultors have no right to elect an administrator, generally called vicar-capitular. Otherwise he may be elected, and after canonical election, without any further formality, assumes the ordinary power of a bishop, except in specially reserved cases. The *vicar-capitular* should endeavor to make no innovations prejudicial to the successor or the diocese.

The Code does not strictly prescribe the appointment of *rural deans,* but gives the impression that the bishop should divide his diocese into deaneries for the purpose of a more compact and efficient administration. The rural deans, therefore, are a kind of vigilance committee, and must report to the bishop at least once a year. One of their duties is to convoke the pastoral conferences and to preside thereat. They must have a seal of their own, and they enjoy precedence over all the pastors (also the cathedral pastor) and priests of the diocese.

To the hierarchic organization belong the *pastors,* who are the proper theme of this book. If we say that they belong to the hierarchic organization, we mean the hierarchy of jurisdiction introduced by ecclesiastical law, because as priests or partakers of the power of order they

[17] Feb. 22, 1919 (*A. Ap. S.,* XI, 75 f.); for Canada, S. C. Consist., May 8, 1919 (*Eccl. Rev.,* Vol. 61, p. 165).

[18] See can. 161–182.

doubtless form part of the hierarchy established by divine command.

We shall, however, not interrupt the order of the Code. On the contrary, following the same, we shall merely stress what pertains to the rights, duties, or functions of pastors and all others who have charge of souls, including assistants or curates.

PASTORS

(CAN. 451–470)

Since, as stated above, there are canonical parishes in our country, the former usage of calling the pastors "rectors" should gradually be allowed to go into desuetude; "rectors" now are a somewhat different class of priests.

Definition

A parish priest is a priest, or a moral ecclesiastical person, to whom is entrusted a parish with the care of souls, to be administered under the authority of the Ordinary of the diocese.

The following are the equals of parish priests as to parochial rights and obligations, and are known in law by the name of parish priests:

1. Priests who govern quasi-parishes, *i. e.*, congregations of the faithful existing in Apostolic vicariates and prefectures (can. 216, § 3);

2. Parochial vicars endowed with full parochial powers.

A *moral* person is a corporation. It is the habitual pastor, as distinct from an actual pastor. Thus a monastery, or, rather, its prelate, is the habitual pastor, but

the priest appointed to administer the parish is the actual pastor. Parishes can be incorporated with monasteries *pleno iure* only by an Apostolic indult.

In titulum here implies possession, not ownership of a parish. It is guaranteed by law as long as the holder does not disobey the laws of the Church or go out of office by resignation, removal, transfer, etc. If the title is not real, but merely presumptive, it is called *putativus* or *coloratus*. Thus a pastor may not be aware of the decision of the bishop who has taken away the parish, and continue to function *bona fide* as pastor. But when there is no foundation for a title, the pastor is simply an intruder. For instance, if a new pastor has been appointed, and the appointment duly intimated or promulgated, but the old pastor does not "move," be becomes an intruder, and the parish is vacant, *de iure* as well as *de facto*.

The *power* of pastors is *an ordinary power,* given them by virtue of their office, and the bishop cannot arbitrarily diminish, take away, or limit it to such an extent that it would become an empty title. But it is also true, as the Code says, that the power of pastors is dependent upon, and subject to, that of the bishop, and therefore they must exercise their office under the authority of the *Ordinarius loci*.

The Qualifications of Pastors

The qualifications of a parish priest are as follows: He must be a man of good morals, filled with zeal for souls, endowed with knowledge, prudence, and all the other virtues required by either common or particular law for the effective government of a parish.

It is not essential to the definition of a pastor that he

be irremovable; he may be removable and yet be a pastor in the full sense of the word. Hence what the Councils of Baltimore [19] have enacted on this head may still be followed.

The Appointment of Pastors

The right of appointing and investing parish priests belongs to the Ordinary of the diocese. The administrator or vicar-capitular—and the same applies to an administrator appointed for a limited term—can appoint only a parochial vicar, but may appoint pastors permanently in case the see has been vacant at least one year. The vicar-general has no power to appoint pastors, except by special mandate of the bishop and in case the episcopal see is *impedita,* for example, if the bishop is exiled or cannot communicate with his diocesans (can. 429, § 1).

For parishes entrusted to religious institutes the superior who exercises that right under the constitution shall present a priest of his community to the local Ordinary for investiture.

Examination and Concursus

The Ordinary must subject the candidate to an examination in the presence of the synodal examiners. If a pastor has already passed such an examination for the first parish he held, no new examination is required. On the other hand, the examinations before ordination or those for the junior clergy are no substitutes for the pastoral examination, unless indeed the examination for ordination comprises all practical questions concerning

[19] *Acta et Decreta Conc. Balt. II,* n. 125; *Balt. III,* n. 32.

the administration of parishes.[20] The examination to be made before a priest is promoted to a parish, never takes the place of a *concursus.* This *concursus*—as outlined in the constitution of Benedict XIV *"Cum illud,"* Dec. 14, 1742, and adopted by the Third Plenary Council of Baltimore (nn. 36, 47 ff.)—must be undergone by all who aspire to an irremovable parish. Those only may present themselves for it who have exercised the sacred ministry in the diocese for at least ten years, three of which they must have spent as simple rectors or at least given proof of their ability to govern a parish spiritually and temporally (*Conc. Balt. III,* n. 43). The bishop may appoint one to an irremovable parish for the first time without a concursus, says the Third Plenary Council (n. 57). This undoubtedly means that now, (since 1884), after a parish has been newly declared an irremovable one, the first irremovable pastor may be appointed freely by the bishop without a concursus. It is neither against the Code nor against the Council of Baltimore if we say that even now the bishop may, without a concursus, appoint a pastor for a parish that has been newly erected or newly declared irremovable. On the other hand, it cannot be held that a new bishop may for the first time, appoint irremovable pastors without a concursus.

In order to safeguard unity of government, the Code provides that one can hold *only one parish in titulum,* and that in each parish *only one is the parish priest,* namely, he who has the actual care of souls. This enactment, of course, does not exclude a union of parishes *aeque principaliter,* nor does it prevent the existence of subsidiary parishes or chaplaincies. Thus, for instance, a parish may embrace several missions or stations, but

[20] *Commissio Pont.,* Nov. 24, 1920 (*A. Ap. S.,* XI, 574).

they are subordinated to one pastor, who exercises the parochial rights and is responsible for the care of souls and the parish books.

By *taking possession of the parish* the appointee becomes what he is called, *i. e.,* pastor of the respective parish. A certain formality is prescribed, as the Code rules (can. 1443) that no one shall take possession on his own authority, because this would savor of ambition. If the bishop writes a letter to the effect that N. is appointed to the parish and will be there on a certain day, this is sufficient to "authorize" N. to take possession on the day appointed. The appointee holds the parish *in titulum* from the day of his appointment, but not before. This is to be noted especially with regard to assistance at marriages (can. 1095). Before taking possession, however, the new pastor must make profession of faith in the presence of the Ordinary or the latter's delegate (can. 1406). In such cases it is proper to delegate the rural dean if the parish is located in the country.

Rights of Pastors

The following are the *strictly parochial rights* reserved to pastors, unless otherwise provided for by either general or particular law. The general law (*i. e.,* the Code) establishes the relation between pastor and curate, or assistant, with reference to those spiritual rights. These rights are limited only in case of exemption. Particular laws, such as diocesan statutes, may also affect the exercise of these rights. Otherwise no limitation or curtailment of these rights should be allowed.

The *strictly parochial rights of a pastor* are:

(1) To administer solemn Baptism;

(2) To carry the Holy Eucharist publicly to the sick in his own parish;

(3) To take the Holy Eucharist either publicly or privately to the sick as *viaticum,* and to anoint them when in danger of death (with due regard to can. 397, n. 3; 514, 848, § 2; 938, § 2);

(4) To announce sacred ordinations and the banns of matrimony, to assist at marriages and to impart the nuptial blessing;

(5) To hold funeral services according to can. 1216;

(6) To bless the homes of the faithful on Holy Saturday or other customary days, according to the liturgical books;

(7) To bless the baptismal font on Holy Saturday, to hold processions outside the church, to give the solemn blessing outside the church, unless, in a capitular church, the chapter performs these functions.

The *temporal or material rights of a pastor* are these: He is entitled to the income established by approved custom and legitimate taxation (can. 1507). If he takes more, he is obliged to restitution. When parochial functions are performed by another than the parish priest, the latter is entitled to the fees, unless there is a surplus and it is evident that the donor intended that surplus for the priest who performed the function.

Parish priests should *never refuse to serve the poor free of charge.*

An exception to refunding the stole fees seems to be established in can. 1097, § 3, which enacts that pastors who assist at marriages without the permission required by law, are not allowed to keep the stole fees, but must hand them to the parties' own pastor. Therefore, speaking positively, pastors, who would otherwise be entitled to assist at marriages, may assist licitly, provided the permission of the *parochus proprius* was given, and in that case may retain the stole fees. The exception is

only apparent; for the pastor exercises a parochial right to which he would be entitled, if permission were granted, and, on the other hand, can. 1097, § 3, only obliges in case of illicit assistance.

Duties of Pastors

1. Since the term "pastor" *implies care of souls,* his principal duty is to provide for all the parishioners, unless some of them should be exempt from his charge. To this exemption reference shall be made when speaking of the relation of pastors to religious.

2. The nature of a pastor's duties requires his personal presence in his parish. Hence the pastor is obliged to *reside in his parish.* A vacation of two months is granted by law, provided he has the permission of his Ordinary, who may shorten or prolong the vacation. For any other absence (also vacation) lasting more than a week, three conditions are required: (a) a legitimate cause, (b) the written permission of the Ordinary, and (c) the appointment of a substitute. In cases of sudden or unforeseen absence the Ordinary must be notified as soon as possible of the reason for absence and the name of the substitute. Even during a shorter (less than a week's) absence the pastor must provide for the wants of the faithful. However, this provision, as the text says, concerns the *wants of the faithful, i e.,* those means of salvation to which they are strictly entitled, *e. g.,* sick calls and the Sacraments which are necessary for salvation. Devotional Communion or assistance at daily Mass are not such wants. Not even a pastor is obliged in conscience to say Mass every day. Besides, if the pastor asks a neighboring priest to attend to his flock during his absence, he has complied with his duty.

Otherwise he could not absent himself for even one day. No one can put such a rigid interpretation upon the text, which purposely adds: "if peculiar circumstances require it" (can. 465, § 6).

3. A grave duty incumbent on pastors is the *application of Holy Mass* on Sundays and holy days of obligation, also on days of (now) suppressed feasts, *pro populo*. The Code has not introduced any change with regard to this.[21] Note, however, that the application obliges only pastors of canonically established parishes.[22] These are bound, *ex iustitia*, to apply the Mass *pro populo* on said days. Consequently they are not allowed to accept any stipend on those days, even though they binate (can. 824). But they are allowed to say a Mass for any purpose for which they would be obliged to say Mass, always provided there is no stipend involved. Thus the pastor may say the second Mass for a fellow priest who was a member of the purgatorial society, or for members of a sodality, or a Mass promised by a vow, or to which he is obliged by a statute or precept of a confraternity. It may not be amiss to state that the Code here as elsewhere (can. 824) does not say which Mass, the first or the second, in case of bination, must be applied *pro populo*. But it does require that the Mass for the people be said in the parish church, unless circumstances (for instance, absence of the pastor or necessity of saying the Mass in a hospital or religious institute) compel him to celebrate elsewhere.

4. *Particular duties* of the pastor are: to hold divine services; to administer the Sacraments to the faithful as often as they legitimately ask for them; to know his sheep and prudently to correct the erring; to bestow

[21] *Commissio Pont.*, Feb. 17, 1918 (*A. Ap. S.*, X, 170).
[22] S. C. Consist., Aug. 1, 1919 (*A. Ap. S.*, XI, 346).

his paternal care upon the poor and wretched, and to employ the greatest diligence in instructing the children in their religion. These duties include the care of the sick, charitable works, and watchfulness against dangers to faith or morals in his parish, especially in the school. "The pastor or any other priest assisting the sick has the faculty to grant, and should not omit to impart, the Apostolic blessing with the plenary indulgence *in articulo mortis,* according to the formula contained in the approved liturgical books" (can. 468, § 2).

5. *Parish books* are a very important factor in the administration of a parish. These books are: baptismal, confirmation, marriage and death records and the *Status animarum.* The Code does not strictly prescribe that the pastor keep these books himself; but it holds him responsible for their correctness and preservation. It also enjoins on him to have his own *parish seal* and to make adequate provision for the safekeeping of these books and all other documents referring to parish or pastoral matters.

ASSISTANT PRIESTS AND RECTORS

(Can. 471–486)

The Code distinguishes five kinds of assistants, as we call them in this country: vicars of incorporated churches, *oeconomi* or administrators of vacant parishes, temporary substitutes, coadjutors of disabled pastors, and *cooperatores* or assistants proper, who in some countries are called curates.

I. When a *religious community* has parishes incorporated *pleno iure* by virtue of a papal rescript, a vicar must be appointed to take actual charge of the parish.

The appointment is made by the religious according to the constitutions of the respective institute, but the vicar must be presented to the local Ordinary, who invests him if he finds him fit. The local Ordinary may remove such a vicar and is not obliged to state the reasons for the removal. The vicar may also be removed by the religious superior, who, in turn, is not bound to give the reasons for the removal to the Ordinary (can. 454, § 5).

Here can. 609, as compared with can. 415, may find a place; both bear on the relation of *pastor and chapter.* If the church attached to the residence of a religious community is at the same time a parish church, can. 415 should, with due proportion, be observed. This canon provides:

1. The *pastor* has the following obligations: (a) to apply the Mass for the people, and to preach and teach catechism at the times prescribed; (b) to keep the parochial books and take from them the attestations required; (c) to perform the funeral services; (d) to perform such other functions as are usually held in parish churches, provided, however, that the choir services do not interfere, or that the chapter does not perform the same; (e) to collect alms for the good of the parishioners, to accept such as are either directly or indirectly offered, and to administer and distribute them according to the intention of the donors.

2. The *chapter* on its part is bound: (a) to take care of the Blessed Sacrament, leaving one key with the parish priest; (b) to see to it that the liturgical rules are observed by the parish priest in the performance of all functions in the chapter church; (c) to take care of the church and administer its possessions and legacies.

The parish priest shall not interfere with the functions of the chapter, nor the chapter with the parochial

functions. If a conflict arises, the Ordinary should settle it. He shall also see to it that catechetical instructions and gospel explanations are given at an hour most convenient for the faithful.

II. An *oeconomus* or administrator must be appointed to a vacant parish as soon as possible. He is pastor *ad interim* with all the rights and duties of a pastor, but should not undertake anything that might cause detriment or prejudice to the pastor or the parish.

III. A *temporary* substitute is appointed when a pastor is absent on a vacation or in case he has been deprived of his parish but has appealed, pending approval. The substitute has charge of whatever pertains to the care of souls, unless the Ordinary of the diocese or the pastor has made reservations.

IV. *Coadjutors* are given to disabled pastors by the local Ordinary. The rights of a coadjutor depend on the physical and mental condition of the pastor and on the wording of the letter of appointment. However, the coadjutor is never obliged to apply the Mass *pro populo*.

V. *Assistants* or curates are appointed if the pastor, on account of the large number of parishioners, or for some other reason, is unable in the judgment of the Ordinary, to take proper care of the parish. Assistants are entitled to a sufficient salary, which is fixed by diocesan statute. The Code does not forbid the sharing or dividing up of the stole fees, or letting the assistants have a portion of the Christmas or Easter collection. In fact, we believe it would do away with certain abuses if the stole fees were all massed together and equally divided among the assistants, the pastor receiving, let us say, two shares. Assistants may be appointed either for the whole parish, or for a particular part thereof.

The right to nominate assistants from among the secular clergy belongs not to the pastor, but *to the Ordinary* of the diocese, but he should consult with the pastor before making an appointment.

Assistants belonging to a religious order must be presented by the competent superior to the Ordinary for his approval.

An *assistant pastor is obliged to reside in the parish,* according to the diocesan statutes, or praiseworthy custom, or episcopal injunction. The Ordinary should see to it, according to can. 130, that the assistants dwell in the parish house. But time for vacation is not excluded, much less forbidden, by the Code.

Their *rights and obligations* must be determined from the diocesan statutes, the letters of appointment, and the instructions of the pastor; however, unless the contrary is expressly stated, they take the place of the pastor in virtue of their office and must assist him in the entire ministry, barring only the application of the Mass for the people.

The assistant is subject to the pastor, who should paternally instruct and advise him in the care of souls, watch over him, and report to the Ordinary about him at least once a year.

The phrase, *"by virtue of their office,"* means that the assistant can do what the pastor is empowered to do, unless the latter expressly excepts something. This rule of can. 1096, § 1, is logically applied to assistance at marriages.

The *relation between pastor and assistant* is well described by the Second Provincial Council of Quebec (A. D. 1854): "The assistants shall diligently endeavor to act in harmony with the pastor, for too great discrepancy in the practice of the sacred ministry might result in

destruction rather than edification. Besides, they shall most carefully avoid in word or deed whatever might belittle the pastor, and in all things conduct themselves modestly and diligently promote the welfare of the people."

Here is an authentic decision concerning *temporary substitutes:* A substitute appointed by the pastor during his vacation may validly and licitly assist at all marriages that occur during that time, provided the local Ordinary has approved the substitute and the pastor has not made any restrictions. A substitute called in by a pastor on account of sudden absence may assist validly and licitly at marriages, until the Ordinary, after having been notified as to the person of the substitute, shall provide otherwise. A religious acting as substitute for a pastor during the latter's vacation may assist at marriages validly and licitly, if he is approved by the local Ordinary, even though he has not yet been approved by his own superior.[23] This interpretation is in conformity with can. 465, §§ 4 and 5. What kind of approval is required? Can. 465, § 4, only says: "[*substitutum*] *ab eodem Ordinario probandum.*" Hence a tacit approval would be sufficient, *viz.,* one which is not contradicted when contradiction is possible; in other words, if the Ordinary is notified of the person of the substitute, and raises no objection against him, his approval may be presumed, provided, of course, the substitute has the diocesan faculties.

The next case is that of a sudden call. The pastor is called to the bedside of his dying mother; he leaves Fr. John, a religious who was sent there by his superior, in his place, but forgets to notify the local Ordinary. Fr. John knows that the bishop has told his superior that

[23] *Commissio Pont.,* July 14, 1922 (*A. Ap. S.,* XIV, 527 f.).

whosoever would be sent by him would have the faculties. and therefore may assume tacit approval, sufficient for valid and licit assistance at marriages.

Concerning *rectors, i. e.,* priests who have charge of a church which is neither a parish nor a capitular church, nor entrusted to a religious community, they resemble rectors of chaplaincies or subsidiary churches established within parishes. The pastor can take the Blessed Sacrament from these churches and administer it to the sick. But rectors should be careful not to interfere with parochial rights and give preference to parish services.

PART II

RELIGIOUS

THE RELIGIOUS STATE

(CAN. 487–681)

"The religious state, that is, the firmly established manner of living in community, by which the faithful undertake to observe, not only the ordinary precepts, but also the evangelical counsels, by means of the vows of obedience, chastity, and poverty, must be held in honor by all," says can. 487.

Besides the religious proper, there are societies of men and women whose members imitate the religious life by living in a community under the government of superiors, according to approved constitutions, but without being bound by the usual vows.

Regular institutes are those whose members, or at least the majority of whose members, pronounce solemn vows; all these members are called religious, pure and simple,

even though some of them may be exempt, as among the Passionists and Redemptorists.

Exemption

Regulars, both men and women, including novices (except nuns not subject to regular superiors), together with their houses and churches, are exempt from the jurisdiction of the local Ordinary, except in cases provided by can. 615.

Can. 464, § 2, rules that the *bishop may,* for just and weighty reasons, *withdraw from the care of the pastor religious communities and pious houses* located within the territory of a parish, even though they are not exempt. This is episcopal, not papal, exemption, and may be granted only by the bishop, not by the vicar-general or vicar-capitular; it may be recalled at any time and is subject to restrictions. The pastor must be notified when such exemption is made, otherwise he might be forced to demand the document of exemption from the respective superior; he would be entitled to ask for such papers, although he may not ask for the reasons of the exemption.

Here the pastor's rights with regard to *non-exempt* religious houses may be set forth.

1. The right of conferring *solemn baptism* belongs strictly to the pastor in whose parish a religious house is located. Therefore children should, as a rule, be brought to the parish church if the parents have their domicile or quasi-domicile in the parish. If there is danger, the child may be privately baptized in the chapel of a religious community (hospital or academy); if solemn baptism is desired, the consent of the pastor, to be expressly given in each individual case, is required (can. 776; can.

773). Religious may be sponsors only in cases of necessity (can. 766, n. 4).

2. As to the *Holy Eucharist:* The pastor is entitled to bring the Viaticum to sick members of *lay institutes,* such as all Sisters are; in clerical congregations this right belongs to the religious superior. If outsiders—for instance, pupils, patients, servants—receive their Easter Communion in the chapel of a religious house, they should inform their pastor of the fact (can. 514; can. 859, § 3).

At the Corpus Christi procession all male religious must be present except those who are strictly cloistered or live 3000 paces from the city (can. 1291).

3. Concerning the *Sacrament of Penance,* the Code (can. 519, 522), renewing former decrees, enacts that religious may be licitly and validly absolved in any church or semi-public oratory—the religious' own oratory not excluded—provided the confessor enjoys the ordinary faculties, and that he or she may be absolved from censures and sins reserved in his or her own institute, unless this reservation is *ab homine* or reserved by law to the religious superior, as is the one mentioned in can. 2385 concerning apostates. The confessor must not inquire into the reason for "the quieting of conscience."

4. The required publication of the *ordination* of religious should not be made in the churches of their parish (can. 998).

5. The Ordinary should never, without urgent necessity, grant permission to have *marriages* celebrated in churches or oratories of religious women (can. 1109, § 2).

6. Concerning the *burial* of religious, the Code vindicates the right to bury non-exempt religious to the pastor in whose parish the religious house is situated.

The same rule applies to the burial of guests, students, or patients who have lived and died in such houses (can. 1221, 1222, 1230).

7. Concerning *preaching,* can. 1334 provides that even exempt religious may be called upon to help in giving catechetical instructions to the people. "The religious superiors should always be ready to lend a helping hand, especially if their own Ordinary, or a pastor of their diocese, calls for assistance in attending to the needs of the people; and this help should be granted willingly, not only to the churches and public oratories subject to the religious, but also to others, as far as compatible with religious discipline. On the other hand, it is but meet that the local Ordinary and parish priests should employ religious, especially those living in the diocese, for the sacred ministry, and particularly for the administration of the Sacrament of Penance" (can. 608).

It may not be amiss to add that pastors or curates who are confessors of religious, are strictly forbidden to meddle in the internal or external government of the community (can. 524, § 3). The chaplain, who is appointed by the local Ordinary, may say Mass and preach or give instructions, but should abstain from interference with the community, especially if the constitutions have been approved by Rome. However, we cannot suppress a remark prompted by experience and the reasonable wishes of a number of conscientious pastors. Religious, especially of the female sex, at times obstinately insist on enforcing their constitutions, for instance, in avoiding help in the sacristy or insisting on having exposition or Benediction so many days or hours, thereby almost overwhelming the chaplain with work. Now, while we certainly recommend faithful observance of the constitutions, it should never be forgotten that even solemnly approved

constitutions are but human laws, and there may be circumstances which demand a certain mitigation. Talking over the matter in a friendly spirit will be helpful for a mutual understanding. There is also a law which rules that Holy Communion should be distributed only at hours when Mass may be said, unless a reasonable cause advises a deviation from this rule (can. 867, § 4). Would it not be reasonable, and also more charitable, if the pastor or assistant were not obliged to commence pastoral work too early,—at least in winter and on days when he has to fast and work until noon? Again solemn or public exposition with the ostensorium, outside the feast of Corpus Christi and its octave, is allowed only for a just and grave reason and with the permission of the Ordinary (can. 1274), § 1). We ask, Is the wish of a few Sisters really such a reason?

Pastors or other priests *cannot absolve apostates* from exempt religious institutes, because the excommunication incurred by them is reserved to the major superior,—general, provincial, abbot, etc. (can. 2385).

PART III

THE LAITY

(Can. 682–725)

As the pastors have the duty to administer, so the laity have the right to receive, the Sacraments and other spiritual benefits offered by the Church. Laymen not only have the right, but should be advised to enroll in *societies organized,* or at least recommended, *by the Church;* on the other hand, they should be deterred from entering forbidden secret societies, especially those which plot against Church and State.

Christian associations are to be encouraged, because they are designed either to promote a more perfect Christian life, like the Tertiaries and Oblates, or to foster works of piety and charity, as many confraternities and the Society of St. Vincent de Paul.

Reception into any society is effected according to the laws and statutes of the same. Unless a society has a special privilege, the local Ordinary is entitled to appoint a *director* or chaplain for it. Tertiaries have moderators of the religious Order with which they are affiliated. Religious cannot be Tertiaries, nor can anyone be a tertiary in two orders at the same time. They cannot be compelled to take part as a body in public processions, but confraternities are bound to be present. Confraternities which have their own churches may exercise non-parochial functions independently of the pastor, provided the parochial ministry does not suffer any injury. In case of doubt whether or not the functions of a confraternity or pious organization interfere with the parochial ministry, the Ordinary shall decide and lay down practical rules for guidance.

Precedence is, without prejudice to can. 106, as follows: (1) Tertiaries; (2) Archconfraternities; (3) Confraternities; (4) Primary organizations for pious purposes; (5) Other organizations for pious purposes.

In sacramental procession the Confraternity of the Blessed Sacrament precedes the Archconfraternities, but not the Tertiaries.

BOOK III

ADMINISTRATIVE LAW

THE "things" (*res*) comprised in the third book of the Code, form the object of ecclesiastical administration, either in the purely spiritual or in the mixed domain. The Sacraments constitute the most important part, not only in the six divisions of the Code, but for the pastor in particular, though the other five are by no means negligible.

PART I

THE SACRAMENTS

1. *Administration and Reception of the Sacraments in General.*—As the Sacraments of the New Law, instituted by Christ, are our chief means of sanctification and salvation, the greatest care must be taken that they are properly administered and worthily received.

The law, therefore, *forbids* the administration of the Sacraments to *heretics and schismatics,* even though they may be in good faith and ask for them. They must first renounce their errors and become reconciled to the Church. Before the age of fourteen, heretics and schismatics need not make a formal abjuration of heresy, but after the age mentioned, even merely material heretics must formally abjure heresy before they can be absolved.

Three Sacraments, viz., Baptism, Confirmation, and

Holy Orders, *cannot be repeated* on account of the indelible mark which they imprint on the soul.

The *Books* to be used in the administration of the Sacraments are the rituals approved by the Church. Each rite, Latin as well as Oriental, must be properly observed, without commingling or curtailment.

Besides the usual fixed *stole fees,* the minister of a Sacrament is not allowed to charge or demand anything for whatever motive or on whatever occasion, either directly by exaction, or indirectly by insinuation, for the administration of the Sacrament.

The *Holy Oils* to be used in the administration of the Sacraments of Baptism, Confirmation, Extreme Unction, and Holy Orders must be blessed by the bishop on Holy Thursday of each year, and old ones may not be used except in case of urgent necessity. Should the blessed oil be about to give out, unblessed olive oil may be added, even repeatedly, but in smaller quantities than the holy oil. Each pastor must ask his Ordinary for the holy oils and keep them in a safe and becoming place in church under lock and key. He may not keep them in his house except in case of necessity, or for some plausible reason, and only with the express consent of the Ordinary.

TITLE I

BAPTISM

(Can. 737–779)

1. *Nature of Baptism*

The Church has ever taught, in accordance with Holy Writ (John iii, 5), that Baptism is absolutely necessary

for salvation. This necessity theologians call *necessitas medii.* "Baptism," says the Code, "is called the gate to, and the foundation of, the other Sacraments, because without it no other Sacrament can be validly received."

If Baptism is administered with all the rites and ceremonies prescribed in the liturgy, it is called *solemn,* to distinguish it from *private* Baptism, which is administered without these rites and ceremonies. The essential matter (natural water) and form ("I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost"), must, however, be employed in both.

2. *The Minister*

The minister is either *ordinary* or *extraordinary.* The ordinary minister of Baptism is any priest, but more particularly the pastor (*parochus proprius*) or a priest commissioned by the pastor or local Ordinary. For the conferring of Baptism is reckoned among the strictly parochial rights (can. 462). *Peregrini,* too, should be solemnly baptized by their pastor in his own parish church, if it can be easily and conveniently done. But in a *district not his own,* neither a pastor nor any other priest may solemnly baptize even his own subjects, unless he (the pastor or other priest) has obtained permission from the local pastor. The reason is based on the fact that local jurisdiction is limited. In *places where parishes or quasi-parishes are not yet established,* special statutes and prevailing customs must be consulted, to make sure which priest, besides the Ordinary, is entitled to baptize either in the whole territory or in a particular district thereof.

What about national or *linguistically distinguished parishes?* If the children belong to parents who are

members of, say, a German or an Irish parish, there is no doubt as to the right of the pastor of that parish to baptize them. But doubtful cases may arise, such as this: A couple moves into a district, and before they have decided what parish to join, a baby is born to them. The Italian pastor is asked to baptize the child, because the mother is an Italian and would rather belong to the Italian congregation, whereas the father, though also of Italian descent, cares for no parish at all. In that case, we believe the Italian pastor would be entitled to baptize the child and keep the fee. The pastor of the English-speaking congregation could not claim the mother, nor could he insist upon territorial rights, because we are supposing that the Italian parish lies within the limits of the English-speaking congregation. But suppose an Italian mother comes to the pastor of a *German*-speaking congregation, which is within the boundaries of an English-speaking congregation, and begs the German pastor to baptize her child, either because he speaks Italian or is personally known to the family. Is the German pastor bound to refuse her request? We hardly think so, because, by reason of the territory or parochial district, he may claim as much right as the English pastor, and as far as pastoral rights go, he is as much entitled to perform the ceremony as the English pastor. However, if an Italian church is near, the English as well as the German pastor should tell the woman to go to the Italian pastor. Or a *convert* has been instructed by the pastor of a German congregation. He is an American of other than German ancestry, while his wife belongs to the German nationality. Or perhaps he is not yet married. In both cases we believe that, in justice, the pastor who instructed the convert is entitled to baptize him, because the pastor of the English-speaking congre-

gation cannot claim anyone as his subject before Baptism. This we say conditionally, *i. e.,* provided there are no diocesan regulations or lawful customs to the contrary.

The *extraordinary minister of solemn baptism* is the deacon, but he should not use his power without the permission of the local Ordinary or pastor, to be granted for a just reason; in case of necessity this permission may be lawfully presumed.

In danger of death private baptism may be administered by anyone, provided he or she uses the proper matter and form and has the right intention. Wherever possible, two witnesses, or at least one, should be called to testify to the act.

If a priest is present, he should be preferred to a deacon; a deacon to a subdeacon; a cleric to a layman; a man to a woman (unless decency would demand preference for the woman or unless the woman knew the form and manner of baptizing better than the man).

Father or mother are not allowed to baptize their own child except there be danger of death and no one else is at hand who could baptize (*qui baptizet*), *i. e.,* who is capable and willing to baptize. Incapable would be, *e. g.,* a bigoted Baptist who does not believe in infant baptism and, moreover, flatly refuses to perform the ceremony.

3. *The Subject*

Certain physical, mental, and moral conditions must be observed for the valid and licit reception of Baptism.

1. As to the *physical conditions,* it is required that the subject be a human being, alive, and in the wayfaring state. *"Omnis et solus homo"* is the phrase used by the Code. Since only human creatures are capable of

attaining to eternal salvation, only beings which are, or may be, styled *human,* according to the metaphysico-physiological concept of humanity, may be validly baptized. *Monsters,* or products of erroneous development, should always be baptized, at least conditionally. When there is doubt whether there are one or several persons, one must be baptized absolutely, the other conditionally. Another physical condition is that the *baptizandus* be a *viator, i. e.,* in the wayfaring state, which means, capable of leading an existence for himself. Therefore, no one enclosed in the maternal womb can be baptized as long as there is reasonable hope that he may be properly brought forth. If an infant puts forth his head, he may be baptized on the head, and need not be rebaptized conditionally in case he survives. If he puts forth some other limb than the head, he may be conditionally baptized on this limb if there be danger; but in that case he must be rebaptized conditionally in case he survives.

If a mother dies in pregnancy, the fetus, after being extracted by those who are obliged to perform that act, should be baptized—absolutely if certainly alive, conditionally if there are only doubtful signs of life.

A fetus baptized in the mother's womb must be rebaptized conditionally after birth.

All *abortive* human fetuses, if certainly alive, should be baptized absolutely; if it is doubtful whether they are alive or dead, Baptism should be administered conditionally.

2. *Mental conditions,* properly speaking, concern only adults. *Infants,* with regard to Baptism, are those who have not yet attained to the use of reason, whereas the term *adulti* (adults) comprises all who enjoy the use of reason.

On the same level with infants are those who have

been *insane from infancy.* Insane persons and maniacs, says the Code, should not be baptized unless they have been so afflicted from birth or before they attained to the use of reason, in which case they are to be baptized like infants. If they have lucid intervals, they may, if they wish, be baptized in the course of one of these intervals, *i. e.,* while they enjoy the use of reason. They may also be baptized when in imminent danger of death, provided they have expressed a desire for Baptism before they became insane.

3. *Moral conditions.* Whilst infants and those in a class with them need not have any intention, *adults,* to receive Baptism validly, must have a habitual, or at least an interpretative, *intention.* The Code says: "Adults who are physically and mentally normal, cannot be baptized except with their own knowledge and free will, and after having been duly instructed and exhorted to be sorry for their sins." The extent of this instruction is outlined by the Roman Ritual, which rules that they "be carefully instructed in the Christian faith and holy manners." By *Christian faith* are to be understood the principal mysteries, those which must be believed *necessitate medii, viz.,* the Blessed Trinity and the Incarnation. In addition to this, express belief in our Lord Jesus Christ is specifically mentioned in one decision of the Holy Office. The *Apostles' Creed,* which is enjoined in an Instruction of the S. C. Prop. Fide, contains the principal mysteries of the faith. The Holy Office also urges instruction regarding the Holy Eucharist, unless the priest, for a prudent motive, deems it better to postpone this until after Baptism. Furthermore the "Our Father," the effects of Baptism, and the acts of faith, hope, and charity, are to be inculcated, and an act of contrition, or at least attrition, is required.

Concerning *Christian morality,* the aforesaid decision of the Holy Office insists on all the divine precepts which, according to the Instruction of the S. C. Prop. mentioned, are included in the Decalogue. The last-named Instruction also demands the teaching of the precepts of the Church.

Concerning adults who are in *danger of death,* the Code rules that if they cannot be carefully instructed in the principal mysteries of the faith, they may be baptized, provided they show in some manner their readiness to assent to the truths of the Catholic religion and promise to observe its precepts.

With regard to the *interpretative intention,* note the following: If an adult can no longer ask for Baptism, but has, either previously or in his present state, in some way expressed his intention to receive Baptism, the Sacrament should be administered conditionally. If he recovers and there is doubt as to the validity of the Baptism conferred, he must be rebaptized conditionally, *i. e.,* the minister must employ some such words as: "If you are capable, *i. e.,* if you sincerely wish to be baptized, I baptize thee in the name," etc.

There is, finally, a moral or *juridico-moral condition* for the permissibility, not validity, of baptism, to be considered with regard to the parents of the *baptizandus,* because Catholic baptism demands Catholic education. Hence the following enactments:

a) *Children of infidels* may be lawfully baptized against the will of their parents only when they are in danger of death. This danger must be such that there is little or no hope of their surviving to the age of discretion. Thus a nurse may baptize the dying child of Hebrew parents, a missionary acting as a physician may baptize a pagan child in the same condition. Even when

there is no danger of death, children of infidels, provided their Catholic education is guaranteed, may be lawfully baptized in the following two cases: (1) If the parents or guardians, or at least one of them, consent; (2) If there are no parents, *i. e.,* no father, mother, grandfather, grandmother, or guardians, or if they have forfeited the right to keep the child or are unable to exercise that right.

b) As to children of *non-Catholics* the rule is that, if parents, relatives or friends offer for Baptism a child that belongs to heretics, schismatics, or apostate Catholics, the priest must gently but firmly decline to baptize it, unless he is morally certain that it will be educated in the Catholic religion, for instance, in a Catholic school or academy, or by Catholic relatives.

c) Abandoned Infants (*expositi*) should be baptized conditionally, unless careful research makes it evident that the Sacrament has already been administered to them. One trustworthy witness, man or woman, especially the baptized subject himself, is sufficient to give evidence that Baptism has been conferred. A piece of paper appended to the neck of the child is not sufficient proof if the writer is unknown; and when there is no other evidence, conditional baptism must be administered.

4. *Rites and Ceremonies*

1. The general rule is that Baptism should be conferred *solemnly, viz.,* with all the rites and ceremonies prescribed by the liturgical books. This is a grievous obligation that binds everyone everywhere and always, except in danger of death. Not even the local Ordinary can permit private baptism to be conferred, except on non-Catholic adults who are baptized conditionally. The

gravity of the law is evident from the precept that ceremonies omitted for any reason, except in the case of non-Catholic adults baptized conditionally, must be supplied in church as soon as possible.

The *danger of death* excuses from the administration of solemn baptism. Two different cases may be distinguished:

a) If the Sacrament is conferred privately by one who is *neither a priest nor a deacon,* then no ceremonies or rites should be used, but only what strictly belongs to validity. In that case the person baptizing takes natural (not holy) water, pours it over the head of the one to be baptized,—whether once or three times does not matter,—and says: "I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost."

b) If the person who baptizes privately, for instance, at the home of the *baptizandus,* is a priest or a deacon, he must administer the Sacrament with the prescribed ceremonies and rites, unless there is no time to apply all the ceremonies, or the parents stubbornly oppose them, or the holy oils, chrism or salt cannot be conveniently had. In these cases the priest or deacon would be permitted to omit the ceremonies.

When Baptism is repeated *sub conditione,* the ceremonies must be supplied if they were previously omitted, except in the case of adult non-Catholics. The reasons for insisting on these ceremonies are that they date back to a remote age (some of them being testified to as existing in the second century) and thus bear witness to a venerable tradition, and that, as Sacramentals, they are not merely empty "show," but productive of grace and deeply significant.

2. *Matter and Form.*—Valid *matter* is pure, natural water in the general meaning of the word. But in ad-

ministering *solemn Baptism* water especially blessed for the purpose must be used. This is the so-called *baptismal water,* which is blessed with special ceremonies on Holy Saturday and the Vigil of Pentecost. It should be kept in a neat and clean font, and the remainder poured into the *sacrarium* (waste-hole) when new water has been blessed. Of course, Baptism would be valid even if other water were used. Where there is danger that the baptismal font may be profaned, the baptismal water may be kept in any decent movable vessel. In one case the Holy Office allowed the use of common instead of baptismal water because the people to whom the missionaries had been sent to baptize were addicted to the superstitious belief that the baptismal water was the cause of their children's death.

Water for baptismal purposes must be blessed not only on Holy Saturday, but also on the Vigil of Pentecost, and the custom, no matter how ancient, of blessing water on Holy Saturday only, has been condemned as an abuse.

If the holy oils do not arrive in time for the blessing on Holy Saturday, they may be privately and separately poured into the blessed water when they are received. If for some reason the holy oils cannot be blessed or obtained in any year, the holy oils blessed the previous year may be used for the blessing of the baptismal font; in that case the baptismal water thus blessed with the old oils should not be poured into the *sacrarium* when the new oils arrive.

If the water in the baptismal font is so diminished that it appears to be insufficient for baptizing, ordinary water may be mixed with it again and again, but in steadily decreasing proportion.

If the baptismal water becomes putrid (rotten), or runs out of the font, or disappears in some other way, the pastor shall cleanse the font and pour new water into it, which he shall bless with the rite prescribed in the liturgical books. The formula for the blessing of baptismal water—which is permitted only in case of necessity—will be found in the Roman Ritual.

As to *form,* the well-known formula: "I baptize thee, . . ." must be pronounced at the moment the water is poured over the head of the *baptizandus.* The simultaneity of the two acts must be at least moral, so that the act of applying the water is fixed by the words, no matter whether the application is made by infusion, immersion, or aspersion.

3. *The baptismal rite* is thus determined by the Code: "Children must be baptized according to the rite of their parents, either Latin or Oriental. If one of the parents belongs to the Latin and the other to the Oriental rite, the rite of the father is decisive, unless a special law provides otherwise; but if only one of the parties is Catholic, the child must be baptized according to the rite of the Catholic party."

The pastors are admonished to see to it that *Christian names* are given to those whom they baptize. If they cannot obtain this, they shall in each case add to the name given by the parents or sponsors the name of some saint, and enter both names in the baptismal record.[24]

[24] A handy book for verifying or finding distorted names is Rev. Z. L. Weidenhan's *"Baptismal Names,"* 2nd ed., 1919.

5. *Sponsors*

1. *Necessity and Number.*—The ancient custom of having *patrini* at solemn baptism should be observed wherever possible. If sponsors, as described in the Code, cannot be had, except with great difficulty, Baptism may be conferred without them; but if religious are present, they may and should be admitted as sponsors.

2. Also at private Baptism a sponsor should be employed if possible; if none was present, one should be engaged when the ceremonies are supplied; but in that case no spiritual relationship is contracted.

When Baptism is repeated *sub conditione,* the same sponsor should be employed who was present the first time; but when this is not possible—and it would not be possible if he had not the qualities negatively described in can. 765—no sponsor is required for conditional Baptism. No spiritual relationship is contracted, unless the same qualified sponsor acts as such on both occasions.

There should be only *one sponsor,* but he need not be of the same sex as the one to be baptized; *at most two* may be employed, *viz.,* a man and a woman. This ruling is evidently inspired by the desire to diminish spiritual relationship, which seems to have been the delight of older canonists and glossators.

3. The qualifications of sponsors are twofold, *viz.,* such as are simply required that one may be sponsor (*ut quis sit patrinus*) and such as condition licit sponsorship.

(1) That *one may be sponsor,*

a) He or she must be baptized, have attained the age of discretion, and have the intention of assuming the office of sponsor.

b) He or she must belong to no heretical or schismatical sect, nor be excommunicated by either a condemnatory or declaratory sentence, nor be infamous by law, nor be

excluded from legal acts, nor be a deposed or degraded cleric.

c) He or she must be neither the father nor the mother nor the consort of the *baptizandus;*

d) He or she must be appointed either by the one to be baptized or by the latter's parents or guardians, or, if these be wanting, by the minister of the Sacrament.

e) The sponsor must either personally or by proxy take upon himself the sponsorship by a physical act indicative of sponsorship according to custom.

Evidently the absence of anyone of these qualifications would render sponsorship null and void, and consequently also render the impediment non-existing.

(2) For *licit* sponsorship the following conditions are required:

a) The sponsor must not be a *cleric in higher orders,* and must have reached the fourteenth year of age, unless the minister, for a just cause, sees fit to admit a younger person. A just cause may be the moral or intellectual qualities of the person admitted; local or rather climatic conditions (in Southern countries maturity sets in sooner), family traditions, or particular circumstances.

b) The sponsor must not be excommunicated for a notorious crime; or excluded from legal acts; or rendered infamous by law, without a sentence having been issued to that effect; or interdicted; or a public criminal; or infamous in fact;

c) The sponsor must know the rudiments of the faith, which requirement is as stringent for sponsors as for adults who desire to be baptized;

d) The sponsor may not be either a novice or a professed member of any religious institute. However, in urgent cases, and with the express (not presumed) permission of at least the local superior, religious may be ad-

mitted to sponsorship. An urgent case would be if Baptism would otherwise have to be conferred without sponsors. In hospitals and other asylums Sisters are sometimes called upon to act as sponsors; they may do so with the permission of the superioress.

e) The sponsor must not be a *cleric in higher orders,* for such may act as sponsors only with the express permission of the Ordinary. This includes subdeacons. An Ordinary, whether bishop or prelate regular, may act as sponsor without consulting anyone.

When in doubt as to whether anyone may be legally or licitly admitted to sponsorship, the pastor should consult the Ordinary.

4. The proper effect of sponsorship is *spiritual relationship* between the minister and the *baptizatus,* and between the sponsor and his godchild. This is one of the five minor diriment impediments to marriage, from which Ordinaries who have received the new faculties may dispense.

A *duty* arising from sponsorship is that godparents must regard their spiritual children as their perpetual charges and instruct them carefully in the obligations of the Christian life, in order that they may prove themselves to be what they solemnly promised to be by their baptismal vows. This obligation exists even though the sponsors do not feel bound by it, but, as a rule, binds only when the parents neglect their duty.

6. *Time and Place*

1. The Code commands that infants be baptized *as soon as possible.* Pastors and preachers should frequently admonish the faithful of this obligation. In cases of urgent necessity it is better to administer

private baptism than to wait too long; because the ceremonies may be supplied afterwards and private Baptism can be conferred at any time and in any place. The term *"quamprimum"* (as soon as possible) is assumed to signify three, or at most, eight days after the birth of the child. An urgent necessity would exist, *e. g.* (a) if the distance from church were great, say more than three leagues; or (b) if the parents stubbornly objected to having the child brought to church. In these and similar cases private baptism may be administered, but the ceremonies and rites must be supplied as soon as the parents give their consent or the child can be brought to church. When a child is so feeble that there is positive danger of death, the midwife may baptize him.

When Baptism, private or solemn, is administered at home, the faithful should be instructed that it is valid and not a mere ceremony.

Solemn Baptism may be administered at any time, but if it can be done conveniently, adults should be baptized on the vigils of Easter and Pentecost, according to the ancient liturgies, especially in metropolitan and cathedral churches.

2. *The proper place* for administering solemn baptism is the baptistry of a church or public oratory. The sacristy is *not* the proper place, unless there be a reasonable cause for using it. This cause must be submitted to the Ordinary. A valid reason would be repair work going on in church, and, we believe, coldness of the church on a winter day when the whole edifice cannot be heated on account of a baptism occurring on a week-day.

The Code *revokes and reprobates every statute,* custom or privilege which would prevent the erection of a baptismal font in any parish church, and commands that

every parish church should have its own baptismal font. This, of course, implies that the blessing of the baptismal water on the vigils of Easter and Pentecost must be performed in each and every parish church according to the Roman Ritual. The pastor is not allowed to put off this ceremony to another day.

The local Ordinary may, for the convenience of the faithful, permit or command that another baptismal font be placed in some other church or public oratory within the boundaries of a parish. But the Code grants this favor only to churches and public oratories, not to semi-public oratories, such as the chapels of brotherhoods and sisterhoods. Much less can pastors or chaplains grant such a favor.

Solemn Baptism—apart from cases of necessity—may not be administered in *private houses,* except in the following circumstances:

a) If those to be baptized are the sons or grandsons of actual rulers, or of their prospective successors to the throne. When this privilege is desired, application must be made for it either directly to the Ordinary, or to the parish priest, both of whom are entitled to perform the rite.

b) If the local Ordinary, after prudent and conscientious deliberation, judges that there is a just and plausible cause for granting the permission in some extraordinary case. Such cases would be: if Catholics would demand to have their children baptized in the house of a Catholic consul, which may happen among foreigners; if the distance from the church would be very considerable, say ten geographical miles, and so forth. But solemn Baptism may never—not even in case of necessity or danger of death—be administered in the houses of non-Catholics.

Attention is called to the wording of the text, which demands serious deliberation and conscientious acting and limits the exception per *modum actus* to individual cases. Therefore such an enactment could not be made a diocesan statute or a habitual grant conceded by way of a faculty.

7. *Baptismal Record and Proof*

Pastors must enter in the baptismal record the names of the baptized, of the minister, of the parents and godparents, and the place and date of Baptism. This record must be made carefully and without delay.

In the case of an illegitimate child, the mother's name must be set down if she is publicly known to be the mother, or if, of her own accord, she demands it in writing or before two witnesses. The name of the father must be recorded only if he, of his own accord, demands it of the pastor, either in writing or in the presence of two witnesses, or if he is known to be the child's father by an authentic public document. In all other cases the one baptized must be recorded as the offspring of an unknown father or unknown parents.

If the Baptism was not administered by the pastor, nor in his presence, the minister shall notify the pastor as soon as possible. It is hardly necessary to call attention to the *grave obligation* of keeping accurate baptismal records, on which authentic testimonies depend. Benedict XIV enjoined Ordinaries to examine the baptismal records at each canonical visitation.

Without delay (*sine mora*) means the same day Baptism was conferred, and *sedulo* signifies legible, neat, and clear writing. If no prejudice to a third person is involved, one absolutely trustworthy witness is sufficient

to prove that Baptism was conferred; the sworn statement of the baptized person is also admissible, if Baptism was conferred on him as an adult.

TITLE II

CONFIRMATION

(CAN. 780–800)

Concerning this Sacrament of the living, which imprints an indelible mark on the soul of the receiver and is pre-eminently the Sacrament of the Holy Ghost, it may suffice to say the following:

1. The *remote matter* is chrism, composed of balsam and olive oil, and the mode of confirming consists in laying on hands, anointing the forehead with chrism, and pronouncing the words prescribed in the pontifical books approved by the Church. The *form* reads thus: *"Signo te signo crucis, et confirmo te chrismate salutis, in nomine Patris et Filii et Spiritus Sancti."* No instrument may be used in anointing.

2. The *ordinary minister* is the bishop, but a priest may act as extraordinary minister, if he has received this power either by law or by a special papal indult. The bishop should take care that this Sacrament is administered every five years.

3. The *subject* of valid Confirmation is every validly baptized Christian who has not yet been confirmed. In order to receive this Sacrament licitly and profitably, one should be in the state of sanctifying grace. Although Confirmation is not absolutely necessary for salvation, no one who has an opportunity may lawfully neglect to receive it.

4. This Sacrament may be conferred at *any time,* but

is most fittingly conferred in Whitsun-week. The proper *place* is the church.

5. Each *confirmandus* should have *a sponsor,* and one sponsor should not stand for more than one or two *confirmandi,* unless the minister deems it prudent to deviate from this rule. As to the *requisites* for sponsorship we refer to what was said under Baptism, they being almost the same. One of the consequences is *spiritual relationship* between the confirmed person and the sponsor, which, however, does not constitute a diriment impediment to marriage.

6. *Record and proof* are required similar to those of Baptism. But the Code insists that if the *parochus proprius* of the person confirmed was not present at the Confirmation, he should be informed of the fact as soon as possible by the minister or by some other person.

TITLE III

THE HOLY EUCHARIST

(Can. 801–896)

Of this sublime mystery, in which Christ the Lord Himself is contained, offered and received, under the species of bread and wine, the Code treats under a twofold aspect: *in fieri* and *in facto esse, viz.,* of the Holy Sacrifice of the Mass and of Holy Communion.

CHAPTER I

THE HOLY SACRIFICE OF THE MASS

1. The celebrant of the Holy Sacrifice of the Mass is the priest, and the priest alone, "concelebration" being

permitted in the Latin Church only at the consecration of bishops and the ordination of priests.

In order to be permitted to celebrate Mass, a priest who is a stranger to the church authorities, where he wishes to do so, must exhibit a *celebret* (*"pastor bonus"*) or other authentic paper which testifies that he is a duly ordained priest, free from ecclesiastical censures or penalties. The *celebret* is issued to secular priests by the local Ordinary, and to religious by their respective superior. It should not be older than one year from date of issue. If a priest has no *celebret,* because he has either forgotten or lost it, but is known to the rector of the church in which he wishes to say Mass as a priest in good standing, he may be permitted to say Mass. Even if he is unknown to the rector, a priest may be permitted to say Mass once or twice, provided he is dressed in ecclesiastical garb, accepts nothing for saying Mass from the church in which he celebrates, and duly enters his name, office and diocese in the book kept for that purpose. *Oriental priests* wishing to say Mass in this country must show letters from the S. Congregation for the Oriental Church.

2. All priests are *obliged* to say Mass several times a year; pastors are bound in proportion to their obligation towards their people, who must attend Mass on Sundays and holydays of obligation.

3. If the Ordinary grants them the faculty of *binating* —which he may now do by virtue of his ordinary power —priests, and in particular, pastors may say two, but not more than two, Masses on each Sunday and holyday of obligation. The condition for granting this faculty is such a lack of priests that a considerable number of the faithful are without Mass on the days mentioned. What *"pars fidelium notabilis"* means is not explained, but may

reasonably be taken in a relative sense, *viz.*, with reference to the size of the parish. The condition of the roads, occupation and other circumstances should also be taken into account. In certain places bination is hardly necessary, whilst other parishes, especially in scattered country districts, need it.

4. The *moral disposition* required for saying Mass is the state of grace, and the *physical condition,* fasting since midnight. Besides, the priest should not omit to prepare himself for the Holy Sacrifice by pious prayers and after celebration give thanks to God for this great grace.

5. The fruits of the Mass may be applied to the living as well as to the dead, *i. e.,* to the Poor Souls in Purgatory. There is no difficulty as to the application of them to members of the Catholic Church who died in communion with her. But there still seems to exist a reasonable doubt as to the application—and hence the acceptance of a stipend—for such as did not belong to the Church at the time of their death. The teaching of the Code on this head may be stated as follows:

a) The priest may apply Mass privately for *excommunicated* persons, provided no scandal is given;

b) If the excommunicated person was or is *toleratus,* the Mass may be applied for him, whether he be living or dead;

c) If he is a *vitandus,* application can be made only for his conversion, according to can. 2262, which excludes application for a dead *excommunicatus vitandus,* unless the excommunication has been removed by a *post-mortem* absolution from this penalty. Hence it may be concluded, with solid reason,

d) That application may be made for *non-Catholics,* living or dead, but only privately and without giving

scandal, unless these were *vitandi,* declared as such by man or law;

e) That a public, solemn or low, Mass can in no case be applied for non-Catholics. Hence such a Mass should never be announced publicly or the person for whom it is said be indicated to the congregation at large. But the priest is not obliged to tell the party who offers the stipend that he will apply the Mass for the Poor Souls in general.[1]

6. When saying Mass the priest shall wear the cassock (*soutane*) and the sacred *vestments* prescribed by the rubrics. The rubrical colors are five: white, red, purple, green, and black. On two Sundays of the year, *"Gaudete"* and *"Laetare"* (the third Sunday of Advent and the fourth in Lent), a roseate color is allowed and recommended.

7. While all priests are obliged to employ *a server,* if possible, no *priest* who is not a bishop or prelate entitled to the use of pontificals is allowed to have an *assistant priest* in celebrating Mass, merely for the sake of honor or solemnity. However, the custom of employing a *prèsbyter assistens* at a first Mass may be admitted.[2]

Rites and Ceremonies of the Mass

1. The Holy Sacrifice of the Mass must be offered in bread and wine, to which latter must be mixed a little water.

The bread must be of pure wheat and freshly baked, so that no corruption need be feared.

[1] See Vol. IV, p. 143 ff.; Vol. VIII, pp. 185 f. of our *Commentary.*

[2] See Vol. IV, p. 150 of our *Commentary.*

The wine must be natural wine made of the juice of the grape and uncorrupted.

There is not much to be added to these rules. One remark may, however, be permitted. The wine must be *fermented* grape juice; as long as it has not fermented it is must (*mustus*), not wine. The Hebrew language and custom bear out this statement.

2. When celebrating Holy Mass, the priest must accurately and devoutly observe the *rubrics* of the respective ritual and avoid the arbitrary addition of other ceremonies and prayers. All contrary customs are reprobated by the Code. The *liturgical language* of the respective rite approved by the Church must be used *sub gravi.* This for us is the Latin language, which is supposed to be familiar to and properly pronounced by every priest.

Time and Place for Celebrating Mass

1. Holy Mass may be celebrated *on all days,* except those on which the respective rite forbids the priest to say it.

In the Latin Church the general rubrics prescribe that no private Masses should be celebrated during the three days preceding Easter. This is to be understood as follows: On *Maundy Thursday,* one solemn Mass should be celebrated in all the churches where the Blessed Sacrament is preserved and the liturgical functions are performed according to the *Memoriale Rituum* of Benedict XIII. In churches where, because of a lack of clerics or servers, the sacred ceremonies cannot be duly carried out, the bishop may grant permission to the priest to say a low Mass for the convenience of the people.

On Good Friday only one Missa Praesanctificatorum

may be celebrated, and priests who have two parishes to attend to, are not allowed to binate on that day.

On *Holy Saturday* only one solemn Mass may be celebrated in churches in which the liturgical functions of Holy Week are carried out. Private Masses are not easily allowed in any church on that day. In small or poor parishes a low Mass may be said if custom permits. But neither a local nor personal indult permits private Masses to be said in churches which are not parish churches.

Mass should not be commenced earlier than *one hour before dawn,* nor later than one hour after noon. Neither the Code nor the new Formulary (III) of the Faculties contains any hint as to the power of Ordinaries to allow anticipation in the morning or celebration of Mass after the hour stated in the Code. But the bishop may, especially on a solemn occasion, permit Mass to be protracted until after two P. M., provided the Mass is started at one o'clock. On Christmas only the *conventual or parochial Mass may be commenced at midnight,* but no other Mass, unless by special Apostolic indult.

In all religious or pious houses which possess an oratory with the faculty of habitually keeping the Holy Eucharist, *one priest* may say one or three Masses according to the rubrics on Christmas night. Those who assist thereat comply with the obligation of hearing Mass, and Holy Communion may be administered to all who desire to receive it. The bishop may, if he has obtained the faculties for which the Formulary was issued March 17, 1922, grant permission for *three Masses on Christmas* night, as admitted by the rubrics, in the churches of religious not comprised by can. 821, § 3, provided the same priest says all three Masses. The churches not comprised in said can. 821 can only be churches proper,

which, however, are not parish churches, or public oratories, or any oratory where the Blessed Sacrament is not habitually kept.

2. As to *place,* the Code rules that Mass must be celebrated upon a consecrated altar and in a consecrated or blessed church or oratory. The privilege of a portable altar, which is granted either by law or by an indult of the Holy See, carries with it the faculty of celebrating Mass anywhere, provided the place be respectable and decent, and upon an altar stone; only celebration at sea is excluded.

Episcopal oratories as well as those of Cardinals exist by law (can. 239; 349). The same law also removes the clause concerning celebration of Mass by bishops and Cardinals on shipboard.

The local Ordinary, or, in the case of an exempt religious house, the higher superior, may grant permission to say Mass outside a church or oratory, upon a consecrated altar stone, provided the place is decent (no bedroom) and the permission is granted for a just and reasonable cause, for extraordinary cases only, and not habitually. Due notice should be taken of the clause, "in extraordinary cases only, and not habitually." This means in plain English that no indiscriminate and unwarranted grants are to be made. The Ordinary could not, therefore, insert this permission in the diocesan faculties. But he may grant it, say, for a limited journey, or when a church is being repaired. By stretching the text he may grant permission to say Mass in a schoolroom or in the basement of the school, or in a room of the parochial residence during winter.[3] On the

[3] The text of can. 822, § 4 reads: *"nunquam vero in cubiculo."* Now *cubiculum* has the meaning of room, particularly a room with a couch or a bed in it; but it also means a living room.

other hand, it is evident that no permission is required for saying Mass in a properly constructed and blessed private chapel, be it on the same floor with the church, or in the basement of the church, or in the school building.

It is strictly forbidden to say Mass in churches of *heretics* and *schismatics,* even though these churches may have been duly consecrated or blessed. The halls of Masonic temples or public school halls are not identical with such churches, and hence the Ordinary may, in particular cases and for good reasons, grant permission to say Mass there.

Mass Stipends

(Can. 824–844)

The whole matter of Mass stipends may be reduced to the following headings:

A. *Nature and lawfulness.*—A stipend may be defined as a contractual offering made to a priest and for his support, for saying and applying the Holy Sacrifice of the Mass according to a specified intention. A stipend, therefore, is not a price paid for a sacred or spiritual thing (simony), but part of a priest's support. Since, however, it bears the character of a contract (*do ut facias*), it follows that the implied or explicit obligations which it entails must be complied with. These differ with the various kinds of Masses.

B. *Various kinds of Masses.*—Stipends for Masses offered, as it were, offhand by the faithful, either out of pure devotion, or in the form of an obligation imposed upon his heirs by a testator, are called *manual.*

Quasi-manual are stipends for foundation-masses which, for one reason or another, cannot be said in the

church in which, or by the priest by whom, they should be said according to the charter, and are therefore, either by law or by an Apostolic indult, to be handed over to other priests.

Stipends which are received from interest on legacies are called *foundations*.

C. The *effects* of the contract involved in a Mass stipend are these:

I. The amount of the *offering* or material consideration is to be fixed by the Ordinary of the diocese (if possible by a synodal decree), and priests are not allowed to demand more.

Where there is no episcopal decree on the subject, diocesan custom must be observed.

Religious, too, even though they are exempt, must abide by the episcopal decree or diocesan custom governing Mass stipends.

A priest is allowed to accept a larger stipend than the one determined by diocesan statute or by custom; and, unless the Ordinary has forbidden it, he may also accept less. The prohibition to receive a stipend below the customary sum must be made antecedently, and it would not be just to punish a priest for doing so, if no prohibition had been promulgated.

The *number of Masses* to be said and applied must correspond with the number of stipends given and accepted, even though these be small. If a priest, for instance, receives ten Mass intentions, but only five dollars, he is bound to say ten Masses, provided, of course, he has accepted the stipends. But it could not be said that he accepted the obligation if he received the five dollars without being aware of the inadequacy of the amount, or if the donor had deceived him or given him a counterfeit note. A contract is entered into between

the one who offers the stipend and the priest who says the Mass. This contract is of the nature of a tacit *do ut facias*. Now any contract that is not knowingly and willingly agreed to by both parties must be regarded as invalid, and a priest is not supposed to acquiesce in fraud or deceit. But if he accepts five dollars with the promise to say ten Masses, he must abide by his promise, even though the amount is not the customary or synodal stipend.

Note that, "though the alms given for Masses have perished without the fault of the one who is obliged to say the Masses, the obligation does not cease." This is merely a consequence of what was said in the preceding canon concerning a stipend as a contract which obliges as soon as it is entered upon. Hence if a priest has received money for Masses and loses it, the loss is his (*res perit domino*) and he remains bound to say the Masses.

If one offers a sum of money for the application of Masses, without determining the number, this is reckoned according to the amount usually given in the place where the donor lives, unless it may be lawfully presumed that he had a different intention.

The Code reinforces the ancient law that "every semblance of bartering or trafficking with Mass stipends must be strictly avoided."

II. The *contractual* side concerns the intention of the donor, the conditions, whether implied or explicit, of the contract, and the personal obligation to comply with these conditions.

1. *Intention and application.*—Since a contract is one already entered upon, it is forbidden to apply a Mass for the intention of one who may ask for the application of a Mass and may offer a stipend in the future, but who has not yet asked for it, and to keep the stipend after-

wards given for the Mass already said. This would be a sort of interpretative intention.

It is unlawful to receive a stipend for a Mass which is due and must be applied for some other reason. Thus a pastor may not receive a stipend for a Mass he is obliged to apply *pro populo,* even though his salary is not sufficient to support him.

A binating priest who is obliged to apply one Mass *ex titulo iustitiae,* is not allowed to accept a stipend for the other, except on Christmas Day, when a priest who says three Masses may accept three stipends. A partial exception to the general rule is the privilege of accepting some compensation for the other Mass for a reason which is extrinsic to the nature of a Mass stipend as such (*ex titulo extrinseco*).

The *titulus iustitiae* applies to every priest holding a canonically established parish. Hence the pastor is not entitled to accept any stipend on the day on which he is obliged to apply the Mass for the people.

It is forbidden to accept two stipends for the application of one and the same Mass, as if the satisfactory fruit could be applied for a deceased, and the impetratory fruit for a living person.[4]

It is unlawful to receive one stipend for the celebration, and another for the application of a Mass, unless it is certain that one stipend has been offered for the celebration alone without the application.

It is perfectly legitimate to accept an offering for singing a High Mass in the place of a sick or absent pastor, who may not be able to sing Mass on that day, but says nothing about its application, for instance, *pro populo.* In that case the substitute may accept the of-

[4] *Prop. damn.* by the S. O., Sept. 24, 1665.

fering for the singing of the High Mass and receive a stipend for the special intention. For it is evident that the offering is given for the special labor of singing High Mass and accommodating the absent pastor, who would be obliged to sing it himself if he were at home.

2. *Conditions* or circumstances are to be observed as follows: "It is presumed that one who offers a stipend asks only to have the Mass applied; but if he expressly determines certain circumstances to be observed in the celebration of the Mass, his wishes must be complied with."

Concerning the conditions of *time,* be it observed that if a term has been expressly set by the donor, the Masses must be said before its expiration. This obligation, as already observed, follows from the stipulation attached to the contract. If no time has been fixed for manual stipends, the following rules must be observed:

a) Urgent Masses must be said as soon as possible within an equitable period. Thus if ordered for the success of an operation or the happy issue of a childbirth, it is supposed to be said before or on the day of the event. However, the legislator says: *"tempus utile"* (can. 35), which means, if the priest is not pre-occupied with other intentions or obligations. Should he be sick or lawfully prevented on the day on which he is obliged to say the stipulated Mass, he would have to ask another priest to say the Mass in his stead, provided he could find one who would be willing and able to do so; if not, he may keep the stipend and say the Mass as soon as possible.

b) If the Masses are not urgent, they must be said *intra modicum tempus,* within a short time, proportionate to the greater or smaller number of Masses. *Modicum tempus* always meant one month from the date

of the obligation in case of one Mass. A scale was proposed to the S. Congregation for a greater number as follows:

For	10	Masses,	1 month
"	20	"	2 months
"	40	"	3 "
"	60	"	4 "
"	80	"	5 "
"	100	"	6 "

The answer was: "The matter is left to the discretion of the priest, with due regard to the decree *'Ut debita,'* of May 11, 1904, and to the rules given by approved authors." But it should be noted that the proposed scale applied to stipends received from one person, not several. If, therefore, 100 individuals should each offer one Mass stipend, say on the first day of November, the priest would have to tell the thirty-first person: "I have already 30 Masses, and therefore cannot say it myself." If the donor does not insist on a certain time, or that the priest addressed should say that Mass himself, the priest may send it away or apply the following rule: If the donor expressly leaves the time for saying the Mass to the discretion of the priest, he may say it when it is most convenient for him, provided he does not accept more Masses which he himself is requested or obliged to say than he can say within a year. The starting-point for manual Masses is the date on which the first Mass is received and accepted, and from that date runs the year within which the Mass or Masses received must be said, supposing always that these Masses are personal obligations of the receiver.

A notable delay would be a month, to be reckoned

after the equitable time (*tempus utile*) has elapsed, according to the scale proposed above. But unless the donor has expressly stated that the Mass should not be said after the time stipulated by him has elapsed, or that the stipend must be returned to the donor, the priest is not obliged to return the stipend, because he may still comply with the obligation.

Other explicit conditions may concern a *certain feast.* If this condition is made and accepted, it must be adhered to, or the stipend returned, provided the condition is one *ad finiendum,* not merely *ad urgendum contractum.*

If the donor asks for a certain Mass, for instance, a votive Mass in honor of the Blessed Virgin, the priest should say that Mass, though he is not bound *sub gravi* to do so. If a priest is asked to say a Mass for the Poor Souls, he should say a "Black" Mass.

The question has been asked whether a priest would satisfy the obligation arising from a stipend offered and accepted for saying a Mass for the dead, if he said the Mass of the day, though he could and should say a "Black" Mass. The S. Congregation of Rites answered that if the rubrics permitted a votive Mass or *Missa de requiem* to be said on the day in question, the priest would not fulfill his obligation by saying the Mass of the day, because the reasonable will of the testator or giver must be respected.

In a mitigated form the same answer was returned twenty years ago by the same Congregation. The question was: "Does a priest who is given a stipend for a Mass to be said for one or several dead, or in honor of a holy mystery, or of the Blessed Virgin, or of a Saint, fulfill his obligation if he says and applies the Mass of the day, because the rubrics do not permit him to say the Mass expressly asked for?" The answer was:

"Yes," but with the addition: "It would be more advisable to comply, as far as possible, with the intention of the giver by saying the 'Black' or votive Mass." From this decision we may gather that the priest should comply with the manifest and express will of the giver, but is not under strict obligation to do so, unless a direct demand was made as to the kind of Mass to be said, especially if it be a foundation Mass. In this country, we believe, most people are satisfied if the priest says a "Black" Mass, even though the intention was directed to the benefit of the living, and we do not quite understand why some theologians regard it as incongruous to say a "Black" Mass for the living. Does not the act of charity done to the Poor Souls enhance, as it were, the fruits of the Mass thus applied? Of course, if a Mass were asked for in honor of a particular Saint, *e. g.*, St. Antony, in the belief that this Saint is a particularly powerful intercessor with God, it would not be prudent to say a "Black" Mass.

If the donor wishes a Mass to be said at a *special altar,* his wish should be complied with. This also holds concerning *privileged altars,* which are generally intended for the dead, and on which, therefore, "Black" Masses should as a rule be offered. The rubrics forbid a *Missa de Requiem* to be said on duplex days, unless it be a *cantata in die obitus,* etc. Yet, says the S. Congregation, if the Mass is *de facto* applied for the intention of the giver or founder, the privilege is not lost, *i. e.,* the indulgence attached to such an altar is gained also by a *Missa de festo* or *die occurrenti,* prescribed according to the rubrics. Neither does it matter whether the altar is privileged *in perpetuum,* or *ad tempus,* or *pro certis diebus* only, if the Mass is said on the privileged days and in the color of the day, according to the rubrics.

Hence, to gain the indulgence attached to a privileged altar it is not necessary to say a "Black," or Ferial, or Vigil Mass with the oration for the deceased, although this may be laudably done.

Should the donor stipulate that the Mass be said in a certain *church* or *chapel,* this condition, too, must be complied with without additional compensation.

Gregorian Masses must be celebrated on thirty consecutive days without interruption. A priest cannot, for instance, say three Masses on Christmas Day as Gregorian Masses, and then resume the series on the 28th of December. Nor can he give the thirty Masses to different priests that they may be said in less than thirty days. On the other hand, it is not required that the same priest say all thirty Masses, or that he say a "Black" Mass on the days when the rubrics permit it.

Since the Gregorian Masses are a burden and a risk, it would not be against ecclesiastical law if the Ordinaries fixed an "extra" tax for them. For religious the Ordinary in that case is the major superior, who, therefore, is entitled to make or authorize an additional charge for Gregorian Masses.

If these are given or sent away to another priest, the one who sends them is not allowed to retain part of the stipend for the trouble of finding priests who are willing to say them, or for the risk encountered. Nor may any part of the stipend be retained for Gregorian Masses if they take the place of funeral Masses.[5]

Since Gregorian Masses also are of the nature of a human contract, it seems reasonable to maintain[6] that an

[5] S. C. C., April 16, 1921 (*A. Ap. S.*, XIII, 532 ff.).

[6] Thus Arregui, *Summarium Theologiae Moralis,* ed. 4, 1919, n. 561.

involuntary interruption does not involve the obligation of repeating the Masses already said or having recourse to composition. Thus if a priest who has no other priest at hand, should suddenly take sick, or should have perchance used invalid matter, he would not be obliged to say again the Masses already said, even though the series had been interrupted.

c) The *personal obligation* which results from the nature of a Mass stipend remains until the Mass is said either by the contracting priest or by another in his stead. Concerning *Masses sent away* or handed over to intermediary persons, note:

(a) *The Ordinaries no longer have the power* (unless it has been granted to them by a special indult of the Holy See after the Code went into effect) *to prevent Masses being sent outside of their dioceses.* The Code has abolished the former legislation, and a rescript of the S. C. of the Council has declared that the exercise of this former power would be not only beyond, but against, the Code.[7]

(b) The Code rules that whosoever has Mass stipends to be given to others—if the donor does not object to their being sent away, or leaves it to the discretion of the priest—should *distribute them as soon as possible.* The lawful time for saying the Masses commences on the day on which the priest who is to say them has received them, unless the contrary is evident.

(c) The *qualities of the priests* to whom Masses, of which one may freely dispose, may be entrusted, are then described. Any priest may be freely chosen, provided he is absolutely reliable or recommended by the local Ordinary. It is not necessary, therefore, that he

[7] S. C. C., Feb. 19, 1921 (*A. Ap. S.*, XIII, 228 f.).

be known personally (*facie ad faciem*) to those who distribute the Masses.

(d) The *duration of the personal obligation* is set forth thus: Whosoever gives to others Mass stipends received from the faithful, or otherwise entrusted to his care, is personally responsible for them until he is informed that the obligation has been accepted and the stipend received.

(e) The *amount* to be transmitted is stated in the following words, with due distinction between manual and foundation Masses: He who sends manual stipends to others, *must transmit them as he has received them, i. e., in full,* unless the donor has expressly permitted him to retain part of the stipend, or unless it is evident that whatever exceeds the synodal or customary stipend was intended for the person to whom the stipend was given.

The excess or surplus of *quasi-manual stipends* may be lawfully retained if the *pingue stipendium* takes the place of a partial endowment of an ecclesiastical prebend or pious institution, unless the will of the founder reads otherwise. In that case, if the beneficiary has the Mass said by another priest, the former is bound to hand only the customary or diocesan stipend to his substitute.

(f) *Mass-obligations not yet fulfilled at the end of a year* should be disposed of thus: Administrators of pious institutions, and all, whether clerics or laymen, who are in any way bound to have Mass obligations fulfilled, must at the end of each year send the Masses not yet said to their Ordinaries, in some manner to be determined by the latter.

The time for complying with this obligation runs, for quasi-manual stipends, from the end of the year during

which the Masses should have been said, and for manual stipends from the day on which the obligation was accepted, with due regard to the intentions of the donor.

D. *The control of Mass stipends* rests with the Ordinaries.

1. The right and duty of watching over the fulfilment of Mass obligations belongs to the Ordinary of the diocese with regard to churches in charge of secular priests, and to the superiors of religious with regard to their churches.

2. Rectors of churches and other pious institutions where Mass stipends are received, whether in charge of seculars or religious, shall keep a special book, in which the stipends must be entered as to number, intention, amount, and date of celebration. The Ordinaries are obliged *to inspect these books* at least once a year, either personally or by deputy.

Local Ordinaries and religious superiors who give Masses to their own subjects or to others, shall promptly enter in a book the Masses they receive, together with the amount of each stipend, according to the order of time in which they were received, and see to it that they are said as soon as possible.

Every priest, secular as well as religious, shall keep an accurate record of the intentions received and the Masses said by him.

CHAPTER II

The Holy Eucharist as a Sacrament

1. The ordinary minister of Holy Communion is the priest, the extraordinary minister may also be a deacon, if the local Ordinary or pastor grants him permission,

which should be given for a grave reason, and may be lawfully presumed in case of necessity.

2. Holy Communion may be distributed at or outside the liturgical services.

a) Any priest may distribute Holy Communion during Mass, and, if he celebrates privately, also immediately before and after Mass, with due regard to the regulations made for private oratories.

Every priest enjoys the same right outside of Mass, provided he has at least the presumed permission of the rector of the church, if he is a stranger.

The question naturally arises: *What is a private Mass?* Our answer is, every Mass that is not a solemn, or *cantata,* or conventual, or parochial Mass, *i. e.,* applied *pro populo.*[8]

b) Holy Communion should be *brought to the sick publicly,* unless a just and reasonable cause advises otherwise.

The right and duty to bring Holy Communion publicly to the sick, even though they be not his parishioners, belongs to the pastor within the limits of his parish. Other priests may perform this function only in case of necessity or with the (at least presumed) permission of the pastor or Ordinary.

In our country, except perhaps in some parishes with an exclusively Catholic population, it is customary to bring Holy Communion to the sick privately. This is not a strictly parochial right. Hence any priest may bring Holy Communion privately to the sick, provided he has the (at least presumed) permission of the custodian of the Blessed Sacrament.

When Holy Communion is brought privately to the sick, care should be taken that due reverence and respect

[8] See our *Commentary,* Vol. IV, p. 215 f.

is rendered to the august Sacrament, according to the rules prescribed by the Apostolic See. To bring the *Viaticum* belongs to the strictly parochial rights, but in case of necessity curates or other priests may reasonably suppose or presume the permission of the pastor or local Ordinary. Bishops and clerical religious institutes are exempt from this exclusive right.[9]

c) Holy Communion may be administered under the *species of bread only*. This is *unleavened* in the Latin, leavened in the Oriental Church. But in case of necessity, if no priest of the respective rite is present, a priest of the Oriental rite, who would otherwise use leavened bread, may administer the Holy Eucharist in unleavened bread, and conversely, a priest of the Latin rite, who would ordinarily use unleavened bread, may give Holy Communion in leavened bread; but each must observe the rubrics of his own rite.

3. Every baptized person not forbidden by law may and must be admitted to Holy Communion. To *children* who, by reason of their tender age, are unable to know and desire this Sacrament, it should not be given, unless they are in *danger of death,* in which case it may and must be given them, provided they are able to distinguish the Eucharist from common bread and to adore it reverently.

Apart from the danger of death, a fuller knowledge of Christian doctrine and a more careful preparation is justly demanded, so that the child may know, as far as he is capable, at least the mysteries which are absolutely necessary for salvation (*necessitate medii*) and approach the Holy Eucharist devoutly, according to the capacity of his age.

It belongs to the confessor and to the parents or

[9] See can. 397; can. 514.

guardians to judge whether children are sufficiently prepared for first Holy Communion. But it is the pastor's office to see to it, by an examination if he deems it necessary, that children are not admitted to Holy Communion before they have attained to the age of discretion or are sufficiently prepared, and to take care that those who have attained the use of reason and are sufficiently prepared, are nourished with this divine food as soon as possible.

The *law forbids* the following to receive Holy Communion: those who are publicly unworthy (*publice indigni*). Such are the excommunicated, interdicted, and notoriously infamous, unless they have shown signs of repentance and amendment and have repaired the scandal publicly given.

4. The *preparation* is partly spiritual, partly physical.

Holy Communion must be received in the state of grace. In case of necessity, when no confessor is available, perfect contrition should be elicited.

The requirement of the Eucharistic *fast* is stated thus: One who has not fasted since midnight cannot be admitted to Holy Communion, except he be in danger of death, or it be necessary to prevent irreverence towards the Blessed Sacrament.

The sick who have been in bed for a month and have no certain hope of speedy recovery may, if the confessor prudently advises, receive the Holy Eucharist once or twice a week, even though they have taken medicine or food by way of a drink. This privilege now applies to all the faithful without exception. All that is required is the confessor's (not the pastor's) advice.

"Per modum potus" includes broth, coffee, or any liquid food mixed with something solid, as, for instance,

wheat meal (*semolino*) or ground toast (*pangrattato*), etc., provided the liquid form remains.

5. *Easter Duty.*—Every Catholic who has reached the age of discretion, *i. e.,* attained to the use of reason, must receive Holy Communion at least once a year, during Easter time, unless his pastor advises him to abstain from it for a time, for some reasonable cause.

The time for receiving the Easter Communion extends from Palm Sunday to Low Sunday, but may be prolonged by the local Ordinary for all the faithful of the diocese from Laetare Sunday to Trinity Sunday, both inclusive,—provided circumstances of persons and place demand such a prolongation. The indult granted and inserted as a conciliary decree [10] may doubtfully be considered as valid, at least if regarded as a particular law.

The Easter duty must be complied with also by *impuberes, i. e.,* boys less than fourteen and girls less than twelve years old; parents, guardians, confessors, pastors, and teachers should see to it that this precept is complied with.

The faithful should be instructed that the Easter duty is not complied with by a knowingly sacrilegious communion. On *Holy Thursday* the clergy should receive Holy Communion if they do not celebrate Mass.

6. *Frequent Communion and the Viaticum.*—Frequent Communion should be prudently and zealously promoted. As to the *Viaticum,* the Code insists upon the obligation to receive it. Those in danger of death, although they have already received Holy Communion on the same day, should be strongly advised to receive it again when

[10] *Conc. Balt. II,* n. 257.

the crisis sets in. It is also lawful and becoming to administer the Viaticum several times on different days, as long as the danger of death lasts, according to the prudent judgment of the confessor. In that case the formula *"Corpus Domini"* is to be employed.

7. As to the rite, it is stated that Holy Communion, even for devotion's sake, may be distributed to the faithful of any rite in the species consecrated in any rite; but they should be advised to receive the Paschal Communion in their own rite. The Holy Viaticum should, except in case of necessity, be received by the dying in their own rite.

Time and Place for Distributing Holy Communion

1. The Holy Eucharist may be distributed every day of the year, except on Good Friday, when only the Viaticum may be administered to the sick.

On Holy Saturday Communion may be distributed only at the (solemn) Mass or immediately thereafter.

Holy Communion may be distributed only at hours when Mass may be said, unless there are good reasons for deviating from this rule.

But the Holy Viaticum may be administered at any hour of the day or night.

A priest saying Mass is not allowed to distribute Holy Communion to persons who are so far away from the altar that he himself would lose sight of it were he in their place.

2. Holy Communion may be distributed wherever Mass may be said, even in private oratories, unless the local Ordinary in some particular case for just reasons forbids it.

TITLE IV

THE SACRAMENT OF PENANCE

(CAN. 870–910)

In the Sacrament of Penance, through a judicial absolution imparted by a legitimate minister, all sins committed after baptism are forgiven to the properly disposed Catholic.

1. *The Minister and his Jurisdiction.*—The sole minister of this Sacrament is the priest, who, to absolve validly, needs not only the power of order, but also jurisdiction, either ordinary or delegated, over the penitent.

Pastors, by virtue of their office, have *ordinary* jurisdiction in the whole territory over which their pastoral care extends. Those who take the place of pastors are endowed with the same power. Thus the *oeconomi* (pastors of vacant parishes) and *coadiutores, viz.,* priests who take the place of absent pastors, may hear confessions like the pastor himself. The same cannot be affirmed of curates and assistants, whose jurisdiction is not ordinary. The *local Ordinary* may hear confessions in any place of his diocese. *Cardinals* enjoy ordinary jurisdiction throughout the whole Church.

Those who possess ordinary jurisdiction for absolving may absolve their own subjects *everywhere.* Thus a pastor may absolve his parishioners and an Ordinary his diocesans in any part of the world.

Delegated jurisdiction is conferred by the local Ordinary on priests, secular as well as religious, even exempt religious, for hearing the confessions of both secular and religious persons; but priests of religious institutes, though thus endowed with delegated jurisdiction, need in addition thereto the permission of their superiors, in

order to absolve licitly. Local Ordinaries as well as religious superiors should grant these faculties only after examining the petitioner as to his fitness, unless he is well known to them.

Secular as well as religious priests who are approved for hearing confessions in some place, no matter whether their jurisdiction be ordinary or delegated, may validly and licitly absolve *vagi* and *peregrini,* who come to them from another diocese or parish, and also Catholics of any Oriental rite.

Without exception and notwithstanding any privilege or particular law, secular as well as religious priests, of whatever rank or office, need *special jurisdiction* for validly and licitly hearing *the confessions of female religious* and their novices. This jurisdiction is granted by the Ordinary in whose diocese the religious house is located. Only Cardinals are exempt from this law.

Delegated jurisdiction must be granted *expressly,* either in writing or orally, but no charge may be made for the grant. *Loss of ordinary jurisdiction* is brought about by the loss of the office to which the jurisdiction is attached. If, therefore, a pastor resigns, his jurisdiction ceases from the moment his resignation is accepted and the acceptance intimated; if a pastor is deprived of, or removed or transferred from, his parish, his jurisdiction ceases from the moment these measures have been intimated to him. After one has been declared to have incurred, or has been condemned to, excommunication, or personal interdict, or suspension from office, his jurisdiction also ceases.

Delegated jurisdiction has to be given expressly and is lost only by express revocation. But such a recall of faculties should not be made except for grave reasons, more particularly for reasons touching confession.

When there is *danger of death,* any priest, even though not otherwise approved for hearing confessions, may validly and licitly absolve any penitent from all sins and censures, including those which are reserved and notorious, even though an approved priest may be present. This also holds concerning the *absolutio complicis* in danger of death. But the priest who thus absolved an accomplice would act *illicitly* if there were no urgent necessity for his action, *e. g.,* if another priest could be called in without giving scandal or seriously impairing the reputation of the guilty priest.

Confession at Sea.—Any priest traveling on the ocean may hear the confessions of all Catholics who travel with him on board the same ship, even though the vessel on its trip may pass, or even stop for some time at, places subject to different Ordinaries. But in order to absolve his fellow travelers validly and licitly, a priest must have duly obtained faculties from his own Ordinary, or from the Ordinary of the place he sails from, or from the Ordinary of any port which the vessel may pass.

As often as the vessel stops on its trip, the priests on board, if endowed with faculties as stated, may validly and licitly hear the confessions of such of the faithful as may for any reason visit the vessel, as well as of those who approach them for that purpose when they go on land for a short stop. In the latter case, they may absolve also from cases reserved to the Ordinary of the diocese where they stop.

2. *Reservation.*—Those who possess ordinary power for granting faculties to hear confession or to inflict censures, are empowered to call certain cases before their tribunal, thus restricting the power of absolving vested in their inferiors. However, vicars capitular and vicars general may not use this power of restricting without a

special mandate. This *avocatio,* which may be made with or without censure, of cases is called reservation.

Only one sin is, as such, reserved to the Holy See, to wit, falsely accusing an innocent priest before the ecclesiastical court of the crime of solicitation.

The cases to be *reserved shall be few,* no more than three or four of the more grievous and atrocious external crimes, and shall be specifically determined. The reservation itself should not remain in force longer than is necessary to uproot some inveterate public crime and to restore Christian discipline.

Power to absolve from episcopal reserved cases is granted to the Canon Penitentiary. Besides, the legislator wishes that the faculty of absolving from these reserved cases should be habitually delegated to the rural deans, who should also be given the power of *toties quoties* subdelegating confessors of their districts, especially in parishes distant from the episcopal see, whenever these confessors have recourse to the deans for individual and urgent cases.

Pastors and those who go by the name of pastors, *viz.,* the administrators of vacant parishes and the substitutes of pastors, may absolve from these cases which the Ordinary has reserved to himself, *viz.,* purely episcopal cases—not papal cases—, during the whole *paschal season.* As often as a person approaches the Sacrament of Penance during the paschal season and confesses a reserved case, he may be absolved by the pastor, but not by a curate or assistant.

Missionaries enjoy the same power during the time of a mission. All reservations cease or lose their force:

1°. When those who go to confession are sick and cannot leave the house, or if they are about to be married *viz.,* within a few days from marriage;

2°. As often as the lawful superior refuses a faculty

asked for in a particular case, or when, according to the prudent judgment of the confessor, the faculty cannot be asked from the lawful superior without great inconvenience to the penitent or without danger of violating the sacramental seal;

3°. Outside the territory of the one who has reserved the case, even though the penitent has repaired thither solely for the purpose of obtaining absolution (*in fraudem legis*).

3. *Attitude of the Confessor.*—If the confessor has no reason for doubting the proper disposition of the penitent, and the latter demands absolution, it is neither to be refused nor postponed.

According to the quality and number of the sins committed, and the condition of the penitent, the confessor should impose a wholesome and proportionate penance, which the penitent must willingly accept and perform in person.

The confessor should remember that he is a *judge and physician,* appointed to administer divine justice as well as mercy, in order to provide for God's honor and the welfare of souls.

He shall be careful never to ask the name of an accomplice, or to detain the penitent with inquisitive and useless questions, especially concerning the sixth commandment, and above all he shall not imprudently ask young people about things of which they are supposed to be ignorant.

The *additional prayers* added to the formula of absolution, though not required for absolution, should not be omitted without a just cause, such as a large concourse of penitents.

The *sacramental seal is inviolable,* and hence the confessor shall be most careful not to betray the penitent

by any word or sign or in any other way, for any reason whatsoever.

The obligation of keeping the sacramental seal binds also *interpreters* and others who may in any way have acquired knowledge of confession.

The confessor is strictly forbidden to make use of the knowledge gained from confession, if this use would involve injury (*gravamen*) to the penitent, even though the seal of confession were not endangered.

Superiors, who are actually such at the time, as well as confessors who afterwards become superiors, are not allowed to make use of knowledge gained in the confessional for the external government of their subjects.

The Code *lays a duty of justice on pastors* in the following words: "Pastors and others entrusted with the care of souls, by virtue of their office, are obliged in strict justice to hear the confessions of the faithful committed to their care as often as the latter reasonably demand to be heard."

In urgent cases all confessors, and in case of danger of death all priests, are obliged in charity to hear confessions.

4. The *recipients* of the Sacrament are all the faithful who are conscious of mortal sins committed after Baptism and not yet directly forgiven by the keys of the Church. The accusation must be preceded by a careful examination of conscience. Necessary matter, therefore, are mortal sins not yet forgiven, whereas sins committed after Baptism, whether grievous but already forgiven by the power of the keys, or merely venial, are sufficient matter for the Sacrament.

Those who are unable to confess otherwise, may, if they wish, confess through an interpreter, provided abuses and scandals are avoided.

All the faithful are free to confess their sins to any lawfully approved confessor whom they may prefer, even though he belong to another rite.

Without *distinction* of *sex,* all who have reached the age of discretion are obliged to confess their sins *once a year.* This obligation is not fulfilled by a sacrilegious or wilfully invalid confession. The obligation of denouncing solicitation is binding to the extent established by the Constitution "*Sacramentum Poenitentiae.*"

The *place for sacramental confession* is the church, or a public or semi-public oratory. The confessional for hearing women's confessions must be in an open and visible place, generally the church or a public or semi-public oratory assigned to women; it must have an immovable grate with small holes. Women's confessions should not be heard outside the confessional, except in case of sickness, or for other reasons of necessity, and under such precautions as the local Ordinary may deem opportune.

INDULGENCES

(Can. 911–936)

1. *Nature and Kinds.*—An indulgence is a remission before God of temporal punishment due to sins, the guilt of which is already forgiven or wiped out. The source of all indulgences is the treasury of the Church. They are granted by the ecclesiastical authority in favor of the living as well as of the dead, but to the former are applied by way of absolution, whilst the latter can obtain their benefits only by way of suffrage. Indulgences should, therefore, be highly esteemed by all the faithful.

If a *plenary indulgence* is granted for the feasts of our

Lord or of the Blessed Virgin, it must be understood only of those feasts which are assigned in the general calendar of the Church, to wit: Christmas, the Circumcision (New Year's Day), the Epiphany, Easter Sunday, the Ascension, and Corpus Christi; or the feasts of the Immaculate Conception, the Purification, the Annunciation, the Nativity, and the Assumption of the Blessed Virgin Mary. Other feasts mentioned in private calendars, for instance, those of religious, are not included in this grant.

A *jubilee* indulgence is one gained during the time of a jubilee, although it may, by special favor, be granted also at other times. There are two kinds of jubilees, one called *ordinary,* granted at fixed intervals, now generally every twenty-five years, the other called *extraordinary,* for special occasions.

2. *Grantor.*—Besides the Roman Pontiff, to whom the stewardship of the whole spiritual treasury of the Church is entrusted, only those who are expressly authorized to do so by law can, by ordinary power, grant indulgences.

The *Pope* may grant indulgences for the whole Church, without any limit as to kind, place, or person.

Archbishops and bishops may grant indulgences in their respective provinces and dioceses, the former 100 days, the latter fifty days. These indulgences are called local because they apply only to the territory over which a prelate has jurisdiction.

Cardinals may grant a two hundred days' indulgence, *toties quoties,* in any place (titular church or institution) and to any person under their jurisdiction and protection. Their power also is an ordinary one by law.

Besides these no other prelates enjoy by law the power of granting indulgences. Thus it has been decided that a titular bishop, who is at the same time auxiliary to

another bishop, may not grant an indulgence of forty days in the diocese in which he is auxiliary.

Apostolic Delegates, who have received faculties from the Pope for granting indulgences, should abstain from attaching such to devotional objects or acts of piety which have already been enriched with indulgences by a bishop within his territory.

Bishops may impart the *papal blessing* in their own diocese with a plenary indulgence, according to the formulary prescribed (in the *Pontificale Romanum*) twice a year: once on the feast of Easter, and once on another day, which they themselves may designate, even though they should only assist at the solemn Mass. The same may be imparted, but only on one of the more solemn feasts of the year, by abbots or prelates *nullius,* by vicars Apostolic and prefects Apostolic, even though they have not the episcopal dignity.

Bishops, abbots or prelates *nullius,* Apostolic vicars and prefects, and the major superiors of exempt clerical religious orders may designate and declare *one altar daily privileged* forever in their cathedral, abbatial, collegiate, conventual, parochial and quasi-parochial churches, provided there be no privileged altar in said churches as yet. In public or semi-public oratories, unless they are united to a parish church or serve as its subsidiaries, no privileged altar may be assigned by the prelates mentioned.

On *All Souls' Day* all Masses enjoy the same privilege as if they were said on a privileged altar. All the altars of a church in which the *Forty Hours' Devotion* is held are privileged during this devotion.

No higher stipend may be charged for Masses celebrated on a *privileged altar* because of this privilege.

New indulgences, not yet published at Rome, may not

be promulgated without the consent of the local Ordinary. This law is binding also on regulars.

In publishing books, pamphlets, etc., which contain indulgences for various prayers and pious works, can. 1388 must be observed. It rules that such indulgences presuppose the permission of the local Ordinary. The express permission of the *Holy See* is required for publishing, in any language, *authentic collections of prayers and good works* enriched with indulgences by the Apostolic See. The same express permission is required for publishing lists of papal indulgences, and summaries of indulgences, whether already collected but not yet approved, or to be made from various grants.

3. A *plenary indulgence* is the remission of the whole debt of temporal punishment due to sin. To gain it fully, one must be free from all affection for sin.

A *partial indulgence* is the remission of a part of the temporal punishment due to sin, and is gauged by the public penance prescribed by the penitential canons of the early Church. In this sense a partial indulgence is indeed a remittance of the penances imposed by the former penitential discipline and valid before the external forum of the Church, but it would be wrong to imagine that this is its only effect. Even a partial indulgence signifies and effects the remission of temporal punishments due to sin before God or in the court of conscience. Consequently, an indulgence of seven years means a remission of the temporal punishments which were formerly imposed by the ecclesiastical authority, for instance, seven years of fasting twice a week on bread and water, but as effective of true remission.

An indulgence, plenary or partial, granted for the feasts of the *Apostles,* must be understood of the main or spiritual birthday feasts, not of other incidental feasts,

such as St. Peter's Chair or Chains, St. Paul's Conversion, etc.

If a plenary indulgence is granted as *quotidiana perpetua vel ad tempus,* this means that the faithful who visit the respective church or oratory may gain said indulgence on any day,—week day or Sunday,—but only *once a year,* unless the grant contains an extensive clause. Therefore, if the grantor intends to grant an indulgence for every day, he must explicitly say so.

Indulgences attached to rosaries (beads) and other objects are lost if the beads or objects are destroyed or sold, but not if they are given away.[11]

4. There are certain *conditions* required on the part of those who wish to *gain indulgences,* and certain prescriptions attached to indulgences, either in general or in particular.

(a) To be capable of gaining an indulgence for oneself, one must be *baptized,* not excommunicated, in the state of grace at least when one complies with the last work prescribed, and a subject of the grantor. To really gain the indulgences the capable subject must have at least the *general intention* of gaining them and comply with the conditions prescribed at the time and in the manner set forth in the grant.

A plenary indulgence is understood to be granted in such a way that, if one cannot gain it in its entirety, one may gain it partially, in proportion to his disposition. Unless the tenor of the grant sounds differently, indulgences granted by a bishop may be gained by his subjects also when outside their own diocese. *Peregrini, vagi,* and all who live in a territory may gain the indulgences granted for that territory. This, of course, is

[11] What we said on this subject in Vol. IV, p. 380 f., has been confirmed by the S. Poenit, Feb. 18, 1921 (*A. Ap. S.*, XIII. 164).

to be understood of indulgences that are not merely local; for local indulgences cannot be gained outside the place to which they are attached.

Unless the contrary is expressly stated, a *plenary* indulgence may be gained only *once a day,* even though the same works are performed several times. But a partial indulgence may be gained as often as the works prescribed are repeated, unless the contrary is expressly ordained.

All the faithful of both sexes, who lead a life in common, either as religious, or as *inmates of an institution,* a place of study, a hospital, or an asylum for the aged or disabled, may gain an indulgence for which the visit of a public oratory is prescribed, by visiting the semi-public oratory or chapel in the house in which they reside, if this house has no public oratory or church attached, provided the house has been established with the consent of the Ordinary and is considered a religious institute. The same indulgence may be gained in the same way by all who wait on, or serve, the members of such a house, and reside therein. But this favor can be made use of only if the church or public oratory, the visiting of which is prescribed for gaining the indulgence, is not determined or designated. Hence, if the visit of a certain church or oratory, for instance, the parish church, or the church of a religious order, were expressly prescribed, the indulgence could not be gained in the manner described above.

Finally, in order to gain the indulgence in the above-named semi-public oratory, the other works or conditions imposed must be complied with.

No one who gains indulgences can apply them to other living persons, but he may apply all indulgences granted

by the Roman Pontiff to the Poor Souls in Purgatory, unless a contrary provision has been made.

(b) *Prescriptions* are set forth as follows: If confession is required for gaining an indulgence, it may be made within the eight days immediately preceding the day to which the indulgence is affixed; Communion may be received on the day before the feast; both confession and communion may be received during the entire octave.

Indulgences granted for pious exercises conducted during a triduum or within a certain week, may be gained if the prescribed confession and Communion are made during the octave immediately following the close of these devotions.

Those who are accustomed to go to confession at least twice a month, or to Communion daily in the state of grace and with an upright and holy intention, although they do not receive every day, may without confession gain all the indulgences for which confession is prescribed as a necessary condition. Indulgences of the ordinary and the extraordinary jubilee are, however, excluded from this favor.

No indulgence can be gained by performing a good work to which *one is obliged by law or precept,* unless the grant expressly admits such duplication. Thus fasting in Lent cannot be taken as fasting for gaining an indulgence. A priest cannot comply with the condition of saying certain prayers for gaining an indulgence by reciting his Breviary.

Those, however, who perform a good work imposed as a sacramental penance may thereby comply with the penance and gain the indulgence, if said good work be indulgenced.

Indulgences may be attached to one and the same object or place on various titles, but by one and the same good work to which by reason of different titles indulgences are attached, these various indulgences cannot be gained unless the work prescribed be confession or Communion, or unless the rescript reads otherwise.

If general prayers for the intention of the Sovereign Pontiff are prescribed for gaining an indulgence, mental prayer is not sufficient; the vocal prayers may be chosen *ad libitum* by the faithful, unless some special oration is prescribed.[12]

If a special prayer is prescribed, the indulgence may be gained by reciting that prayer in any language, provided the accuracy of the translation is assured by a declaration of either the S. Poenitentiaria or the Ordinary of any diocese where the language is spoken. But no indulgence is gained if any *addition, subtraction, or interpolation* is made in regard to the required prayers.

Here a remark may be added concerning the manner of reciting the *Rosary*. The insertion of the words announcing the respective mystery in each "Hail Mary" is against the Code. However, the S. Poenitentiaria has, by a general indult, granted that the addition may be allowed in all places where it was customary.[13] The custom originated in Germany and formerly (*viz.*, in 1859)

[12] It may be held, with solid reason, that one *Our Father,* without the *Hail Mary,* is sufficient.

[13] July 27, 1920, the S. Poenit, had simply and categorically declared that this method of reciting the Rosary nullified the indulgences; but German and Swiss bishops finally obtained the modification mentioned in the text; S. Poenit., Jan. 22, 1921 (*A. Ap. S.* XIII, 163 f.). But parishes cannot form a juridically valid custom. Hence not even the Apostolic See can "come to the aid" of a stubborn pastor who has unlawfully introduced this "custom" in reciting the beads.

was granted only for certain dioceses of that country.

Pious works imposed for gaining indulgences may be *commuted* by the confessor into other good works for those who are lawfully prevented from performing the good works prescribed.

Mutes may gain the indulgences attached to the recital of public prayers if, together with the other faithful, they assist and raise their minds and hearts to God; as to private prayers, it is sufficient that they recollect them in their mind and follow them either by signs or with their eyes (if they are able to read).

TITLE V

EXTREME UNCTION

(Can. 937–947)

1. The Sacrament of Extreme Unction is administered by anointments with duly blessed olive oil, and by pronouncing the words prescribed in the approved rituals of the Church.

2. *Every priest,* and no one but a priest, *may validly administer* this Sacrament.

Since the administration of Extreme Unction is a strict *parochial right,* it is by law reserved to the pastor, and assistant priests or curates must have the pastor's permission to exercise it. This permission may be given habitually. Besides, the diocesan statutes or the letter of appointment may determine whether or not assistants have this right. The *oeconomus,* or temporary administrator, of a parish enjoys full parochial rights and may, therefore, give permission to another priest to administer this Sacrament. Regulars have been enjoined time and again not to interfere with this right. Secular Tertiaries

are not allowed to receive this Sacrament at the hands of the Friars Minor. To canons of cathedral as well as collegiate chapters this Sacrament must be administered by the pastor in whose parish they have their domicile. Exempt from these rules is the Ordinary of the diocese, to whom the dignitaries or canons should administer Extreme Unction according to rank and precedence.

The ordinary minister, says can. 939, is obliged in justice to administer Extreme Unction either himself or by substitute. In case of necessity every priest is bound by charity to administer this Sacrament.

3. *The Recipient.*—Extreme Unction may be administered only to faithful *Catholics,* who have reached the age of discretion and are in danger of death in consequence of sickness or old age. The Sacrament may not be repeated in the same sickness, unless the patient has recovered after receiving Extreme Unction, and his condition has again become critical.

When it is doubtful whether the sick person has attained to the use of reason—not the age of discretion—or whether he or she is really in danger of death, or already dead, Extreme Unction should be conferred conditionally.

To those who asked for Extreme Unction at least implicitly or *interpretatively* whilst in the full possession of their mental faculties, the Sacrament may be administered even though they have lost their senses or the use of reason.

Although this Sacrament is not absolutely necessary as a means of salvation, yet no one may neglect it; and care and diligence should be taken that the sick receive it while fully conscious.

4. *Rites and Ceremonies.*—The olive oil to be used in the administration of Extreme Unction must be blessed for that purpose by the bishop or by a priest who has

obtained the necessary faculty from the Apostolic See.

The "oil of the sick" must be preserved in a vessel of silver or white metal (a composition of lead and silver), and in a decent and properly equipped place, but it may not be kept at home, except in the case permitted by can. 735.

The *anointments* must be accurately performed, as stated in the Roman Ritual, which prescribes the words, the order and the manner of anointing. In case of necessity one anointment on the forehead with the short formula is sufficient, but the obligation of supplying the other anointments remains when the danger is over. The anointment of the loins is now always omitted. The anointment of the feet may be omitted for any reasonable cause. Except in case of grave necessity, the anointments must be made by direct touch, without instruments.

The use of an "instrument," *e. g.,* a brush, a piece of cotton or a little stick or twig (*stylus, virgula*), may be allowed in contagious diseases, but aside from such cases of necessity, it is strictly forbidden.

TITLE VI

HOLY ORDERS

(Can. 948–1011)

It is the hieratic element, the power of order established by Christ himself, which distinguishes the clergy, who govern the faithful and conduct the divine worship, from the laity. To the clergy is entrusted the government and administration of the mystical and the real body of Christ, whereas the laity cannot validly perform any act of jurisdiction or order. This power is conferred by the Sacrament called Orders.

1. The *ordinary minister* of the Sacrament of Orders

is the duly consecrated bishop; the *extraordinary minister* one who has obtained this power either by law or through a special indult of the Apostolic See.

The *lawful* minister of ordination is the *episcopus proprius, i. e.,* the candidate's own bishop. This is established by the fact that the ordinand (1) was born and had his domicile, or (2) has only a domicile, though he was not born, in the diocese. In the latter case he must take an oath affirming his intention of remaining permanently in the diocese.

2. The *canonical titles* of ordination are: benefice, patrimony, and pension. *Supplementary titles* are: the service of the diocese and the mission title for territories under the Propaganda. *Regulars* are ordained on the *titulus professionis;* other religious on *mensae communis.*

3. *Qualifications of Candidates.*—Although priests, and especially pastors, should interest themselves in boys who shows signs of an ecclesiastical vocation, keep them away, as much as possible, from worldly contagion, and foster the germ of piety (can. 1353), it is criminal, on the other hand, to compel any one, in whatever manner or for whatever reason, to embrace the clerical state, or to turn away from it any one who is canonically qualified.

Seminaries are the proper place for aspirants to assure their vocation and prepare themselves for ordination.

The legislator has set up certain conditions for the worthy and proper exercise of the sacred ministry. The lack of these are the so-called *irregularities;* they are not considered penal sanctions in the proper sense. Of these seven are said to spring from defect, and seven from crime. Besides, the Code has also introduced a class of

qualifications which go by the term of *canonical impediments.*

A. Irregularities *ex defectu* are:

1°. Illegitimate birth, no matter whether the illegitimacy be public or occult, unless the subject has been legitimated or made solemn profession.

2°. Bodily defects or deformities which prevent a man from properly performing the functions of the priesthood. A greater defect is required to prohibit one from exercising an order already lawfully received, than for receiving a new order. Clerics suffering from a defect are not forbidden to perform those functions which they can properly perform.

3°. Epilepsy, insanity and diabolical possession, past or present.

4°. Bigamy resulting from two or more valid successive marriages.

5°. *Infamia iuris.*

6°. The fact that one, as judge, has pronounced sentence of death.

7°. The fact of having held the office of executioner or been an immediate helper of such.

B. Irregularities *ex delicto* are:

1°. Apostasy from the faith, heresy, and schism.

2°. The fact of having allowed oneself to be baptized by a non-Catholic, except in a case of extreme necessity.

3°. Attempted marriage, or marriage before the civil court, on the part of one who was bound by marital ties, by sacred orders, or by religious (even though only simple or temporary) vows; also attempted marriage before the civil court with a woman bound by the matrimonial tie or by a religious vow.

4°. Voluntary homicide or having procured the abortion of a human fetus, if these acts were effective; also coöperation in these crimes.

5°. Mutilation of oneself or others and attempted suicide.

6°. The practice of medicine or surgery by a cleric, if death resulted from the practice.

7°. The performance by those without an order of any act which is reserved to clerics in higher orders, or the exercise of an order duly received against a prohibition either by canonical sentence or by a censure or vindictive penalty. These crimes do not produce irregularity, unless they are of the nature of a grievous sin committed after Baptism, and external, either public or occult.

C. Simple *canonical impediments* are:

1°. The married state. A man who has a wife cannot embrace the clerical state while his wife lives.

2°. The fact of one's parents being non-Catholics.

3°. Being engaged in an office or administration forbidden to clerics, and of which one has to render an account, until he has given up the office and administration, settled his accounts, and thus become free.

4°. The state of being a slave, properly so-called.

5°. The duty of rendering common military service under the civil law, until one is fully discharged.

6°. Neophytes cannot be ordained until the bishop judges that their faith has been sufficiently tried.

7°. Another impediment is infamy (not by law, but) in fact, as long as this blemish remains on a person in the judgment of the Ordinary.

Ignorance of irregularities and impediments does not excuse from incurring them.

Confessors can absolve penitents in all *occult cases* of

a very urgent nature, when the Ordinary cannot be approached and there is danger of great loss or infamy. But the dispensation is valid only in that it enables the penitent to exercise an order already received; homicide is exempted from this faculty.

4. *Publication of ordinations.*—The names of candidates for ordination should be publicly announced in their respective parish churches. The Code re-inforces this rule for all aspirants to higher orders, with the exception of religious who take either simple or solemn vows. The church in which these publications are to be made is the *parish church* to which the candidate belongs by reason of domicile or quasi-domicile, on his own part or that of his parents. The time for these publications is the parochial service on some Sunday or holyday of obligation, or any other day or hour when there is a large gathering of people.

The Code enjoins upon all the faithful the obligation of revealing to the Ordinary or the pastor, before the day of ordination, any impediments they may be aware of.

The Ordinary may ask the *pastor* who has made the publication, or, if he deems it expedient, any other person, to investigate the conduct and life of the candidate by questioning trustworthy persons, and to transmit the testimonial letters containing the results of that investigation and publication to the diocesan court.

5. *Time for ordinations.*—Episcopal consecration must be conferred during the solemnity of the Mass on a Sunday or on the feast of an Apostle.

Higher orders should be conferred during holy Mass on the four Ember Saturdays, on Saturday "Sitientes," before Passion Sunday, or on Holy Saturday. However,

if there be a grave reason for so doing, the bishop may ordain to higher orders also on any Sunday or holyday of obligation.

The *tonsure* may be given on any day and at any hour of the day, in the forenoon or in the afternoon. Minor Orders may be conferred on Sundays and weekdays which have a feast marked duplex in the diocesan calendar.

The custom of ordaining on days other than those prescribed in the preceding sections is reprobated by the Code. These days must also be observed when a bishop of the Latin rite, in virtue of an Apostolic indult, ordains a clergyman of an Oriental rite, and conversely.

6. *Record of Ordinations.*—Ordinations must be duly registered. This duty is especially incumbent on the diocesan court. In the case of the secular clergy the local Ordinary, and in the case of religious ordained with his dimissorials, the religious superior, must inform the pastor of the church in which the ordinand was baptized of his ordination to subdeaconship, in order that the fact may be recorded in the baptismal register.

TITLE VII

MATRIMONY

(Can. 1012–1143)

The subject-matter treated under this title not infrequently proves a crux to pastors, and hence we need hardly apologize for offering a little more than the bare essentials of this important branch of pastoral occupation.

1. *Essence, Object, and Species*

1. Jesus Christ Himself raised the marriage contract between baptized persons to the dignity of a *Sacrament,* and hence there can be no valid marriage between baptized persons which is not at the same time a Sacrament.

If the baptism of the two contracting parties, no matter in what creed it has been conferred, was valid, their marriage is a sacramental contract. Logically it must be maintained that the marriage of an unbaptized couple becomes a Sacrament when they receive baptism, without renewing the consent.

2. The *primary end* of marriage is the procreation and education of offspring, while its secondary purposes are mutual help and the allaying of concupiscence.

The *essential properties* of marriage are unity and indissolubility, which obtain a special firmness or stability in Christian marriage by reason of its being a Sacrament. This firmness may be traced to the typical union between Christ and His Church and also to the sacramental grace attached to Christian marriage.

Since the *law favors marriage,* the presumption in case of doubt is always in favor of the validity of a marriage, until the contrary is proved. An exception to this rule is the Pauline Privilege, which enjoys the favor of faith.

The marriage of baptized persons is *governed* not only by the divine law, but also by canon law, with due regard to the competency of the civil power concerning the merely civil effects of Matrimony.

Notice that the Code stresses the marriage of *baptized* persons and leaves the marriage of unbaptized persons untouched. Who, then, is to regulate these latter unions? We can see but one competent authority: the State. To

it, therefore, must be vindicated legislative power concerning the marriages of non-baptized persons. Consequently, the State may surround these marriages with *diriment impediments,* provided these do not conflict with the natural or the divine law. It may demand that *all* marriages must be contracted in the presence of *either* the State authorities *or* of duly authorized ministers of religion. This is called optional or *facultative civil marriage* and obtains in the United States.

Finally attention must be drawn to the general term *Baptizatorum matrimonium.* All baptized persons fall under the legislative power of the Church, as the Council of Trent dogmatically defined.[14] The conclusion would seem to be that unless the legislator himself expressly exempts some one, as is done in can. 1099, § 2, *all* baptized persons are comprised by the law. Yet this is not the case, for can. 1070, concerning disparity of cult, leaves a doubt, which might have been cleared up by the addition of a few words. We make this statement, not to criticize, but for practical reasons.[15]

3. The *various kinds* of marriage are thus defined by the Code:

a) A valid marriage, contracted between baptized persons, is called *ratified* (*ratum*) as long as it has not been consummated by conjugal intercourse; *ratified and consummated,* if perfected by the conjugal act to which matrimony is by nature directed and by which the partners become one flesh.

b) If the parties have lived together after the celebration of marriage, consummation is presumed, until the contrary is proved.

[14] Sess. VII, can. 7, *De Bapt.*

[15] We have received several letters to that effect, and our answer was: solicit an authentic answer through your Bishop.

c) A marriage validly contracted between unbaptized persons (*e. g.,* Mohammedans, Jews, Gentiles) is *legitimate,* but not sacramental.

d) An invalid marriage is called *feigned* (*putativum*) if it was contracted in good faith by at least one party, until both become aware of its invalidity.

Pastors are exhorted to instruct their people on marriage and its impediments. The Code does not say how often such instructions should be given or on what occasions. The instructions may be public or private.

2. *Betrothal*

A promise of marriage, made either by one party or by both, is *void of effect,* in the court of conscience as well as in the external forum, unless it is made in writing and signed by the parties themselves as well as by the parish priest, or the diocesan Ordinary, or at least two witnesses.

In case one or both parties do not know how, or are unable, to write it is required for validity that this fact be noted in the document and another witness added, who shall sign the document together with the pastor, or the Ordinary of the diocese, or the other witnesses.

On a promise of marriage, even though it be valid and no just reason excuses, no action can be based to compel the celebration of the marriage.

The Code has done away with the former diriment impediment of *sponsalia,* which no longer figures even as a prohibitive one. Although the impediment has been removed, and binding force is attached only to formal engagements, as just described, it does not follow that there is no obligation in conscience to keep an engagement, whether formal or informal. A person who violates even

an informal engagement without reason, is guilty of a breach of fidelity, decency, and honor, all of which require that a man should perform what he has promised.[16]

A man who has damaged a young lady's reputation by undue familiarity is bound in conscience to make restitution, or if no remedy can heal the damage, to marry her. This obligation arises, not from the betrothal, but from the natural law, and has nothing to do with the form of the engagement.

3. *Preliminaries and Banns*

1. Before a marriage may be celebrated, certainty must be had as to whether there exists an obstacle to its validity or licitness.

When there is *danger of death,* and no other proof can be procured, and signs do not point to the contrary, the sworn statement of the parties that they are baptized and subject to no impediment will suffice to admit them to the celebration of marriage.

Aside from the case of danger of death, there are *two kinds* of *investigation* mentioned in the Code. One is informal or previous, designed to ascertain the existence of an obstacle or impediment to either a valid or a licit marriage; the other is called the bridal examination. Who is to conduct them? The pastor who is entitled to assist at a marriage shall, at a convenient time, carefully investigate whether there is an obstacle to the marriage to be contracted. He may delegate another, for instance, his assistant, to make this investigation; but the personal obligation remains, and negligence on the part of the delegate would recoil on the pastor. This inquiry should,

[16] J. A. McHugh, O. P., *Preparation for Marriage,* 1919, pp. 19 ff.

as a rule, be conducted by the pastor of the bride, *i. e.*, he (a) in whose parish the bride has a domicile or quasi-domicile or (b) one of the parties has lived for thirty days, or (c) if one of them is a vagrant. There is no strict obligation to institute such a previous inquiry if the parties are known to the pastor. But there is a serious obligation to hold the *bridal examination.* This, too, is incumbent on the pastor who is entitled to assist at the marriage, but he may entrust another with it. The pastor, then, or his delegate, should question the bridegroom and the bride separately and cautiously as to the possible existence of an impediment, ascertain whether both, especially the woman, freely consent to the marriage, and whether they are sufficiently instructed in Christian doctrine. The last question may be omitted where the character and standing of the parties render it superfluous.

This examination has two parts: the juridical and the doctrinal.

a) Juridically it comprises the following questions:

1°. Have you complied with the requirements of the civil law? in other words: Have you obtained a marriage *license?* [17]

2°. What is your age?

3°. Are you a Catholic? Are you baptized? Do you belong to a non-Catholic sect?

4°. Are you bound by any vows or orders?

5°. Are you a blood relative of your intended consort?

6°. Have you been married before? Was the former marriage dissolved and how?

[17] See McHugh, *op. cit.*, p. 23. The pastor will also ask himself whether he himself is an American citizen, where the State requires this qualification under penalty or fine.

7°. Was your former wife (or husband) a blood relative of your intended wife (or husband)?

8°. Have you ever administered Baptism or stood as sponsor?

9°. Are you related to your intended wife (or husband) by legal adoption? (This question is not necessary if the pastor knows that in his State adoption constitutes neither a diriment nor a prohibitive impediment to marriage.)

10°. Have you agreed to be married of your own free will?

11°. A delicate question is that concerning *crime*. To put it leniently and yet precisely, a formula like this may be used: Have you known your intended bride (bridegroom) for a long time? Has any promise or improper relation forced you into this second marriage? [18]

b) The *doctrinal* examination need be held only if the pastor is not certain as to the parties' religious knowledge. If this is seriously deficient, it will be difficult to supply the lack in one instruction. If the parties "can or will not wait," the pastor should briefly explain the properties of marriage, its unity and indissolubility, the mysteries of the Blessed Trinity and Incarnation, the Lord's Prayer and "Hail Mary," the acts of faith, hope and charity, and contrition.

The pastor must demand a *baptismal* certificate from both parties, unless they were baptized in his own parish. If not already received, *Confirmation* should be administered before marriage, provided it can be done conveniently.

The local Ordinary should issue regulations to the pastors concerning the instruction of bridal couples.

[18] A question might also be asked concerning "Public Propriety," if the parties are entirely unknown to the pastor.

2. The *parties' own pastor* must publicly announce their future marriage. The *"banns"* must be proclaimed for each and every marriage between Catholics, unless a dispensation has been obtained. *Mixed* marriages should, as a rule, not be publicly announced. Neither rural deans nor pastors enjoy the power of *dispensing* from one or two or all three "calls"; they may, at most, determine that under peculiarly pressing circumstances and in urgent cases this law does not bind. The power of dispensation in this matter belongs to the local Ordinary, who may, according to his discretion, dispense from the publication of the banns in his own diocese or in a strange diocese, provided there is a lawful reason. If the parties belong to different dioceses, the bishop in whose diocese the marriage is to be celebrated is entitled to dispense; if the marriage takes place in neither of the two dioceses, any Ordinary who is the *"ordinarius proprius"* of either of the parties may dispense.

If a party has lived in a place other than the parish of the *parochus proprius* for six months after the age of puberty,[19] the pastor shall report the matter to the Ordinary, who may prudently order either the banns to be published in that place or else proofs or conjectures to be gathered which establish the party's free status.

If the pastor suspects the existence of an impediment, he should report to the Ordinary, even though the party has lived less than six months in the other place; and the Ordinary shall not give permission to marry until the suspicion has been removed by the means mentioned in the preceding paragraph.

The *banns* are to be *proclaimed in church on three successive Sundays or holydays of obligation* during the

[19] Puberty is here to be taken according to can. 88, *viz.*, fourteen and twelve years, respectively.

solemnity of the Mass or at other services frequented by the people. The Ordinary may, however, substitute for said publication the public posting of the names of the contracting parties at the doors of the parish church, or some other church; the announcement is to remain posted for eight days, including two holydays of obligation.

After the examination and the publication of the banns the pastor shall not assist at the marriage until he has received all the necessary papers, and until at least three days have elapsed after the last call, unless a plausible reason dictates otherwise. Should a marriage be delayed for six months after the banns have been published, the publication must be repeated, unless the Ordinary decides otherwise.

The *necessary papers* here mentioned are: the marriage license, the baptismal certificate, and authentic information regarding the status of the nupturients. The Code says that if another pastor has attended to the examination of the candidates, or made the publications, he should "as soon as possible authentically inform the pastor who is to assist at the marriage of the results of his inquiry."

The publication of the banns is intended to ascertain the *free status* of the contracting parties, *i. e.,* the non-existence of impediments to their marriage. Now it may happen (a) that a serious doubt arises concerning the existence of an impediment, or (b) that an impediment certainly exists. (a) If a *doubt* of a positive nature arises, the pastor shall investigate more thoroughly by querying at least two trustworthy witnesses (provided the impediment is not defamatory) and also the parties themselves,—under oath, if he deems it necessary. (b) If the existence of an impediment is *certainly established,* then, (a) if the impediment is *secret,* the pastor shall continue or complete the publication of the banns and refer

the matter, without naming the parties, either to the Ordinary or to the S. Poenitentiaria; (β) If the impediment is *public* and is discovered before the publications are begun, the pastor shall not proceed further until the impediment is removed, even though he may know of a dispensation granted for the court of conscience. If a public impediment is discovered after the first or second publication of the banns, the pastor shall finish the publications and then report to the bishop. Finally, if no impediment is discovered, the pastor shall, after all the banns have been published, admit the parties to the celebration of marriage.

Except in case of necessity, the pastor shall not assist at the marriage of *vagi,* unless he has previously referred the case to the Ordinary of the diocese, or to a priest delegated by the latter, and obtained his permission.

The pastor shall gravely admonish *minors* not to marry without the knowledge or against the reasonable wishes of their parents. If they refuse to obey, he shall assist at the marriage only after having consulted the Ordinary of the diocese.

4. *Impediments in General*

By impediment is understood, in general, an obstacle that render a marriage either invalid or illicit. What we call a *canonical* impediment may be taken in a twofold sense: (a) strictly limited to ecclesiastical law, and then "canonical" impediments are only such as have been established by human authority, or the ecclesiastical law as human law; (b) taken in a wider sense, "canonical" comprises human and divine law, and, therefore, "canonical" impediments, whether diriment or prohibitive, are such as are declared or established by

the ecclesiastical authority. For it should be remembered that the Church of God is endowed with the power, not indeed to establish, but to declare and interpret, the divine law, as she also is empowered to set up impediments of her own.

The Code has reduced the number of impediments to 12 (13) properly called invalidating, and six prohibitive ones. The number 13 set in brackets indicates that legal adoption is not a universal, but only particular, impediment, depending on the civil law of the respective country.

1. Marriage impediments are (a) either *prohibitive* (forbidding but not invalidating marriage), or *diriment* (invalidating marriage); (b) either *public* (when they can be proved in the external forum), or *occult* (when no proofs are available, though perhaps one or both parties know of it). Even when the impediment exists only on one side, it renders marriage illicit or invalid, on account of the individual character of the matrimonial contract.

2. It belongs to the supreme power of the Church to declare authentically when the divine law forbids or invalidates a marriage and to establish, for persons baptized, prohibitive or invalidating impediments by way of universal or particular law.

The Roman Pontiff alone can either totally or partially abolish impediments established by ecclesiastical law, whether prohibitive or diriment. He alone can dispense from matrimonial impediments, unless this power has been granted to another by the common law or by a papal indult.

Customs tending to introduce a new impediment or to abrogate those in force, are expressly *reprobated* by the Code.

The local Ordinary has the right to forbid a particular

marriage or a marriage in a particular case. However, this forbidding decree, or *vetitum ecclesiae,* which the Ordinary may, for a just cause, issue in some extraordinary instance, has no invalidating force.

3. *List of Impediments.*—The Code distinguishes between diriment impediments of a *higher and a lower degree.* They are here exhibited in order:

MAJOR	MINOR
1. Age.	
2. Impotence.	
3. *Ligamen* or Marriage Bond.	
4. Disparity of Worship.	
5. Sacred Orders.	
6. Solemn Profession.	
7. Rape or Abduction.	
8. Crime with adultery and *uno machinante*—or without adultery but *utroque machinante.*	1. Crime with adultery and promise of marriage.
9. Consanguinity in the whole direct line and in the first and second degrees of the collateral line.	2. Consanguinity in the third degree of the collateral line.
10. Affinity in the whole direct line and the first degree of the collateral line.	3. Affinity in the second degree of the collateral line.
11. Public honesty in the first degree.	4. Public Honesty in the second degree.
12. Legal adoption.	5. Spiritual Relationship.

5. *Dispensations from Impediments*

By law (can. 1040) the Pope alone can dispense from any impediment of ecclesiastical law. The Code does not explicitly state which impediments are of ecclesiastical and which are of divine-natural law; but the common teaching refers the following to *ecclesiastical law:* age;

orders; vow; rape; crime; consanguinity in the collateral line from the second degree onward; affinity, at least from the second degree in the direct line and every degree of the collateral line; public propriety; spiritual relationship.

Impediments of *divine-natural law* are these: impotence; the marriage bond; consanguinity in all degrees of the direct line; also disparity of worship and mixed religion in cases where the faith of the Catholic party is in danger. However, since this is rather an ethico-dogmatical consequence of the impediment, we should say that both these impediments of disparity and mixed religion belong directly (*in directo*) to the impediments of ecclesiastical law, but indirectly (*in obliquo*) to the impediments of divine law.

Of a *disputed nature* are the impediments arising from consanguinity in the first degree of the collateral line and from affinity in the first degree of the direct line.

A doubt may also arise concerning *adoption,* because this is acknowledged by the Church as a prohibitive or diriment impediment wherever the civil government regards it as such. *Can the Church* dispense from this impediment? The answer, on general principles, should be affirmative, because legal adoption as an impediment is acknowledged as such only by canonical sanction, when both parties are baptized. Hence, since the Church sanctions this impediment as canonical (merely ecclesiastical), the supreme authority can dispense from it. *Will* the Church, in fact, dispense? We hardly believe so, at least not without consulting the State, or by mutual agreement, as, for instance, through a concordat.[20]

The Code also lays down the general rule that, although

[20] Also in case of a marriage of conscience, we believe, the Church would be compelled to dispense.

dispensation from ecclesiastical impediments is reserved to the supreme power, yet either the law itself or a special indult may convey this power to others.

The *law, i. e.,* the Code itself (can. 1043), grants the right of dispensation:

1. To the *local Ordinaries,* when one of the parties concerned is in *danger of death,* for the relief of conscience, and, if necessary, for the legitimation of children.

This dispensation may, under the aforesaid circumstance, be applied to all impediments of *ecclesiastical law,* diriment as well as impedient, public as well as occult, simple as well as multiplex, with the exception of the impediments of the priesthood and affinity in the direct line arising from a consummated marriage. It is, furthermore, applicable to *clandestinity, i. e.,* to marriages contracted without the prescribed form.

The conditions are that, as far as it lies with the parties, the *scandal must be removed* in each and every case. This clause does not, however, affect the validity of the dispensation. Concerning *disparity of worship* and *mixed religion* the condition is and must be complied with, at least in the form of an oral promise. If the party should refuse to comply with this last-named demand, the Ordinary could neither validly nor licitly apply the dispensation (can. 84, § 1.).

The local Ordinary can grant this dispensation to *all his subjects,* wherever they may be, and to all other persons *actually residing* within his territory.

2. The law (can. 1044) grants the same power, just mentioned, to *pastors* and to *all priests* who are called upon to assist at a marriage in accordance with can. 1098, n. 2 (marriage in danger of death with the assistance of two witnesses), provided access to the Ordinary is impossible (*solum pro casibus in quibus ne loci quidem Or-*

dinarius adiri possit). This *adiri* must be taken in the sense of regular communication, either personal or epistolary. The pastor or priest is not obliged to try to reach the Ordinary by telegraph or telephone.[21]

3. The law also grants this power to *confessors,* provided access to the local Ordinary is out of the question. But there is a further *proviso:* the confessor may make use of the power granted by law only in the *court of conscience* and in the act of *sacramental confession.* The pastor or priest should immediately inform the Ordinary of every dispensation granted *in foro externo* and also record the same in the matrimonial register. Of course, the validity of a dispensation does not depend on the fact of its being duly reported and recorded.

4. The law (can. 1045) grants the right of dispensing in the *casus perplexus* as follows: Under the conditions laid down in can. 1043, if the impediment is discovered when everything is ready for the marriage, and the ceremony cannot be delayed without the probable danger of a grave inconvenience until a dispensation is obtained from the Holy See, Ordinaries can dispense from all the impediments mentioned in the same canon.

This faculty holds good also for the revalidation of a marriage already contracted, if delay is dangerous and there is no time to have recourse to the Holy See.

[21] This is now authentically interpreted by a decision of the Pont. Comm., Nov. 12, 1922 (*A. Ap. S.*, XIV, 662 f.):

"Utrum in casibus, de quibus in cc. 1044 et 1045, § 3, censendum sit Ordinarium adiri non posse, cum nec per litteras, nec per telegraphum nec per telephonum ad eum recurri potest; an etiam cum solum per literas impossibile est, licet per telegraphum vel telephonum id fieri possit. Resp. Negative ad 1am *partem, affirmative ad* 2am*, seu ad effectum, de quo in cc. 1044 et 1045, § 3, censendum esse Ordinarium adiri non posse, si non-nisi per telegraphum vel telephonum ad eum recurri possit."*

In the same circumstances *pastor, priest, and confessor,* as mentioned in can. 1044, enjoy the same faculty, but are allowed to apply it only in occult cases which admit of no recourse to the local Ordinary, or when access to the Ordinary would entail danger of violating the secret.

As to *special indults* of the Holy See, these are generally given in the form of set faculties issued to Apostolic Delegates and to Ordinaries and prelates under the Propaganda.[22]

6. *Rules for Dispensation*

1. A dispensation granted *extra-sacramentally* should be recorded in a special book to be kept in the diocesan archives. No new dispensation is necessary for the external forum if an occult impediment afterwards becomes public. On the other hand, *a dispensation granted in the act of sacramental confession does not hold in the external forum,* and, therefore, a new dispensation is required if the impediment becomes public.

2. The faculty of dispensing granted by a *general* indult extends to multiple impediments of *diverse species.* But if an impediment arises from which they cannot dispense, the Ordinaries must petition the Apostolic See. If, however, the impediment or impediments from which they can dispense are discovered only after petitioning the Holy See for a dispensation, they may make use of their faculties.

3. All dispensations granted by a *general indult* [23] in-

[22] These faculties are not *publici iuris,* we were told in a letter from a Roman friend.

[23] We believe that Formulary III has the character of a general indult, although Ordinaries of other countries may receive a somewhat different formulary.

clude the *legitimation of children,* excepting only adulterine and sacrilegious offspring.

4. A dispensation from the impediment of *consanguinity or affinity,* granted for a certain degree, is valid even though a mistake was made concerning the degree in the petition or concession, provided the actual degree is inferior to the one which was alleged. It is valid also though an impediment has been concealed in the petition, provided said impediment be of the same species and of an equal or inferior degree.

5. A dispensation granted by the Holy See from marriage *ratified and not consummated,* or a permission given to marry again on account of the presumed death of the other spouse, always includes a dispensation from the impediment arising from adultery with promise of, or attempt at, marriage (by civil act), if there be need of such, but not from the other two impediments of crime (can. 1075, n. 2, 3).

6. A dispensation granted from a *minor impediment* is not vitiated by the fact that a falsehood has been alleged or the truth suppressed in the petition, even though the sole final cause alleged be false.

Canonical reasons for dispensation are:

a) *Angustia loci* or smallness of the place or town (not parish). This reason can be alleged by a girl living in a place with less than 1500 inhabitants, because in such a small place it is difficult for a girl to find a husband of equal social standing.

b) *Aetas feminae superadulta* or relatively advanced age of the girl, *i. e.,* if she is more than twenty-four years old.

c) *Deficientia aut incompetentia dotis,* if a woman has no dowry or property, and a relative would marry or endow her under certain conditions.

d) *Lites super successione bonorum iam extortae vel earundem grave aut imminens periculum,* which would be the case if a quarrel could be settled by a marriage between relatives, or if the husband *in spe* were the only man who could settle a lawsuit concerning property or inheritance.

e) *Paupertas viduae,* poverty of a widow, especially if she has many children.

f) *Bonum pacis,* if it is possible by a marriage to settle family or feudal quarrels and remove long-standing enmities.

g) *Nimia suspecta periculosa familiaritas,* too long courtship and great intimacy apt to cause suspicion or scandal.

h) *Copula cum consanguinea, praegnantia ideoque legitimatio prolis,* which requires marriage in order that the damage be repaired and disgrace averted.

i) *Infamia mulieris,* ill-fame of the woman, caused by the fact mentioned under n. 7, even though she be innocent.

j) *Revalidatio matrimonii,* if a marriage has been contracted according to the prescribed form and in good faith.

k) *Periculum matrimonii mixti vel coram acatholico ministro,* danger of a mixed marriage, which is present especially in small congregations and in communities with a preponderantly non-Catholic population.

l) *Periculum incestuosi concubinatus,* when near relatives live under the same roof and in imminent danger of concubinage.

m) *Periculum matrimonii civilis,* danger of a civil marriage if a dispensation be denied.

n) *Remotio gravium scandalorum et cessatio publici concubinatus;* serious scandal and cessation of public con-

cubinage are generally connected, and here supposed to be existing.

o) *Excellentia meritorum,* if one has deserved well of the Catholic faith by combating its enemies in word or writing, or by generosity, or conspicuous learning and virtue.

7. The *executor* of a rescript of dispensation is, as a rule, the local Ordinary of the petitioner, because he generally sends the petition and receives the dispensation. And the local Ordinary may execute the dispensation even though the petitioners (*sponsi*) have given up their domicile or quasi-domicile in his diocese at the time the dispensation is to be used, and have gone to another diocese with the intention of not returning. The Ordinary who executes the rescript should inform the Ordinary in whose diocese the wedding takes place.

8. With the exception of a *moderate fee* for the expenses of the chancery, the local Ordinaries or their officials are not allowed to charge anything for dispensations, unless the Holy See has expressly granted them permission to make a charge. Every contrary custom is reprobated. If a charge is made without permission, the officials are bound to restitution.

9. Those who grant dispensations in virtue of *delegated power* from the Apostolic See must mention the papal indult when they make use of it.

7. *Prohibitive Impediments*

The prohibitive impediments are the following: The simple vow (a) of virginity, (b) of perfect chastity, (c) not to marry, (d) to receive sacred orders, (e) to enter the religious state, (f) legal adoption where it is accepted by the civil law, and (g) mixed marriage.

The most important and serious impediment is that of *mixed marriage,* that is to say, when one party is a baptized Catholic, while the other party is a baptized member of another denomination.

1. *The Church severely forbids* marriages between two baptized persons, one of whom is a Catholic and the other a member of a heretical or schismatic sect; if there is danger of perversion for the Catholic party or the offspring, such a union is forbidden also by divine law.

2. The *conditions* for dispensing from this impediment are: (a) that there be just and weighty reasons; (b) that the non-Catholic party guarantee to remove the danger of perversion from the Catholic party, and both promise to have all their children baptized and educated in the Catholic faith; (c) that there be a moral certainty that the promises will be kept.

The promise must, as a rule, be given in writing.

The Catholic consort is bound prudently to procure the conversion of the non-Catholic party. This obligation is based upon charity. It should be fulfilled "prudently," says the Code, hence not by force or threats.

3. Even when a dispensation from the impediment of mixed religion has been granted, the parties cannot, either before or after their marriage before the priest, go, whether in person or by proxy, to a *non-Catholic minister* in the exercise of his office, for the purpose of giving or renewing the matrimonial consent.

If the pastor knows for certain that the parties are going to violate or have violated this law, he should not assist at their marriage, except for very weighty reasons, all danger of scandal being removed and the Ordinary having been consulted.

The parties are not, however, forbidden to present themselves before a non-Catholic minister *who acts as a*

civil magistrate, when the civil law requires it, solely to comply with a legal formality and for the sake of civil effects.

4. Ordinaries and other *pastors* of souls shall:

1°. Deter the faithful as much as they can from contracting mixed marriages;

2°. If they cannot prevent them, they shall take the greatest possible care that such marriages are celebrated according to the laws of God and the Church;

3°. After such a marriage has been contracted, either in their own territory or outside of it, they shall watch over the faithful fulfillment of the promises made.

5. The faithful should be deterred from marrying those who have *notoriously renounced the Catholic faith,* without, however, joining a non-Catholic sect, or those who are notoriously affiliated with societies condemned by the Church. The pastor shall not assist at such marriages, except after consulting the Ordinary, who, upon due consideration of all the circumstances of the case, may permit the pastor to assist, provided there is a weighty reason and sufficient provision is made for the Catholic education of all the children.

6. If *public sinners* or persons *notoriously under censure* wish to get married, and refuse to go to confession or to be reconciled to the Church before the marriage, the pastor is not allowed to assist thereat, except for grave and urgent reasons, concerning which he shall, if possible, consult the Ordinary.

7. Since a marriage contracted against the prohibition of the Church is merely illicit, but not invalid, cases may arise which require *straightening.* How is that to be done?

First let it be noted that the case of a merely illicit marriage is comparatively rare. A marriage not contracted in the presence of the pastor (priest) and two

witnesses is not merely illicit, but also invalid. If it is contracted properly, no unlawfulness attaches to it. However, it may happen, through ignorance on the part of the pastor, or by surprise, or in consequence of stubborn refusal of the two conditions or promises, that a marriage is contracted in the prescribed form, but without a dispensation, and therefore unlawfully. In that case the mode of procedure would be the following:

(1) If the parties were married in church, and not before a non-Catholic minister, as such (*qua sacris addictus*), the pastor shall instruct them concerning the sin they have committed and the strict obligation of complying with the required conditions, especially that concerning the Catholic education of their offspring, and assure them that any contrary promises are not binding, because unjust. If they acknowledge the wrong they have done, and show signs of repentance, they may be admitted to the Sacraments, with the imposition of a wholesome penance. And this is all that may or should be done in such a case; for the marriage is valid, and the dispensation cannot affect its lawfulness after it has been contracted.

(2) If the parties have been married in church, but have presented themselves before a non-Catholic minister, as such (can. 1063), the Catholic party has incurred the *excommunicatio latae sententiae,* reserved by law (can. 2319, § 1, n. 1) to the Ordinary. This is the only censure, none other being mentioned in the Code. The way a pastor must proceed is as follows: (a) He must seek to persuade the Catholic party to repent of his or her fault and deny him or her the Sacraments until he or she does so; (b) If there are signs of repentance, he must demand the two promises, as a rule in writing; (c) If these promises are sincerely made, he shall apply the faculty of absolving from the episcopal censure, or procure the

same if he does not yet enjoy it, and impose a wholesome penance. No renewal of consent is required.

If a *public penance* is prescribed by the diocesan statutes or a special injunction of the Ordinary, to repair the scandal given, the pastor is not at liberty to remit it. Nothing else is to be done, because the marriage is supposed to be valid.

(3) If the marriage is invalid because of lack of the prescribed form—*vitio clandestinitatis*—the pastor must refuse the Catholic party the Sacraments until he or she repents and makes the two promises, and then obtain a dispensation. Should the parties have given their consent before a non-Catholic minister, the censure must also be removed. In that case the procedure would be as follows: (a) The *litterae reversales* or the two promises must be agreed to, either in writing or orally; (b) Absolution from censure must be given; (c) A dispensation from the impediment of mixed religion must be obtained and applied; (d) The matrimonial consent must be renewed in the presence of the pastor and two witnesses.

8. *Diriment Impediments*

The Code describes the twelve (thirteen) diriment impediments as follows:

1. *Age.*—A boy cannot validly contract marriage before he has completed his sixteenth, and a girl before she has completed her fourteenth year. Although marriage contracted after the aforesaid age is valid, pastors of souls should deter from it young people who have not yet reached the age at which, according to the custom of the country, marriage is usually contracted.

2. *Impotency.*—Anterior and perpetual impotency,

whether in man or woman, whether known to the other party or not, whether absolute or relative, renders marriage invalid by the very law of nature. If the impediment is doubtful, be the doubt one of fact or of law, marriage should not be hindered.

Sterility does not render marriage either invalid or illicit. Here it may be well to add that particular decisions concerning particular cases cannot be construed into general rules.

3. *Marriage bond.*—Those bound by the bond of a former marriage, even though it was not consummated, attempt marriage invalidly, unless they can claim the privilege of the faith.

Although the previous marriage is invalid or for some reason was dissolved, it is not lawful to contract another before the nullity or dissolution of the first has been legally and certainly established.

The *method of legally proving the death of a person* is as follows:

(1) If possible, an authentic document must be obtained from the records of the parish or hospital or asylum or military department, or from civil authority.

(2) If no such document can be obtained, two witnesses may be admitted. These must be trustworthy persons and testify under oath. They must have known the person whose death they attest, and their testimony must agree as to the place, the cause, and the essential circumstances of the death.

(3) If two witnesses cannot be produced, one will suffice, provided he was acquainted with the party and the circumstances of the death, and nothing unsuitable or unlikely is found in his deposition. These witnesses may also testify from hearsay, provided their testimony agrees with circumstances known from other sources, and pro-

vided their information has come from direct witnesses.

(4) If no witnesses are available, the judge may resort to circumstantial evidence, which is furnished by conjectures, presumptions, and circumstances that preceded, accompanied, and followed the supposed death. Examples are furnished by military companions, especially officers, or by the companions and circumstances of a voyage either on land or sea; whether the person in question traveled alone or in company, for what purpose, which was his route and destiny, whether a wreck took place, etc.

(5) Rumor may be admitted if other proofs are wanting. A rumor must be established by two trustworthy witnesses who testify under oath to its reasonableness as also to the general opinion of the people and their own conviction.

(6) Finally, a newspaper advertisement may effect the desired result, especially if the manager is furnished with the necessary information.

4. *Disparity of worship.*—A marriage is null when contracted by a non-baptized person with a person baptized in, or converted to, the Catholic Church from heresy or schism.

If the party, at the time of the marriage contract, was commonly held to have been baptized, or if his or her baptism was doubtful, the marriage must be regarded as valid in accordance with can. 1014, until it is proved with certainty that one party was baptized and the other was not.

The rules laid down for mixed marriages must be applied also to marriages to which there is the impediment of disparity of worship.

What about *doubtful Baptism?* The Holy Office has more than once declared that a doubtful Baptism must

be considered valid in respect of marriage. The rules to be followed in such cases are the following:

a) If the ritual of the sect to which the person belonged prescribes Baptism, but without the required matter and form, each case must be treated singly and on its own merits.

b) If the respective sect baptizes validly, according to its ritual, the Baptism is to be considered valid. If there is room for doubt, even in the first mentioned case, the Baptism must be regarded as valid in reference to marriage.

c) If it is evident from actual custom that Baptism in a sect is invalid, then marriage, too, is invalid if contracted between one thus invalidly baptized and a Catholic, because of the impediment of disparity of cult.

Of special interest for our country is the answer of the Holy Office to the Bishop of Savannah. Its first point is merely a reaffirmation of the principle stated above, namely, that the presumption is in favor of the validity of Baptism in respect of marriage. But the bishop wished to know further when the presumption of validity may be duly applied. The answer was: (a) If the parents belong to a sect which rejects Baptism, the latter is not to be presumed; (b) The same holds good if the sect rejects infant Baptism (as, *e. g.,* the Baptists do); (c) Also if the parents belong to no sect whatever, but are absolutely indifferent in religious matters. If, on the other hand, the parents belong to a sect that requires and generally administers Baptism, and if they were zealous in the practice of their religion, Baptism may be presumed. If only one of the parents belongs to a sect that prescribes and administers Baptism, and this one, whether father or mother, was the chief edu-

cator of the party in question, Baptism is to be presumed, provided the other parent, who was less zealous in religious observance, did not positively object to it. If no presumption is admissible, the case must be examined for itself and, if the doubt remains, reported to the Holy See.

5. *Sacred Orders.*—A marriage is invalid when attempted by clerics in major orders, *i. e.,* from subdeacon up.

6. *Religious profession.*—Marriage is null also if attempted by religious who have taken solemn vows, or simple vows that have the force of invalidating marriage by a special disposition of the Holy See.

7. *Abduction or rape.*—Between the abductor and the women whom he has abducted with a view to marriage, there can be no (valid) marriage as long as she remains in the power of the abductor.

If the abducted woman, after being separated from the abductor and taken to a place of safety, consents to have him for a husband, the impediment ceases.

As far as the nullity of marriage is concerned, the forcible detention of a woman is equivalent to abduction when a man violently detains her with a view to marriage, in the place where she dwells or to which she has repaired of her own accord.

8. *Crime.*—There can be no valid marriage between:

1°. Those who, during the same legitimate marriage, have committed adultery with and promised marriage to each other or attempted it, even by a merely civil act (*promissio cum adulterio*).

2°. Those who, during the same legitimate marriage, have committed adultery together and one of them conjugicide (*uno machinante et adulterio*).

3°. Those who, even without adultery, have caused the

death, of a partner by mutual coöperation, either physical or moral (*utroque machinante absque adulterio*).

9. *Consanguinity.*—In the direct line consanguinity invalidates marriage between all ascendants and descendants, whether legitimate or natural.

a) According to can. 96, *consanguinity is reckoned* by lines and degrees. A *line* is simply the series of persons descended from the same stock. The *degree* is determined by the number of generations or persons forming the line. The line has been likened to a ladder,—the original image of ancestry,—which contains two sides and a more or less well defined number of degrees. The line may be *direct* or indirect, *i. e.*, collateral. The former exists between persons of whom one is descended in a direct line from the other, either upwards in the direct ascending line, or downwards in the direct descending line. Add now the degree or measure of distance in the relationship of one person to the other, and recall can. 96, § 1: "In the direct line there are as many degrees as there are generations, or as there are persons, not counting the common stock."

(b) In the *collateral* line Matrimony is invalid to the third degree inclusive, in such a way, however, that the impediment is multiplied as often as the common stock is multiplied.

The degrees are reckoned thus: if both sides of the line are equal, there are as many degrees as there are generations on one side; if they are unequal, there are as many degrees as there are generations on the longer side.

Matrimony is never permitted when there is a doubt whether the parties are related to one another in some degree of the direct line or in the first degree of the collateral line.

10. *Affinity.*—Affinity in the direct line annuls marriage in any degree; in the collateral line it annuls it to the second degree inclusively.

The *extent* of affinity, according to can. 97, is as follows: It exists only between the man and the blood relations of the woman, and likewise between the woman and the blood relations of the man. It is reckoned in this wise, that blood relations of the man are related to the woman by affinity in the same line and the same degree, and *vice versa.*

A multiplication of this impediment takes place as often as the impediment of consanguinity, from which it originates, is multiplied; also by repeated marriages with blood relations of the deceased consort.

11. *Public Propriety.*—The impediment of public propriety (or decency) arises from an invalid marriage, whether consummated or not, and from public or notorious concubinage; and it annuls marriage in the first and second degree of the direct line between the man and the blood relations of the woman, and *vice versa.*

12. *Spiritual relationship* is contracted: (1) Between the baptizing minister and the baptized person; (2) Between the sponsor and the person baptized.

13. *Legal Adoption.*—Those whom the civil law considers incapable of contracting marriage with each other on account of the legal relationship arising from adoption, are incapable of contracting marriage validly also under the canon law.

9. *The Matrimonial Consent*

Under this heading the Code treats, not only of the qualities of the matrimonial consent in the strict sense, but also of such conditions as may affect the consent and were formerly classed with impediments.

1. The matrimonial consent—which alone, without the copula, suffices to render a marriage complete,—is an act of the will by which the parties deliver and accept the exclusive and perpetual right to each other's body for the purpose or performing acts apt for the procreation of children.

In order that matrimonial consent be possible, it is necessary that the contracting parties be aware that marriage is a permanent union between man and woman for the purpose of begetting children. Ignorance of this fact is not presumed in those who have reached puberty.

The persons who give the consent must be *iure habiles,* that is to say, not prevented by law from giving the matrimonial consent. For instance, one bound by a marriage bond is *iure inhabilis,* that is, he cannot give his consent to another woman. If he does so, it is not a matrimonial consent, because the divine (if not the natural) law prevents him from making the consent a matrimonial one, as the object is wanting.

Knowledge or belief that the marriage will be void does not necessarily exclude matrimonial consent.

The *internal consent* of the will is always presumed to correspond to the *words or signs* used in the celebration of marriage.

If one or both parties, by a positive act of the will, would exclude marriage itself or the right to the conjugal act, or an essential property or marriage, the contract would be null and void.

To contract a valid marriage the parties must be present, either personally or by proxy; they must, if they are able to speak, express the matrimonial consent by words, and are not allowed to use signs.

A marriage may be contracted by *proxy or through an*

interpreter. But the pastor shall not assist at such a marriage, unless there is a just cause and no doubt exists concerning the genuineness of the mandate or the trustworthiness of the interpreter; if time permits, the Ordinary's permission should be obtained.

Although a marriage is invalid because of an impediment, the consent once given is presumed to continue until it is revoked.

2. *Error,* or the state of mind in which one mistakes one thing or person for another, renders marriage *invalid* in three cases: (a) if the error concerns the *person,* as when James mistakenly marries Gemma, whereas his real intention was to marry Nelly; (b) if a *free* person marries a *slave,* supposing him to be free; slavery must here be taken in the strict sense, not as mere serfdom, or dependence, or subjection; (c) if the error, though accidental or directed to a quality, concerns a person in such a way that it amounts to an error about the person, as, for instance, when one is so firmly determined to marry the eldest daughter of a wealthy man that he would not consider any other daughter of the same man.

Otherwise an error about the *qualities* of a person, whether rich, poor, healthy, pretty, etc., never renders a marriage invalid. Neither does a simple error as to the unity, indissolubility, or sacramental character of marriage, even if it be the cause of the contract, vitiate the matrimonial consent. Note the term "simple error," which is a purely mental state, although the will may also be influenced.

3. Different, however, must be the verdict when a *condition* is attached. For

a) If a condition concerns the *future and is against the substance of marriage,* it renders the marriage invalid. The Schoolmen expressed this truth thus: A

condition that is against the substance of marriage, vitiates the latter, but not the condition itself.

b) When a condition has been made and not withdrawn, if it concerns the future and is necessary, or impossible, or dishonest, but *not contrary to the substance of marriage,* it must be regarded as non-existing.

c) If a condition attached to the consent and not withdrawn concerns the future and is lawful, it *suspends* the validity of the marriage until the condition can be verified. If, for instance, one would set up this condition: "I'll marry you if I shall be elected to Congress," or "if you bring me a dowry of $10,000," it would concern the future and be licit, but unless the stipulation were mutual, formal, and lasting, the marriage would not on that account be declared invalid, nor would it be conditional.

d) If the stipulated condition concerns the *past or present,* the marriage is either valid or invalid according to the verification or non-verification of the condition. Thus, if one would marry a woman on condition that she were a virgin, the marriage would be objectively valid if the woman really were a virgin, but the marriage rights could not be made use of until the condition was ascertained.

The trouble with "conditional consent" consists in the fact that it cannot easily be proved in the external forum. Therefore, unless an authentic document or two trustworthy witnesses testify to a condition, the matrimonial court will pronounce in favor of validity.

4. *Violence and fear* may also influence the matrimonial consent. Therefore a marriage is invalid when it is entered into because of violence or grave fear, unjustly caused by an external agent, and there is no alternative but marriage.

No other fear, even though it was the cause of the contract, entails the nullity of a marriage.

10. *Form of Celebrating Marriage*

Although the matrimonial consent duly given to each other by capable persons suffices, *per se,* to constitute marriage, yet positive law is entitled, to safeguard a public institution such as Matrimony, to declare how the consent must be manifested; in other words, the legitimate power has a right to surround the marriage consent with certain formalities. This practice was in vogue from ancient times both in and outside the Church.

Later ecclesiastical legislation may be divided, for practical purposes, into three stages, which we designate as the *"Tametsi,"* the *"Ne temere,"* and the *Code* periods.

a) The *"Tametsi period"* lasted from the Council of Trent (1563) to 1908. It is characterized by a lack of uniformity in discipline. In the *United States* the *Tametsi* was supposed to have been published, but to affect only strictly Catholic marriages in the province of New Orleans, in the province of San Francisco (together with the territory of Utah, except that part which lies east of the Colorado River, in the province of Santa Fe, except the northern part of Colorado), in the diocese of Vincennes, in the city of St. Louis and the parishes of St. Geneviève, Florissant, and St. Charles of the same archdiocese, in Kaskaskia, Cahokia, French Village, and Prairie du Rocher, all now situated in the diocese of Belleville. In some parts of the U. S. *neither Catholics nor non-Catholics* were bound by the Tridentine decree. Thus the following ecclesiastical provinces were exempt: Baltimore, Philadelphia, New York, Boston, Oregon, Milwaukee, Cincinnati (except the diocese of Vincennes),

St. Louis (except the city itself and the places mentioned above), and Chicago (with the exception of the places mentioned in the Belleville diocese). To this exempt territory also belonged: England, Scotland, Denmark, Norway, several German provinces, Greece, Russia, Turkey, Japan, and China. The main points of this decree were:—the *parochus proprius*[24] and the two witnesses.

b) The "*Ne temere* period" commenced *April 19, 1908*, though the decree had been promulgated Aug. 2, 1907. From this time onward each and every marriage in every part of the world, with the exception of the German Empire and Hungary, had to be contracted as the Code now rules.

c) The *Code,* which went into effect May 19, 1918, *i. e.,* ten years after the above-named decree, abolished the local exceptions and made the law with regard to the form of marriage universal. These dates are set down here, not to encumber the memory, but for a practical purpose, which will be easily understood, especially by court officials.

Valid Assistance

1. Now only such marriages are valid as are contracted before the pastor, or the Ordinary of the diocese, or a priest delegated by either the pastor or the Ordinary, and at least two witnesses. The pastor and the Ordinary may validly assist at marriages:

1°. Only from the day they have taken canonical pos-

[24] There is little, or no, weight to be attached to the attempt to prove that all the canonists were mistaken in stressing this condition. What about the Roman Court? Was it also in error?

session of their benefice, or entered upon their office, provided they are not excommunicated, or interdicted, or suspended from office by a judiciary sentence, or declared suspended, interdicted, or excommunicated.

2°. Only within the *boundaries of their respective territory,* in which, however, they may validly assist at marriages not only of their own subjects, but also of others.

3°. Provided they are *not compelled by violence or grave fear* to ask and receive the consent of the parties.

Besides the pastor, there are others who certainly meet the requirements of the Code, *viz.:* (1) those mentioned in can. 451, § 2, n. 2, as taking the place of a pastor with full pastoral powers, *i. e.,* actual pastors of an incorporated parish or chapter; (2) the *oeconomi* or parochial administrators appointed by the bishop during the vacancy of a parish; (3) Substitutes who take the place of pastors during vacation or a sudden absence, unless the bishop or pastor excepts assistance at marriages; and (4) parochial coadjutors or assistants given to a disabled priest, if they take the place of the disabled pastor in all things.

This interpretation, printed in Vol. V of our Commentary, p. 273, has been fully corroborated by the Pontifical Commission for the Authentic Interpretation of the Code.[25]

The Code does not explicitly state anything concerning the *witnesses,* and hence the former practice must be observed. The witnesses must be present simultaneously with the minister, and both at the same time. Therefore, if they would be in the vestibule or sacristy of the church, from where they could neither hear the words nor see the ceremony, they could not be styled

[25] July 14, 1922 (*A. Ap. S.,* XIV, 527).

witnesses, even though they had been called for that purpose.

A distinction must be drawn between valid and licit assistance.

Valid assistance can be rendered by all persons of either sex who are physically and mentally able to realize the meaning of the marriage contract. Non-Catholics, pagans, and infidels are not excluded. But *licit* assistance at Catholic marriages can be rendered only by Catholics, unless the Ordinary, for grave reasons, permits assistance by non-Catholics, and provided no scandal is given.

With regard to the admission of *Freemasons* we could find no positive prohibition. However, it appears certain that at least prominent Masons are not easily to be admitted, on account of the scandal that might arise to Catholics. But the Ordinary may judge differently.

The reason why non-Catholics should be, and, as a rule, are excluded from being witnesses, is the prohibition of passive assistance at Catholic rites (*communicatio in divinis passiva*).

Here a remark may be pertinent as to Catholic witnesses at non-Catholic marriages. If the wedding is performed in the presence of a non-Catholic minister, *qua* minister (*sacris addictus*), the Catholic party is guilty of violating the law of the Church which forbids active communication in the religious rites of a non-Catholic denomination. But if the minister acts only as a public magistrate, the ceremony bears the character of a purely civil rite, which cannot be called strictly sacred, and therefore participation is not forbidden. This applies also, and *a fortiori,* if a lay justice of the peace performs the civil act.

We may also call attention to can. 2316, where *communicatio in divinis* with heretics is said to induce the suspicion of heresy.[26]

2. *Delegation for valid assistance.*

The pastor and the Ordinary of the diocese, who can validly assist at marriages, may also grant permission to another priest to assist validly within the limits of their respective districts.

This permission, however, must be granted to *a specified priest for a specified marriage.* General delegations are excluded, except in case of assistant coadjutors for the parish to which they are appointed; in all other cases general delegation is invalid.

The pastor or Ordinary of the diocese shall not grant such a permission unless he has complied with the regulations of the law for establishing the free status of the nupturients.

Presumed delegation, therefore, as well as *general* delegation, is excluded. An exception to this rule is made in favor of *curates* or *assistant priests,* who may receive a general delegation and may assist validly at any marriage, within the boundaries of their parish, unless the pastor, or the letter of appointment, expressly reserve this right to the pastor.

The delegation must be given for a *specified marriage,* which means that it is directed to certain, particular marriages. The Ordinary, bishop or vicar-general, may delegate a priest—not a deacon or subdeacon—to assist at specified marriages in any parish of the diocese.

3. The *requisites for licit assistance* are thus determined by the Code. The pastor or the Ordinary of the diocese assist at a marriage licitly:

[26] See Vol. VI, p. 192ff. and Vol. VIII; p. 287 f., of our Commentary.

a) After having ascertained the free status of the contracting parties, as the Code prescribes (especially in can. 1029–1031) and after the publications of the banns have been made or dispensed from;

b) After having ascertained the fact of domicile, or quasi-domicile, or monthly stay of at least one of the parties in the place where the marriage is to take place, or of actual stay in the case of *vagi.*

If the conditions set down under a) are not verified, the pastor or Ordinary, in order to assist lawfully at a marriage, must have the permission of the pastor or Ordinary of the place where one of the contracting parties has a domicile, or quasi-domicile, or monthly stay, except in the case of *vagi,* who have no residence anywhere, or unless a weighty reason excuses from demanding such permission.

Every marriage should be performed before *the pastor of the bride,* unless there are just reasons for breaking this rule. If the parties belong to different rites, their marriage must be celebrated in that rite and before the pastor of the bridegroom, unless particular laws dictate otherwise.

Pastors who assist at marriages without the permission required by law, are not allowed to keep the *stole fees,* but must hand them to the parties' own pastor. The canon restricts the obligation of refunding to cases of illicit assistance. Hence if the conditions prescribed in this canon have been complied with, the stole fee may be kept by the assisting pastor. This rule binds also in case of necessity, where no permission was required.

4. *Case of Necessity* (can. 1098).—If the pastor, or the Ordinary, or a priest delegated by either, as prescribed by can. 1095 and 1096, cannot be had without great inconvenience, then:

a) In *danger of death,* marriage may be validly and licitly contracted in the presence of two witnesses; the same holds good also where there is no danger of death, provided it can prudently be foreseen that this condition of things will last for one *month.*

b) In both cases, however, if a priest is available, he must be called to assist at the marriage, together with the other two witnesses; but the marriage is valid if contracted in the presence of the witnesses only.

5. *Extent of the Law* (can. 1099).—The following are bound to observe the form prescribed above:

1°. All persons baptized in the Catholic Church, as well as those converted from heresy or schism, even though they (whether Catholics or converts) have afterwards fallen away, as often as they contract marriage among themselves;

2°. Catholics as well as converts (n. 1) who marry non-Catholics, either baptized or non-baptized, even after having obtained a dispensation from the impediment of mixed religion or disparity of cult;

3°. Orientals marrying persons of the Latin Rite who are bound by that form.

Saving the rule in n. 1, § 1, of this canon, non-Catholics, whether baptized or not, who marry among themselves, are nowhere bound to observe the Catholic form of marriage. Neither are those bound to observe the Catholic form who, born of non-Catholic parents and baptized in the Catholic Church, have grown up in heresy, schism, or infidelity, or without any religion at all, and marry a non-Catholic.

6. *Marriage Rites.*—Apart from the cases of necessity, the rite prescribed in the liturgical books approved by the Church or received by praiseworthy custom are to be observed.

The Code, however, clearly and precisely distinguishes between Catholic and mixed marriages.

a) Concerning *Catholic* marriages it says that the *pastor* should take care that the spouses receive the *solemn nuptial blessing,* which may be imparted even after they have lived in the matrimonial state for a long time, but only at Mass, according to the special rubrics provided for the purpose, and on days not forbidden.

The solemn blessing may be imparted only by the priest who is validly and licitly authorized to assist at the marriage, or by his delegate.

It may not be superfluous to summarize the liturgical rules for the celebration of marriage.

1. The *ritual* or private *blessing.*—The priest asks the consent of both parties: "N., wilt thou take N., here present," etc., to which both answer: "I will." Then the priest says: *"Ego coniungo vos,"* etc., after which follows the blessing of the ring. The bridegroom puts the ring on the finger of the left hand of the bride. Then the priest blesses the couple: *"Confirma hoc,"* etc. This is all that belongs to the ritual blessing. It would be the ordinary form for Catholic marriages during the forbidden seasons or outside the nuptial mass. However, since, according to can. 1108, the bishop may permit the solemn blessing to be given even during the "holy" seasons, we will now see what this is.[27]

2. The *solemn blessing* comprises:

(a) the ritual blessing just described, to be imparted by the priest clothed in the vestments prescribed for Holy Mass, except the maniple, which he assumes after the blessing.

[27] It certainly must be styled an abuse never to sing or celebrate a nuptial mass, and it involves contempt of a Sacrament and Sacramental.

(b) The nuptial Mass, either *Pro Sponso et Sponsa,* or a Mass of the day. The *Missa pro Sponso et Sponsa* is a votive Mass and must, therefore, be said *without* the *Gloria* and *Credo* and with *Benedicamus* at the end. This rule applies also when the Mass is solemnly sung, and no contrary custom may be tolerated. The second or third oration must be added according to the rubrics for the respective day. This Mass also contains two prayers for the spouses, one after the Pater Noster (*"Propitiare"*), the other before the *"Placeat,"*—both to be said by the priest facing the couple. This Mass may be said on all days not prohibited by the rubrics. The rubrics forbid it on the following days: all Sundays and holydays of obligation; all holydays of the first and second class within the octaves of Epiphany, Easter, Pentecost, and Corpus Christi; all privileged vigils and ferial days, excluding feasts of the first and second class. On these days the Mass *de festo vel die occurrente* must be said. However, the orations taken from the formulary of the *Missa pro Sponso et Sponsa* must be inserted after the *Oratio diei* and other orations, if such are prescribed in the Ordo, but before the *imperata.* On holydays like Epiphany, Trinity Sunday, Corpus Christi, which exclude other orations, the *Oratio pro Sponso et Sponsa* is to be added *sub unica conclusione.* If the bishop, according to can. 1108, permits solemn celebration during the forbidden time, even on Christmas or Easter, the same orations, *sub unica conclusione,* must be added to the oration or orations of the day. And whenever the orations *pro Sponso et Sponsa* are said, the special orations after the *"Pater Noster"* and before the *"Placeat"* must also be recited.

(c) At *mixed marriages* the consent of the parties must

be asked and received as in Catholic marriages; but all sacred rites are prohibited. If, however, great evil is foreseen from this prohibition, the Ordinary may permit one or the other of the usual ecclesiastical ceremonies, always exclusive of the nuptial Mass.

7. *Recording marriages.*—As soon as possible, *i. e.,* not later than three days after the marriage ceremony, the pastor, or whoever takes his place, shall enter in the marriage register the names of the parties and witnesses, the place and date of the marriage, as well as other data prescribed by the rituals or diocesan statutes; he must do this even though another priest delegated by himself or the Ordinary assisted at the marriage.

The pastor shall also enter every marriage contracted in his parish in the baptismal record. If the parties, or one of them, were baptized elsewhere, the pastor in whose parish the wedding was celebrated shall inform the pastor of the parish where the party or parties were baptized, either personally or through the episcopal chancery, of the fact of the marriage, so that the latter may enter it in his baptismal record. "Red tape," some may say; but this contempt is not shared by a *defensor vinculi* or any one who has ever had to do with a matrimonial court. Rome will hardly recede from this prescription, though petitions asking for a modification have been submitted. Whenever a marriage was contracted in case of necessity (can. 1098), the priest who was present, or if no priest was present, the lay witnesses, are bound conjointly with the contracting parties to see to it that the marriage is recorded as soon as possible in the parish register.

Concerning a *"marriage of conscience,"* which is one contracted without the publication of the banns and in

secret, but not without the formalities prescribed, the local Ordinary, but not the vicar-general, is competent (see can. 1104–1107).

8. The *time and place for weddings* are thus described: Marriages may be contracted at any time of the year, but the solemn nuptial blessing may not be imparted from the first Sunday in Advent to Christmas, inclusive, and from Ash Wednesday to Easter Sunday, inclusive. However, the bishops may, for good reasons, permit solemn weddings even during these forbidden seasons, provided the liturgical rules be observed and the parties admonished to refrain from too great ostentation. Whether the reasons are sufficient the bishop must judge. A sufficient reason would be if the pastor visited a mission only at rare intervals, or the couple lived at a great distance from church; also the sudden departure of a soldier for the barracks or battlefield.

All marriages between Catholics should be celebrated *in the parish church.* If another church or oratory, either public or semi-public, is preferred, the permission of the Ordinary or pastor should be obtained.

The Ordinary may, in some exceptional case and for just and sound reasons, allow a marriage to be celebrated in a *private house.* In churches or oratories of seminaries or of women religious the Ordinary should not grant permission for marriages to be celebrated, except in cases of urgent necessity, and then only with proper precautions.

Marriages *between Catholics and non-Catholics* are to be performed *outside the church.* However, should the Ordinary in his discretion be convinced that evil might follow from insistence on this law, he may dispense from it, provided, however, that all sacred rites are

omitted, or at least, in any and every case, no nuptial Mass is celebrated.

11. *Effects of Marriage*

The effects of marriage concern first and above all the parties themselves, and secondly, the primary end of Matrimony, the procreation of children.

1. Valid marriage unites the contracting parties by a bond which is of its very nature perpetual and exclusive. Christian Matrimony, moreover, imparts sacramental grace to husband and wife if they place no obstacle in the way.

Husband and wife, from the moment of marriage, have equal rights and duties concerning the acts pertaining to conjugal life.

Unless otherwise provided by special laws, the wife partakes of the state of her husband as far as canonical effects are concerned.

2. With regard to the *children* the Code says that parents are under the gravest kind of obligation to provide to the best of their ability for the religious and moral as well as the physical and civil education of their children, and for their temporal well-being.

Then it proceeds to define the *legitimacy* of children by saying that those are legitimate who are conceived *or* born in valid or putative wedlock.

A marriage is certainly valid if contracted without an invalidating impediment and according to the form prescribed by the Church. A putatively valid marriage is one contracted with due observance of the prescribed form, but with an invalidating impediment, the existence of which is unknown to one of the parties. To this rule exception is made: (a) if one of the parties is bound

by solemn religious profession when making (unlawful) use of the marriage rights, or (b) if one is bound by holy orders when making (unlawful) use of these rights. The offspring born of parents thus impeded would be sacrilegious. The other kinds of illegitimate children are: *natural* or *spurious* or *adulterine*. Illegitimate children may, however, be legitimated by the subsequent marriage of their parents, contracted validly or putatively, either by a new contract or by revalidation, though not consummated, provided the parents were capable of contracting marriage between themselves at the time of the conception, pregnancy, or birth.

Legitimated children share in all the effects granted by Canon Law, unless the latter makes special exceptions. These canonical effects concern especially the capacity of being ordained without a dispensation and obtaining ecclesiastical benefices and appointments, also certain prelatures of inferior rank. The cardinalate and the episcopate are excepted.

12. *Dissolution of the Matrimonial Bond*

1. A valid (Christian) marriage, which has been consummated, cannot be dissolved by any human authority or for any reason except by death. An unconsummated marriage between two baptized persons, or between a baptized and a non-baptized person, can be dissolved by *solemn religious profession or by a dispensation granted by the Apostolic See* for a just cause, if requested by both parties, or by one, even though it be against the will of the other.

What we have said elsewhere[28] concerning consummation before baptism, still seems to us the more

[28] Vol. V, p. 343 f. of our Commentary.

probable view. For the *matrimonium consummatum* before baptism becomes *ratum* after baptism. It is, therefore, specifically the same marriage, because the same consent between the same persons constitutes and continues to constitute the *matrimonium consummatum et ratum,* and such a marriage cannot be dissolved by any human authority—not even by the Pope.

2. There is, then, according to our view, only one way to solve a valid, and consummated marriage, *viz.,* the *Pauline Privilege.* This means dissolution of a legitimate marriage between non-baptized persons, even though consummated, in favor of the faith. The salient points are, briefly these:

a) *Both parties must be unbaptized.* This is a serious feature, for we know of cases which presented difficulty because the parties were separated for some time, and one of them was baptized in a sect. If a doubt of the valid baptism of one of the parties prevails, the privilege cannot be applied, until the fact is proved that Baptism was either not at all or invalidly conferred. This privilege cannot be applied to a marriage between a baptized and an unbaptized person contracted with a dispensation from the impediment of disparity of worship.

b) The *faith* in favor of which the privilege can be applied is, at least *de facto,* the faith preached by St. Paul, who promulgated this privilege. But this faith must in one way or another be jeopardized. It *is* endangered by the Catholic party dwelling with the unbeliever or by his departure, be this moral or physical, by hatred of faith, conjugal infidelity, and danger to the faith of the offspring. Does this privilege apply to the *Catholic faith exclusively?* We stated above that the faith here understood is that of St. Paul—which *we Catholics* take to be identical with the Catholic faith, for

there is only *one* true faith. That the one Lord, or his disciple, St. Paul, could have meant error, is hard to believe. Favors are not extended for the purpose of extending evil. This is our opinion. In matter of fact non-Catholics have another expedient for getting rid of the other party and certainly will not trouble ecclesiastical courts.

c) In order to apply this privilege validly, *interpellations* must be made by the converted and baptized party to establish (1) whether the other party will be converted and receive Baptism; (2) whether he or she would at least consent to peaceful cohabitation without offense to the Creator. These interpellations must *always be made,* unless the Apostolic See has declared otherwise.

They should, as a rule, be made at least in *summary* and extrajudicial *form* with the authority of the Ordinary of the converted party. The same Ordinary may grant to the unbelieving party, who asks for it, time to deliberate—a respite—under the explicit condition, however, that failure to reply within the term conceded will be regarded as a negative answer.

Private interpellations made by the converted party are valid and lawful, when the prescribed form cannot be followed; but in that case evidence that the interpellation has been made must be given by at least two witnesses, or in some other legal form.

If the interpellations were omitted by virtue of a declaration of the Apostolic See, or if the infidel party has (either explicitly or tacitly) returned a negative answer to them, the baptized party may contract a new marriage with a Catholic, unless he or she has, after Baptism, given just cause to the infidel party for departing.

Even though the baptized party has renewed marital relations with the infidel party after Baptism, he or she

does not thereby lose the right to contract a new marriage with a Catholic, and that right may be used if the infidel, having changed his mind, withdraws without a just cause, or refuses to cohabit peacefully, without blaspheming the Creator.

The *Ordinaries,* in cases called *ordinary, i e.,* those in which it is impossible to ascertain the whereabouts of the infidel consort, or in which an extrajudicial and summary investigation shows that the absent spouse cannot be interpellated,[29] *should proceed according to the Code.* Therefore: (a) The marriage must have been contracted by both parties whilst they were certainly unbaptized; a dubious Baptism would not permit the application of the privilege; (b) After Baptism (but not before) either a summary canonical interpellation authorized by the Ordinary, or a private interpellation duly proved, must be made to the infidel party concerning the two questions; (c) In the case of polygamists one question: "whether the unbeliever will be converted," is sufficient; (d) After a negative answer, or undue delay in answering, the baptized party may contract a new marriage, in virtue of which the former marriage is dissolved and the infidel party becomes free. No other intervention on the part of the Ordinary is needed.

13. *Separation*

Husband and wife are bound to live together unless they have a just cause for separating. *Just causes* are: Adultery, provided the other party has not consented to the crime, or has not been responsible for it, or has neither expressly nor tacitly condoned it, or committed

[29] An ordinary case is also that of insanity of one of the parties, *i. e.,* the one to be interpellated.

the same crime; if one party joins a non-Catholic sect; or gives his children an education which is not Catholic; or leads a scandalous and disgraceful life; or gravely endangers the spiritual or bodily welfare of the other; or renders the marital union intolerable by acts of cruelty. These and similar reasons give the injured spouse the right to withdraw by appealing to the Ordinary of the diocese, or even without legal process, if the guilt is proved and delay would be dangerous.

After separation, the children must be educated by the innocent spouse. If one of the parties is non-Catholic, the education of the children belongs to the Catholic party, unless the Ordinary decides otherwise for the good of the children and their Catholic education is duly provided for.

14. *Revalidation of Marriage*

An invalidly contracted marriage may be revalidated either by renewing the consent or by a *sanatio in radice.*

1. *Simple revalidation* of a marriage which is invalid on account of a diriment impediment requires that the impediment cease, or be dispensed from, and that the consent be renewed at least by the party who is aware of the impediment.

This renewal of consent is required by ecclesiastical law even if both parties gave their consent in the beginning and never withdrew it.

The renewal of the consent must be a new act of the will ratifying a marriage which is known to have been null from the beginning.

If the *impediment is public,* the consent must be renewed by both parties in the form prescribed by law.

If the impediment is *occult* and known to both parties, it suffices that the consent be renewed privately and in secret by both.

If the impediment is occult and *known to only one* of the parties, it is enough that the party who is aware of it should renew his consent privately and in secret, provided the other party's consent continues.

A marriage which is invalid for lack of consent is validated if the party who had not consented, now consents, provided the consent of the other party continues.

If the want of consent was merely *internal,* it suffices that the party who did not give consent, now gives it interiorly.

If the want of consent was *external,* it is necessary that the consent be manifested outwardly; and this outward manifestation must be made in the form prescribed by law if the want of consent was public, whereas a private and secret manifestation suffices if the defect was occult.

A marriage null for *want of form* must be contracted again according to the prescribed form in order to become valid.

2. The *sanatio in radice of a marriage* is its revalidation, implying besides a dispensation from, or the cessation of, the impediment, the dispensation from the (ecclesiastical) obligation of renewing the consent, and, by a *fictio legis,* retroaction as regards the canonical effects.

Revalidation takes place at the moment the favor is granted; the retroaction is understood to reach back to the moment of the marriage, unless the contrary is stated.

A dispensation from the obligation of renewing the consent may be granted without the knowledge of one or both parties.

Therefore the validity of the marriage, once invalidly

contracted, begins at the moment—*ex nunc*—when the Cardinal Prefect puts his signature to the decree of revalidation.

Entirely different from this genuine assertion is the other that the law feigns or assumes by a *fictio iuris* the validity of the marriage from the time it was first, invalidly, contracted. For this fiction, as in civil law, almost exclusively concerns the legal effects of the legitimation of offspring. Concerning these the *sanatio* works *ex tunc, i. e.,* from the moment of the first celebration.

Any marriage contracted in spite of an impediment of *ecclesiastical law,* or without legal form, may be revalidated *in radice,* provided a naturally sufficient, though juridically ineffective, consent was given and continues.

But a marriage contracted with an impediment of the *natural or divine law,* even if the impediment afterwards disappears, cannot be revalidated *in radice,* not even from the moment when the impediment has ceased.

If the consent of one or both parties is wanting, the marriage cannot be revalidated *in radice,* regardless of whether the consent was wanting from the beginning, or was given at the beginning and afterwards withdrawn.

If the consent was wanting in the beginning, but given latter, the *sanatio* may be granted from the moment the consent was given.

A *sanatio in radice* can be granted *only by the Apostolic See,* or by one who has received the faculty from that See, as our bishops who have applied for this faculty according to Formulary III.

3. *Second Marriage.*—Although a chaste widowhood is more honorable than remarriage, second and further marriages are valid and lawful, provided the former marriage has been duly dissolved and the free status proved.

But a woman who has received the *solemn nuptial blessing* cannot receive it again. Note that what is forbidden is only the solemn nuptial blessing, which is given during Mass (whether *pro sponso et sponsa* or the Mass of the Day) with the proper orations and special prayers; not the blessing of the Roman Ritual. This solemn blessing may and should be imparted even to a widow, if she has not received it at her first marriage, even though she may be *enceinte*.

TITLE VIII

THE SACRAMENTALS

(Can. 1144–1153)

1. *Nature and Administration.*—The Sacramentals are objects or actions resembling the Sacraments and of which the Church makes use by way of intercession to obtain especially spiritual effects.

The legitimate *minister* of the Sacramentals is any clergyman duly empowered and not forbidden to exercise his power by the competent ecclesiastical authority.

No one who lacks the episcopal character can validly perform consecrations, unless he is allowed to do so by law or in virtue of an Apostolic indult. However, *any priest may perform blessings which are not reserved to the Roman Pontiff,* to the bishops, or to others. And blessings given by a priest without the necessary permission, though they be reserved, are valid, unless the Apostolic See has added an invalidating clause to the reservation.

Blessings *reserved to the Pope* are: those of the pallium, the Agnus Dei, the Golden Rose, and the swords of princes.

Blessings *reserved to the bishops* are: the blessings of abbots, the consecration of virgins, the blessing of holy oils and chrism, the dedication of churches, the consecration of altars and sacred vessels (not vestments), and the blessing of bells.

Blessings *reserved to others* are those reserved to the *pastor* as per can. 462; and those reserved to *religious orders and congregations*.[30]

In performing or administering Sacramentals, the *rites* approved by the Church must be carefully observed.

Consecrations and blessings, those called constitutive as well as those called invocative, are invalid if the formulas prescribed by the Church have not been employed.

2. *Use of the Sacramentals.*—Blessings are to be bestowed chiefly upon Catholics; but they may also be given to catechumens, and, unless the Church prohibits it, to non-Catholics in order to obtain for them the light of faith, or, together with it, bodily health.

Objects consecrated or blessed by a constitutive blessing should be treated reverently and not used for profane purposes, even though they may be in the possession of private persons.

The *exorcism* should not be performed without the special and express permission of the Ordinary. But having obtained this it may be pronounced not only over faithful Catholics and catechumens, but also over non-Catholics and excommunicated persons. The ministers of the exorcisms employed in Baptism, consecrations and blessings, are the persons who administer these

[30] See *Rituale Rom.*, Tit. VIII, cc. 20–23, but cc. 20–22 are no longer reserved. *Ibid.*, Tit. VIII, c. 1–19, blessings reserved to religious. What we have said elsewhere, we here repeat: devotional articles destined for the use of all the faithful should not be subject to a caste.

sacred rites. Hence for these cases no special permission from the Ordinary is required.

PART II

SACRED PLACES AND TIMES

(Can. 1154–1254)

Sacred places are places set aside for divine worship or for the burial of the faithful, by a consecration or blessing prescribed for this purpose in the approved liturgical books.

Consecration belongs, by law, to the local Ordinary, if he is endowed with the episcopal character. The local Ordinary is also entitled to *bless* sacred places which do not belong to exempt religious. The same is to be said concerning the *laying of corner-stones.* Consecrations and blessings must be recorded.

TITLE IX

CHURCHES

(Can. 1161–1187)

1. By the term *church* is understood a sacred building, dedicated to divine worship, which may be made use of by all the faithful for public services. A church may not be built, even by exempt religious, without the express permission of the bishop.

2. All churches must be consecrated or blessed. *Parish churches* should, if possible, be *consecrated.* The *feast of the* consecration is to be celebrated annually. Each consecrated or blessed church must have its own title, which cannot be changed after the dedication.

The *titular feast* is to be celebrated annually according to the rubrics.

Churches cannot be dedicated to a *Beatus* without an Apostolic indult.

3. *Church bells* must be consecrated or blessed according to the rites prescribed in approved liturgical books. Their use is regulated exclusively by the church authorities. Aside from the stipulations made by the donor, with the approval of the Ordinary, a blessed bell cannot be used for purely profane purposes, except in cases of necessity, or by permission of the Ordinary, or by lawful custom.

4. A *church does not lose its consecration or blessing* unless it is totally destroyed, or the larger part of the walls has collapsed, or the Ordinary has turned the building over to profane uses.

5. A church is *desecrated* or violated by the following acts, provided they are certain, notorious, and committed in the building itself, to wit:

1°. The crime of homicide;

2°. Injurious and serious shedding of blood;

3°. Putting the Church to impious or sordid uses;

4°. The burial of an infidel or of a person excommnunicated by a declaratory or condemnatory sentence.

The desecration of a church does not entail the desecration of the cemetery, even though the latter adjoins the church, and *vice versa,* desecration of the cemetery does not involve desecration of the church.

Until reconciliation is effected, it would be unlawful to hold divine services in a desecrated church or to administer the Sacraments or bury the dead there. Hence all liturgical services which have been instituted by divine or ecclesiastical law and are performed exclusively by the clergy, are strictly forbidden in a desecrated church.

If the desecration happens *during* the divine office, this must cease immediately. If before the Canon of the Mass, or after Communion, the Mass must be discontinued. If between the beginning of the Canon and Communion, Mass must be continued until Communion, *viz.*, until the *"Corpus tuum."* This is the rule of the Missal.

6. *Reconciliation* should be performed as soon as possible. If the fact of desecration is doubtful, provisional reconciliation may take place. A church which was merely blessed may be reconciled by its rector or by any other priest with the (at least) presumed consent of the rector. A *consecrated* church can be reconciled only by the Ordinary; but in cases of serious and urgent necessity, if the Ordinary cannot be reached, the rector of a consecrated church may reconcile it and inform the Ordinary afterwards.

The reconciliation of a blessed church may be effected with ordinary holy water, whereas for a consecrated church water blessed according to the liturgical laws should be used.

7. All to whom it pertains shall take care that the churches are kept neat, as becomes the house of God; business and fairs, even though for pious purposes, must not be held in them, and in general everything that is incompatible with the holiness of the place must be excluded.

8. The administration of the goods (property) destined for repair and upkeep of divine service belongs to the pastor, who may—but is not bound to—have trustees. If there are *trustees they are forbidden* to meddle:

1°. With the functions of divine worship in church;

2°. With the manner and time of ringing the bells or the order of services in the church and cemetery;

3°. With determining the manner of taking up collections, making announcements, and other acts which refer to divine worship or the adornment of the church, and are performed in church;

4°. With the arrangement of the altars, communion rails, pulpit, organ and organ loft, seats and benches, collection boxes and other things belonging to divine service;

5°. With the admission or rejection (because of unfitness according to traditional usage or the laws of the Church) of sacred utensils and other things destined either for divine worship or the embellishment of the church or sacristy;

6°. With the manner of writing, arranging or keeping the parochial books and other documents which belong to the archives of the parish.[31]

Offerings made in favor of a parish church or mission, or of a church located within the boundaries of a parish or mission, are administered by the respective pastor or missionary. The pastor, the missionary, the rector of a secular church, whether he be a secular priest or a religious, must administer these offerings according to church law and render an account to the Ordinary.

9. The *duty of repairing the parish church* rests upon the following in the order named:

[31] Here we will add from *Conc. Balt. III* (n. 287) the prescription (still in force) concerning the *qualifications of trustees:* (a) They must have performed their Easter duty; (b) they must rent a seat or otherwise contribute to the support of the church; (c) they must send their children to a Catholic school; (d) they must not be members of any secret or forbidden society. The same Council (*l. c.*) also rules, in accordance with the Code, that it is the bishop who decides whether trustees are necessary or not, how many of them there should be, and how they should act. This latter enactment is negatively determined by the Code.

1°. On the church funds, as described above;

2°. On the advowson or patron;

3°. On those who receive some income from the church, in proportion to such income, to be fixed by the Ordinary;

4°. On the parishioners, whom the Ordinary should exhort rather than compel to contribute.

TITLE X

ORATORIES

(Can. 1188–1196)

1. *Name and Kinds.*—An oratory is a place destined for divine worship; not, however, principally for the purpose of having all the faithful worship there publicly. There are three kinds mentioned and defined by the Code:

a) A *Public Oratory* is one built for the benefit of a certain corporation, or of private individuals, but in such a manner that all the faithful have the right to frequent it, at least at the time when divine services are held there.

b) *Semi-public Oratories* are such as are built for the convenience of a certain community or class of people, but are not open to all the faithful indiscriminately. Here stress is laid on the corporate or specified class of faithful who make up the ordinary attendance at a chapel. The rest of the faithful cannot set up a claim to be admitted, and if they are admitted, it is by mere favor, which should prejudice neither the community itself nor the parish at large.

c) *Private* or *Domestic Oratories* are those erected in private homes for the convenience of a family or of

private individuals. The term *family* must here be taken in its strict sense, and excludes artificial persons and corporations.

2. *Erection.*—Public oratories require the same formalities for erection as churches; semi-public oratories need the permission of the Ordinary. In colleges and boarding schools for the young, in high schools and lyceums (intermediate classical schools), in fortresses and barracks (garrisons), in prisons and asylums, etc., but one principal oratory may be erected, unless the Ordinary judges that need or great usefulness demand more.

3. *Functions.*—In a *public* oratory, therefore, provided it has been dedicated for permanent divine worship by the authority of the Ordinary through blessing or consecration, all sacred functions may be held which are not forbidden by the rubrics.

In a *semi-public* oratory, lawfully erected, all divine offices and ecclesiastical functions may be held, as far as the rubrics and the rulings of the Ordinary permit.

In *private* oratories the local Ordinary may permit one Mass to be said, not habitually, but upon occasion, in some extraordinary case, and provided there is a just and reasonable cause.

In private *cemetery chapels* several Masses may be permitted. Private oratories are neither consecrated nor blessed, but must be exclusively reserved for divine service.

TITLE XI

ALTARS

(Can. 1197–1202)

1. In the liturgical sense of the word, an *immovable* or a *fixed altar* means the upper table with its supports,

consecrated as a whole together with the table. A *movable* or *portable altar* is a stone, generally of small size, which is consecrated alone, and called portable altar or sacred stone; or the same stone with its support, even though the latter was not consecrated with the table.

In every consecrated church at least one (preferably the main) altar must be immovable; but in churches that are merely blessed, all altars may be movable.

The *table* (*mensa*) of an immovable altar as well as a sacred stone must consist of one natural stone, whole and not easily crumbled. The altar stone is to be a single slab, which excludes several parts.

In an immovable altar the table or stone plate must extend over the whole altar and be properly joined to the support; the support itself, or at least the side props or columns which support the table, must also be of stone.

The *sacred stone* (portable altar) must be large enough so that at least the host and the larger part of the base of the chalice may find room thereon.

A *sepulchre* containing relics of saints and closed with a stone is required for every kind of altar.

2. An altar must be *consecrated,* and the consecration remains until the altar is desecrated. An *immovable altar loses its consecration* if the table or *mensa* is removed from its support, even if only for a moment; but in this case the Ordinary may grant permission to any priest to reconsecrate the altar with the short rite and formula.[32] (Can. 1200, § 1).

[32] The formulæ, though not yet embodied in the *Rituale Romanum* (at least as far as we could see in the latest edition) are contained in the *Acta Apostolicae Sedis,* 1920, Vol. XII, pages 449–453. There is one formula for reconsecration if consecration was lost according to can. 1200, § 1; and another in case consecration was lost as per can. 1200, § 2, nn. 1 and 2.

Fixed as well as portable altars lose their consecration:

1.° By a fracture which is regarded as very considerable by reason either of the break itself or of the anointed place;

2.° If the relics are removed, or the lid of the sepulchre is broken or removed, unless this is done by the bishop or his delegate for the purpose or fastening, repairing, or replacing it, or for the purpose of inspecting the relics. (Can. 1200, § 2; formulas see in Appendix). A slight crack in the cover of the sepulchre does not involve desecration, and any priest may fill it up with cement.

The desecration of a church does not involve the desecration of its fixed or portable altars, and conversely.

TITLE XII

ECCLESIASTICAL BURIAL

(Can. 1203–1242)

1. *Ecclesiastical burial* consists in bringing the corpse to the church, holding the funeral service over the same in church, and entombing it in a place destined for the burial of departed Catholics. *Cremation* is strictly prohibited.

2. *Cemeteries* must be either solemnly or simply blessed. Burial within the Church is not permissible except for certain personages.

The Catholic Church has the right to possess her own cemeteries. Where this right has been violated, and there is no hope of recovering it, the local Ordinaries shall see to it that the civil cemeteries are blessed, provided the majority of the persons to be buried in them belong to

the Catholic faith, or at least that Catholics be granted a separate space, which should be blessed.

If not even that much can be obtained, then the grave of each Catholic must be blessed singly according to the liturgical books.

Each *parish should have its own cemetery,* unless the local Ordinary assigns a common cemetery to several parishes.

Priests and clerics should, if possible, have a special burial place, located in a more prominent part of the cemetery; the priests' lot should be distinguished from that of the lower clerics if it can conveniently be done.

The canonical regulations concerning the interdict and the desecration and reconciliation of churches apply also to cemeteries.

A body that has been laid to final rest by ecclesiastical burial cannot be exhumed without the permission of the Ordinary.

3. *Funeral services* should be held for every departed Catholic who is not deprived of this honor, in his *parish church,* unless another church has been lawfully chosen. If the deceased belonged to several parishes, the funeral should be held in the church of the parish within which he died.

All Catholics may freely *choose* their funeral church or burial place, unless they are expressly forbidden to do so by law. Those forbidden are boys who have not yet completed their fourteenth and girls who have not yet completed their twelfth year. In their stead, even after their death, the parents or guardians may make the choice.

Wives as well as boys and girls who have completed

the age of fourteen or twelve, respectively, are free to make their choice, and are not hampered in this matter by marital or parental power.

Professed religious of whatever rank or dignity, except bishops, are deprived of the right of choosing their funeral church or burial place. *Novices,* however, may select their funeral church.

4. The *duties and rights of pastors* are thus determined in can. 1230:

Where it is customary the pastor should accompany the corpse from the house to the church, even though the parishioner may have died in a strange parish.

In *exempt* churches the *parochus proprius* may take up the body and accompany it to the exempt church; but the cross behind which the funeral procession marches must be that of the exempt church, and the rector of the latter is entitled to hold the funeral services.

In *non-exempt* churches the celebration of the funeral service belongs to the pastor in whose parish the church selected for the funeral is located, provided the deceased was a subject of his. Therefore the rector or chaplain of the church in which the exequies are held must make way for the *parochus proprius* of the deceased. If the latter refuses to perform the services, the rector or chaplain of the *ecclesia funerans* may do so.

As to *religious* of female institutes and their novices,—if they die in their religious house, their bodies must be brought to the threshold of the enclosure, whence the chaplain conducts the funeral procession to the church or oratory, where he holds the exequies. But the chaplain is entitled to this privilege only if the religious are exempt from the jurisdiction of the pastor. If they are subject to the pastor in whose parish the religious house is located, the latter is obliged and entitled to conduct the

funeral. If sisters or novices die outside their religious house, the common law takes effect.

The *burial* should be held by the priest who performed the funeral service or by his substitute.

As to *funeral processions* the Code rules that, except for a weighty and just reason approved by the Ordinary, the pastor has no right to prevent secular or religious clerics, or pious societies whom the family or their heirs wish to invite, from accompanying the body to the church and grave-yard and assisting at the funeral. But the clergy of the respective church should be invited above all others by the family of the deceased or his heirs.

No societies or emblems manifestly inimical to the Catholic religion are to be admitted. Concerning the emblems of Masonic lodges—for these are here chiefly intended—the Holy Office has decided as follows: Ecclesiastical sepulture may be given only to such members of a condemned sect as have received the Sacraments and have not, after receiving them, demanded to be buried with or under sectarian insignia, or have formally retracted their desire. If such emblems are placed on the coffin against the will of the deceased, they must be removed before the funeral starts (*ante associationem cadaveris*). The same rule applies to banners or standards.

All those who accompany the funeral must obey the orders of the pastor concerning the arrangement of the funeral cortège,—with due regard, of course, to the rules of precedence.

Clerics shall never act as pall-bearers for a defunct layman, no matter what his rank or dignity may have been, because the clerical dignity transcends every secular rank and degree.

5. *Funeral fees* should be fixed by diocesan statute,

and, if feasible, be classified as to expenditure and pomp. The poor shall by all means be given a decent funeral and burial, inclusive of the exequies, free of charge, according to the sacred liturgy and the diocesan statutes.

Concerning the *quarta funeris,* or pastor's portion when the funeral is not held in the parish church, the custom does not prevail in this country, so far as we are aware.

After the funeral services the minister shall *enter in the book of the dead* the name and age of the deceased, the name of his parents or consort, the date of his demise, who administered the Sacraments, what Sacraments, and the place and date of the funeral.

6. *Those deprived of ecclesiastical burial* are, besides the non-baptized, the following:

1.° Notorious apostates from the Christian faith and persons who notoriously belonged to a heretical or schismatical sect, or to the Masonic sect, or to other societies of the same kind;

2.° Persons excommunicated and interdicted after a condemnatory or declaratory sentence;

3.° Those who died in a duel or from a wound received in a duel;

4.° Those who have deliberately killed themselves;

5.° Those who ordered their body to be cremated, unless they have retracted their order before death;

6.° Other public and manifest sinners.

All these are deprived of Christian burial unless they gave signs of repentance before death. If the pastor has a doubt, for instance, concerning a suicide, or whether a wound received in dueling was the direct cause of death, he should, if time permits, inform the Ordinary and abide by his decision. If the doubt remains after the pastor has been advised by the Ordinary, ecclesiasti-

cal burial may be granted, provided no scandal is given. Scandal may be removed by divulging the fact that the deceased gave public signs of repentance, or that, for instance, the suicide was committed in a moment of mental aberration according to a physician's verdict.

For those who have been deprived of ecclesiastical burial no (public) Requiem Mass, no anniversary or other public funeral service may be held.

Holy Seasons

1. The supreme authority of the Church alone can establish, transfer, or abolish holydays as well as days of fasting and abstinence.

Local Ordinaries may, *per modum tantum actus* (*i. e.*, for a transient reason and for the time being, but not for always or habitually), prescribe the observance of a holyday or of a day of fasting and abstinence.

2. *Pastors* in individual cases and for a just cause may dispense their subjects from the common law of keeping feasts and from the observance of fast and abstinence, or from fast and abstinence at the same time.

3. Holydays as well as days of fasting and abstinence run *from midnight to midnight, i. e.*, twenty-four hours, counting from twelve o'clock midnight to twelve o'clock of the following night, according to the time in vogue.

TITLE XIII

HOLYDAYS

Holydays are all Sundays and, in the United States, the feasts of the Immaculate Conception, Christmas, New Year's (the Circumcision), the Ascension, the Assumption of the Blessed Virgin Mary, and All Saints'.

On these days a *Mass* must be heard, and *servile work* must cease, so far as custom does not permit it to be carried on.

The law of hearing Mass may be complied with by attending Mass in any Catholic rite, in any church, public or semi-public oratory or grave-yard chapel, with the sole exception of private chapels in the case of those not included in the favor.

TITLE XIV

ABSTINENCE AND FASTING

1. The *law of abstinence* forbids the eating of flesh meat and broth or soup made of meat; but it does not forbid eggs, *lacticinia,* and seasoning with animal fat.

The law of *fasting* permits only one full meal a day, but it does not forbid the taking of some food for breakfast and supper.

The quantity and quality of these repasts is left to local custom. Care must be taken that one does not take "something" between meals too often, as this might eventually constitute a considerable quantity or amount to a full meal.

Flesh meat and fish may be taken at the same meal, and dinner and supper may be interchanged.

The law of *abstinence* binds all who have completed the *seventh year of age.* It obliges even on the vigils of suppressed feasts if these vigils were observed by reason of a particular precept or vow.

The law of *fasting* obliges all Catholics from the *twenty-first year of age,* completed, until the beginning of the sixtieth year.

2. *Abstinence* only must be observed on all *Fridays* of

the year. The law of fasting and abstinence must be observed on Ash Wednesday, on the Fridays and Saturdays of Lent, on the Ember days, and on the vigils of Pentecost, the Assumption, All Saints', and Christmas.

The fast only must be observed on all other days of Lent.

On Sundays and holydays of obligation (outside of Lent) the laws of fasting and abstinence do not bind; nor need vigils of holydays of obligation which fall on a Sunday be observed on the preceding day. Thus, if the Feast of the Assumption, or All Saints', or Christmas should fall on a Monday, the vigil need not be observed on the preceding Saturday or Sunday.

But if Christmas falls on a Monday, as it did in 1922, the preceding Saturday (before the fourth Sunday of Advent) must be observed on account of its being an Ember day.

PART III

DIVINE WORSHIP

(Can. 1255–1264)

1. To the Blessed Trinity as well as to each of the three Divine Persons, to Christ our Lord also under the sacramental species, is due the cult of *latria;* to the Blessed Virgin Mary, the cult of *hyperdulia;* to the other Saints reigning with Christ in Heaven, the cult of *dulia.*

To the sacred relics and images a *relative veneration* and worship are due, in as far as these relics and images refer to persons. The *dulia* which we exhibit to the person of a Saint is absolute, in contradistinction to the merely relative worship which we give to relics and images. Another essential difference is that relics and

images, being inanimate objects, may be venerated, but not invoked.

The Apostolic See alone has the right to prescribe the sacred liturgy and to approve liturgical books.

The ministers of the Church depend exclusively on their ecclesiastical superiors, not on civil authority in the exercise of divine worship.

Prayers and devotions are not to be permitted in churches and oratories without previous revision by, and express permission of, the local Ordinary, who shall report difficult cases to the Apostolic See. The local Ordinaries cannot approve new litanies for public recital.

2. *Communicatio in sacris* or participation in non-Catholic worship is forbidden or permitted under the following conditions: It is unlawful for Catholics to assist actively at, or to take part in, the religious services of non-Catholics. A passive or merely material presence may be tolerated for reasons of civil duty or honor, at funerals, weddings, and similar celebrations, provided no danger of perversion or scandal arises. In doubtful cases the reason for assisting must be grave, and recognized as such by the bishop.

3. The *seats* in churches should be separate for men and women, if possible. The men should assist at sacred functions, either in or outside the church, with their heads uncovered, unless a reasonable national custom or special circumstances justify a departure from this rule. The women, on the other hand, should cover their heads and be dressed modestly, especially when they approach the Lord's Table.

Prominent seats may be granted to magistrates, but outside the sanctuary; otherwise the reservation of seats depends on the permission of the local Ordinary. *Pew-rent* is not forbidden.

4. The *Church music* must be in keeping with the liturgical laws, but this does not mean that Gregorian Chant alone is permissible. Besides, a reasonable custom allows women to sing in the choir. If they are female religious, they should be secluded from public view.

TITLE XV

RESERVATION AND WORSHIP OF THE BLESSED SACRAMENT

(CAN. 1265–1275)

1. Provided there is a guard and a priest to say Mass at least once a week, the Blessed Sacrament *must* be kept in every parish and quasi-parish church, and in every church adjoining the house of exempt religious, male as well as female.

With the permission of the local Ordinary the Holy Eucharist *may* be kept in collegiate churches, in the principal public or semi-public oratories of charitable or religious houses, as well as in those of ecclesiastical colleges, in charge of either the secular or the religious clergy.

2. The *Blessed Sacrament altar* can be only one altar in a church, and, except in cathedral churches, should, as a rule, be the main altar, which, therefore, should be more elaborately decorated than the rest.

3. The *tabernacle* must be immovably fixed in the middle of the altar, be skillfully constructed, safely locked, appropriately decorated according to the liturgical rules, empty, and so carefully guarded that there is no danger of profanation.

The *key* to the tabernacle in which the Blessed Sacrament is kept must be carefully guarded; the responsibility for carrying out this law rests with the priest who has charge of the church or oratory.

At least *one lamp* must burn day and night before the tabernacle in which the Blessed Sacrament is kept.

4. The *consecrated hosts* reserved for the communion of the faithful or for the exposition of the Blessed Sacrament must be fresh and should be *frequently renewed,* the old ones having been duly consumed, so that there is no danger of corruption.

5. *Private exposition* of the Blessed Sacrament, *i. e.,* with the ciborium, may be held for any reasonable cause without the permission of the Ordinary in churches and oratories in which the Blessed Sacrament is lawfully kept.

Public exposition, i. e., with the ostensorium or monstrance, may be held in all churches on the feast of Corpus Christi and every day within its octave, at Mass and Vespers, but not on other occasions, except for a just and weighty reason, especially of a public character, and with the permission of the diocesan Ordinary, which is required also for churches which belong to exempt religious.[33]

The *Forty Hours' Devotion* should, if possible, be held every year; if it cannot be held, a short adoration lasting at least a few hours should be substituted for it.

TITLE XVI

WORSHIP OF SAINTS, IMAGES, AND RELICS

(Can. 1276–1289)

1. The good and useful practice of invoking the Saints, especially the Blessed Virgin, and venerating their relics and images, is regulated by the authority of the Church, which "canonizes" some and declares others "Blessed."

[33] For a further explanation the reader may be referred to our Commentary, Vol. VI, pp. 228 ff.

Canonized *Saints* may be worshipped everywhere and by any act of *dulia,* but the *Blessed* (*beati*) may be worshipped only in the places and manner expressly granted by the Roman Pontiff.

It is praiseworthy for nations, dioceses, provinces, confraternities, religious institutes, places and corporations to choose *patron saints* with the approval of the Apostolic See. But a *"beatus"* can be chosen as patron only by a special indult.

2. *Unusual images* should not be tolerated, and the local Ordinaries should never allow sacred images to be publicly exhibited to the veneration of the faithful, unless these images are in keeping with the approved usage of the Church. Neither shall the Ordinary permit the exhibition, in churches or sacred places, of images which offend against dogma or against decency or propriety, or are apt to lead the ignorant into error.

Images which possess *great value* by reason of their antiquity, artistic finish, or the veneration given to them, and which have been exhibited to the worship of the faithful in churches and public oratories, if in need of repairs, must not be restored without the written consent of the Ordinary, who shall seek advice from wise and experienced men before he grants such a permission; nor should they be alienated without his consent.

3. *Reliquiae insignes* (important relics) are: the entire body, head, arm, forearm, heart, tongue, hand, limb of a saint or blessed person, or that part of his body in which a martyr suffered death, provided it be entire and not too small. The *alienation* of such relics is prohibited. Only genuine relics may be *exhibited* for public veneration in churches, including the churches of exempt religious. The genuineness of a relic is ascertained by an authentic document, issued either by a cardinal, or by

the local Ordinary, or by a clergyman who has obtained an Apostolic indult authorizing him to authenticate relics.

A vicar-general needs a special mandate to issue such a document.

Relics should be carefully preserved and guarded against profanation, especially in case of hereditary transfer or the sale of reliquaries.

TITLE XVII

PROCESSIONS

(Can. 1290–1295)

1. Unless there be an immemorial custom to the contrary, or unless, in the prudent judgment of the bishop, local circumstances demand a deviation from the rule here laid down, only one solemn procession is permitted in the same place through the public streets on the feast of *Corpus Christi.* This procession is to be arranged and led by the more prominent church of the respective city or town, and all the clergy and male religious orders, including the exempt, as well as the confraternities of laymen, must attend it. Only those regulars who live perpetually in strict enclosure or dwell three thousand paces from the city are excused from participation.[34]

2. Neither the pastor nor any one else can introduce new processions or transfer or abolish the customary processions without permission from the local Ordinary.

At processions which are peculiar to any church, all the clergy belonging to that church must be present.

[34] From the wording of the text it is evident that the local Ordinaries cannot compel either the secular or religious clergy to attend the Corpus Christi procession of the cathedral, if held only within the premises of the cathedral property.

TITLE XVIII

SACRA SUPELLEX

(CAN. 1296–1306)

1. *Sacred vessels,* utensils, vestments, linens, especially when blessed or consecrated as required by the liturgical rules, and used for public worship, must be *carefully guarded* in the sacristy of the church or in some other safe and decent place, and may not be used for profane purposes.

An *inventory* should be made of the whole stock and diligently preserved.

As to the *material and form* of the *sacra supellex,* the liturgical laws, ecclesiastical tradition, and as far as possible, the rules of sacred art should be observed.[35]

Rectors of churches and others entrusted with the care of the articles known as *sacra supellex* shall diligently preserve them and keep them clean and neat.

2. The *blessing* of sacred vessels, utensils, etc., provided no sacred anointment is required, may be performed by the *pastors* for the churches and oratories situated within their parishes; by the rectors for their own churches; by *priests delegated* by the local Ordinary, within the limits of their delegation and the jurisdiction of the *delegans;* by *religious superiors* and priests of the same institute delegated by the superior for their own churches and oratories and those of nuns subject to them.

3. The *loss of blessing* (or consecration) occurs: (a)

[35] We cannot convince ourselves that "Gothic" vestments—like the so-called Gothic letters or types—have a monopoly, or should be used in Romanesque churches.

When the blessed article or object is so badly damaged or altered that its form is lost and it becomes unfit for its proper purposes; (b) When the article or object has been used for unsuitable purposes or exhibited for public sale.

Chalice and paten do not lose their consecration by the wearing away of the gilding, or by the process of regilding; but if the gold plating wears off, there is a grave obligation to have the vessel replated.

4. In *handling* such sacred things, care must be taken that the chalice with the paten, as well as the purificators, palls, and corporals, after having been used for the Sacrifice of the Mass, before being washed, are touched only by clerics or by those who have charge of them.

Concerning the *ostensorium, ciborium,* and *custodia* there is no prohibition of touching these objects, nor are laymen obliged to use a cloth in handling them.

Purificators, palls, and corporals, which have been used in the Sacrifice of the Mass, shall not be given to lay persons, even though they be religious, to be washed by them before they have been washed by a cleric in higher orders. The water of the first washing should be poured into the waste-hole, called *sacrarium,* or, if there is no *sacrarium,* into the fire.

TITLE XIX

VOWS AND OATHS

(CAN. 1307–1321)

1. *Vows*

1. The *essence* of a vow consists in a deliberate and free promise made to God concerning something pos-

sible and better; it obliges by reason of the virtue of religion. Since free and deliberate action is required, the legislator declares a vow made under the influence of grave and unjust fear void, although in itself fear would not necessarily render it null.

2. A vow is *public* when it is accepted by a lawful ecclesiastical superior in the name of the Church; all vows not so accepted are *private*.

A vow is *solemn* if it is acknowledged as such by the Church; otherwise it is *simple*.

A vow, as such, obliges no one but the person who makes it, for the reason that a vow involves a strictly personal obligation, which can neither be assumed nor fulfilled except by the person who has made the promise.[36]

3. *Reserved private vows* (*i. e.*, reserved to the Holy See), are those of perfect and perpetual chastity and of entering a religious order with solemn vows, provided they are made unconditionally and after the eighteenth year of age has been completed.

The vow of perfect and perpetual chastity (*perfectae et perpetuae castitatis*) tends to an act that is perfect in itself and by reason of the matter intended. If this vow is taken from a motive lower than love of the virtue of chastity, it is imperfect. Such a lower motive may be vanity, physical imbecility, or even stubbornness. A vow of chastity would be imperfect on the part of the matter vowed, if only virginity, or integrity of the body, or the obligation not-marrying, was contracted.

4. The *obligation* of a vow ceases: (a) after the time

[36] If a vow is made by a parish, or municipality, or religious community, it obliges only those who have made it, unless an ordinance or statute was made to perpetuate the obligation.

conditionally set for its fulfillment has expired; (b) if there is a substantial change in the thing promised; (c) if some condition on which the vow was made to depend, is not fulfilled; (d) if the cause or object for which the vow was made ceases to exist; (e) by nullification, dispensation, or commutation.

The *irritation or nullification* of vows is not within the power of pastors or confessors, but they are called upon, in and outside the confessional, to instruct parents, guardians, and husbands that they enjoy the power of irritating vows of those subject to them.

All private vows not reserved to the Holy See may be *dispensed* from by *local Ordinaries* who enjoy ordinary power over their own subjects and *peregrini.* And since this power is ordinary, it may be communicated to others.

Besides the Apostolic See may grant the power of dispensing to others, and it is generally understood that the *confessors* belonging to religious orders, *i. e.,* regulars, are *ipso facto* endowed with this power, which, however, extends only to vows that are not reserved or do not trench on the rights of a third person.

The *commutation* or change of a vow into something better, or equally good, is subject to the same rules as dispensation.

2. *Oaths*

1. An oath means the invocation of the Divine Name in witness of the truth of a statement. It cannot be taken except with truth, judgment, and justice.

Oaths demanded or admitted by Canon Law cannot validly be taken by proxy.

2. An *assertory oath* is one by which God is called upon to witness an assertion of a past or present fact;

a *promissory* oath, one by which God is called upon to witness the execution of a resolution, vow, or agreement. An oath, in general, obliges by reason of the virtue of religion, but a promissory oath, besides, follows the nature and conditions of the act to which it is attached, be it contract, stipulation, or simple agreement.

3. The *obligation of an oath ceases:*

1°. If it is condoned by the one in whose favor it was taken;

2°. If the thing promised is substantially changed, or if, by reason of a change in the circumstances, the oath becomes sinful, or entirely indifferent, or an obstacle to a higher good;

3°. If the final cause or condition under which the oath was taken has ceased to exist or failed;

4°. By irritation, dispensation or commutation.

PART IV

THE TEACHING OFFICE OF THE CHURCH

1. Jesus Christ has entrusted to the Church the deposit of faith, in order that, by the continual assistance of the Holy Ghost, she should preserve the revealed doctrine and expound it faithfully.

The Church, independently of the civil authority, possesses the right of teaching all nations. Correlative to this right is the duty of teaching men, and on their part the duty of obtaining a knowledge of the truth and embracing the Church of God. This obligation, incumbent on all, is derived from the divine law.

The material object of the Church's teaching office is the *depositum fidei,* which consists of the written word and tradition, guarded by the infallible custodian, the

Pope, and by the bishops, as teachers depending on the Roman Pontiff.

2. To this right corresponds the *duty* of all the faithful to avoid danger to the faith and to make public profession of it when called upon.

Opposed to the faith are three classes of persons: (a) *heretics* who, having been baptized, retain the name of Christians, but obstinately deny or doubt some of the truths that must be believed by divine or Catholic faith; (b) *apostates,* who have given up the Christian faith entirely and fallen away from it; (c) *schismatics,* who refuse to obey the Sovereign Pontiff or to live in union with those who submit to him.

Catholics are *warned against holding theological disputations and conferences* with non-Catholics. To hold such a disputation or conference, especially in public, requires a special permission from the Holy See, or, in urgent cases, from the local Ordinary.

TITLE XX

PREACHING THE WORD OF GOD

(CAN. 1327--1351)

I. The *pastor* is in duty bound to prepare the children of his flock for the reception of the Sacraments of Penance and Confirmation by a continuous course of instructions held at stated times each year, and to instruct the children with special care, if nothing prevents him, especially during Lent, in order that they may receive first Communion worthily.

Besides instructing the Children, the pastor shall not neglect to instruct more fully in Christian doctrine the

adolescent boys and girls who have already received their First Communion.

On *Sundays and other holydays of obligation* he shall, at an hour convenient for the people, teach catechism also to his adult parishioners, in a manner adapted to their capacity.

Parents are obliged to coöperate with the pastor, *viz.*, to see to it that their subjects receive proper religious instruction. Besides, if the pastor is prevented, he may call upon other *priests and clerics* to help him, which they should do if they are not prevented.

II. The *faculty for preaching* must be obtained from the local Ordinary. Priests of other dioceses can only be invited after the permission of the local Ordinary (in whose diocese the preaching is done) has been obtained. None but priests and deacons should be granted the faculty for preaching, and only after due examination and investigation.

Pastors are in duty bound to preach the word of God in the customary manner on all Sundays and holydays of obligation, especially during the Mass that is more largely attended.

This obligation is personal and cannot be habitually committed to another, except for reasons recognized as sufficient by the Ordinary.

The Ordinary may allow the sermon to be omitted on solemn feast-days, and, for good reasons, also on the one or other Sunday.

During *Lent,* and, if expedient, also during *Advent,* sermons should be preached more frequently in cathedral and parish churches.

The subject of the sermons should be the truths necessary for the faithful to believe in order to be saved.

Therefore preachers shall abstain from profane and abstruse arguments which exceed the capacity of their hearers, and perform their evangelical ministry (as the Apostle warns) not in persuasive words of human wisdom, or for the display of vain and ambitious eloquence, but to show the spirit and power; preaching, not themselves, but Christ crucified.

The faithful should be diligently admonished and exhorted to hear sermons frequently.

III. A *mission* should be held in every parish at least once every ten years. Pastors, including religious, must abide by the regulations of the local Ordinaries in this matter.

Non-Catholics living in a diocese or parish are recommended to the benevolent attention of the bishop and the pastors, who should devise effective ways and means of bringing them back to the one true fold of Christ. This may be accomplished by spreading apologetic tracts, giving missions to non-Catholics, etc.

No one should be compelled to embrace the Catholic faith against his will.

TITLE XXI

SEMINARIES

1. The *Church enjoys the innate and exclusive right* of training those who wish to devote themselves to the sacred ministry.

2. The *seminary tax* must be paid by all who hold ecclesiastical benefices, including religious, and by all parishes and quasi-parishes, even though they have no other income than the offerings of the faithful. This *tax must be general and equal,* proportionate to the needs of the

seminary, and the maximum rate should not exceed five per cent. of the net income or capital taxed. This means that a poor parish which can barely exist, after the expenses for the support of the pastor and worship and repairs have been deducted, will have to pay very little for the seminary. Take, for instance, the income to be about $3000; we ask, what remains after the necessary expenses have been defrayed? Perhaps $200 or $300, which would mean $10 or $15 for the seminary tax. It appears to us a rather doubtful means for spreading religion and training an efficient clergy to erect luxurious palaces for seminarians who may afterwards have to be satisfied with fewer comforts, and to tax struggling parishes beyond their means. *"Sapienti sat";* complaints are heard everywhere.[37]

3. The seminary is exempt from the jurisdiction of the local pastor, whose place is taken by the rector or his delegate for all who live in the seminary, in all things except marriage and matters concerning which the Holy See may have provided differently.

TITLE XXII

SCHOOLS

(Can. 1372–1383.)

The promotion of education forms a creditable and honorable page in the annals of the Church. The Code demands:

1. *Religious and moral instruction* for all the faithful.

[37] Dr. A. O'Malley's saying (*Keystones of Thought,* page 19) is to the point: "The chief reasons why largely endowed universities do little or no work are, that at first they buy stones instead of learned men: later they make the professorship the possession of a social clique."

They must be educated from childhood in such a way that not only are they taught nothing that is contrary to faith and morals, but that religious and moral training takes the first place in their training.

2. *Not only parents,* but all who take their place, have the right and the solemn duty to provide a Christian education for the children entrusted to their care.

In every *elementary school* religious instruction should be given to the children according to their age. Youths who frequent the secondary or higher schools should be given fuller instruction in Christian doctrine, and the local Ordinaries should see to it that this instruction is given by zealous and learned priests.

Since *neutral or non-confessional schools,* which necessarily lack the fundamental principle of morality and sound pedagogy, are a *real* menace to the normal development of the human mind and will, it is evident that Catholic children should not frequent neutral or mixed schools, *i. e.,* such as are open also to non-Catholics. It is for the local Ordinary to decide, according to the instructions of the Apostolic See, in what circumstances and with what precautions attendance at such schools may be tolerated, without danger of perversion to the pupils.

2. *The Church claims and exercises the right to establish schools,* not only elementary, but also secondary and higher. The Code earnestly admonishes all in authority, especially the local Ordinaries, to establish *Catholic schools,* including universities in countries or districts where the existing universities are not imbued with Christian principles.

The *faithful should lend their aid,* each according to his ability, in the establishment and support of Catholic schools.

3. Finally, the Code demands *ecclesiastical supervision*

of the religious instruction given to the young in all schools. This duty devolves more particularly on the local Ordinaries, who also have the right to approve teachers and textbooks of religion and to demand that teachers or books that offend against faith and morals, be removed. The Ordinaries are entitled, either personally or through delegates, to inspect the schools, oratories, asylums, orphanages, and similar institutions existing in their dioceses in all matters pertaining to religious and moral education. This right of inspection includes the schools of exempt religious, with the sole exception of purely internal schools intended for the members of exempt institutes.

TITLE XXIII

THE CENSORSHIP AND PROHIBITION OF BOOKS

(Can. 1384–1405)

I. The Church has the right to demand that the faithful shall not publish books which she has not previously approved by her judgment, and, for a just reason, to forbid books published by whomsoever.

The term *books* includes, so far as censorship is concerned, newspapers and periodical publications as well as all other published writings, unless the contrary is manifest.

Previous *censorship* or the *imprimatur* is required:

1. For all editions of, and exegetical commentaries on, the Bible;

2. For all theological works, including ethical treatises and such as treat of theodicy, devotional and ascetical

books, and in general all books which concern faith and morals;

3. For all sacred images printed with or without a text.

The *imprimatur* is granted by the local Ordinary of the author, or by the local Ordinary of the place of publication, or, finally, by the local Ordinary of the place where the book is printed. However, if any one of these Ordinaries refuses the imprimatur, the author is not allowed to ask it of another, unless the latter has been informed of the refusal.

Clerics and laymen require a permission for the *publication of, or coöperation* in publishing books as follows:

The secular clergy without the consent of their Ordinary, and religious without the permission of their higher superior and of the local Ordinary, are forbidden to publish books on secular subjects, and to write for newspapers or other periodical publications, or to act as editors of such.

Not even Catholic laymen—much less clergymen and religious—may write for newspapers or other periodical publications which are accustomed to attack the Catholic faith or good morals. An exception to this rule may be made only for a just and valid reason, acknowledged to be such by the local Ordinary.

There ought to be *more than one diocesan censor.*

II. The *right and duty to forbid books for a just cause* belongs to the supreme ecclesiastical authority for the whole Church, and to particular councils and local Ordinaries for their respective subjects.

Recourse from this prohibition may be had to the Apostolic See, but only *in devolutivo.*

Books condemned by the Apostolic See must be considered as forbidden everywhere and in whatever language they may appear.

Officials, and, under certain conditions, all the faithful are obliged to *denounce* pernicious books to the ecclesiastical authorities.

A forbidden book may not be published, read, kept, sold, or translated into another language, or communicated to others in any way.

A forbidden book may *not be republished* until after it has been corrected and the one who forbade it, or his superior or successor, has granted permission to publish it.

The *list of forbidden books* comprises the following:

1. Editions of the original text and of ancient Catholic versions of Holy Scripture, including those of the Oriental Church, which have been published by non-Catholics; also translations of the same into any language, when made or published by non-Catholics.

2. The books of writers defending or championing heresy and schism, or attempting in any way to undermine the foundations of religion.

3. Books which purposely attack religion or good morals.

"Data opera" appears to mean the same as *"ex professo,"* and is opposed to such expressions as *perfunctorie* and *obiter*. It may be, however, that *data opera* is intended to signify the intention.

4. Books by non-Catholics which professedly treat of religion, unless it is certain that they contain nothing contrary to the Catholic faith.

5. Bibles and biblical annotations and commentaries, modern translations of the Bible, *i. e.*, into the vernacular, and all books mentioned in can. 1385, § 1, n. 2, and books or booklets which narrate new apparitions, revelations, visions, prophecies, miracles, or aim to introduce new devotions, even though they pretend to be purely private,

if published without regard to the rules prescribed, *i. e.*, without complying with the law of previous censorship.

6. Books which attack or ridicule any dogma of the Catholic Church; or defend errors that have been proscribed by the Apostolic See, *i. e.*, by the Pope himself, or by any one of the S. Roman Congregations; or disparage divine worship; or seek to undermine ecclesiastical discipline; or of set purpose insult the ecclesiastical hierarchy or the clerical or religious state.

7. Books which teach or approve any kind of superstition, fortune-telling, divination, magic, the evocation of spirits, and other similar practices.

8. Books which defend the lawfulness of dueling or suicide or divorce; or which try to prove that Freemasonry and other similar sects are useful and not detrimental to Church and State.

9. Books which, of set purpose, treat of, relate, or inculcate lascivious and obscene things. To this group belongs the whole class of strictly so-called pornographic literature as well as innumerable romances, novels, and poems.

10. Editions of liturgical books approved by the Apostolic See, which have been altered so as no longer to agree with the authentic text.

11. Books which spread apocryphal indulgences or indulgences that have been proscribed or recalled by the Holy See.

12. Images, however printed, of our Lord Jesus Christ, the Blessed Virgin Mary, the Angels, the Saints, and other Servants of God, which are not in keeping with the spirit or decrees of the Church.

The *permission* to make use of forbidden books is granted, by law, to theological or biblical students with regard to editions of the original text of Holy Scripture,

of ancient versions made by non-Catholics, and translations into the vernacular made and published either by non-Catholics or by Catholics without previous censorship;—provided, however, that these editions are faithful and entire, and that neither the introduction nor the annotations attack Catholic dogma.

Ordinaries may grant permission to their subjects to read books forbidden either by law (*i. e.*, by the Code) or by special decree of the Apostolic See, but they can impart this faculty only for individual books and in urgent cases. But the license to read forbidden books does not in any way exempt a man from the prohibition of the natural law against books which are to him a proximate occasion of sin. Therefore, the local Ordinaries and all those in charge of souls should warn the faithful of the danger and injury caused by reading bad, especially forbidden, books.

TITLE XXIV

PROFESSION OF FAITH

(Can. 1406–1408)

Vicars-general, diocesan consultors, pastors and all priests—therefore also assistants or curates—entrusted with the care of souls, confessors and preachers, before they obtain the faculty, must make a profession of faith in the presence of their Ordinary or his delegate.

The *formula* now prescribed is found in the Code.[38]

This profession must be repeated whenever one assumes a new office, benefice or dignity, after giving up the former, even if the new office is of the same species.

[38] See our Commentary, Vol. I, page 69 ff. and Appendix.

PART V

BENEFICES AND OTHER NON-CORPORATE ECCLESIASTICAL INSTITUTES

(Can. 1409–1494)

What falls under this heading, so far as it concerns our pastors, has partly been inserted in the tract on ecclesiastical offices and organizations. We may, however, be permitted to state that what we maintained in Vol. VI, p. 495, of our Commentary, that *our American parishes are benefices,* has been corroborated by a decision communicated to his Eminence Cardinal Bonzano, the late Apostolic Delegate, and forwarded by him to all the Ordinaries, Nov. 10, 1922. The passage in question reads: "His Eminence, the President of the Commission, added, moreover, that *a parish is always an ecclesiastical benefice,* according to can. 1411, 5, whether it has the proper endowment (resources or revenue) as described and defined in can. 1410, or even if, lacking such endowment (resources or revenue), it be erected according to the provisions of can. 1415, 3." Since, then, our parishes are considered benefices in the canonical sense of the term, it will not be amiss here to set forth the more important rules which regulate the erection and change of benefices.

1. As requisites for *erecting* a benefice the Code demands:

a) A stable *endowment,* such as defined by can. 1410, which admits any kind of property, contributions, voluntary offerings of the faithful, stole fees, and even choir distributions to the amount of the third part. Can. 1415, § 3, says, "It is not forbidden to establish a parish or quasi-parish, even if a sufficient endowment is not im-

mediately available, provided it can be reasonably foreseen that the necessary support will be forthcoming."

b) The Code also requires—although it does not say that the omission of this formality would involve invalidity [39]—that *those* who are *interested* in its erection should be *invited and heard*. This includes parishioners and others who may suffer detriment, for instance, pastors.

c) Lastly, can. 1418 demands a *legal document,* in which the place of the benefice is designated, and the endowment, rights and obligations are described, also eventual conditions laid down by the founder, if acceptable.

2. Concerning *union of benefices,* the Code allows local Ordinaries to unite, either *aeque* or *minus principaliter,* parish churches with one another or with non-curate benefices.

3. Ordinaries may, for a just and canonical reason, *divide* parishes of any kind by establishing a perpetual chaplaincy or a new parish, or dismembering the territory of parishes; and they may do so even against the will of the rectors of the parishes, and without the consent of the people. But the Code requires a *canonical reason,* without which the division would be *invalid.* And the canonical reason, as we have already said, is twofold: either great difficulty on the part of the people to come to the parish church, or impossibility of properly attending to their spiritual needs because of too great a number.

[39] This is to be judged from can. 105, 1, where it is said that *"de consilio consultorum,"* or *"audito Capitulo, parocho,"* means that the Superior is *obliged* to hear their advice, though not bound to follow it, *ad valide agendum;* consequently, the omission might be construed as involving invalidity.

4. Ordinaries may also *transfer* the seat of a secular parochial benefice to another place; but other benefices they may transfer to the mother church, or to another church of the same or near-by place, only if the church in which said benefices were founded has collapsed and cannot be restored.

Can. 1422 regulates the change of *religious benefices, viz.,* such as have been incorporated with religious by the Apostolic See. Of these the Code says: "The union, whether *aeque* or *minus principalis,* of a religious with a secular benefice, or *vice versa,* and the transfer, division, and dismemberment of benefices belonging to religious, are *reserved to the Apostolic See.*" [40]

5. As to *resignation,* the following rules must be observed:

a) The resigner must state expressly whether or not the benefice was one on the title of which he had been ordained; if it was the *titulus ordinationis,* his resignation cannot be accepted unless it be solidly (if necessary by oath) proved that the resigner has other means of support, otherwise the resignation is invalid;

b) If another title, for instance, patrimony, was substituted, this fact, too, must be established beyond reasonable doubt;

c) The consent of the Ordinary into whose hands the benefice was resigned must be given by means of a declaration that the substitution of the title has been lawfully made;

d) Conditional resignation, especially in favor of an-

[40] The footnote on page 509 of Vol. VI of our Commentary, note 15, should, therefore, read: Can. 1422 requires a papal indult for dividing such parishes;—the former practice and can. 1427 were deceiving; can. 1422 is logical.

other, is forbidden, on account of the danger of hereditary succession.

6. An *exchange* or a mutual transfer of benefices can be made under the following conditions, laid down by the Code in can. 1487 f.:

a) That no other interested persons suffer detriment therefrom;

b) That if the benefice be one of advowson, the consent of the patron be obtained;

c) That the exchange be made with the permission of the local Ordinary, or, more accurately speaking, of the Bishop, because the vicar-general needs a special mandate, and the vicar-capitular cannot give the permission at all;

d) That it be made either in writing or before two witnesses. Exchange of benefices reserved to the Holy See requires a papal indult.

Concerning *non-corporate institutions* the Code allows the local Ordinary to erect hospitals, orphanages, and similar institutions destined for religious or charitable purposes and to endow such institutions with the character of ecclesiastical corporations exempt from the parish-organization (can. 462, § 2).

PART VI

THE TEMPORAL POSSESSIONS OF THE CHURCH

The Catholic Church and the Apostolic See have the inherent right, freely and independently of any civil power, to acquire, retain, and administer temporal goods for the pursuit of their own ends.

Individual churches and other corporations, established

as such by ecclesiastical authority, are also endowed with the right of acquiring, retaining, and administering their own property according to Canon Law.

To the Church must also be vindicated, independently of any civil power, the right to demand of the faithful whatever is necessary for divine worship, for the support of her clergy and other servants, and for the pursuit of her proper ends, to which also belong schools.

TITLE XXVII

ACQUISITION OF ECCLESIASTICAL PROPERTY

(CAN. 1499–1517)

1. The Church has the right of acquiring property by all just means permitted either by natural or positive law to other citizens or individuals, *e. g.,* by contract, donation, inheritance, etc.

2. A *division* of property should be made according to the principles of justice and equity. Not only the property, but also the debts, should be equally divided. This rule is to be observed also in dividing parishes.

3. There is also a canon (1503) which treats of collecting for ecclesiastical or charitable purposes. Private persons, whether clerics or laymen, are forbidden to collect alms for any charitable or ecclesiastical institution or purpose, unless they have the written permission of the Apostolic See, or that of their own and of the local Ordinary. Who are the *private persons* here intended? All those who beg without official or public capacity, authority or warrant, no matter whether they belong to the ranks of the clergy or of the laity. A pastor is no private person, and may therefore collect within the boundaries of his parish, but not beyond these, without

special permission, because he has no official capacity outside his own district. It is a wise ruling, and in keeping with our canon, if diocesan statutes forbid priests in charge of souls to collect either directly or indirectly, for instance, by selling tickets or chances. The so-called *chain-letters* belong in the waste-basket.

If a corporation is chartered by the State, though under ecclesiastical supervision, it cannot be called a private enterprise, and, therefore, can. 1503, which forbids private persons to collect, should not be invoked against it, with due attention to what we said above. Note that the Code does not distinguish between personal or oral quest and begging by letters. Hence it includes both kinds. There is an unspeakable and a cunning way of begging—*et infinitus est numerus stultorum*—witness the oil-stock victims!

4. The *cathedraticum* is a sign of subjection to the local Ordinary, but not, properly speaking, a means of supporting the bishop. *Who must pay it?*

a) *All churches and public oratories subject to episcopal* jurisdiction must pay the cathedraticum, even though they may not have been subject to it formerly. This rule certainly applies to all churches governed by secular clergy. Churches or public oratories in which exempt religious hold services for themselves only, and not for outsiders, or for these only *per accidens,* need not pay the cathedraticum. But if exempt religious have a parish church, even though it be an abbey of a convent church, or an incorporated public oratory, and even though one of their own number acts as pastor or chaplain, they are obliged to pay this tax.

b) *All holders of benefices not exempt* from episcopal jurisdiction must pay the cathedraticum.

c) *Lay confraternities* must pay the cathedraticum if

they own, not merely a chapel erected in honor of a Saint in some church, but a church or public oratory of their own, even though no benefice is connected with it.

The *amount of this tribute* was formerly established at two solidi (about $6) a year; but the Code leaves it to be determined by *provincial councils.*

A recent decision of the *S. C. Concilii* throws some light on this subject. A French bishop had asked permission to demand two per cent. of each Catholic, so that, for instance, a parish with 500 souls would pay ten francs, a parish with 1000 souls, twenty francs, and so on, in proportion to the numerical strength of each parish. The sum appeared rather small, still the S. Congregation held that the cathedraticum, which should be a moderate and uniform "tax," should not be made a personal, pecuniary tribute, as this would be entirely foreign to the very notion of cathedraticum. The answer, therefore, was: *"Prout exponitur, non expedire.*[41] The S. Congregation advised the bishop to recur to another expedient, if necessary, *viz.,* a charitable subsidy. We mention this decision because sometimes the cathedraticum is imposed by the Bishop simply because he needs money. Such is not the idea of that contribution. Besides, according to can. 1507, the cathedraticum must be fixed by a provincial council or meeting of the bishops of the province, and the approval of the Apostolic See must be obtained before any fixed rate takes effect. This also applies to other taxes. Hence, even if diocesan statutes should fix these taxes, they do not bind unless can. 1507 has been duly complied with.

[41] March 13, 1920 (*A. Ap. S.*, XII, 446): *"Liquet hac ratione non haberi merum signum recognitionis honoris, sed verum tributum fiscale, a quo indoles cathedratici maxime abhorret."*

5. *Subsidium caritativum.*—When there are particular diocesan needs, the local Ordinary (not the vicar-general) may demand, besides the seminaristicum and the pension (mentioned in can. 1429), a contribution from all beneficiaries, secular as well as religious; but this contribution must be moderate and can be demanded only on extraordinary occasions, and, therefore, differs from the regular diocesan taxes, though it may be demanded in justice and under threat of penalty.

Ordinaries are forbidden to impose any other tax besides those mentioned for the benefit of the diocese or of a patron (advowee) upon churches, benefices, and other ecclesiastical institutions, subject to their jurisdiction, except on the occasion of their foundation or consecration.

It may be worth while to clear up some erroneous ideas concerning the nature and extent of such extraordinary taxation.

a) We comprise all these extraordinary taxes under the name of *subsidium caritativum,* which, no doubt,[42] is the subject of can. 1505. We exclude, of course, diocesan collections which have not an extraordinary, but a stable, character. But we include all special or particular assessments, or subscriptions, or "drives," or whatever term this subsidy may go by. It is defined by canonists as an extraordinary tax imposed upon subjects, for a manifest and reasonable cause, and demanded in a charitable rather than coercive manner. However, most of the canonists agree that this way of collecting the tax does not exclude compulsory means, and, if necessary,

[42] This is clearly indicated by the scources which Card. Gasparri quotes from the Decretals of Gregory IX, *viz.,* c. 6, X, III, 39. and the S. C. C.

even censures.[43] The Code, indeed, has not provided for a special penalty in this case, although can. 2331, § 1, and can. 2347 might be alleged in its support. But it is not too much to say that censures should be rarely employed.

b) What are the *reasons* that may justify the imposition of such a tax? Can. 1505 uses the general phrase: "when a special need should press the diocese" (*speciali dioecesis necessitate impellente*). This phrase was understood by former authors[44] as including the following: expenses incurred on the occasion of the consecration and installation of the bishop; great indebtedness incurred by the bishop for the utility or necessity of the whole diocese or the cathedral church; expenses made for the episcopal visit *ad limina* or to a council, either general or provincial. All this goes to show that the *diocese as such* (at large) must be concerned; that the need must be a real, not a fancied one; that a solitary religious or charitable institution, though it may be useful to the diocese, if it is not an institution established by and for the diocese, cannot lay any claim to being subsidized by this means; that personal debts contracted by the bishop as a private person are not to be paid by means of a charitable subsidy, such as the canon permits.

c) What is the *amount* that may be demanded? Our text simply says that it should be a *moderate* tax and *extraordinary, i, e.,* not of frequent occurrence. The canonists abstained from giving a fixed sum. One of them states that, since the law has not determined the amount, it should be gauged by custom, the income of the diocese, and the extent of the need for which it is de-

[43] Barbosa, *De Officio Episcopi,* Allegatio LXXXVII, n. 5; Schmalzgrueber, in lib. III, tit. 39, n. 54.

[44] Barbosa, *l. c.,* nn. 29 ff.

manded.[45] However, there is another limit to the amount, as will be seen from the following answer to the question:

d) *Who must pay this tax?*—The answer is clearly given in can. 1505: "*all beneficiaries,* whether secular or religious." Hence, evidently, laymen cannot be compelled to pay this tax, neither can monasteries or religious houses, as they are not benefices.[46] If religious hold or administer a parish either in their own name or in the name of the Ordinary—provided, in this latter case, they draw the salary of a real beneficiary—they are obliged to pay the tax like the secular clergy and to the same, not larger, amount. In a word, *all pastors must pay it.* Whether *assistants* or curates are obliged to pay it, is not so easily and clearly to be deduced from the text. For, although our parishes, if established in accordance with the Code (can. 1410, 1415, § 3), are and have been declared benefices, it does not follow that our curacies come up to the requisites of benefices; this is a point still to be settled. However, since they in one way or another share in the revenues of the benefice, or parish, they appear to be liable to taxation, provided, of course, that the amount demanded is in strict proportion to the salary drawn, and that it is less than the amount paid by the pastors. We repeat that, since laymen cannot be compelled to pay this tax, it is evident that the *parish as such is not liable to the payment,* because the Code expressly says that only beneficiaries may be taxed, and the parish as such is not a beneficiary in the canonical sense of the term. Furthermore, since beneficiaries are liable as such, it is evident that the pastors or curates *cannot be taxed on their private means,* such as patrimonial or quasi-patrimonial property, income, or revenues. Only

[45] Schmalzgrueber, *l. c.,* n. 70.

[46] Id., *l. c.,* nn. 63 ff.; Barbosa, *l. c.,* nn. 39 ff.

what is connected with or flows from the benefice is subject to this tax. Besides, canonists as well as a decision of the *S. C. Concilii* make it plain that poorly salaried beneficiaries, whose income is barely sufficient for a decent livelihood, cannot be compelled to pay the subsidy demanded.[47]

Attention should be paid to the term "beneficiaries" also for another reason. Where there is no proper canonical division of parishes with set boundaries, it would be rather difficult to apply the term "benefice" to a parish. The consequence is quite evident: in dioceses which have no such division, there are no benefices in the canonical sense of the word, hence no beneficiaries, and, therefore, no strict right to demand such a tax, nor any obligation to pay it. *Videant consules!* Finally it will be well to observe can. 216.

We add that the canonists demand of the bishop that he ask the *advice* of the cathedral chapter (our diocesan consultors) before imposing such a tax. Also the vicar-capitular (our administrator) *sede vacante* may levy the subsidy; and consequently those who enjoy the same power as administrators.[48]

[47] Barbosa, *l. c.*, n. 49; Schmalzgrueber, *l. c.*, n. 65. Here the text of the *S. C. Concilii, in Gerundinensi,* 27 Feb., 1663, quoted by Card. Gasparri: *I. "An episcopi pingues reditus habentes . . . possint exigere subsidium caritativum a suis clericis dioecesanis? II. An episcopi, quibus pro exigendo subsidio caritativo non obstat sufficientia sive exuberantia redituum, possint illud exigere nulla urgente causa et inconsultis eorum capitulis? III. An possint illud exigere a clericis beneficiatis, qui licet aliquos reditus habeant non consistentes in distributionibus quotidianis, nihil tamen eis superest ultra honestum victum, immo tales reditus vix sunt sufficientes ad praedictum eorum victum?—S. C. resp. ad I, II et III negative."*

[48] Barbosa, *l. c.*, n. 13; Schmalzgrueber, *l. c.*, n. 57.

There is one more question attached to charitable subsidy, *viz.*, that of providing for *needy priests*. This would undoubtedly fall under the heading of can. 1505, in case the diocesan funds should be insufficient to make ends meet. But in this case what has been said as to the nature and extent of this subsidy must logically be applied also to the raising of the amount required to cover the deficit. Therefore it must be a moderate and extraordinary tax to be levied on the beneficiaries, not the parishes. —But if there is a *clerical aid society* with its own funds and administration,—a society, we mean, which is intended for secular priests in case of need,—it does not appear quite just to demand of religious who are pastors contributions from which they derive no benefit at all, because religious are generally taken care of by their respective communities. Thereby, as stated, we do not deny that the local Ordinary would be entitled to demand of the religious beneficiaries, as explained above, the subsidy based on can. 1505, and as far as this canon permits, also in case the funds of the clerical aid society should run so low that an extraordinary tax became imperative, provided it be moderate.[49]

6. *Prescription,* as admitted by the civil law, is a legitimate way of acquiring title to property by long-continued and uninterrupted possession. It also means freeing oneself from an obligation due to another, for instance, tithes or pension or servitude (lease), in which latter case the term signifies the loss or curtailing of property right, brought about by failure to assert the same within a given time. Finally, prescription also signifies the period or time required for legal acquisition or loss of this right.

[49] See Vol. VII of our Commentary, pp. 434 ff., where we discuss the disabled priests' funds.

Even sacred things owned by *private persons* may be acquired by prescription, but they may not be used for profane purposes, unless they have lost their consecration or blessing, and even then the use to which they are put must not be unbecoming (*sordidus*). Sacred objects which are not owned by private persons cannot be acquired by prescription by a private, but only by a juridical, person.

Not subject to prescription are: (1) Things pertaining to natural or divine law; (2) those obtained by an apostolic privilege; (3) spiritual rights of which laymen are incapable; (4) certain and undisputed boundary lines of ecclesiastical provinces, dioceses, parishes, vicariates and prefectures apostolic, abbacies and prelacies *nullius;* (5) Mass stipends and obligations; (6) ecclesiastical benefices; (7) the right of canonical visitation and obedience, so that the subjects could not be visited by any prelate or would not be under obedience to any prelate; (8) the cathedraticum.

Prescription is not valid unless it is based upon good faith at the beginning as well as throughout the whole period required.

7. *Legacies and Donations.*—He who, by natural and ecclesiastical law, is free to dispose of his property, may bequeath the same, either by donation or last will and testament, to pious institutions or causes.

Testamentary bequests in favor of the Church should, if possible, be made *in legal form, i. e.,* according to the rules prescribed by civil law. If this precaution has been omitted, the heirs must be admonished to carry out the testator's will. Ordinaries should carefully watch over this matter. If a cleric or religious receives a donation or a bequest in trust, he must notify his Ordinary of the

fact and indicate to him all the property held in trust, movable as well as immovable, together with the obligations attached thereto. Should a donor have expressly forbidden the intervention of the Ordinary, no religious or cleric can accept the bequest or donation.

The Ordinary must insist that the property held in trust be safely invested, and watch over the fulfillment of the testator's will.

To *reduce, mitigate, or change testamentary bequests* in favor of the Church is a right reserved to the Apostolic See, which can proceed only for a just and necessary cause. The local Ordinary may act only if the founder has expressly granted this power to him, and he, too, is bound by reasons of justice and necessity, for both the natural and the divine as well as the positive law demand that the last will of the faithful be conscientiously executed and the money bequeathed by them expended for those purposes for which it was intended. It may not be applied to a seemingly better cause, or in a more suitable manner, because such a change would frustrate the last will of the testator and injure the Church, since the faithful would hesitate to make donations if they were not certain that the money would be applied in accordance with their wishes.

TITLE XXVIII

ADMINISTRATION OF CHURCH PROPERTY

(Can. 1518–1528)

1. The Roman Pontiff is the supreme administrator and steward of all church property.

2. Every Ordinary should establish in his episcopal

city a *board of administrators,* consisting of the president, who is the bishop himself, and two or three capable men, experienced also in civil law, if possible, to be appointed by the Ordinary after having heard the advice of his chapter (consultors). Should there be in the diocese a particular law or custom which provides another, equally effective mode of administration, this may be retained.

If the charter or the will of the local Ordinary calls upon laymen to take part in the administration of ecclesiastical property, the whole administration must nevertheless be conducted in the name of the Church, and the Ordinary's right of visitation and of demanding a regular account and prescribing the mode of administration must be safeguarded.

3. A *fair wage*—which, now-a-days, means a living wage—must be paid to workingmen. All administrators, especially clerics and religious, must pay their employees a just and adequate wage; they should also see to it that the workingmen be given a convenient time for fulfilling their religious duties; they should never keep them from their domestic duties or from habits of thrift, nor impose upon them more work than their strength, age or sex enables them to perform. We think, housekeepers, too, should experience the benefit of this canon.

4. Administrators of church property *must not institute* or contest a *lawsuit* in the name of the Church without written permission from the local Ordinary, or, in urgent cases, from the rural dean, who shall immediately inform the Ordinary when he has granted such a permission. If they disregard his advice and are defeated in a lawsuit, they are bound in conscience and by ecclesiastical law to make up for the loss sustained.

TITLE XXIX

CONTRACTS

(CAN. 1529–1543)

1. Whatever the civil law of a country determines with regard to contracts, general and specific, named and nameless, as well as payments, shall be observed also in ecclesiastical law and with the same legal effects, unless the civil law runs counter to the divine law or the canons provide otherwise.

2. *Alienation* is allowed under these conditions: (a) after appraisement; (b) for a just cause; and (c) with the permission of the competent superior, *viz.,* the local Ordinary or the Apostolic See, according to the following regulations:

1.° The Apostolic See, *i. e.,* the *S. C. Concilii* (can. 250, § 2), if (a) precious things of any kind or amount are to be alienated; or (b) property is to be disposed of, the value of which exceeds the sum of 30,000 lire (or francs), *i. e.,* about $6,000 to $10,000, must grant permission by a rescript;

2.° If the value of the property to be alienated does not exceed the sum of 1,000 lire (or francs), *i. e.,* about $200, the local Ordinary may proceed after having heard the advice of the board of administrators—unless the property is of little value—and with the consent of those concerned.

3.° If the value of the property to be alienated is between 1,000 and 30,000 lire (or francs), the local Ordinary may proceed, provided a threefold consent has been obtained, *viz.,* (1) that of the cathedral chapter (or diocesan consultors), which must be given *collegialiter, i. e.,* by vote at a meeting; (2) the consent of the board of

administrators; and (3) that of the persons concerned. The penalties are stated in can. 2347.

3. *Donations.*—Prelates and rectors are allowed to make only small and moderate donations from the movable property of the Church, according to legitimate local custom; large donations may be made only for a just reason, as a reward for piety, or Christian charity. Donations made against this rule may be revoked by the successors.

Donations made to rectors of churches, secular or religious, are supposed to be made to the Church, unless there is reason to presume the contrary. In order lawfully to refuse a donation made to a church, the rector or superior of the same needs the permission of the Ordinary. An illegal refusal, if it results in loss, justifies an action for restitution *in integrum,* or indemnity.

4. *Debts and mortgages* can be contracted only with the permission of the local Ordinary, who shall first consult the administrators and rectors.

5. *Sale and exchange.*—The administrator may convert notes payable to bearer into other titles or investments, which are safer than, or at least equally safe and profitable as, the former. In doing so, however, they must avoid every species of trading or speculation, and, besides, obtain the previous consent of their Ordinary, of the diocesan board of administrators, and other interested persons.

6. *Lease or Rent.*—Land belonging to a church should not be rented except by public auction or announcement, and exact conditions must be laid down in the lease or rent contract as to boundaries, appropriate methods of cultivation, payment of rent, and the necessary safeguards for the fulfillment of the conditions.

Anticipated payments being excluded, the following

rules must be observed in leasing or renting church property:

1.° If the rental exceeds 30,000 lire (or francs), and the lease is made for more than nine years, a papal indult is required; if the contract is made for less than nine years, the local Ordinary may give permission with the consent of his cathedral chapter (or diocesan consultors), the board of administrators, and those interested.

2.° If the rental is between 1,000 and 30,000 lire (or francs), and the lease runs more than nine years, the local Ordinary may grant permission with the consent of those just mentioned; but if the contract is made for less than nine years, the local Ordinary has only to consult with the board of administrators and obtain the consent of those concerned.

3.° If the rental is less than 1,000 lire (or francs), and the contract reads for more than nine years, the local Ordinary must consult with the board of administrators and obtain the consent of those concerned; if the contract is for nine years or less, the administrators themselves may sign the contract and notify the Ordinary.

If *fungible things* are given to a person in such a way that he becomes the owner thereof, and are restored in kind to the same amount, no interest can be demanded by reason of the contract itself, for it would be usury to demand back more than was given (*"nihil in mutuo vi mutui accipiendum ultra sortem principalem"*). However, it is not *per se* forbidden to make loans under the usual legal conditions, provided no excessive interest is charged; nor is it forbidden to stipulate a higher rate of interest if a just and proportionate reason can be advanced.

TITLE XXX

PIOUS FOUNDATIONS

(CAN. 1544–1551)

The term "pious foundation" signifies temporal goods conveyed to some ecclesiastical juridical person with the perpetual or long-continued obligation to say Masses, or to perform certain ecclesiastical functions or works of piety or charity, in consideration of the revenues from said endowment. Hence every foundation, after it has been duly accepted, has the nature of a bilateral contract: *"do ut facias."* And for the valid acceptance of such obligations the written consent of the local Ordinary is required; he also fixes the *minimum* of endowment below which no pious foundation may be accepted, as well as the manner in which the interest is to be distributed. The endowment itself must be safely deposited or *securely invested,* according to the regulations of the Ordinary.

Two *records* must be drawn up, one to be kept in the diocesan archives, the other in the archives of the institution which is obliged to fulfill the obligation; this institution or church must also have a list of all the obligations to be kept in the safe of the rectory.

The *reduction* of obligations arising from pious foundations is reserved to the *Apostolic See,* unless the Ordinary enjoys the faculty to so do. This faculty may be obtained from the *S. C. Concilii.*

BOOK IV

ECCLESIASTICAL TRIALS

The Code divides Book IV into three parts: (I) Ecclesiastical Procedure, (II) Beatification and Canonization, (III) Procedure in particular cases. The scope of this work permits us to be brief on these points, because it may be reasonably presumed that few pastors are, either actively or passively interested in them.

PART I

ECCLESIASTICAL PROCEDURE

The Code defines an ecclesiastical trial (*iudicium ecclesiaticum*) as the lawful discussion and settlement before the ecclesiastical court of a disputed matter, of which the Church is entitled to take cognizance.

By reason of its purpose a trial is either civil or criminal. Civil (*contentiosum*) is one that concerns a private interest, as, for instance, a damage suit which may be brought to court by individuals as well as corporations.

The *ecclesiastical court* claims the right of judging exclusively: (a) all *spiritual* matters and such as might *per se* be called temporal, but are intimately connected with the spiritual, such as advowson, church revenues, ecclesiastical burial, legitimacy of children, real immunity, etc.; (b) all cases of violation of ecclesiastical laws and all matters in which the question of sin is involved, in so far as the determination of guilt and the infliction of

ecclesiastical punishments comes into play; (c) all cases concerning persons who enjoy the *privilegium fori,* or privilege of an ecclesiastical court in matters civil as well as criminal.

Besides the mode of procedure which is peculiar to the Holy Office, all other tribunals—including diocesan courts —must observe the laws laid down in this fourth Book of the Code, which has two sections, one devoted to "Trials in General," the other to "Special Rules for Certain Trials."

SECTION I

TRIALS IN GENERAL

The first question to be answered in every trial is, whether the court or judge is competent. Every trial implies at least three persons: judge, plaintiff, and defendant. Besides these, there are others who are required for orderly procedure: attorneys, counsel, witnesses, etc. Furthermore, every judiciary procedure is carried on, like a debate, by a set of rules which must be carefully observed. Then follows the sentence and its execution, unless appeal is taken. This is the skeleton of ecclesiastical trials.

I. *The Forum Competens or Competent Court*

The person who determines the *forum competetens* is the defendant, according to the well-known adage: *"Actor sequitur reum," i. e.,* the plaintiff follows the defendant's court. However, this is a rule which has exceptions. If the plaintiff has several courts where he may be tried, the defendant is allowed to choose between them.

The several courts may be determined: (a) by domicile or quasi-domicile; (b) by a *res sita;* (c) by a contract; (d) by a crime; (e) by connections.

This, however, does not take away the right to bring a case, whether civil or criminal, before the *Holy See,* no matter what stage or turn the suit may have taken. From all the faithful in the whole universe appeal or recourse is permitted to *"the First See which is judged by no one,"* and which tries cases through its regular tribunals, the *S. Romana Rota* and the *Signatura Apostolica* or by specially delegated judges.

II. *The Judge*

1. Excepting those cases which the Apostolic See has reserved to itself (can. 1557) or which have been brought before it, all cases must be tried by the *local Ordinary,* who may exercise his power personally or by proxy, but must invariably proceed according to the rules laid down in the following canons. This is the law, new as well as old, for every diocese. *Exempt religious,* of course, are bound to this tribunal only in cases expressed by law (can. 616); otherwise their competent judge is their respective superior (can. 1579).

2. Every bishop is obliged to appoint an *officialis* with ordinary judiciary power. This office is distinct from that of the vicar-general. Only in case the diocese is small and there is not much litigation, may the bishop entrust the vicar-general with this office.

The tribunal of the *officialis* and the bishop are one. Consequently no appeal can be taken from the one to the other, or *vice versa.* Besides, the *officialis* cannot render judgment in cases which the bishop has reserved to himself. The *officialis* as well as his assistants must be

priests experienced in law, if possible doctors of Canon Law.

3. The Code also requires that there be in each and every diocese either synodal or extra-synodal *judges;* and from among these *counselors* should be chosen.

4. The Code *commands,* under a *reprobating clause,* that a *collegiate board of judges* be constituted. To a board of *three judges* are reserved the following cases: (a) civil or contentious causes concerning the bond of sacred ordination (*vinculum s. ordinationis;* see can. 1993), the marriage tie (not mere separation), and the right and property of the cathedral church; (b) criminal cases which concern privation of an irremovable benefice, which must also be applied to the case of privation (not mere removal) of an irremovable pastor; or which concern infliction or declaration of excommunication, which may also affect laymen.

To a board of *five judges* are reserved all criminal cases which involve the penalty of deposition, of perpetual privation of the ecclesiastical habit, or of degradation.

The Code also commands the Ordinary to choose two or four judges for a collegiate tribunal, together with the president, who is no one else than the diocesan *officialis,* in turn, from among the synodal judges, as, for instance, is done by the Roman Rota, where three proceed *per turnum.* The *turnus* may be taken either by seniority, or one senior and one junior, etc. But the Ordinary may depart from this rule if he deems it advisable, and select ecclesiastics who are not synodal judges.

The ordinary judge in the *second instance* is the *metropolitan* court, which must be established in the same fashion as the court of the first instance; hence the collegiate board with the *officialis* and *vice-officialis* must be constituted also in courts of appeal, and the same rules,

proportionately, must be observed in the proceedings. If the case was tried *collegialiter* by the first court, it must be tried *collegialiter* also by the court of appeal; if three judges functioned in the lower court, three must act also in the court of appeal; if five in the first, five also in the second instance.

III. *Assessors or Assistants*

The term here chosen is perfectly legitimate, because it comprises the whole personnel collaborating with the judge.

1. Among these the first place is given to the *auditor,* also called *instructor actorum,* because he drafts the summary of the acts, the *restrictus.* Of these there *may* —it is not absolutely required—be one or more taken from the synodal judges. Their *office,* besides the drafting of the acts, includes the summoning and hearing of witnesses and the preparation of the judiciary documents according to the tenor or wording of their commission or mandate.

2. The Ordinary may also appoint a referee or *ponens,* taken from the board of judges. This official must report to the judges on the process of the trial and write down the sentence, which is generally given in the form of an answer to a query, *e. g.: "Utrum constet de nullitate matrimonii? Resp. Affirmative"* (or *"negative,"* as the case may be).

3. At every process or trial there must be present a *notary,* who at the same time acts as *secretary.* No papers or acts are valid unless written, or at least signed, by him. This latter clause permits the use of a typewriter. A rubber stamp is not admissible for the signature.

The notary must take down in writing the deposition

of the witnesses who are present, as well as the answers sent in from other courts, which were asked for by the *litterae rogatoriae.*

4. Each diocese must have a prosecuting *attorney and defender, a promotor iustitiae, and a defensor vinculi.* If these officials are summoned to trials which require their presence, all the acts are null and void, unless the officials were actually present, even though not summoned. Hence actual presence is required, not a summons.

One and the same person may be promoter and defender, unless a multiplicity of affairs and cases prevents, as may happen in large dioceses, or when cases are tried by several courts or in different places at the same time.

5. Then there may be appointed laymen as *couriers* and *beadles.* How the judge and his assessors are to proceed, in what order the different main and incidental questions are to be treated, concerning terms and *fatalia,* the days for trials and exclusion of the public, title III must be consulted.

IV. *The Parties*

1. *Any one* not prevented by canon law may be *plaintiff.* The *defendant,* when duly summoned, must appear in court. But both plaintiff and defendant may present their case by proxy or through advocates (lawyers), unless the law—which here means first and above all the common law, then also a particular law which does not contradict the common law—or the judge demand their personal presence.

For *minors* and adults who lack the use of reason, parents or guardians are obliged to act as plaintiffs or defendants. In spiritual matters and matters closely

connected with these, minors who have attained the use of reason may act as plaintiffs or defendants without the consent of their parents or guardians; and after completing the age of fourteen, they may act by themselves without a procurator. But before they have completed the fourteenth year of age, minors, or rather *impuberes,* must be represented at trials by a guardian appointed by the Ordinary, or by a procurator whom they have chosen with the Ordinary's approval.

Beneficiaries (which name certainly comprises our *pastors*) may act as plaintiffs or defendants in the prosecution of beneficiary rights, but for so doing they need the written consent of the local Ordinary, or, in urgent cases, that of the rural dean.

Those who are under a sentence, either declaratory or condemnatory, of excommunication, either as *vitandi* or *tolerati,* are allowed to appear as plaintiffs in ecclesiastical trials only in case they wish to plead against the justice or legitimacy (validity) of the sentence of excommunication, and in this case they may defend themselves. But if they wish to ward off spiritual injury or damage, they should act by proxy. When they are called into court in some other case, they must, of course, obey.

All persons, even the excommunicated, may be admitted as plaintiffs.

2. Since the parties may, unless forbidden, present their case by *proxy and attorneys,* these must follow the rules of the Code. Each party may choose but one, whilst the number of *counsels and lawyers* is not limited. But attorneys and counsels must be Catholics; they must have completed the legal age of twenty-one years, and be men of good moral standing. Non-Catholics are admitted only by way of exception and in cases of necessity. A

mandate is required for proctor and counsel, without which the judge is not allowed to admit them. They may also be rejected by the judge, who must, however, issue a decree to that effect.

V. *Procedure*

A whole title (V) is devoted to what might be called a preliminary quash of a trial, *viz.*, to *actions and exceptions*. *Actio* signifies the cause or legal demand of a right. And every right may be supported and sustained, not only by an action, but also by an exception, unless the law expressly forbids the latter.

There are two actions: the one by which the plaintiff seeks to vindicate a thing in court or a right founded, as he believes, on the authority of the law. This action is called petitory (*actio petitoria*); the other, by which the plaintiff claims possession or quasi-possession of a thing (*actio possessoria*). For in every complete title to an object or right, either movable or immovable, two things are necessary: the possession or seisin, and the right or property, which in terms of old English law was called *iuris et seisinae coniunctio*.

Exception, in the sense of an action, is a *counterplea,* or countercharge, by which the defendant endeavors to stop, or at least to curtail, the plea or demand of the plaintiff.

However, exceptions are more commonly used in connection with the judge or witnesses, when these are, for one reason or another, objected to as suspect or incompetent. This may suffice for this preliminary question. After that the Code, in titles VI to XII, lays down the mode of procedure.

A trial may be considered to have three stages: the

opening, the defence or pleading, and the sentence with its execution.

A. *Opening of the Case*

The first stage, or opening of the case, comprises two distinct acts: the statement of the case (*libelli oblatio*) and the summons (*citatio*).

1. A *bill of plea,* or original writ, is a statement of the case made to the competent judge in order to ask him to prosecute or to grant redress. It may be made orally; but it must contain: (a) the name of the judge; (b) the object of the plea; (c) the name of the defendant; and (d) the law or reason for the plea.

2. Then follows the *summons,* issued by the lawful judge to the other party, either plaintiff or defendant. *This is the beginning of the judicial action.* It may be omitted if both parties appear before the judge of their own accord; but in that case the clerk must record the fact that the parties appeared spontaneously at the trial, so as preclude a plea of dilatory exception.

The summons must be made in writing and contain what was said above concerning the bill of plea. A copy of the summons and a warrant that the summons reached the defendant, should be kept on file. This *summons is absolutely necessary.*

3. The *litis contestatio,* or issue in pleading, follows on the part of the defendant. It is nothing else but a final denial or contradiction of the plantiff's demand, coupled with the intention of prosecuting the case before the judge. It may be put in by proxy, but should be definite, because, if the petition, or writ, or plaint of the plaintiff is obscure and complicated, or the denial of the defendant offers serious difficulties, either because the

facts are doubtful or the law is indefinite, the judge shall, either *ex officio* or at the demand of either party, command both parties to define the points at issue more clearly (*ad concordanda dubia*).

After the *litis contestatio* (a) it is not allowed to change the original writ (*libellus*), unless the judge, for weighty reasons, deems a change necessary and the defendant consents, provided always that the latter be indemnified, if necessary; (b) the judge shall set a certain term for proposing and completing the process or proofs; this term may be prorogued at the demand of the parties, but not unduly; (c) the possessor of property belonging to another ceases to be *bona fide* after the *litis contestatio,* and therefore, if he should lose his case, is bound to make restitution not only of the property or thing itself, but also of the interest or profit drawn from the moment of the *litis contestatio,* and shall also be held to indemnification, if an additional loss occurs either to the defendant or to the object.

4. *Questioning of the parties follows next.* When the public welfare is at stake, the judge *must* question the parties concerning the facts, in order that they may be ascertained. In other cases,—*i. e., contentious,* civil, or private matters,—the judge *may* question one party at the demand of the other, or both *ex officio,* whenever he considers it necessary to corroborate or illustrate a proof alleged. Such questioning is admissible until the proceedings are closed.

The *oath* to tell the truth must not be demanded in criminal trials, lest the defendant be exposed to the danger of perjury. However, in civil cases which concern the public welfare, such as matrimonial and ordination cases, the judge must demand this oath of the parties. Culpable or negligent omission of this requirement does

not, however, affect the validity of the acts. In other cases the judge may demand this oath whenever he deems it necessary.

5. Here the Code inserts the important title on *proofs,* or judicial demonstration of the truth of a disputed assertion or fact.

PROOFS

a) No *proof* is required for notorious facts, nor for facts presumed by law, nor in case of judicial confession.

b) The *duty of proving* rests with the plaintiff, unless the defendant sets up an exception or makes a counter-charge, and thereby becomes a plaintiff (*reus excipiendo fit actor*), in which case he must furnish proof to his exception or counter-charge.

c) With regard to the *weight* of proof, the Code speaks of *plena* and *semiplena probatio,* or *plenam* and *semiplenam fidem facere.* Full proof is one which convinces the judge and prompts him to give sentence without further investigation. A *probatio semiplena* or half-proof is one that leaves room for reasonable doubt.

d) Different *means* of proving are: confession, witnesses, experts, local inspection, documents, circumstantial evidence, oaths, and, to some extent, contumacy.

(1) *Confession* frees the other party from the burden of proof, and may not be retracted except under certain conditions (can. 1750–1753).

(2) A *witness* is a person who has seen or knows a fact about another person, and is therefore competent to give evidence concerning the same. Persons whose *knowledge is privileged* cannot be called to take the witness stand. This includes pastors and priests who have knowledge of the matter in question only by reason of,

and in connection with, their sacred ministry, even though such knowledge was gained extra-sacramentally; also civil magistrates, physicians, midwives, lawyers (attorneys), notaries, and other persons bound by official secrecy.

Unfit and suspected persons must be rejected. Witnesses are *introduced* by the parties or promoters, and must give oath that they will tell the truth and nothing but the truth.

The *examination of witnesses* is made by the judge or auditor in the presence of a notary. Each witness must be questioned separately, and their deposition be taken down by the notary. The testimony of two or three persons is considered full or sufficient proof: (a) if they have been duly sworn; (b) if they are beyond suspicion and exception; (c) if their testimony is consistent, and (d) if they make judicial (not extrajudicial) deposition concerning a thing or fact which they themselves have witnessed (*de scientia propria*).

(3) Omitting experts and local inspection, some remarks concerning *documents* may be to the purpose. There are two kinds of documents: public and private. A *public document* is one composed by an official in his official capacity, with due observance of the prescribed formalities, or at least in official style. The official style requires the signature of an officially acknowledged person, his seal, or at least that of his office (for instance, the diocesan or episcopal seal, the parish seal, the monastery seal, etc.), and the date and place of issuance.

A *private document* is a writing executed by private persons or by an official in his private capacity only. Thus a pastor or notary public may give a receipt (*apocha*), or make a bilateral contract (*syngraphum*), or write a letter, which are entirely private.

Public documents are: (a) The acts of the Sovereign Pontiff, of the Roman Court, and of Ordinaries, when issued in authentic form in the exercise of their office; (b) Documents issued by ecclesiastical notaries; (c) Judicial ecclesiastical acts, because they possess all the requisites of authentic documents; (d) The original records of baptism, confirmation, ordination, religious profession, matrimony, and death, which are kept on file in the ecclesiastical courts, in the archives of parishes and religious institutes; also the testimonies or certificates taken from these original registers and issued by pastors, Ordinaries, or ecclesiastical notaries, as well as copies of these attestations.

Civil public documents, such as *affidavits,* are presumed to be genuine as long as the contrary is not evidently established. They prove what is directly and principally affirmed in them. In other words, such documents afford *prima facie* evidence. They are admitted also by the ecclesiastical law. The phrase, *"quae directe et principaliter in eisdem affirmantur,"* must be understood of the intention of the plaintiff or the direct object of the action to be proved by a document. For instance, a baptismal record proves that baptism has been conferred, but it does not prove the validity of the baptism, and a marriage certificate issued by a recorder proves that the parties have gone through the ceremony required by civil law, but it does not prove the validity of the marriage from the ecclesiastical point of view.

(4) *Praesumptio* or circumstantial evidence is a probable conjecture concerning an uncertain fact or thing. From circumstances which either necessarily or usually attend a fact, we conclude to the existence of the fact itself.

A presumption is *legal* if expressed in, and admitted

by, law, and is twofold: *iuris* simply, when introduced and admitted and expressed as such by law; *iuris et de iure,* when it is not only expressed and acknowledged by law, but the law is based upon the presumption. Against a *praesumptio iuris simpliciter,* direct as well as indirect proofs are admissible; whilst against a *praesumptio iuris et de iure* direct evidence only may be admitted, *i. e.,* a proof overthrowing the fact upon which the presumption is based.

(5) The supplementary *oath* supplies a missing proof and therefore takes the place of a witness or other instrument of evidence. It may be admitted in certain cases, but should never be demanded in criminal cases.

(6) *Contumacy* is treated under the incidental questions. Its effect for the plaintiff is that he forfeits the right of prosecuting the case, because he is supposed to have renounced that right. However, if the case concerns the public welfare, as, for instance, in criminal, ordinational, and matrimonial matters, either the *promotor iustitiae* or the *defensor vinculi* may continue the prosecution in his own name.

B. *Defence or Pleading*

This is opened by the *publication of the process* and the closing of the evidence. For before the defence is put up and the sentence is pronounced, all the evidence contained in the acts or records (minutes) and that which has so far been kept secret, must be published. This is done in order to give an opportunity to the parties to defend themselves. The so-called *conclusio in causa* is nothing but a formal declaration that the evidence is exhausted. It requires a decree of the judge. The *conclusio in causa,* as a rule, forbids the bringing forth

of new evidence; otherwise there might be no end to the trial and the door would be opened to undue protraction.

Then follows the *defence proper,* concerning which the Code lays down the following rules:

1.° A time is to be fixed by the judge for the defence, and it may be prolonged or restricted.

2.° The defence is to be made in writing, and if so demanded by the judge,—who also gives the permission,—it must be printed. Each judge as well as the fiscal promoter and the defender are entitled to a copy, and the parties must exchange their defence.

3.° The judge or the president of the board of judges shall direct the defence so that it may not be unduly protracted.

4.° After the parties have exchanged their written defence, they shall prepare the answers within the time assigned by the judge. But answers are allowed only once, unless for weighty reasons the judge grants a second chance for pleading. However, both parties must be treated equally, *i. e.,* if one party is allowed a second pleading, the other must also be offered the same opportunity.

The answers are to be in writing and, according to the practice of the S. R. Rota, should be ready twenty days after the written or printed defence has been distributed and exchanged.

5.° Whilst oral information (by which attorneys try to explain circumstances of law and fact to the judge, who may thus be unduly influenced by a one-sided presentation of the case) is forbidden, a *moderate oral discussion* or pleading is permitted, if necessary to throw light on the subject.

C. *The Sentence and Its Execution*

1. A *sentence* is the legitimate pronouncement of a judge, by which a case proposed by the litigants and judicially tried, is settled. It is called *interlocutory* if it settles an incidental question, *definitive* if it settles the main issue. The judge must have moral certitude concerning the case he settles by his sentence. Moral certitude requires sufficient proof to convince the judge of the righteousness of the cause.

The proofs may not be sought outside of the acts and allegations of the trial (*acta et probata*), because it is not as a private citizen, but as a judge, that he must give sentence. Hence privately gained knowledge should not influence the decision.

2. When a board of judges or one judge pronounces sentence, this must be drafted in such a way:

1.° That it settles the controversy at issue; that is, it must be either absolutory or condemnatory concerning the question contained in the writ of complaint (*libellus*), and offer suitable answers to each disputed point.

2.° That, so far as the case permits, the penalty of the guilty party is determined. Hence the sentence should state clearly and precisely what the condemned party has to give, do, or perform, or from what he has to abstain; also the manner, place, and time for fulfilling the obligation imposed. This is called *sententia certa.*

A conditional sentence, as a rule, is invalid, because a trial is supposed to settle the quarrel.

3.° That it contains the reasons, *in facto et iure,* upon which the dispositive part of the sentence is based. The

dispositive part is that which contains the absolutory or condemnatory sentence. Hence neither the *arenga,* nor the *narratio propria,* nor the *conclusio* are here concerned.

4.° That it states the amount of expenses incurred. The *extensor,* who is no one else but the *ponens* or referee, *i. e.,* one of the judges, may make a summary (*ristretto*) of the motives or reasons given by the judges, unless the majority has specifically determined which motives are to be advanced.

3. The sentence thus drafted should be *published as soon as possible.* How soon, is not expressly stated; but the phrase generally means after an interval of not more than three or eight days.

The manner in which the sentence may be published is threefold:

1. By summoning the parties to hear the sentence solemnly pronounced by the judge sitting in court;

2. By notifying the parties that the sentence is ready at the chancery of the court, and leave is granted to read it and have a copy made;

3. By sending a copy of the sentence to the parties concerned through the public carrier, where this is customary.

4. From a sentence thus published, an *appeal,* except in certain cases (see can. 1880), may be brought before the judge who pronounced the sentence, within ten days from the time the sentence becomes known. If the judge is still sitting in court, and the sentence was publicly read, the appeal may be made there and then; but the clerk must put it down in writing. Otherwise the party may, within *ten days,* put in the appeal in writing and offer it to the judge, or employ a notary public (of the ecclesiastical court) to draw it up for him. The appeal

must be prosecuted before the judge to whom it was directed, within a month from the date when it was lodged.

But the judge *from whom* the appeal was made may fix a longer term for the prosecution of the case appealed. The judge to whom (*ad quem*) is not determined here, but the rule is that he should be the one immediately superior. Hence from the diocesan court appeal should be taken to the *metropolitan* court. However, this latter may lawfully be omitted if an appeal is addressed to Rome. From the vicar-general to the bishop no appeal is possible.

If the parties permit the term granted for appeal (*i. e.*, ten days for putting in the appeal before the judge *a quo*, and a month or thirty days for prosecuting the appeal before the appellate court) to expire, the appeal is supposed to have been dropped. These terms are called *fatalia*, because they prove fatal to a cause if not observed.

After an appeal has been properly lodged, the court from which (*a quo*) the appeal was made must forward to the court of appeal (*ad quem*) either the original acts of the trial or a copy thereof.

In the *second instance* no new complaint or new doubts concerning the merit of the cause may be admitted, even if the new complaint is brought by way of a valid bulking of several actions (*utilis cumulationis*).

Different from appeal is the *complaint of nullity of a sentence*, of which there are two kinds that may upset a sentence or at least retard its execution: one is a curable and the other an incurable defect.

The sentence is *incurably null* in the following cases:

1. When it has been rendered by an incompetent judge,

or, if there was a board of judges, by a number less than that prescribed by law;

2. When the sentence has been pronounced on parties one of whom was not entitled to bring suit in an ecclesiastical court;

3. When one has prosecuted a case in another's name without being commissioned to do so (*sine legitimo mandato*); hence a proctor, counsel, or administrator (cfr. can. 1520) cannot validly prosecute without a special commission.

A sentence has a *curable defect:*

1. If the legitimate summons was omitted;

2. If it does not contain the reasons or motives that prompted the judge; exempt from this rule are sentences given by the Signatura Apostolica;

3. If the necessary signatures are wanting;

4. If the date and place are wanting; as to date, the year, month, and day are required.

5. As soon as a sentence becomes *res iudicata,* it may be executed. And a *res* becomes *iudicata:* (1) After two uniform sentences have been pronounced on the same case, *i. e.,* in the first and second instance, or in the second and third instance. (2) After a sentence which has not been appealed within the time granted by law. The same holds good when a sentence, though appealed to the judge who pronounced it, was not prosecuted at the court of appeals. (3) After one sentence in cases in which no appeal is admitted.

The *execution* should be carried out, either personally or through a delegate, by the local Ordinary of the diocese in which the trial was prosecuted in the first instance. If he refuses or neglects to put the sentence into effect, the interested party may demand execution

from the court of appeal, which may execute the sentence *ex officio* in case of refusal or neglect of the lower court.

SECTION II

SPECIAL RULES FOR CERTAIN TRIALS

Leaving aside compromise, there are three trials which demand closer attention, *viz.:* criminal, matrimonial, and ordination cases.

I. *Criminal Cases*

1. The *subject* of criminal trials are public crimes as understood by the Code.

Exempted from criminal procedure are the cases for which other penalties are sanctioned in law. These are:

a) Procedure against non-resident clergymen; can. 2168–2175.

b) Procedure against *concubinarii clerici;* can. 2176–2181.

c) Procedure against pastors who neglect their pastoral duties; can. 2182–2185.

d) The procedure called *ex informata conscientia;* can. 2186–2194.

2. *Accusation* or criminal action may be brought by no one but the *promotor iustitiae.*

From this differs *denunciation,* which, in certain cases, is demanded by law, and, therefore, is incumbent on every Catholic. Besides, every Catholic has the right to denounce the crime of another, either (a) to demand satisfaction or indemnity, or (b) for the sake of justice, *i. e.,* that scandal may be repaired or evil counteracted.

Denunciation should be made *in writing* and signed by the accuser, or orally to the local Ordinary, the di-

ocesan chancellor, or the rural dean or pastor (assistants or curates are not mentioned, and therefore cannot lawfully accept a denunciation).

Since the denouncer forms, as it were, one person with the fiscal promoter, the latter is entitled to demand all the evidence and the assistance of the accuser, in order to prove the crime.

3. A *special inquest* is required in cases (a) where the crime is neither notorious nor entirely certain, *viz.*, uncertain as to the fact or its imputability to the person denounced, but known only (b) through rumor and hearsay, or (c) by semi-official information, *viz.*, denunciation, complaint of damage, general inquiry made by the Ordinary, or in any other strictly extra-judicial way. But the inquest should not begin before sufficient evidence has been gathered, so that the Ordinary can give orders for the inquest. The *inquisitor cannot validly act as judge.* Denunciations made by manifest enemies or persons of ill-fame, and such as are anonymous, must be counted for nothing. The inquest must be held *secretly.*

If the *result* of the inquest proves *groundless,* the Ordinary, or the *officialis,* by special mandate, issues a decree to that effect; if *insufficient,* the acts are simply put away in the secret archives; if conclusive or probable, the delinquent must be summoned.

4. If the delinquent makes *a judicial confession,* he may, except in very serious cases (can. 1948), be *twice corrected or rebuked.* When correction is applied, the trial is suspended, provided the correction proves effective, *i. e.,* the corrected person behaves himself. This correction or rebuke consists in wholesome admonitions, combined with appropriate remedies, such as penances and good works, applied to the delinquent in order that he may publicly repair the disturbed order of justice and

the scandal given. However, these remedies do not bear the character of a judicial punishment, because the criminal trial has not yet begun, and hence they should be milder than those meted out after a condemnatory sentence.

5. *Criminal procedure* must begin:

a) if judicial correction was considered insufficient to repair the scandal or to restore justice (can. 1948);

b) if the defendant denies the crimes imputed to him, in which case the judicial correction may not be employed;

c) if judicial correction was ineffective.

The fiscal promoter must immediately draw up a bill of complaint or accusation, and present it to the judge, according to the rules laid down in the first section of this Book (IV). The defendant must be summoned as in other trials. If the crime is of a very serious nature, and the Ordinary is of the opinion that the faithful would be scandalized if the incriminated cleric should exercise the sacred ministry or perform spiritual functions or pious exercises or publicly receive holy Communion, he may, after having heard the promoter's advice, forbid him to exercise the sacred ministry or spiritual ecclesiastical functions, and to receive Communion publicly. This is a kind of suspension, but without penal character, and therefore irregularity would not follow its violation.

II. *Matrimonial Cases*

1. Matrimonial cases between baptized persons belong by proper and exclusive right to the ecclesiastical judge. Exclusively competent is the S. C. of the Sacraments whenever there is question of dispensing from a ratified but not yet consummated marriage.

Cases of the Pauline Privilege belong to the Holy Office. The *local Ordinary* is competent in case of impotency, as explained in can. 1963, § 2, in the following terms: If he has, by his own authority, conducted a trial for nullity of marriage on account of *impotency,* the result of which trial amounted, indeed, not to the establishing of impotency, but at least to proving that the marriage had not been consummated, he must send all the acts to the S. C. of the Sacraments, which will use these documents in order to pass judgment on the *matrimonium ratum, non consummatum.* It is hardly necessary to add that this preliminary investigation as to impotency, or non-consummation of marriage, respectively, must be conducted by experts, *viz.,* conscientious midwives and physicians, whose procedure and depositions must be judged according to the rules laid down in can. 1976–1982.

In other matrimonial cases the competent judge is the judge of the respective place (or diocese) where the marriage was celebrated, or where the defendant has his domicile or quasi-domicile, or, if one of the parties is a non-Catholic, where the Catholic party has his or her domicile or quasi-domicile.

2. The *court is composed* of the collegiate board of three judges and the *defensor vinculi.* How the judges proceed, see in can. 205–207 and 1576.

The *duties of the defender* are:

a) He must be present at the examination of the parties, witnesses, and experts; must present to the judges, in a closed and sealed envelope, the questions to be opened by them in the act of examination, and to be proposed to the parties and witnesses; and suggest to the judges new questions which may arise from the cross-examination.

b) He has to weigh the arguments proposed by the parties, and if necessary to contradict them, and to review the papers offered.

c) He has to set down in writing and to point out observations against the nullity of the marriage and in favor of its validity or consummation, and, in general, to make use of all lawful means which he deems conducive for the defence of the marriage bond.

But it is *not his office* to collect evidence, make up petitions, and sift illegible scraps of paper sent by pastors at random. The ordinary channel through which he is to work out the cases is the diocesan chancery. However, the diocesan chancery is supposed to be represented by a man versed in Canon Law, to some extent at least. Besides—we speak from experience—it would be a reasonable demand if the local Ordinary would insist upon "decent" paper of a definite size and that all documents be typewritten, or at least legibly written, signed and sealed by the pastor.

The *rights of the defender* are:

a) He is entitled to inspect, at any stage of the proceedings, the minutes of the trial, even though they have not yet been published, and to demand prorogation, which is to be granted according to the discretion of the judge, in order to complete his records.

b) He is entitled to be informed of all the proofs and allegations made, in order to be able to contradict them if he wishes.

c) He may demand that new witnesses be introduced or that such as have already been on the witness stand, be re-examined, even though the minutes of the trial have been completed and published; and he may also make new observations.

d) Finally, he may demand that other acts, suggested

by himself, be drawn up, unless the tribunal objects to this demand by a unanimous vote.

A remark concerning *documents*. Public documents afford full proof. But *affidavits* with the clause, "to the best of my knowledge," cannot be accepted as full proof, since they betray a wavering state of mind. Concerning *baptism*, there should be at least two witnesses, if no public document can be obtained, whilst one official public document must be considered sufficient. What sometimes is feared from perjury—even in affidavits—should not be presumed, but needs proof, and therefore such papers or witnesses must be admitted, until contrary proof is established beyond a doubt. The defender is not obliged to raise doubts as to perjury.

3. The *parties* alone are admitted to attack their marriage on the ground of defective consent, whether this defect be caused by violence and fear, or error, or lack of will, or unlawful conditions. They alone have the right to petition for a dispensation from a marriage ratified but not consummated.

Besides the parties themselves, the *promotor iustitiae* or prosecuting attorney of the diocesan court may attack a marriage because of impediments which are by nature public. Can. 1037 defines an impediment to be public when it can be proved in court. With the exception perhaps of impotency and crime, all marriage impediments are more or less of a public character.

All others, even blood relations, have no right to attack a marriage, though they may denounce a marriage which they regard as null to the Ordinary or promoter of justice.

4. For *legal procedure* the general rules must be observed. Thus witnesses, experts, and bodily inspection may be required. The defender is entitled to be heard

last, when allegations are made, petitions filed, or answers given, and he may exercise this right either in writing or by word of mouth. He must, within the time granted by law, appeal to a higher tribunal if the first sentence was in favor of the nullity of the marriage. If the second sentence confirms the first, and the defender of the court of appeals (who is a different one from that of the first instance) does not feel himself obliged in conscience to appeal, the parties are free to marry again after the expiration of ten days from the date when the second sentence became known to them.

Since no sentence in matrimonial trials ever becomes a *res iudicata,* a case may be reopened at any time, provided new proofs are offered; but these proofs must be of a weighty nature and supported by documents.

The *solemnities thus mentioned may be omitted,* and the Ordinary, upon having summoned the parties, may declare the marriage null and void, provided the *defensor vinculi* is satisfied, in cases of the following *impediments:* disparity of worship, sacred orders, solemn religious profession, the bond of a previous marriage, consanguinity, affinity, and spiritual relationship; but the following *conditions* must be verified:

(a) that the existence of the impediment be ascertained by a reliable and authentic document, which cannot be rejected or disregarded;

(b) that it be equally certain that no dispensation had been granted from the impediment.

The Papal Commission for the Authentic Interpretation of the Code has decided the following cases:[1]

1. If two Catholic parties have contracted marriage before the civil magistrate only, without observing the *"Tametsi"* or the *"Ne temere,"* in places where these laws are binding, and wish to contract marriage anew

in facie Ecclesiæ, or to have their civilly contracted marriage revalidated, the local Ordinary (or the pastor after having consulted the local Ordinary) may declare the first marriage null and void without a formal trial and without the intervention of the *defensor vinculi,* after having made the investigation prescribed in can. 1019, *i. e.,* after having ascertained the free status of the couple, *i. e.,* that no other impediment except the former invalid civil marriage is in the way.

2. The same rule is to be applied in cases of *mixed marriage* contracted invalidly under the same condition, provided the Catholic party wishes to contract a new marriage with a Catholic party.

3. The same rule applies in cases where apostates from the Catholic faith have contracted an invalid civil marriage for the same reason, and, now repentant, wish to contract a new marriage with a Catholic party *in facie Ecclesiae.*

But in each and every one of these cases a *civil divorce* must have been obtained. (*A. Ap. S.,* Vol. XI, 479, Oct. 16, 1919).

III. *Ordination Cases*

1. If the obligations arising from sacred ordination, or the validity of the ordination itself, are disputed, a petition must be filed with the *S. C. of the Sacraments.* If the dispute concerns a substantial defect in the holy rites, the *Holy Office* is competent. If the case is to be settled in a judiciary way, the local Ordinary or the Ordinary of the diocese where the disputed ordination took place, will have to prepare the documents, when asked by the Roman Court.

2. The *clergyman* himself, as well as the *Ordinary* to

whom he is subject, or in whose diocese he was ordained, may attack the validity of ordination. However, no one but the clergyman who thinks that he has not contracted the obligations arising from sacred ordination is entitled to ask for exemption from these obligations.

3. The *defender of the ordination tie* enjoys the same rights as the *defensor vinculi matrimonialis.*

4. *Two identic sentences* are required to free a clergyman from the obligations of sacred orders, *viz.,* celibacy and the recital of the Breviary.

Concerning *appeals,* the general rules on appeals must be followed.

PART II

BEATIFICATION AND CANONIZATION

1. *Canonization* is an act by which the Sovereign Pontiff definitively and, we may add, infallibly declares an individual who died in communion with the Church to be a Saint and deserving of the veneration of the universal body of the faithful.

2. The persons assisting at the trial are the petitioners, the postulators, the Cardinal *relator,* the *promotor* and the *subpromotor fidei,* notaries, secretaries, advocates, all of whom are bound under oath to fulfill their duties conscientiously.

3. The *evidence* turns about the theological and cardinal virtues, whether they were possessed in a heroic degree; or, if a martyr is under discussion, whether the fact of martyrdom is established as well as signs and miracles. If the result of the finding is favorable, the Servant of God may be called *Venerable.* Then the

miracles are severely scrutinized, with the assistance of physicians. There must be at least two or three miracles unquestionably proved to have been wrought at the intercession of the Servant of God. If martyrdom is evident, miracles are not strictly required. This concerns cases *per viam non cultus.*

4. When the *via cultus* or *casus excepti* is to be employed, the Ordinary, after having collected all the writings,—this is absolutely required also in the former method,—must gather evidence concerning the general and constant veneration paid to the Servant of God in the place, on his martyrdom and its cause, the miracles wrought at his intercession, and whether this veneration is now given to him. If, after examination made upon the request of the S. Congregation of Rites and approved by the Pope, the fact of veneration is verified, the virtues and miracles are scrutinized. Then the decree of immemorable cult and heroic degree of virtues is issued; which is equivalent to *beatification.*

5. Finally, canonization follows. A document establishing formal or equivalent beatification is required to introduce the process of canonization, or else an inquiry must be made as to the positive permission of the cult on the part of the Roman Pontiff.

To proceed to the canonization of a formally beatified Servant of God, two miracles wrought through his intercession after beatification, and three miracles in case the beatification was *aequipollens,* are required. The discussion of these miracles takes place as stated under beatification (can. 2116–2124).

Then the Roman Pontiff issues a decree of solemn canonization, the ceremonies and solemnities of which are those approved by the Roman Court.

PART III

MODE OF PROCEDURE IN CERTAIN CASES

There are seven cases for which the Code determines the procedure especially: the first three treat of removal and transfer. These, indeed, may also be treated by way of criminal trial, because the Code exempts from criminal trial only the last four.

General Rules

1. In all these trials a notary should be employed.
2. Admonitions must be made, like a precept, either in writing, or if made orally, before two witnesses.
3. *Examiners* and *pastors-consultors* must be employed.
4. The *procedure* is a summary one, without all the solemnities of a regular trial.
5. From the *final* decree only recourse is admissible.

A. *Removal of Irremovable Pastors*

1. An irremovable pastor may be removed from his parish for any reason which renders his ministry harmful, or at least inefficient, even though there be no grievous fault implied on his part. In particular these *reasons* are: (a) *Inexperience* or *permanent mental* or *bodily infirmity,* which render the pastor incapable of discharging his obligations properly, provided, however, that the Ordinary is convinced that the welfare of the souls in his charge cannot be insured by the appointment of a coadjutor; (b) *Popular hatred,* even though unjust and not general, provided it is such as to prove an obstacle to the pastor's useful ministry and is not likely to

cease within a short time; (c) *Loss of esteem* among righteous and serious-minded men; (d) A *probable crime* imputed to the pastor, which, though secret, may in the bishop's judgment create great scandal among the faithful; (e) *Faulty administration* of the temporalities, to the great damage of the church or benefice.

2. The *procedure* comprises the following acts:

a) Hearing the advice of the examiners concerning the charges;

b) Invitation to resign. If the pastor resigns, the case is finished. If he neither resigns nor asks for a delay or dilatory terms, nor rebuts the reasons alleged, the Ordinary must make *two inquiries,* one touching the juridical formalities, and the other concerning a mere fact; to wit, he must inquire whether, and be morally certain that:

α) The invitation to resign has been properly made and reached the pastor, and that

β) the pastor had no lawful excuse for not answering the same. After that removal may be decreed.

c) If the pastor *opposes the reason* alleged in the invitation because he is convinced that it has no foundation except gossip, he is entitled to demand dilatory terms —the extent of which is not determined by the Code— in order to prepare his defence. Then the reasons are examined by the Ordinary and the examiners.

d) The *decision* of the Ordinary must be communicated to the pastor, who may, within ten days, have recourse to the Ordinary against the decision, and within another ten days produce the reasons. Here the *pastors consultors* must be asked for their advice in debating the reasons advanced by the pastor.

e) After that the final decree is issued and notified to the pastor.

f) Then follows his transfer to another parish or office. The pastor, thus removed, must, as soon as possible, leave the parochial residence and hand all the belongings of the parish to the new pastor, or administrator *pro tempore,* appointed by the Ordinary. But the Ordinary should leave a sick priest in the (if necessary exclusive) enjoyment of the pastoral residence as long as his need requires.

B. *Removal of Movable Pastors*

1. There must be a just and grave reason, *viz.,* one of those mentioned above. A certain fixed term must be given the pastor for answering the Ordinary's demand. If the warning is given in writing, it should be sent by registered mail.

2. If the pastor does not act upon being thus warned, he may be removed at once. If he answers negatively, *i. e.,* if he refuses to resign, he must state the reasons for his refusal in writing. The Ordinary shall then discuss these reasons with two of the examiners. This discussion is required for valid procedure.

3. If the Ordinary, after having heard the advice of the examiners—which, however, he is not bound to follow—deems the reasons brought against the removal groundless or unlawful, he shall repeat the exhortation to resign under threat of involuntary removal in case the pastor refuses to leave the parish within the time appointed.

4. After the expiration of this term (which may, however, according to the prudent judgment of the Ordinary, be prolonged) the Ordinary shall issue the decree of removal. This, of course, must be intimated to the pastor.

C. *Transfer*

1. If the welfare of souls requires a transfer, the Ordinary will know that an *irremovable* pastor cannot be transferred against his will, unless the Ordinary has special faculties to transfer him.

2. A removable pastor may be transferred to another parish against his will, provided the parish to which he is transferred is not of too low a rank, and provided the Ordinary proceeds according to law.

D. *Procedure against Clergymen Transgressing the Law of Residence*

Pastors as well as assistants (curates) unless lawfully excused are obliged to reside within their parish. If they violate this law the procedure is as follows:

1. The Ordinary shall first give a canonical warning or admonition and in the mean time, in the case of a negligent pastor, provide as well as he can for the welfare of his subjects. The expenses of this temporary provision must be borne by the careless pastor.

2. If he does not heed the warning at all, removal is to be declared against him, as follows:

a) A *removable* pastor, who does not return after the second canonical warning, may (not *must*) be deprived of his parish immediately after the appointed time has elapsed. If he returns within the time set, the Ordinary shall issue a precept to the effect that, if he again leaves the parish without a written permission, he shall be *ipso facto* deprived of the parish.

b) If an *irremovable* pastor does not return to his residence after being duly warned, but brings forward new excuses for his absence, the Ordinary shall discuss

them with the examiners to see whether they may be admitted as lawful. If not, he shall not demand other proofs, but simply command the cleric to return within the time previously appointed, or a new term now fixed, under penalty of privation of his benefice, to be incurred *ipso facto*.

If the pastor does not return within the prescribed time, the Ordinary shall declare him deprived of his benefice; if he returns, the Ordinary shall give him a precept like that issued in the case of removable pastors, *viz.*, not to leave the place a second time without a written permission, under penalty of incurring privation of benefice *ipso facto*.

E. *Procedure against Concubinarians*

1. The fact of concubinage must be established and proved.

2. A personal and special *warning* is to be administered, with threats of penalties.

3. If the warning or precept was duly made and no answer returned, the Ordinary shall proceed as follows:

a) He shall suspend the cleric *a divinis, i. e.*, from exercising the acts of the power of ordination (can. 2279, § 2, n. 2°);

b) If the cleric is a pastor, he shall be immediately deprived of his parish, provided no excuses are forthcoming.

4. If *excuses* are offered, the Ordinary must call in two examiners, and discuss with them the validity or lawfulness of the reasons alleged. This discussion is absolutely required, although the Ordinary is not bound to accept the views of the examiners. If the excuses are found without weight, the procedure is as above, with

this difference, that an irremovable pastor must be given a new warning, which is not required for a removable pastor.

F. *Procedure against Neglectful Pastors*.

1. The neglect here mentioned may concern:

a) The administration of the Sacraments, pastoral correction and charity, care of the sick and dying (can. 467, § 1; 468, § 1);

b) Catechetical instructions and personal preaching, especially on Sundays and holydays of obligation (can. 1330–1334, 1344);

c) Neatness and decorum in the house of God, which includes care that no profanation occur (can. 1178).

2. Gross neglect must be punished first by admonition, then by a rebuke and some penalty, and, finally, after a new warning and time being given for defence, by subtraction of the salary, and, lastly, by removal.

G. *Suspension ex Informata Conscientia*

1. Ordinaries are allowed to suspend their clerical subjects from office, either partly or totally, *ex informata conscientia*. However, they should not inflict suspension *ex informata conscientia* when they can proceed without great inconvenience in the judiciary way. For this may be styled an extraordinary means of inflicting a heavy penalty, which, as a rule, would require all the solemnities of a trial. If the suspension is *ab officio*, without further determination or limitation, it forbids every act of order, jurisdiction, and administration implied in the office itself, except the administration of the benefice as such. If a partial suspension is intended, it must be clearly

indicated. But this suspension, either partial or total, affects neither benefice nor reception of higher orders.

2. It is required that the *decree* of suspension be issued *in writing,* unless the circumstances advise another mode, for instance, when there is a well-founded suspicion that the clergyman or others are bent on causing trouble in any shape or form. The decree must contain the precise date, *i. e.,* day, month, and year of issue. Besides, it must contain the following statements:

a) That the suspension is inflicted *ex informata conscientia,* for reasons known to the Ordinary;

b) That it is inflicted for a certain clearly expressed period of time;

c) A specification of the acts forbidden if the suspension is partial only.

3. It is furthermore necessary that the Ordinary who suspends a cleric *ex informata conscientia,* have *evidence* sufficient to be certain (α) that the cleric really perpetrated the crime with which he is charged, and (β) that the crime is of a nature to deserve such a severe punishment.

4. The *crime* for which this suspension is inflicted, must be *occult, i. e.,* one which is not yet divulged or has been committed under, or is involved in, circumstances which render it unlikely that it will become known. *"Occultum, quod non est publicum,"* says can. 2197.

For *public* crimes the suspension *ex informata conscientia* can be inflicted only under certain conditions: for *notorious* crimes it cannot be inflicted at all.

5. Since there is no judiciary procedure involved, it is left to the prudent judgment of the Ordinary to *manifest or conceal the reason for the suspension.* If he deems it prudent to make the reason known to the suspended cleric, he should use pastoral care and charity, in

order that the penalty inflicted and accompanied by paternal admonitions may not only procure an atonement of the transgression, but also better the delinquent and eliminate further occasions of sin.

6. *Recourse* to the Apostolic See, *i. e.*, to the *S. Congregatio Concilii,* is permitted, but no appeal or recourse to any higher instance. The recourse has *no suspensive effect.* The Ordinary must forward to the same S. Congregation papers containing the evidence or proofs that the clergyman really committed the crime for which he was suspended *ex informata conscientia.* These must be sent in trustworthy and correct abstracts, bearing the official seal and signature.

BOOK V

PENAL CODE

THIS book on "crimes and penalties" is divided into three parts, the first of which treats of crimes or transgressions, the second of penalties in general, and the third of penalties in particular.

PART I

CRIMES

(CAN. 2195–2213)

TITLE I

NATURE AND DIVISION OF CRIMES

1. A *crime,* in ecclesiastical law, is an external and morally imputable transgression of a law to which is attached a canonical sanction, at least in general.

2. Three *kinds* are distinguished: public, notorious, and occult crimes.

a) A *public* crime is one committed under, or accompanied by, circumstances which point to a possible and likely divulgation thereof.

b) A *notorious* crime may be such either by notoriety of law or notoriety of fact. It is *notorium iuris* if it has become an adjudged matter, or is judicially confessed (can. 1750). A crime is notorious *notorietate facti* when

it is publicly known and has been committed under such circumstances that it cannot be concealed by any artifice or be excused by any legal assumption or circumstantial evidence.

c) Every crime which is not public, says our text, is *occult* or secret. The Code distinguishes a twofold secrecy, *viz.*, merely material (*materialiter occultum*). which exists when the fact is unknown, or known only to the perpetrator and a few reticent persons; and formal (*formaliter occultum*), when the moral and juridical guilt is unknown.

TITLE II

IMPUTABILITY

1. The imputability of a crime depends on two essential conditions on the part of the perpetrator, *viz.*, (1) deliberation (*dolus*), and (2) speculative or practical guilt (*culpa*). Since either reason or free will may be affected not entirely, but partially, the degree of imputability or guilt is proportionate to the mental state in which the agent was at the time he committed the criminal act.

Incapable of committing a crime are those who are actually deprived or destitute of the use of reason. Those habitually insane are presumed not to be capable of committing a crime, even though they may have lucid moments or may appear sane as to certain processes of reasoning or certain acts.

2. *Ignorance* properly means an absence of knowledge that is morally imputable to the free agent. Such ignorance may be culpable or inculpable, and our text says that *inculpable* ignorance of the law renders one immune from responsibility for transgressing it,

whereas culpable ignorance diminishes the degree of imputability only in proportion to the obligation one is under of acquiring the necessary knowledge.

Ignorance is *vincible* if it can be removed by the use of ordinary means proportionate to the matter and the person who has to employ these means. If it cannot be remedied except by extraordinary means, which are required neither by the thing itself nor by the state or vocation of the person who is supposed to be obliged to use such means, ignorance is called *invincible*.

There are different degrees of vincible ignorance; *affected,* when one purposely avoids knowing the laws, in order to escape the burden of observing them; *supine or crass,* when one is ignorant of the law through indolence or carelessness. Both affected and supine ignorance, being consequent, render a crime simply voluntary.

Ignorance of the penalty does not take away, but to some extent diminishes, imputability. This rule must be proportionately applied to *inadvertence and error.*

3. Concerning *carelessness,* the text says that a breach of law committed by omitting the required diligence is less imputable, but the degree of imputability is left to be fixed by the judge, who must weigh all the circumstances. But if a person has been able to foresee the event (or effect of an action) and has nevertheless omitted to take the precautions which ordinary diligence would have dictated, carelessness approaches vicious intent or *dolus.*

4. As to *age,* it is ruled that, unless the contrary is evident, youth diminishes responsibility in proportion to its closeness to infancy.

5. Other causes diminishing imputability are: violence, fear, necessity, and *self-defence.* Of the last named the

Code says that the motive of legitimate self-defence against an unjust aggressor, provided the measure of necessity is not exceeded, takes away the criminal offence, and, like provocation, diminishes imputability.

With regard to the *passions* the law states that these, when wilfully and deliberately excited and fostered, increase imputability; otherwise, *i. e.*, if neither nurtured nor stirred up by wilful coöperation, but simply taken as they objectively affect human nature as a whole and individually, diminish responsibility in proportion to the degree of strength with which they work on the imagination. If they precede and impede the deliberation of the mind and the consent of the will, the act following cannot be imputed.

6. *Aggravating circumstances* are: higher dignity, abuse of authority and power, and relapse into the same crime.

7. *Effects of crime* are what may be called its consequences. For from crimes may arise:

1.° A penal or criminal action looking either to a declaration or condemnation to penalty and satisfaction, or to retribution.

2.° A civil action looking to repair of the damage if any was done.

TITLE III

CONATUS DELICTI

1. A *conatus delicti* is an external act committed with criminal intent, but without effect, in other words, a non-consummated crime.

2. A crime is said to be *frustrated* if all the acts neces-

sary for its commission, whether positive or negative, were posited, and sufficient preparations were made to commit the crime, but the same was not actually committed because another cause or agent aside from the perpetrator interfered and prevented it.

3. The *imputability* for attempted and frustrated crimes is determined as follows:

a) An attempt to commit a crime is less imputable than the act of perpetrating it; the degree of responsibility for the former must be gauged by its approach to the latter, with due regard, of course, to the damage done.

b) The responsibility resulting from a crime that failed involuntarily, or a frustrated crime, is greater than for one resulting from a simple attempt.

c) Those who wilfully desist from perpetrating a crime are free from responsibility for the same, provided no damage and no scandal were caused by the attempted or frustrated crime—which, of course, they would have to repair, according to can. 2211.

PART II

PENALTIES

(Can. 2214–2313.)

To the Church must be vindicated the right, flowing from her constitution, to punish with spiritual as well as temporal penalties those of her subjects who transgress her laws. This right is natural and inherent in the Church, and therefore entirely independent of human authority.

The Code advises moderation combined with firmness in the infliction of penalties.

TITLE IV

DEFINITION, KINDS, INTERPRETATION, AND APPLICATION

1. An ecclesiastical penalty *means* the privation of some good, inflicted by lawful authority for the correction of a delinquent and in punishment of his crime. Its purpose is reformatory and punitive. Every society has, or should have, in view this aim,—to protect itself and lead the delinquent to a better life.

2. Three different kinds are mentioned: censures or corrective (medicinal) penalties, vindictive penalties, and penal remedies and penances.

A subdivision of penalties is based upon the measure and mode of their infliction:

1. A *fixed penalty* is one so clearly determined by law or precept that there is no room for doubting what is meant. Thus, if the law says: "they incur excommunication," "are deprived of office," etc., this and no other penalty must be understood.

An *undetermined* or arbitrary *penalty* is one, the infliction of which is left to the prudent discretion of the judge or superior. The discretion may, however, concern the question whether any penalty is to be meted out at all, or what kind of a penalty, and in what measure. For the law may determine that a penalty must be inflicted, but leave the kind and measure to the judge; *e. g.*, where the phrase is used: *"pro gravitate delicti."* Take, for instance, can. 2170. It says that the Ordinary must decree privation of income, but may inflict other penalties in addition thereto. Hence the law sometimes prescribes one penalty and intimates others. The law may also establish the minimum penalty and leave it to the judge

to inflict a severer one. *Preceptive* or obligatory terms in general are: *"debet puniri," "puniendus est," "privandus," "declarandus"* or *"declaretur infamis"; facultative* or *arbitrary* terms: *"pro gravitate culpae," "ad arbitrium superioris,"* etc.

2. Another distinction is that between penalties *latae* and *ferendae sententiae.* A fixed penalty is *latae sententiae* if it is attached either by law or precept to the commission of a crime. The law uses, for instance, the terms *ipso facto, ipso iure incurrit excommunicationem* (can. 2343, *privilegium canonis*); the superior decrees (*per modum praecepti*) suspension to be *ipso facto* incurred for a certain kind of crime; these are penalties *latae sententiae. Ferendae sententiae* are those which are to be inflicted by the judge or superior, although perhaps appointed by law.

3. A *fixed* penalty *latae sententiae* as well as *ferendae sententiae* may be established by law (*a iure*). For instance, clerics who violate the *privilegium canonis* against cardinals and papal legates incur two penalties *ipso iure latae sententiae* and, besides, are to be deprived of their benefices, offices, dignities, which is a penalty *ferendae sententiae,* although both kinds of penalties are laid down in law (can. 2343).

Ab homine is a penalty which, though established by law, is inflicted by way of a special order *per modum praecepti peculiaris,* or by a condemnatory judiciary sentence.

Penalties must be understood to be *ferendae sententiae,* unless *ipso iure* or *ipso facto,* or similar terms are used. The general rule is that a penalty *ferendae sententiae* requires at least a summary trial.

4. The rule for *applying penalties* is that they must be proportionate to the crime, which is to be judged ac-

cording to its imputability and the scandal and damage caused.

5. The rules for *interpretation* may be thus stated:

a) "In penalties the more favorable interpretation should be adopted," which must be understood according to the general rules of interpretation.

b) If there is doubt whether a penalty inflicted by the competent superior is just or unjust, the penalty must be borne in both the internal and external forum, unless an appeal with suspensory effect was lodged.

c) *Analogy* is not admitted in interpreting penal laws. Hence there is no stretching from one person to another, no extending from one case to another, even if the reasons or circumstances of persons and cases are quite alike, nay, the reasons for extending the penalty seems even stronger.

TITLE V

SUPERIORS WITH COERCIVE POWER

1. Those who enjoy legislative power, the Pope and the Ordinaries, are authorized to attach a penal sanction to their laws. Vicars-general need a special mandate to do so.

2. The general rule is that no penalty is to be inflicted without a threat or *canonical warning*. This warning must contain a penalty of either *ferendae* or *latae sententiae* before the transgression happens. For in case the transgression is proved, the penal sanction goes into effect. This canonical warning is not required if scandal has been given or the transgression is of a particularly serious character.

3. The *judge,* as such, has only to *apply* the penalty stated in law, and therefore should observe the rules of procedure, *viz.:*

a) He is not allowed to increase a fixed penalty, unless extraordinary circumstances demand a severer punishment; *e. g.,* the atrocity of a crime, the scandal given, etc. The increase may consist of multiplication or added intensity; for instance, suspension and detention in a house of correction, or suspension from office and benefice, etc;

b) If the penal law *ferendae sententiae* is couched in arbitrary terms (*verbis facultativis*), it is left to the conscience and prudence of the judge to mete out the penalty or dictate the minimum penalty if this is fixed;

c) If the wording of the penal law is compulsory (*verbis praeceptis*), the penalty must, as a rule, be inflicted. There are precepts couched in the subjunctive or gerundive form, *e. g., "privetur," "privandi sunt," "debet puniri, suspendi, removeri,"* etc. Yet even in this case the legislator leaves it to the conscience and prudence of the judge, both of which qualities suppose that he decides objectively, not subjectively or under the influence of passion. But he may also, if the case is such, delay or mitigate a penalty already fixed, and abstain from inflicting it in case of sincere reform.

d) Finally, if the sentence is a *judiciary* one, the judge must observe the rules given in can. 1968 ff. for pronouncing sentence. Besides, if a penalty, more especially a censure, whether *latae* or *ferendae sententiae,* is to be inflicted by way of a particular order or precept, it must be declared to have been incurred (*latae sententiae*), or actually inflicted, in writing or before two witnesses, and the reasons for it given.

TITLE VI

WHO ARE SUBJECT TO PENAL LAWS

1. An ecclesiastical penalty *binds* the delinquent everywhere, even after the superior who inflicted it has gone out of office. This applies to penal laws in general, for there are, *e. g.*, local interdicts which are merely territorial. But the crime must be such according to the terms of the law.

2. Besides, penalties follow imputability. Hence:

a) *Affected ignorance* (*ignorantia affectata*), *i. e.*, the kind that is purposely fostered in order to avoid the trouble of ascertaining the law and to have a pretext for transgressing it, does not render one immune from incurring the penalties *latae sententiae,* no matter whether this ignorance concerns the law itself or its penal sanction,—not even if the law contains words like these: *"praesumpserit," "ausus fuerit," "scienter, studiose, temerarie, consulto egerit," i. e.*, even though the law expressly demands a *dolus.*

b) If the law contains the terms quoted above (*"praesumpserit,"* etc.) or similar ones, which require full knowledge and deliberation, every degree of diminished imputability, either of the intellect or the will, renders the offender with such lessened responsibility immune from penalties *latae sententiae.*

c) If the law does not contain the terms *"praesumpserit," "ausus fuerit,"* etc.:

(α) Crass or supine ignorance (*crassa vel supina ignorantia*) exempts from no penalty *latae sententiae.*

(β) Drunkenness, carelessness, mental weakness, impetuous passions do not exempt from penalties *latae*

sententiae, provided the responsibility, though somewhat diminished, is still grievously culpable.

(γ) Grave fear by no means excuses from penalties *latae sententiae,* if the crime involves contempt of faith or of ecclesiastical authority, or public damage to souls.

d) *Impuberes, i. e.,* boys before the fourteenth and girls before the twelfth year of age, completed, are excused from penalties *latae sententiae,* and should be punished rather by reformatory educational means than by censures and severe vindictive penalties.

e) Those who coöperate in a crime by conspiracy, or as accomplices or effective counselors and coöperators, are subject to the same penalty, though only one (in the singular) is mentioned in the penal law; unless the text has a contrary provision.

3. A penalty *latae sententiae,* whether corrective or vindictive, binds the delinquent *ipso facto* both in the external and in the internal forum, provided he is conscious of the crime. However, says the text, if *defamation* should actually follow the application of this penalty, the delinquent is excused from executing the penalty as long as no declaratory sentence has been issued. In the external forum no one is allowed to demand this self-execution of the penalty on the part of the delinquent, unless the crime is notorious. No penalty can be inflicted unless it is certain that the crime has been perpetrated and legitimate prescription has not set in

TITLE VII

REMISSION OF PENALTIES

1. Penalties may be removed by way of *absolution* or *dispensation.* The former is applied to censures, the lat-

ter to vindictive penalties. Both presuppose jurisdiction over the person as well as over the matter at issue, because of the juridical tie contracted by penalty. The judge who *ex officio* applies a penalty established by a superior, cannot remit the penalty thus inflicted. Having rendered the sentence, his office is completed.

2. The *Ordinary* may remit all penalties *latae sententiae,* either corrective or vindictive, established by common law, except the following:

a) Cases brought before the civil ecclesiastical court, as when civil action is instituted in order to obtain damages for a crime.

b) Cases reserved to the Apostolic See, either simply, or especially, or most especially.

c) Penalties entailing to hold benefices, offices, dignities in the Church, penalties referring to the active and passive vote and privation thereof, perpetual suspension, infamy by law, privation of advowson, and privileges or favors granted by the Apostolic See.

In *occult cases latae sententiae,* established by common law, the Ordinary as well as any one delegated by him may remit the penalties. An exception to this general rule are the censures which are reserved either *specialissimo or speciali modo* to the Holy See. In occult cases, the Ordinary may delegate another, as per can. 199, § 2, either for each separate case or habitually.

3. A penalty may be remitted not only when the person is present, but also when he is *absent,* either unconditionally or with a condition attached, for instance, to present himself to the superior, or provided his amendment has lasted for a certain length of time. A remission may be valid either in the court of conscience only or in the external forum only. A remission extorted by physical compulsion or grave fear is *ipso iure* invalid.

TITLE VIII

CENSURES

1. A censure is defined by the Code as a penalty by which a baptized person, delinquent and contumacious, is deprived of certain spiritual benefits, or benefits connected with spiritual ones, until he has given up his contumacy and obtained absolution.

Contumacy may be said to cease (can. 2242, § 3), when the delinquent repents of the crime he has committed, makes proportionate satisfaction for the damage he has caused, and repairs the scandal given, or at least seriously promises to do so. Whether the repentance is sincere, the satisfaction sufficient, or the promise serious, must be judged by the one who is asked to give absolution.

Recourse from censure has only a devolutive effect, *i. e.*, the whole case is thrown upon the court of appeal, but the one thus censured must conduct himself as if he were censured, *i. e.*, abstain from every act of order, jurisdiction, or administration forbidden by the censure.

2. *Reservation of censures* may be made either *ab homine, i. e.*, by the lawful superior, or *a iure, i. e.*, as stated by a general or particular law. Censures reserved *ab homine* are reserved to the one who inflicted the censure, to the former's superior, or successor or delegate. Therefore, if a priest has been censured by his bishop, the censure may be reserved to the Pope, to the bishop's successor, or to his delegate.

Censures reserved *a iure* are: (a) those reserved to the Ordinary; (b) those reserved to the Apostolic See; and (c) those reserved to no one. To the *Apostolic See* some are (a) simply, some (b especially, and some (c) most especially reserved.

Censures *latae sententiae* are *reserved* only if the reservation is expressly stated in the law or precept which contains or threatens the reservation. If a doubt exists concerning the reservation, it need not be observed, *i. e.,* any confessor may absolve therefrom. Reservation of censures must be strictly interpreted.

The *effect of reservation* depends on receiving the Sacraments thus: (a) If it prevents one from receiving the Sacraments, a reservation involves reservation of the sin to which the censure is attached; (b) If it *does not prevent* one from receiving the Sacraments, the sin is not reserved, even though the censure is.

If one is excused from censure, or has been absolved therefrom, reservation of the sin ceases entirely.

Can. 2247, § 1, forbids Ordinaries to attach another censure reserved to themselves to a crime already reserved to the Apostolic See. But we cannot agree with some writers who maintain the invalidity of a censure attached by the bishop to a censure already reserved to the Apostolic See.

The *territorial extent of reservation* is thus stated in the Code:

a) The reservation of censures made for a particular territory—by way of a territorial law—is restricted to the limits of that territory, diocese, or province, and has no binding force outside its boundaries, even though the person censured leaves this territory in order to be absolved, in other words, if he leaves his home *in fraudem legis.*

b) If, however, an Ordinary or judge would inflict a censure and reserve it to himself by virtue of a *special ordinance or condemnatory sentence* (can. 2217, § 1, n. 3), such a reserved censure would bind the censured person everywhere, so that he could not be absolved

by any confessor unless the latter had obtained special faculties for the purpose.

There is some comfort in can. 2247, § 3, because a confessor, especially when tired, may not always have all the reserved censures present in his mind. Hence, if a confessor, *unaware of a reservation,* would absolve a penitent from censure and guilt, the absolution from censure would be valid. Exception, however, is taken to censures inflicted *ab homine* and the four censures "most especially" reserved to the Apostolic See.

3. *Absolution* from censures is required and may be claimed by such as recede from contumacy. A censures duly removed never revive. One who has incurred *several censures* must mention them in his petition; but an absolution imparted in general terms is valid for all. One may be absolved from sin, and therefore be in the state of grace, yet remain under censure. On the other hand, when there is question of a censure which prevents the reception of the Sacraments, absolution from censure must be imparted before absolution from sin can be licitly granted.

The *formula of absolution* is thus determined: (a) If absolution is given in the tribunal of penance (*in foro sacramentali*), the usual form contained in the Roman Ritual should be employed. (b) In the non-sacramental forum (*in foro non-sacramentali*), either for the court of conscience or for the external forum, any formula may be used if no excommunication is implied; hence also the short formula for the confessional is permitted. (c) If, however, absolution is to be given from excommunication, the formula prescribed in the Roman Ritual (or Pontifical) should, as a rule, be employed.

Absolution given *in foro externo* affects both *fora,* the internal as well as the external. Concerning this there

never was a doubt. If the absolution is given *in foro interno,* the person thus absolved may conduct himself as one absolved or freed from censure also concerning acts of the external forum, provided the scandal has been removed.

4. *Those empowered to absolve from censure* are mentioned in can. 2252–2254, which distinguish three classes of cases: normal, danger of death, and urgent.

a) As to *normal cases, i.e.,* cases which are neither urgent nor in danger of death, can. 2253 distinguishes as follows:

(α) From *non-reserved censures* every duly approved confessor may validly and licitly absolve in the tribunal of penance. If absolution is to be given outside the confessional, it must be imparted by one who has jurisdiction over the delinquent *in foro externo.*

(β) From *censures reserved ab homine,* only he who has inflicted the censure, or his competent superior, or his successor or delegate, can absolve.

(γ) From *censures reserved a iure,* only the one who made the law, his superior, his successor or delegate, can absolve.

The *Ordinary may absolve his subjects everywhere* from censures reserved *episcopo* or *ordinario;* the local Ordinary may also absolve *peregrini.* By "Ordinary" are understood all those who go by this name: the bishop, vicar-general, administrator, vicars and prefects apostolic, and major superiors of exempt religious organizations.

Only the *Apostolic See* itself can *de iure* absolve from censures reserved to the Apostolic See; every inferior needs faculties, which are of a threefold kind:

1.° A special faculty is required for absolving from censures which are reserved to the Apostolic See *simplici modo.*

2.° A special faculty is required to absolve from censures reserved to the Apostolic See *modo speciali.*

3.° A most special faculty is needed to absolve from the four cases reserved to the Apostolic See *modo specialissimo.*

b) *In danger of death* one may be absolved *by any priest,* even though that priest has no jurisdiction or faculties to absolve from the censure in question; but after recovery, *i. e.,* after being fully restored to health, the penitent is bound to have recourse to the proper authority, under penalty of falling back into the censure.

If absolution has been given from a censure reserved *ab homine,* or *modo specialissimo* reserved to the Apostolic See, recourse must be had to the one who inflicted the censure, if it was a censure *ab homine.* The recourse must be had to the S. Poenitentiaria, or to the bishop, or to another endowed with the faculty of absolving, if the censure was *a iure, i. e., specialissimo modo* reserved to the Holy See.

This recourse implies that the penitent abide by the order of the respective superior. The term *"mandatis parendi"* implies willingness and promptness to carry out the injunctions given, either orally or in writing. Generally there is attached to the rescript of absolution the clause: *"iniunctis de iure iniungendis."* This signifies:

(α) that the censured party must give satisfaction to those who were hurt or damaged by the criminal act for which he or she was censured;

(β) that the scandal be repaired if any was given;

(γ) that other imposed works, such as sacramental confession or penance, be accepted.

Danger of death may be supposed to exist when the penitent is in such a state that he has an equal chance

for life or death, be the danger internal (sickness, wounds, birth, old age) or external (war, perilous journey).

c) *In more urgent cases* any duly approved confessor may validly and licitly absolve from each and every censure, no matter how and to whom it is reserved, provided it is a censure *latae sententiae.*

Which cases are more urgent, is explained as follows:

α) When these censures cannot be exteriorly observed without serious danger of scandal or loss of reputation, which may be the case if a priest would be obliged to exercise the sacred ministry, or if a layman in good standing would have to omit his Easter Communion; to judge whether this case is verified belongs to the confessor.

β) Or if it would be difficult for the penitent to remain in the state of grievous sin for the length of time required to obtain the necessary faculty from the competent superior. Whether and under what circumstances it would be difficult for a penitent to remain in this state, must be left to the judgment of the confessor, who may apply the rule: *"Poenitenti credendum est."* Therefore, if the penitent should say, that one day would be hard, we think our canon could be applied, though some authors hold that a week, or at least three or four days, are required.

The obligation of the confessor under such circumstances is:

α) That he absolve in the tribunal of penance; hence he cannot absolve outside the confessional, because the *forum sacramentale* is not identical with the internal forum;

β) That he impose on the penitent the strict and grievous obligation of having recourse to the S. Poenitentiaria, or to a bishop or other superior endowed with the neces-

sary faculties to absolve him, and to abide by their order;

γ) That this recourse be imposed under penalty of reincidence (*sub poena reincidentiae*), *i. e.,* of falling back into specifically the same censure from which he is now absolved;

δ) To remind the penitent that recourse must be had within a month, to be reckoned probably from the day of absolution, or at least from the day when he became conscious of the obligation;

ε) To tell the penitent that recourse may be had by letter, in which case the proper names are to be suppressed and fictitious names used, or personally, because a personal visit to Rome is not excluded;

ζ) The confessor should remember that he, too, is bound to have recourse to the competent authority, unless a serious obstacle prevents.

The penitent is at liberty to approach another confessor endowed with the necessary faculties and to obtain absolution from him. This right is granted even in case the penitent has already been absolved (in urgent necessity) and has had recourse to the competent authority. But the penitent has again to confess the censured sin to this other confessor, in order that the latter may know the nature of the case and impose the necessary injunctions. After receiving absolution the penitent has merely to carry out the orders given by the second confessor and is not bound to abide by the injunctions of the superior to whom recourse was had, which may reach him later.

If, in some extraordinary case, recourse should be morally impossible, the confessor may grant absolution without imposing the obligation of recourse. However, in that case, another obligation must be imposed, *viz., iniunctis de iure iniungendis,* and a proportionate penance

and satisfaction for the censure. This obligation is so grave that if the penitent would not comply with the penance imposed and with the demand of satisfaction within the time fixed by the confessor, he would fall back into the same censure.

From this favor of omitting the recourse is excluded the case of *absolutio complicis* (can. 2367); poverty or the inconvenience of seeking another confessor are not admitted as excuses.

Particular Censures

These are: excommunication, interdict, suspension.

Excommunication is always a censure, whereas interdict and suspension may be either censures or vindictive penalties; if it is doubtful whether they were inflicted as a censure or as a vindictive penalty, they are presumed to be censures.

Suspension is proper to the clergy; an interdict may be inflicted also on laymen, nay, even on places.

There are two terms which the Code frequently uses in connection with penalties and explains more particularly:

a) By *divine offices* are to be understood those functions of power of order (*potestatis ordinis*) which have been established by divine or ecclesiastical authority and are performed only by the clergy. Such are the celebration of Holy Mass, the administration of the Sacraments and sacramentals (blessings, sepulture, public service, preaching, choir service, processions), etc.

b) *Legal ecclesiastical acts* are those of official administrators of ecclesiastical property; those of the following persons employed in the ecclesiastical court: judge, auditor, relator, *defensor vinculi* (for marriage and ordina-

tion), fiscal promotor and promotor of the faith (for beatification and canonization), courier and beadle lawyer and proxy; those of sponsors at Baptism and Confirmation;—the (active) voice or right of voting at ecclesiastical elections, including those held by monastic chapters and chapters of religious communities and acts of actual (not habitual) exercise of the *iuspatronatus* or advowson.

I. *Excommunication*

1. Excommunication *means* the act of excluding, or the state of being excluded, from fellowship with the faithful; practically speaking, the Church is the society of the faithful.

2. Its *inseparable effects* are:

a) An excommunicated person may not assist at divine services; the only exception is hearing the word of God, which is not forbidden.

b) He may not receive the Sacraments, and after a declaratory or condemnatory sentence cannot even receive sacramentals.

c) He cannot administer the Sacraments and sacramentals, nor say Mass.

d) The excommunicated do not partake of the indulgences, suffrages, and public prayers of the Church, either by way of satisfaction or of impetration.

e) They are excluded from legal acts and acts of jurisdiction.

f) No excommunicated person may obtain any dignity, office, benefice, ecclesiastical pension, or other commission in the Church.

g) No one may be licitly promoted to orders as long as he is excommunicated. Order is here taken according

to can. 950, *i. e.,* including all orders, even tonsure; for there is no reason why the term should be restricted to "holy" orders, nor does the context call for a milder interpretation.

h) No one excommunicated by a declaratory or condemnatory sentence (including *vitandi*) can obtain any papal favor, unless mention is made of the excommunication in the papal rescript.

i) A clergyman remains deprived of the fruits, *i. e.,* revenues, salary, income, accruing from the dignity, office, benefice, pension, charge, which he holds in the Church.

3. There is a distinction between an *excommunicatus toleratus* and a *vitandus* which concerns especially ritual and social intercourse.

a) *Passive assistance* may be permitted to a *toleratus,* and it is not necessary to expel him from an assembly, *e. g.,* from the church or chapel, even though the priest who says Mass and others may know of the excommunication.

b) *Active assistance* must be denied not only to *vitandi,* but also to every other excommunicated person, even though *toleratus,* after a declaratory or condemnatory sentence has been issued or the excommunication has become notorious.

c) *Vitandi* are denied active as well as passive assistance and must be expelled from the place where divine services are held. Should expulsion be impossible, because of great inconvenience, the divine office must cease at once, unless the rubrics demand its continuance.

d) Provided a minister is not a *vitandus* or under a declaratory or condemnatory sentence, the faithful may, for any just reason, ask him to administer the Sacraments and sacramentals to them. This is more especially true if no other minister is available, in which case the ex-

communicated minister thus asked may administer the Sacraments and sacramentals without as much as inquiring into the reason why the petitioner wishes to receive them.

If the minister, *i. e.,* priest, is a *vitandus* or excommunicated by virtue of a condemnatory or declaratory sentence, the faithful may demand from him absolution in danger of death, even though other priests are present who are not excommunicated; but other Sacraments or sacramentals they may receive from such priest only if no other ministers are available.

e) The faithful shall avoid *social intercourse* with *vitandi.* From this obligation are exempted those bound by matrimonial bonds, parents, children, servants and subjects. Besides, any reasonable cause may excuse others.

II. *The Interdict*

1. The interdict is *defined* as a censure by which the faithful, while remaining in communion with the Church, are denied certain sacred things or benefits.

It is *personal* when the prohibition directly concerns the personal use of certain sacred things, *i. e.,* when persons are directly intended by the interdict.

It is *local* when *in recto* the place, and only indirectly the persons living in that place, are struck by this penalty. In interdicted places the administration or reception of sacred things or spiritual benefits is forbidden.

A *general personal interdict* is one laid upon a corporation as such, for instance, the entire (Catholic) population of a realm, province, diocese, parish, chapter, or all the members of a religious community.

A *general local interdict* is one inflicted upon a place

comprising several distinct places, or juridical entities, for instance, a diocese, province, parish.

A *special personal interdict* is one imposed on specified persons, for instance, on the pastor of a parish or the administrator of a diocese.

A *particular local interdict* is one inflicted on a specified place, taking place (*locus*) in the stricter sense of locality, for instance, a specially designated church, chapel, altar, or cemetery.

2. A *general prohibition* extends to divine office and sacred rites. But the administration of Sacraments and sacramentals to the dying is allowed. On Christmas, Easter, Pentecost, Corpus Christi, and the Assumption (Aug. 15) the local interdict is suspended, and only the conferring of orders and the solemn nuptial blessing are forbidden. Hence solemn services with all pomp and liturgical display may be celebrated, but only on these days themselves, not during the octave. In *parish churches* a low Mass may be celebrated *daily;* external pomp, however, must be avoided. Priests who gave no cause to the interdict may say Mass, the faithful, however, being excluded. Personally interdicted persons are debarred, like the excommunicated, from administering and receiving the Sacraments.

If a *cemetery* is interdicted, the adjoining church is not interdicted, even though it belongs to the cemetery; but all oratories erected on the cemetery are included.

III. *Suspension*

1. Suspension is a *censure* by which a cleric is forbidden to exercise the rights attached to his office, or benefice, or both.

2. Since the *effects* of suspension are *separable,* it is

evident that they follow the various kinds of suspension in varying degrees.

a) A *general suspension* deprives a cleric of all the rights pertaining to his office as well as his benefice; and if the suspension is not further determined in the decree or precept of the superior or judge, a general suspension is to be understood, *i. e.,* one accompanied by all the effects stated in this article.

b) A *special suspension* is twofold: from office or from benefice. The special suspension *from office* may be either total or partial, according as all the rights attached to the office, or some only, are taken away. The special suspension from *benefice,* too, may be total or partial, since the administration of the benefice may be taken away, or only its revenues.

The distinction of *latae* and *ferendae sententiae* also applies to suspension.

3. If suspension from office is inflicted without any further restriction, it forbids the exercise of any act of the power of order or jurisdiction, and of mere administration attached to the office itself. But the administration of one's benefice is not withdrawn. Besides, it should be noted that the office itself is not lost, for the effect touches only the exercise of rights.

4. A *modification* of the effects is admitted by the Code under the following conditions:

a) If a suspension is incurred that forbids the administration of Sacraments and sacramentals, as is the case in suspensions *ab officio* and *a divinis,* the suspended cleric may lawfully administer them only in case he is legitimately requested to do so by the faithful; nor is he obliged to ask for the reason of the demand. This favor, however, supposes that no condemnatory or declaratory sentence has been pronounced against him.

b) When the suspension, *e. g., ab officio, a iurisdictione, a definito et certo ministerio* (*e. g., audiendi confessiones*) forbids an act of jurisdiction either in the internal or external forum, the act performed under such censure is invalid, if a condemnatory or declaratory sentence has been pronounced or if the superior has expressly declared that the power of jurisdiction is withdrawn; but if no such sentence or such express declaration has been made, the act of jurisdiction is valid, even though illicit. Nay, it even becomes lawful if the minister has been legitimately asked by the faithful. In danger of death the act of jurisdiction which is exercised in giving sacramental absolution is valid and licit, even though other priests or ministers are available.

TITLE IX

VINDICTIVE PENALTIES

1. *Vindictive penalties* are intended directly for the expiation of crimes, and consequently their relaxation does not depend on the mere cessation of contumacy.

2. *Appeal or recourse* from vindictive penalties is admitted, and this appeal has a suspensive, not merely a devolutive effect, unless the law contains an express provision to the contrary.

3. These penalties, properly speaking, need a *dispensation* in order to cease. Dispensation can be granted only by the prelate who inflicted the penalty and, therefore, a penalty inflicted by common law can be remitted only by the Pope; a penalty inflicted by a particular law or statute can be remitted by the one who enacted that particular law. However, *confessors* may dispense in *occult and urgent cases,* provided the penalty, which is

supposed to be *latae sententiae,* would, at least probably, cause the loss of good name to the delinquent and scandal to the people. Of the existence of this condition the petitioner may judge and his testimony must be believed.

But this power is furthermore limited in this sense, that the confessor in the confessional—therefore not merely *in foro interno*—can only suspend the obligation of observing the vindictive penalty to the duty of having recourse to the proper authority in writing, through the confessor, within one month from the date of confession, if this can be done without serious inconvenience. This recourse must be had, without mentioning names, to the S. Poenitentiaria or to the bishop, if he possesses the necessary faculties. The penitent must then abide by their orders.

4. *Single penalties,* for instance, are: interdict, transfer, privation or temporary suspension of benefices and pensions, privation of academic degrees, disability and infamy.

5. There is a twofold *infamy,* one of law, the other of fact. (a) Infamy of law (*iuris*) is that expressly stated in common law as a penalty for certain crimes; it is legal conviction of a crime. (b) Infamy of fact (*facti*) exists when one, by reason of a crime committed, or on account of bad character, has lost his good reputation with upright and serious Catholics. Whether and when this is the case, is for the Ordinary to decide.

The effects of legal infamy (*infamia iuris*), which may be inflicted as a penalty, are: irregularity and disability, *viz.,* disqualification for any ecclesiastical benefice, pension, office, dignity, and any legal act or right of any kind.

6. *Infamia facti* produces the following effects:

1.° It constitutes a canonical impediment for receiving orders, but does not render one irregular (can. 987, n. 7).

2.° It disqualifies one from lawfully (not validly) accepting ecclesiastical dignities, benefices, or offices.

3.° Infamous persons may not exercise any function of the sacred ministry which may ordinarily be performed by laymen, as stated above.

4.° They must be repelled from exercising *actus legitimi.*

Legal infamy is removed only by an Apostolic dispensation; this is true with one exception, *viz.,* occult urgent cases, in which can. 2290 may be applied.

Infamy of fact (*infamia facti*) ceases by the rehabilitation of one's good name, *i. e.,* by regaining one's lost reputation with upright and serious Catholics. This depends upon particular circumstances, continued good behavior, and, above all, the judgment of the Ordinary.

7. Among the severest penalties which may be inflicted are deposition and degradation.

Deposition consists in the privation of all the titles that a clergyman may possess, except the clerical state itself and its essential privileges. Its effects are described in can. 2303 as follows:

a) The obligations inherent in the order received, as well as the clerical privileges, remain. Therefore, even a deposed cleric, if he has received subdeaconship, must recite the Breviary, remain unmarried (can. 132, 135), and retains the prerogatives mentioned in can. 118–123.

b) A deposed cleric is *ipso facto* suspended from office;

c) He is disqualified for any office, dignity, benefice, pension or ecclesiastical charge (*munus*);

d) He is deprived of all offices, dignities, benefices, pensions, and charges that he may hold, even though he

has been ordained on the title of benefice or pension. However, in case of the benefice or pension being the title on which the clergyman was ordained, the Ordinary should act charitably towards a needy cleric and provide him with the necessary support, so that he may not be compelled to beg and so disgrace the clerical state.

No juridical claim can be asserted against this charitable support. There is no such penalty *latae sententiae* of deposition in the Code; all mentioned there are *ferendae sententiae*.

Degradation, either verbal or real, consists in deposition, perpetual privation of the clerical dress, and reduction to the lay state. This penalty, too, is *ferendae sententiae* only.

TITLE X

PENAL REMEDIES AND PENANCES

1. There are four kinds of *preventive remedies:* warning, correction, order or precept, and surveillance. Both *warning* and *rebuke,* if public, must be made either before a notary, who in this case may also be the chancellor, or in the presence of two witnesses, who may be discreet laymen, or by letter, which should be registered. They may be made more than once.

A *precept,* order, or injunction is a special command of the bishop, accompanied by threats of punishment in case of disobedience. It may be served after a warning or a rebuke has proved ineffective, or if it is likely that these two measures, warning and rebuke, will not produce the desired effect.

Surveillance or vigilance may be demanded in a very serious case, especially if a person is exposed to the danger of relapse into the same crime.

2. The *principal,* though not the only *penances,* are:

a) To recite certain prayers, *e. g.,* the Penitential Psalms, or the Stations of the Cross, or the Rosary;

b) To make a pilgrimage to a certain shrine, provided the penitent has the means to do so and is physically able; or to perform other devotional works, such as taking care of the church or of an altar;

c) To observe special fasts, if one's work or family permits;

d) To give alms for charitable purposes;

e) To retire for some days into a religious house.

PART III

PENALTIES FOR INDIVIDUAL CRIMES

(Canons 2314–2414)

The penalties, and for the most part they are censures, are here placed according to the gradation of reservation, together with a few notes, as it were footnotes, if some of these censures should require such. This method appears more practical for the use of pastors and confessors, and may, therefore, serve as an excuse for departing from the arrangement of the Code.

I. *Excommunications Reserved to the Holy See*

Modo Specialissimo

1. Whoever throws away the *Sacred Species,* or carries them away or retains them for an evil purpose (can. 2320).

2. Those who lay violent hands on the *person of the Roman Pontiff* (can. 2343, § 1, n. 1).

3. Those who absolve, or feign to absolve, an *ac-*

complice in peccato turpi, even if the confessor absolves an accomplice who does not confess the sin of complicity from which he was not yet absolved, but conceals that sin, because he was induced by the confessor not to confess it, either directly or indirectly (can. 2367).[1]

4. Confessors who dare (*praesumpserint*) to break the *seal of confession* directly (can. 2369).

In order to absolve validly and licitly from these four censures a *most especial faculty* of the Holy See is required. Neither the Apostolic Delegates (see n. 4 of their faculties; Vol. I of our Commentary, p. 265), nor the Ordinaries, according to Formulary III, issued March 17, 1922, have obtained this faculty.

II. *Excommunications Reserved to the Holy See Modo Speciali*

1. All apostates from the Christian faith and all heretics and schismatics (can. 2314).[2]

[1] If the sin of complicity had been absolved by another confessor, the censure is not incurred by the guilty priest, even though the accomplice should mention it to him in the confessional. If the confessor does not recognize the penitent, or has a well-founded doubt about the identity of the person, the absolution would be licit and valid, and no censure incurred. Even in danger of death another priest must be called to hear the accomplice's confession, if it can be done without serious infamy or scandal; otherwise the censure is incurred.

[2] Formulary III grants Ordinaries the faculty to absolve all penitents who have incurred the aforesaid penalty on account of *heresy*—apostasy and schism are not mentioned—no matter whether they uttered the heresy in the presence of others or not; but they must denounce the professional teachers or heresy before absolution, if possible, or at least seriously promise to do so afterwards; they must also, under the same condition, denounce the accomplices of these teachers if they are religious or ecclesiastics.

2. Those who publish books written by apostates, heretics, or schismatics, after the books have been effectively published, and those who defend such books or others nominally forbidden by Apostolic letter, or who knowingly read or retain them without due permission (can. 2318).[3]

3. Persons not in sacerdotal orders, who pretend to say Mass or to hear sacramental confession (can. 2322).

4. Individuals, of whatever state, rank, or condition, who appeal from laws, decrees, or ordinances of a governing Pope to a future council (can. 2332).

5. Those who have recourse to the civil power in order to impede letters and documents coming from the Apostolic See or from its legates, their promulgation or execution (can. 2333).

6. Those who issue laws, ordinances or decrees against the liberty and rights of the Church; also those who, in order to impede the exercise of ecclesiastical jurisdiction in the external as well as internal forum, either directly or indirectly have recourse to any secular power (can. 2334).[4]

7. Persons who compel to appear before the civil court

Abjuration is made secretly before the confessor. From this benefit or faculty are excluded those who purposely disseminate heresy among Catholics. A wholesome penance should be imposed on those absolved, by virtue of this faculty, and the scandal repaired as much as possible.

[3] The above-named *Formulary* grants the faculty to absolve from this excommunication. We remind the Ordinaries that these faculties *are to be obtained;* they are not *ipso facto* granted by reason of having received the Formulary.

[4] Ordinaries, by virtue of Formulary III, may absolve from this censure, as far as the second clause is concerned (*impedientes iurisdictionem ecclesiasticam*).

—against the *privilegium fori*—Cardinals, legates of the Apostolic See, higher officials of the Roman Court, or their own Ordinary (can. 2341).[5]

8. Those who lay violent hands on Cardinals, legates, patriarchs, archbishops, or bishops, even though only titular (can. 2343).

9. Usurpers or retainers of property or rights of the Roman Church (can. 2345).

10. Those who forge or falsify decrees or rescripts of the Apostolic See, and those who knowingly make use of such falsified documents (can. 2360).

11. Those who either themselves or through others falsely accuse a confessor of the crime of *solicitation* to his superior (can. 2363).

III. *Excommunications Reserved to the Holy See Simpliciter*

1. Those who make profit from indulgences (can. 2327).

2. Those who enlist in Masonic sects or other associations of the same kind, which plot against the Church or against lawful civil authority (can. 2335).[6]

3. Those who, without the necessary faculty, dare to absolve any one from excommunication *latae sententiae,*

[5] This would include also such as compel the aforesaid persons to appear as witnesses. However, it is at least doubtful whether this penalty binds in countries where the *privilegium fori* does not, *de facto,* exist.

[6] Formulary III contains the faculty to absolve such persons, *provided* they sever their connection with these societies, denounce ecclesiastics or religious who belong to them, and return books, manuscripts and emblems, or at least seriously promise to do so.

either most especially or especially reserved to the Apostolic See (can. 2338).[7]

4. Those who aid or favor an *excommunicatus vitandus* in the crime for which he was excommunicated (can. 2338, § 2).

5. Those who dare to hale before a lay judge any bishop (not their own Ordinary), or an abbot nullius or prelate nullius, or one of the major superiors of religious institutes (can. 2341).

6. Those who violate the enclosure of Regulars, and nuns with papal enclosure who leave the enclosure (can. 2342).

7. Those who, either personally or through others, dare to appropriate to their own use and usurp ecclesiastical property of whatever kind, and those who dare to prevent either individual or corporate ecclesiastical persons from receiving the fruits or income due to them (can. 2346).

8. Those who participate in a *duel,* or challenge others to it, or accept the challenge, or assist at, or purposely witness a duel (can. 2351).[8]

9. Clerics in higher orders, and regulars or nuns with

[7] *"Praesumentes"* supposes a rash or presumptuous act, and, therefore, every degree of diminished imputability renders the offender immune from this penalty (can. 2229, § 2). Besides, can. 2227, § 3, says that if a confessor, *unaware of the reservation,* absolves from censure and sin, the *specialissimo modo* absolution is valid unless the censure is reserved, or *ab homine.*

[8] Formulary III grants the faculty to absolve from this censure, *provided* the case has not yet been brought before the ecclesiastical court—*ad forum externum nondum deductum.* This means that the duelers have not yet been accused to the Ordinary, and that the latter has not yet issued a summons to the parties in question to appear before his tribunal. After the summons has been intimated, the case is certainly *ad forum externum deductus.*

solemn vows, who presume to contract a marriage, even though it be only a civil one, and all those who contract such a marriage with one of the aforesaid persons (can. 2388).

10. Those who commit simony in any ecclesiastical office, benefice or dignity (can. 2392).

11. The vicar-capitular (administrator) and members of the chapter (our diocesan consultors), as well as outsiders who either personally or through intermediary persons withdraw, destroy, conceal, or substantially alter any document belonging to the episcopal court (can. 2405).

IV. *Excommunications Reserved to the Ordinary*[9]

1. Those who contract marriage before a non-Catholic minister as such, *i. e., qua sacris addictus* (can. 2319, § 1, n. 1).

2. Those who contract marriage with the implied or express agreement that all or some of the children shall be educated outside the Catholic Church (can. 2319, § 1, n. 2).

3. Those who knowingly dare to offer their children to non-Catholic ministers for baptism (can. 2319, § 1, n. 3).

4. Parents or those holding their place, who knowingly

[9] The Ordinary is entitled to communicate this power, which is an ordinary one, to others, either to the full extent or in part, either for all time or for a certain length of time, and, therefore, may lawfully and validly insert it in the "diocesan faculties." This is plainly stated in can. 199, § 1. *Should* he do it? We answer that he may take a directive norm from can. 897, which tells him that reservation is intended to uproot some inveterate crime and to restore discipline. If this is not the case, the Ordinary had better make it as lenient as possible.

offer their children to be educated or brought up in a non-Catholic denomination (*ib.*, n. 4).

5. Those who manufacture *false relics* or knowingly sell or distribute them or have them exposed [10] to the public veneration of the faithful (can. 2326).

6. Those who lay violent hands on the person of clerics or religious of either sex (also novices and members of religious associations).

7. Those who procure abortion, the mother not excepted (can. 2350).

8. Apostate religious of non-exempt and lay institutes (can. 2385).[11]

9. All religious with simple vows who presume to contract marriage, and those who contract marriage with such a religious (can. 2388).

V. *Excommunication Reserved to No One* (*Nemini*)

1. Authors and publishers who print books of Sacred Scripture, or annotations and commentaries thereon, without due permission (can. 2318).

2. Those who dare to command or compel others to give a Christian burial to infidels, apostates from the faith, heretics, or other excommunicated or interdicted persons (can. 2339).

3. Those who knowingly neglect to obtain the papal indult required for the alienation of ecclesiastical property to the amount of more than 30,000 francs, also those who receive anything through such an unlawful deal, as well as those who give their consent (can. 2347).

[10] Also *exempt religious* are subject to this censure; see can. 1283.

[11] Apostates of exempt institutes are subject to their own Ordinary (*can. cit.*).

4. All those who, no matter what their dignity, in any way compel a man to embrace the clerical state, and those who in any way compel a man or woman to enter the religious state or to make religious profession, be it solemn or simple, perpetual or temporary (can. 2352).

5. Those who knowingly omit to denounce, within a month, a confessor who solicited them *ad turpia* in the confessional,—from which censure the neglectful penitent cannot be absolved unless he or she has complied with or seriously promised to satisfy, this obligation (can. 2368).

VI. *Interdicts*

1. Corporations, such as universities, colleges, chapters and other juridical persons who appeal from laws, decrees or ordinances of the ruling Pope to a general council (can. 2332) incur excommunication reserved to the Holy See *modo speciali.*

2. Those who knowingly celebrate or have others celebrate divine offices in interdicted places, and those who knowingly admit to the celebration of divine offices clerics who have sustained a declaratory or condemnatory sentence of excommunication, interdict or suspension, incur the interdict from entering into the church—*ab ingressu ecclesiae,*—reserved to the one whose sentence they have disregarded (can. 2338, § 3).

3. Those who are the cause of a local interdict, or of an interdict laid upon a community or corporation, are *ipso facto* personally interdicted (can. 2338, § 4).

4. Those who, of their own accord, grant Christian burial to such as are not entitled to it, incur the interdict *ab ingressu ecclesiae,* reserved to the Ordinary (can. 2339).

VII. *Suspensions*

1. The following incur suspension *reserved to the Apostolic See:*

a) A bishop who consecrates another, and the assistant bishops or the priests taking their place, as well as the one who receives episcopal consecration without having obtained the Apostolic mandate (can. 2370).

b) Clerics (also bishops) who have knowingly ordained any one, as well as those who have been ordained through simony, and those who administer or receive other Sacraments simoniacally (can. 2371).

c) Suspension *a divinis* is incurred by those who dare to receive Orders from an excommunicated, suspended, or interdicted minister, provided he has been declared such or condemned to one of the aforesaid penalties; or from a notorious apostate, heretic, or schismatic (can. 2372).

d) Religious in higher orders, whose profession has been declared null and void on account of deceit admitted by them, remain *ipso facto* suspended until the Apostolic See shall have made provision for them (can. 2387).

2. Suspensions *reserved to the Ordinary* are:

a) If a clergyman brings another clergyman of inferior rank than prelates before the civil court, without due permission, he is suspended *from office.* In case of exempt religious the Ordinary is their superior (can. 2341).

b) A religious in higher orders, who is a fugitive, incurs suspension, which must be understood as total, reserved to his superior (can. 2386).

3. Suspensions *reserved to no one:*

a) Priests who dare to absolve from *reserved sins* are *ipso facto* suspended from hearing confessions (can.

2366), if neither by law (can. 900) nor by virtue of faculties absolution is rashly imparted.

b) *Ipso facto* suspended from the exercise of an order illegally received are those who maliciously present themselves for ordination without any dimissorial, or with false dimissorial letters, or without having reached the canonical age, or who, without observing the prescribed order, permit themselves to be ordained *per saltum* (can. 2374).

c) A cleric who dares to resign an ecclesiastical office, benefice, or dignity into the hands of laymen, *ipso facto* incurs suspension *a divinis* (can. 2400).

d) Abbots *nullius* or prelates *nullius* who, being obliged to receive the abbatial blessing, neglect to receive it, are *ipso facto* suspended from jurisdiction (can. 2403).

e) Vicars-capitular (our administrators) who grant dimissorials against the ruling of the law (can. 958, § 1, n. 3) *ipso facto* incur suspension *a divinis* (can. 2409).

f) Religious superiors who dare, against the ruling of the law (can. 965–967), to send their ordinands to another bishop, are *ipso facto* suspended from saying Mass for one month (can. 2410).

VIII. *Degradation,*

which, however, is only *ferendae sententiae* and, therefore, requires a canonical warning in each and every case, may be pronounced:

1. Against clerics who have joined a non-Catholic sect or publicly professed themselves to be members thereof (can. 2314).

2. Against clerics who lay violent hands on the person of the Roman Pontiff (can. 2343).

3. Against clerics guilty of homicide (can. 2354).

4. Against clerics guilty of very serious solicitation (can. 2368).

5. Against clerics in higher orders who, after having attempted marriage, do not repent (can. 2388).

IX. *Deposition,*

of which the same must be said as of the preceding penalty, may be inflicted:

1. Against clerics who apostatize from the Christian faith or become heretics or schismatics (can. 2314).

2. Against clerics who desecrate consecrated species (can. 2320).

3. Against clerics who say Mass though they are not priests (can. 2322).

4. Against clerics who desecrate corpses and graves (can. 2328).

5. Against clerics procuring abortion (can. 2350).

6. Against clerics committing one of the various crimes mentioned in can. 2354, provided they have been found guilty in the civil court (can. 2354).

7. Against clerics found guilty of very serious transgressions *contra sextum,* as mentioned in can. 2359.

8. Against clerics in higher orders who refuse to wear the clerical dress and have taken up a mode of life incompatible with the clerical state (can. 2379).

9. Against clerics who illegally take possession of an office, benefice, or dignity, as stated in can. 2394.

10. Against clerics who retain an office, benefice or dignity of which they have been lawfully deprived, or from which they have been lawfully removed, or who oppose such privation or removal (can. 2401).

X. *Infamia Iuris*

1. *Ipso facto* infamous are:

a) Those mentioned above (IX, 2);

b) Those mentioned above (IX, 4);

c) Those who lay violent hands on the person of the Roman Pontiff or of Cardinals or legates of the Roman Pontiff (can. 2343);

d) Duelers and their seconds or *patrini* (can. 2351);

e) Bigamists in the true sense of the word (can. 2356);

f) Laymen condemned by the civil court for certain crimes *contra sextum:* with minors, rape, sodomy, incest, panderage (can. 2357).

2. *To be declared* infamous are:

a) Apostates, heretics, schismatics (can. 2314);

b) Clerics guilty of crimes mentioned under f), n. 1 (can. 2359).

XI. *Privation of Office or Benefice*

is either *ipso facto* incurred, or must be, or may be inflicted in certain cases.

1. It is *ipso facto* incurred:

a) By an *excommunicatus vitandus* (can. 2266);

b) By those who have taken possession of another office or benefice incompatible with one already possessed; this illegal retaining of two incompatible benefices entails the loss of both (can. 2396);

c) By Cardinals who refuse to take the oath required of them (can. 2397);

d) By bishops who neglect to receive the episcopal consecration within six months after their appointment has been intimated to them (can. 2398).

2. It *must be inflicted:*

a) On concubinarians, according to can. 2177 ff.;

b) On clerics who become apostates, heretics, or schismatics (can. 2314);

c) On conspirators against the authority of the Roman Pontiff, or his legate, or their own Ordinary, or against the lawful commands of these authorities (can. 2331, § 2);

d) On clerics who remain for six months under the censure of suspension, if they do not give up their contumacy within a month from the date of the canonical warning (can. 2340, § 2);

e) On clerics who lay violent hands on the person of Cardinals and legates of the Roman Pontiff (can. 2343, § 2);

f) On clerics usurping property belonging to the Roman Church (can. 2345);

g) On clerics unjustly usurping other church property (can. 2346);

h) On clerics laying hands on themselves (can. 2350, § 2);

i) On clerics committing certain crimes mentioned in can. 2354;

k) On clerics guilty of gross transgressions *contra sextum* (can. 2359).

3. It *may be inflicted:*

a) On clerics who traffic with Mass stipends or commit fraud by retaining parts of stipends or neglecting to say as many Masses as they have received stipends (can. 2324);

b) On clerics belonging to forbidden sects (can. 2335 f.);

c) On clerics infringing the liberty or rights of the Church or impeding the exercise of ecclesiastical jurisdiction (can. 2334, 2336);

d) On clerics who are guilty of verbal injuries or defamation inflicted on other clerics or on laymen, provided a very serious scandal was given or great damage done (can. 2355);

e) On clerics guilty of the crimes mentioned in can. 2359;

f) On clerics forging or falsifying documents of the Apostolic See or using such forged or falsified documents (can. 2360);

g) On clerics who take illegal possession of an ecclesiastical office, benefice, or dignity (can. 2394);

h) On clerics who refuse to make the profession of faith, if such is, according to can. 1406, prescribed for them (can. 2403);

i) On clerics who withdraw, destroy, conceal, or substantially alter any document belonging to the episcopal court (can. 2405).

These are the more important and grievous penalties mentioned in the Code. As to their application, it should be remembered that Ordinaries are not entirely free, but should act as explained above.

APPENDIX I

1. PROFESSION OF FAITH PRESCRIBED BY THE NEW CODE

Ego N. firma fide credo et profiteor omnia et singula, quae continentur in symbolo Fidei, quo sancta Romana Ecclesia utitur, videlicet: Credo in unum Deum, Patrem omnipotentem, factorem caeli et terrae, visibilium omnium et invisibilium. Et in unum Dominum Iesum Christum, Filium Dei Unigenitum. Et ex Patre natum, ante omnia saecula. Deum de Deo, lumen de lumine, Deum verum de Deo vero. Genitum non factum, consubstantialem Patri: per quem omnia facta sunt. Qui propter nos homines, et propter nostram salutem descendit de caelis. Et incarnatus est de Spiritu Sancto ex Maria Virgine, et Homo factus est. Crucifixus etiam pro nobis, sub Pontio Pilato: passus, et sepultus est. Et resurrexit tertia die, secundum Scripturas. Et ascendit in caelum: sedet at dexteram Patris. Et iterum venturus est cum gloria iudicare vivos, et mortuos: cuius regni non erit finis. Et in Spiritum Sanctum, Dominum et vivificantem: qui ex Patre Filioque procedit. Qui cum Patre et Filio simul adoratur, et conglorificatur: qui locutus est per prophetas. Et Unam, Sanctam, Catholicam et Apostolicam Ecclesiam. Confiteor unum Baptisma in remissionem peccatorum. Et exspecto resurrectionem mortuorum. Et vitam venturi saeculi. Amen.

Apostolicas et ecclesiasticas traditiones, reliquasque eiusdem Ecclesiae observationes et constitutiones firmissime admitto et amplector. Item sacram Scripturam iuxta eum sensum, quem tenuit et tenet sancta Mater Ec-

clesia, cuius est iudicare de vero sensu et interpretatione sacrarum Scripturarum, admitto; nec eam unquam, nisi iuxta unanimem consensum Patrum, accipiam et interpretabor.

Profiteor quoque septem esse vere et proprie Sacramenta novae legis a Iesu Christo Domino nostro instituta, atque ad salutem humani generis, licet non omnia singulis, necessaria, scilicet, Baptismum, Confirmationem, Eucharistiam, Poenitentiam, Extremam Unctionem, Ordinem et Matrimonium; illaque gratiam conferre, et ex his Baptismum, Confirmationem et Ordinem sine sacrilegio reiterari non posse.—Receptos quoque et approbatos Ecclesiae Catholicae ritus in supradictorum omnium Sacramentorum sollemni administratione recipio et admitto.—Omnia et singula quae de peccato originali et de iustificatione in sacrosancta Tridentina Synodo definita et declarata fuerunt, amplector et recipio.—Profiteor pariter in Missa offerri Deo verum, proprium et propitiatorium Sacrificium pro vivis et defunctis; atque in sanctissimo Eucharistiae Sacramento esse vere, realiter et substantialiter Corpus et Sanguinem una cum anima et divinitate Domini nostri Iesu Christi, fierique conversionem totius substantiae panis in Corpus, et totius substantiae vini in Sanguinem, quam conversionem Catholica Ecclesia Transsubstantiationem appellat. Fateor etiam sub altera tantum specie totum atque integrum Christum, verumque Sacramentum sumi.—Constanter teneo Purgatorium esse, animasque ibi detentas fidelium suffragiis iuvari. Similiter et Sanctos una cum Christo regnantes venerandos atque invocandos esse, eosque orationes Deo pro nobis offerre, atque eorum Reliquias esse venerandas. Firmiter assero imagines Christi ac Deiparae semper Virginis, necnon aliorum Sanctorum habendas et retinendas esse, atque eis debitum honorem ac venerationem imperti-

endam.—Indulgentiarum etiam potestatem a Christo in Ecclesia relictam fuisse, illarumque usum Christiano populo maxime salutarem esse affirmo.—Sanctam, Catholicam et Apostolicam Romanam Ecclesiam, omnium Ecclesiarum matrem et magistram agnosco, Romanoque Pontifici beati Petri Apostolorum Principis successori ac Iesu Christi Vicario veram obedientiam spondeo ac iuro.

Cetera item omnia a sacris Canonibus et Oecumenicis Conciliis, ac praecipue a sacrosancta Tridentina Synodo et ab Oecumenico Concilio Vaticano tradita, definita ac declarata, praesertim de Romani Pontificis primatu et infallibili magisterio, indubitanter recipio atque profiteor, similque contraria omnia, atque haereses quascunque ab Ecclesia damnata et reiectas et anathematizatas, ego pariter damno, reiicio et anathematizo. Hanc veram Catholicam Fidem, extra quam nemo salvus esse potest, quam in praesenti sponte profiteor et veraciter teneo, eandem integram et inviolatam usque ad extremum vitae spiritum, constantissime, Deo adiuvante, retinere et confiteri, atque a meis subditis seu illis, quorum cura ad me in munere meo spectabit, teneri et doceri et praedicari, quantum in me erit curaturum, ego idem N. spondeo, voveo ac iuro. Sic me Deus adiuvet, et haec sancta Dei Evangelia.

APPENDIX II

FORMULA OF THE ANTIMODERNIST OATH

Ego . . . firmiter amplector ac recipio omnia et singula, quae ab inerranti Ecclesiae magisterio definita, adserta ac declarata sunt, praesertim ea doctrinae capita, quae huius temporis erroribus directo adversantur. Ac primum quidem Deum, rerum omnium principium et finem, naturali rationis lumine per ea quae facta sunt,

hoc est per visibilia creationis opera, tamquam causam per effectus, certo cognosci, adeoque demonstrari etiam posse, profiteor. Secundo, externa revelationis argumenta, hoc est facta divina, in primisque miracula et prophetias admitto et agnosco tamquam signa certissima divinitus ortae christianae Religionis, eademque teneo aetatum omnium atque hominum etiam huius temporis, intelligentiae esse, maxime accommodata. Tertio: Firma pariter fide credo, Ecclesiam, verbi revelati custodem et magistram, per ipsum verum atque historicum Christum, cum apud nos degeret, proxime ac directo institutam, eandem super Petrum, apostolicae hierarchiae principem eiusque in aevum successores aedificatam. Quarto: Fidei doctrinam ab Apostolis per orthodoxos Patres eodem sensu eademque semper sententia ad nos usque transmissam, sincere recipio ideoque prorsus reicio haereticum commentum evolutionis dogmatum, ab uno in alium sensum transeuntium, diversum ab eo, quem prius habuit Ecclesia; pariterque damno errorem omnem, quo, divino depósito, Christi Sponsae tradito ab Eaque fideliter custodiendo, sufficitur philosophicum inventum, vel creatio humanae conscientiae, hominum conatu sensim efformatae et in posterum indefinito progressu perficiendae. Quinto: certissime teneo ac sincere profiteor, Fidem non esse coecum sensum religionis e latebris subconscientiae erumpentem, sub pressione cordis et inflexionis voluntatis moraliter informatae, sed verum assensum intellectus veritati extrinsecus acceptae ex auditu, quo nempe, quae a Deo personali, creatore ac domino nostro dicta, testata et revelata sunt, vera esse credimus, propter Dei auctoritatem summe veracis.

Me etiam, qua par est reverentia, subiicio totoque animo adhaereo damnationibus, declarationibus, praescriptis omnibus, quae in Encyclicis literis *Pascendi* et in

Decreto *Lamentabili* continentur, praesertim circa eam quam historiam dogmatum vocant.—Idem reprobo errorem affirmantium, propositam ab Ecclesia fidem posse historiae repugnare, et catholica dogmata, quo sensu nunc intelliguntur, cum verioribus christianae religionis originibus componi non posse.—Damno quoque ac reiicio eorum sententiam, qui dicunt, christianum hominem eruditiorem induere personam duplicem, aliam credentis, aliam historici, quasi liceret historico ea retinere quae credentis fidei contradicunt, aut praemissas adstruere, ex quibus consequatur dogmata esse aut falsa aut dubia, modo haec directo non denegentur.—Reprobo pariter eam Scripturae Sanctae diiudicandae atque interpretandae rationem, quae, Ecclesiae traditione, analogia Fidei, et Apostolicae Sedis normis posthabitis, rationalistarum commentis inhaeret, et criticen textus velut unicam supremamque regulam, haud minus licenter quam temere amplectitur.—Sententiam praeterea illorum reiicio qui tenent, doctori disciplinae historicae theologicae tradendae, aut iis de rebus scribenti seponendam prius esse opinionem ante conceptam sive de supernaturali origine catholicae traditionis, sive de promissa divinitus ope ad perennem conservationem uniuscuiusque revelati veri; deinde scripta Patrum singulorum interpretanda solis scientiae principiis, sacra qualibet auctoritate seclusa, eaque iudicii libertate, qua profana quaevis monumenta solent investigari. —In universum denique me alienissimum ab errore profiteor, quo modernistae tenent in sacra traditione nihil inesse divini; aut quod longe deterius, pantheistico sensu illud admittunt; ita ut nihil iam restet nisi nudum factum et simplex, communibus historiae factis aequandum; hominum nempe sua industria, solertia, ingenio scholam a Christo eiusque apostolis inchoatam per subsequentes aetates continuantium. Proinde fidem Patrum firmissime

retineo et extremum vitae spiritum retinebo, de charismate veritatis certo, quod est, fuit eritque semper in piscopatus ab Apostolis successione; non ut id teneatur quod melius et aptius videri possit secundum suam cuiusque aetatis culturam, sed ut nunquam aliter credatur, nunquam aliter intelligatur absoluta et immutabilis veritas ab initia per Apostolos praedicata.—Haec omnia spondeo me fideliter, integre sincereque servaturum et inviolabiliter custoditurum, nusquam ab iis sive in docendo sive quomodolibet verbis scriptisque deflectendo. Sic spondeo, sic iuro, sic me Deus adiuvet etc.

APPENDIX III

FORMULA FOR RECONSECRATING ALTARS

A

Instaurato Altari immobili et mensa, integrum Reliquiarum sepulcrum habente, cum stipite coniuncta, Consecrator sancto chrismate inungat, ad modum crucis, coniunctiones mensae cum stipite in quatuor angulis, quasi illas coniungens, ad singulas cruces dicens: In NOMINE PA ✠ TRIS ET FI ✠ LII ET SPIRITUS ✠ SANCTI, *recitatis dein orationibus* MAIESTATEM TUAM, *et* SUPPLICES TE DEPRECAMUR *iuxta Pontificale Romanum; ac subinde scripto declaret ac testetur praefatum Altare a se, ordinaria vel delegata auctoritate, rite consecratum, uti tale habendum esse et sub eodem titulo quo ipsum ante execrationem gaudebat.*

B

Pontifex, indutus rochetto et stola alba, vel Presbyter, indutus superpelliceo et stola alba, accedit versus altare et, loco congruenti stans, benedicit aquam cum sale, cinere et vino, incipiens absolute exorcismum salis.

Exorcizo te, creatura salis, in nomine Domini nostri Iesu Christi, qui Apostolis suis ait: Vos estis sal terrae, et per Apostolum dicit: Sermo vester semper in gratia sale sit conditus; ut sancti ✠ ficeris ad consecrationem huius altaris, ad expellendas omnes daemonum tentationes; et omnibus, qui ex te sumpserint, sis animae et corporis tutamentum, sanitas, protectio et confirmatio salutis. Per eumdem Dominum nostrum Iesum Christum

Filium tuum, qui venturus est iudicare vivos et mortuos, et saeculum per ignem.

R. Amen.

Deinde dicit:

V. Dominus vobiscum.

R. Et cum spiritu tuo.

Oremus.

Domine Deus, Pater omnipotens, qui hanc gratiam caelitus sali tribuere dignatus es, ut ex illo possint universa condiri, quae hominibus ad escam procreasti, bene-✠dic hanc creaturam salis, ad effugandum inimicum; et ei salubrem medicinam immitte, ut proficiat sumentibus ad animae et corporis sanitatem. Per Christum Dominum nostrum.

R. Amen.

Tum procedit absolute ad exorcismum aquae:

Exorcizo te, creatura aquae, in nomine Dei Pa ✠ tris, et Fi ✠ lii, et Spiritus ✠ Sancti, ut repellas diabolum a termino iustorum, ne sit in umbraculis huius Ecclesiae et altaris. Et tu, Domine Iesu Christe, infunde Spiritum sanctum in hanc Ecclesiam tuam et altare; ut proficiat ad sanitatem corporum animarumque adorantium te, et magnificetur nomen tuum in gentibus: et increduli corde convertantur ad te, et non habeant alium Deum, praeter te, Dominum solum, qui venturus es iudicare vivos et mortuos, et saeculum per ignem.

R. Amen.

Deinde dicit:

V. Domine, exaudi orationem meam.

R. Et clamor meus ad te veniat.

V. Dominus vobiscum.

R. Et cum spiritu tuo.

Oremus.

Domine Deus, Pater omnipotens, statutor omnium elementorum, qui per Iesum Christum Filium tuum Dominum nostrum elementum hoc aquae in salutem humani generis esse voluisti, te supplices deprecamur, ut, exauditis orationibus nostris, eam tuae pietatis aspectu sancti-✠ fices; atque ita omnium spirituum immundorum ab ea recedat incursio, ut ubicumque fuerit in nomine tuo aspersa, gratia tuae benedictionis adveniat, et mala omnia, te propitiante, procul recedant. Per eumdem Dominum nostrum Iesum Christum Filium tuum: Qui tecum vivit et regnat Deus, per omnia saecula saeculorum.

R. Amen.

Tum dicit super cineres:

Benedictio cinerum.

V. Domine, exaudi orationem meam.
R. Et clamor meus ad te veniat.
V. Dominus vobiscum.
R. Et cum spiritu tuo.

Oremus.

Omnipotens sempiterne Deus, parce poenitentibus, propitiare supplicantibus, et mittere digneris sanctum Angelum tuum de caelis, qui bene ✠ dicat et sancti ✠ ficet hos cineres, ut sint remedium salubre omnibus, nomen sanctum tuum humiliter implorantibus, ac semetipsos pro conscientia delictorum suorum accusantibus, ante conspectum divinae clementiae tuae facinora sua deplorantibus, vel serenissimam pietatem tuam suppliciter obnixe-

que flagitantibus; et praesta, per invocationem sanctissimi nominis tui, ut quicumque eos super se asperserint, pro redemptione peccatorum suorum, corporis sanitatem et animae tutelam percipiant. Per Christum Dominum nostrum.

R. Amen.

Tum accipit sal, et miscet cineri in modum crucis, dicens:

Commixtio salis et cineris pariter fiat. In nomine Pa✠tris, et Fi✠lii, et Spiritus✠Sancti.

R. Amen.

Deinde, accipiens pugillum de mixtura salis et cinerum, mittit in aquam in modum crucis, dicens:

Commixtio salis, cineris et aquae pariter fiat. In nomine Pa✠tris, et Fi✠lii, et Spiritus✠Sancti.

R. Amen.

Deinde dicit super vinum:

Benedictio vini.

V. Domine, exaudi orationem meam.

R. Et clamor meus ad te veniat.

V. Dominus vobiscum.

R. Et cum spiritu tuo.

Oremus.

Domine Iesu Christe, qui in Cana Galilaeae ex aqua vinum fecisti, quique es vitis vera, multiplica super nos misericordiam tuam; et bene✠dicere et sancti✠ficare digneris hanc creaturam vini, ut ubicumque fusum fuerit, vel aspersum, divinae id benedictionis tuae opulentia repleatur, et sanctificetur: Qui cum Patre, et Spiritu Sancto, vivis et regnas Deus, per omnia saecula saeculorum.

R. Amen.

Deinde mittit in modum crucis vinum in aquam ipsam, dicens:

Commixtio vini, salis, cineris et aquae pariter fiat. In nomine Pa ✠ tris, et Fi ✠ lii, et Spiritus ✠ Sancti.

R. Amen.

V. Domine, exaudi orationem meam.

R. Et clamor meus ad te veniat.

V. Dominus vobiscum.

R. Et cum spiritu tuo.

Oremus.

Omnipotens sempiterne Deus, creator et conservator humani generis, et dator gratiae spiritualis, ac largitor aeternae salutis, emitte Spiritum Sanctum tuum super hoc vinum cum aqua, sale et cinere mixtum; ut armatum caelestis defensione virtutis, ad consecrationem huius altaris tui proficiat. Per Dominum nostrum Iesum Christum Filium tuum: Qui tecum vivit et regnat in unitate eiusdem Spiritus Sancti Deus, per omnia saecula saeculorum.

R. Amen.

Postea cum praemissa aqua benedicta facit maltam, seu coementum, quod benedicit, dicens:

V. Dominus vobiscum.

R. Et cum spiritu tuo.

Oremus.

Summe Deus, qui summa et media imaque custodis, qui omnem creaturam intrinsecus ambiendo concludis, sancti ✠ fica et bene ✠ dic has creaturas calcis et sabuli. Per Christum Dominum nostrum.

R. Amen.

Coementum benedictum reservatur et residuum aquae benedictae funditur in sacrarium.

Deinde consecrator, accedens ad altare, signat cum pollice dexterae manus de Chrismate confessionem, id est sepulchrum altaris, a quo ablatae sunt Reliquiae, in quatuor angulis signum crucis, et dicens, dum unamquamque crucem facit:

Conse ✠ cretur, et sancti ✠ ficetur hoc sepulchrum. In nomine Pa ✠ tris et Fi ✠ lii, et Spiritus ✠ Sancti. Pax huic domui.

Deinde recondit ibi vasculum cum Reliquiis et aliis in eo inclusis veneranter, atque accipiens lapidem, seu tabulam, qua debet claudi sepulchrum, facit cum pollice crucem de Chrismate subtus in medio eius, dicens:

Conse ✠ cretur et sancti ✠ ficetur haec tabula (vel hic lapis), per istam unctionem et Dei benedictionem. In nomine Pa ✠ tris, et Fi ✠ lii, et Spiritus ✠ Sancti. Pax tibi.

Et mox, coemento benedicto adhibito, adiuvante, si opus fuerit, coementario, ponit et coaptat tabulam, seu lapidem, super sepulchrum, claudens illud, et dicit:

Oremus.

Deus, qui ex omnium cohabitatione Sanctorum, aeternum maiestati tuae condis habitaculum, da aedificationi tuae incrementa caelestia: et praesta; ut quorum hic Reliquias pio amore complectimur, eorum semper meritis adiuvemur. Per Christum Dominum nostrum.

R. Amen.

Tunc, coementario adiuvante, cum eodem coemento firmat ipsam tabulam, seu lapidem, super sepulchrum: deinde ipse facit crucem desuper ex Chrismate cum pollice dexterae manus, dicens:

Signe ✠ tur et sancti ✠ ficetur hoc altare. In nomine Pa ✠ tris, et Fi ✠ lii, et Spiritus ✠ Sancti. Pax tibi.

Ex Secretaria S. Rituum Congregationis, die 9 septembris 1920.

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